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JUST NEW JARGON, OR REAL CULTURAL CHANGE? ON THE IMPACT OF GHANA'S FIRST 'HUNG PARLIAMENT' ON ITS MULTIPARTY DEMOCRACY.

Maame A.S. Mensa-Bonsu[1*]

Abstract

Ghana's 2020 general election produced the country's first hung Parliament under the 1992 Constitution, creating an unprecedented opportunity to evaluate the operation of Ghana's multiparty constitutional democracy. This paper examines whether the absence of a parliamentary majority strengthened the constitutional functions that political parties are expected to perform or merely exposed longstanding structural weaknesses within Ghana's political system. I argue that while the hung Parliament enhanced legislative bargaining and scrutiny in some respects, it did not fundamentally transform Ghana's political culture. Instead, it revealed persistent deficiencies in party ideology, internal party democracy, campaign finance transparency, and the dominance of the two major political parties. It concludes by proposing legal and institutional reforms to strengthen political party governance, improve democratic accountability, and enhance the effectiveness of Ghana's constitutional framework, while drawing broader lessons for emerging multiparty democracies across Africa.

1 * Associate Professor of Law, Ashesi University, Ghana. My heartfelt thanks to Joojo Afun for his invaluable research assistance and comments; to Patrick Dadey for editorial assistance; to Alfred Berkoh for helpful comments on earlier drafts; Dr Dominic Ayine for his candour and insightful views; and Charles Fombad whose invitation to write on multiparty politics in Ghana led me to write this paper.

Introduction

Ghana's 1992 Constitution is the country's longest lasting configuration of state and government. Her preceding history is filled with military juntas and colonialism. The longest period of democratic governance prior to 1992 was the period 1957–1966. But even that short nine-year period of democracy was not accompanied by rich multiparty political activity. For in 1960, a slide towards constitutional authoritarianism began with the republican Constitution that abandoned parliamentary government and named Kwame Nkrumah life president with unlimited power.[2] Four years later, Nkrumah's party, the Convention People's Party (CPP), was by constitutional amendment made the official state party; all other political parties were banned and thus multiparty political activity in Ghana ceased.[3] Between then and 1992, there were only five years of multiparty democracy. Unsurprisingly, therefore, when, in 1992,[4] the ban on political party activity was lifted, there was much joy but little understanding what exactly a political party does beyond participating in elections. This gap in knowledge has been evident in the functioning of Ghana's political culture. In between elections, what is a political party good for? How do its members show their loyalty to the party while in office?

This paper discusses Ghana's eighth Parliament under the 1992 Constitution (2020–2024); novel for being the nation's first 'hung parliament'. It documents and discusses the imprint of this novelty on Ghana's governance and political culture. While this study engages with previous Parliaments of this constitution, its focus is always on the Parliament in office from 2020–2024. The paper develops as follows: it begins with a theoretical discussion on the

2 Egon Schwelb, 'The Republican Constitution of Ghana' (1960) 9(4) AJCL 634.

3 Wilson Kwame Yayoh, 'Resurgence of Multi-Party Rule in Ghana, 1990-2004: A Historical Review' (2006) 10 Transactions of the Historical Society of Ghana 125 accessed 15 November 2024 <http://www.jstor.org/stable/41406736> accessed 15 November 2024.

4 On 18 May 1992, PNDCL280 was passed, lifting the 11-year ban on political parties, though specific parties remained banned, nevertheless.

role political parties play in the governance of a constitutional state. The second section then gives a brief contextualising overview of the legal framework under which political parties operate in Ghana. In the third section, I introduce the reader to the lived experience of multipartyism during this fourth republic juxtaposing the situation on the ground with what the law expects. I turn then to the hung parliament of the 2020–2024. What have been its victories and what its failures. What accounts for them? Has the hanging of Parliament allowed political parties to fulfil the roles identified in the first section? The fifth section assesses the hung parliament's performance in respect of each of the roles political parties play in governance identified in the first section I conclude by extrapolating from this experience what changes should be made to Ghana's legal framework to improve political party functioning in the democratic state and extract the wider insights of constitutional design that Ghana and other African democracies should draw from this forerunner experience.

Of the value of political parties in democratic constitutions

Political parties are curious creatures because they are private bodies of public interest. Outside of one-party states where the state apparatus and the lone legal political party are inextricably intertwined, the political party is a private institution, privately populated, privately funded. It has no compulsion power; neither over members nor to compel membership. Its agenda is, to the extent that it does not violate the Constitution, entirely within its remit to determine. It can have a holistic posture about the governance and direction of the society, or it can pursue a singular objective.[5] However, its purpose being always public, it, and all its business, is the business of the public. Provided

5 Such as was… a British political party whose sole purpose was to prevent the sale of Manchester city fc to ….

a political party has enough sway in the society to have a realistic chance of acquiring the reins of government or taking a noticeable number of the legislature's seats, its trajectory and interests are public matters.

Yet remaining a private body, the general public has no say in how it runs its affairs. For example, who wins the primaries of the Republican Party in the United States significantly affects every American's voting options and therefore the collective direction. But non-Republican Americans do not have a say in how or who the Republicans choose as their candidate. The palpable frustration and disbelief of wide sections of American society as Donald Trump pulled into the lead in the 2024 presidential primaries is a testament to both the private nature—which is why they were helpless—and the public nature—which is why they cared—of the political party. It is perhaps tempting, in view of how significantly political parties affect even those outside its membership, to think that it might be good to exert some public control over them. But this would be misconceived. Allowing political parties to stay entirely private, deciding what causes they will espouse, who will lead them and what they will achieve is what gives democracy any real bite.[6] This is why the democracy of one-party states is underwhelming. They allow citizens to choose, as the popular saying goes, any colour as long as it is black. One is not really choosing when one votes if the choice is simply between agents rather than ideologies, bundles of incidents and policy choices. That is what multiparty politics offers citizens; real choice.

Nevertheless, they ought not to be beyond scrutiny. While their content ought to be entirely within their purview and the limits of the Constitution, their methodology should not. How they expel their members, choose their candidates, and raise funds, at the very

6 N W Barber, 'Sovereignty, Parties, and Principles: A Partial Reply' (2021) 24(1) Jerusalem Review of Legal Studies 123.

least, should be regulated by the state and their burden of fairness and reasonableness should be equivalent to that of public bodies.[7] To achieve this delicate balance of private-public, the ability to litigate affairs of the party should be limited to its members. But its decision-making procedures should not be *in camera*.

For the longest time viewed as problems a constitution had no choice but to navigate,[8] political parties, have finally in recent times, been accorded a new respect by the literature. It is now accepted that they are necessary elements without which democracy cannot function.[9] This section illustrates some of the key roles political parties play in a truly functional representative democracy. Firstly, political parties put together manifestos, which are party agenda items for when in power. The belief that party representatives will stick to it make the manifesto a useful tool. But it conflicts with the delegate view of representation. In non-parliamentary democracies, party discipline is often intensely distrusted[10] and viewed as incompatible with the very idea of representation. After all, how is a person to vote according to her conscience and understanding of what is best for their constituents if their first instinct is to vote according to what the manifesto says the party thinks. Yet, it is not as devious and self-serving as it can at first thought appear. It is impossible to know every candidate closely and so know exactly what they stand for. Manifestos allow for voters to know the bundle of commitments that a candidate will pursue,[11] and it is on the basis of this that they vote. Therefore, fidelity to party lines is an important accountability mechanism in the relationship of represented and representative. For this reason, I hold firmly that when a Member of Parliament (MP) crosses carpet[12] i.e. changes side,

7 Ibid.
8 Barber (n6) 123.
9 Ibid.
10 Barber (n6).
11 Ibid 124.
12 As was common in the first Republic. By... most opposition MPs had either fled the country or crossed carpet by waving a handkerchief and walking across the room to sit on the government side. See...

they should have to resign. They were not elected simply because of their high moral fibre or their superior appreciation for ideological soundness. Once they have become party candidates, a vote for them is as much for the bundle of party commitments as for their personal appeal. If therefore they change affiliation, they are no more who their constituents voted; they no longer intend to push the interests the constituents sent them there to advance. They have, then, no moral authority to continue representing them. Therefore, if an MP finds themselves no longer able to support the party's agenda, their remedy is resignation. Party MPs ought to pay serious attention to party discipline as an act of respect to their constituents.

Of course, like nearly every tool of governance, its excess corrupts it. MPs should not take the manifesto and therefore party lines as their mandate. For, if they do, they lose sight of their primary goal as legislators, which is to advance the welfare of the members of the state.[13] Instead, they become consumed in bringing the manifesto to reality and are unable to engage in the vital exercise of assessing the manifesto items' continued utility or benevolence to the people. Simply because it is in the manifesto, such MPs will seek to carry it out. There is no benefit in this doggedness. Though the representative owes a duty of accountability to those who voted her not to deviate so dramatically from the set of commitments they chose her for, she ought, at the very least, to be able to discern whether a party policy is against the interest of her particular constituents and ought to be willing to stand against it in that case. For instance, a government project that could generate significant revenue in tax for the country may threaten many small local shops in a constituency. The MP for that constituency should not be more wedded to the manifesto's tax generation plan than to her constituency's economic welfare, and so should be able to vote against it. That said, the general lines of party thought represent ideology and remain important to governance and the public's capacity to assess government.

13 Barber (n6) 125.

A legislature full of independents would not only be a raucous institution, it would be an ineffective one too. With no clear lines of common cause, the process of arriving at a decision would be impossibly slow. It would be akin to teaching a class in which everyone was studying a different subject. Greater progress would be made faster if the students were divided into subject groups and taught accordingly. Similarly, the presence of parties in the legislature groups the representatives into ideological, interest, or methodological caucuses and thereby allows the business of negotiation which is legislation to get on. This is a vital role for political parties in representative democracy.

Again, as Barber has pointed out, without parties, each representative's voice is vanishingly small. But as a party caucus, their individual voices acquire the amplification of party machinery and increases each MP's impact.[14] This is what allows them to deliver on any promise of representation. Alone, the MP would merely be present. In the context of a party caucus, the MP gets a meaningful say in the decisions of the House and so actually represents. This is clearly seen in the way that Independents in the house tend to side with a party caucus on matters of importance to their constituents. Independents are voted in on a platform they do not actually have the capacity to deliver on their own. Their advantage over party MPs is the flexibility to cherry-pick from among the agenda items of the various parties when deciding when to vote with any of them. However, this parasitic advantage, while useful to individual independents, does not outweigh the ill effect of the chaos of a legislature of independents.

Political parties are the non-authoritarian state's solution to factions. Being, as Madison described them,"'a number of citizens, whether amounting to a majority or minority of a whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate

14 Barber (n6) 124.

interest of the community".[15]Factions are inherently dangerous to the continuity and harmony of the state. Wherever people are allowed to hold individual opinions, they will invariably both have some ideas that are adverse to others' interests[16](whether about access to some public good, tax or even when they should be allowed to make noise), and associate with others who share those views. Political parties create benign associations of what would have been factions. By articulating a vision for the whole society, about what should it be and how to attain it, they redirect the energy of factions from the negative focus of the interests of their members only. For example, a separatist faction is concerned only with the future and welfare of the section of society they want to pull out of the state. But a political party cannot articulate a vision for only one section of the state and expect to win the votes of those not in that section. In this way, political parties are really the glue by which democracies are held together or as Peele put it the 'life and blood of democracy.'[17]

Furthermore, political parties allow likeminded citizens to meet, discuss ideas and create and refine policy. As no person is likely to have thought through carefully every single issue of societal importance—defence, health, the war in Gaza, the UN, Free SHS, juvenile justice etc. Political parties allow people who agree on certain matters broadly to form thinking groups and develop detail to the broad ideas.[18] This not only improves the quality of policymaking, it enables wider coherence across policies[19] and thus ensures cross-issue ideological consistency in public life.

15 James Madison, 'Federalist No 10' in Charles R Kesler (ed), The Federalist Papers (Signet Classics 2023) 118.

16 Danica Fink-Hafner, *Party system changes and challenges to democracy* (Palgrave Macmillan 2024) 21.

17 Gillian Peele, 'British Political Parties in the 1980s' in Anthony Seldon (ed), UK **Political Parties** Since 1945, (Phillip Allan 1990) 138–148.

18 Jesse Norman, *Edmund Burke: The First Conservative* (Basic Books 2013); Jonathan White and Lea Ypi, 'On Partisan Political Justification' (2011) 105 American Political Science Review 381, 387-389.

19 Nancy L Rosenblum, *On the Side of the Angels: An Appreciation of Parties and Partisanship* (Princeton University Press 2008) 306–311, 356–362.

Political parties are also a key tool of democratic control of government. They provide structures through which the people choose their executive leader and through which that leader chooses her team. A new occupier of executive office needs people she can trust to subscribe to her agenda, and so will exert themselves to fulfil it. The party offers her a pool of likeminded competence from which to draw her team and is therefore important for efficient and effective government formation.[20] By extension, who is in that talent pool becomes a fore notice to the public of the direction, energy and productivity that can be expected from the executive leader's term. This allows the people, though expressly choosing only their executive leader, to control indirectly but accurately, who executes the mandate they have chosen to give.

In between elections, governments can appear quite unaccountable, for in the interest of stability (a non-trivial good), prudent constitutions make the removal of the executive mid-term cumbersome and unlikely. It is political party activity then that acts as a countervailing force to the public unaccountability that security of tenure inevitably breeds. They do this by being an instigator, medium for and historian of citizen engagement with policymaking and general governance in the period between elections.[21] Because the central aim of political parties is to win the next election, they campaign relentlessly in between elections, positioning themselves as the better alternative at the next polls. This means that they raise policy issues, question government policy choices, engage with the public to rouse support for or opposition to proposed policies. This ensures that the public is constantly abreast of developments, issues, the range of viable options in every situation, and government action. In this way, political parties prevent executive leaders from becoming self-standing while in power and so keep the principal-agent dynamic alive between the people and their leaders.

20 NW Barber, 'Populist leaders and political parties' (2019) 20 German Law Journal 129 at 135
21 Ibid 136.

Finally, the existence of a range of vibrant political parties prevents the rise of a populist leader.[22] A full discussion of populism and why it might not be desirable is beyond the scope of this paper. What is important to note is that populist leaders claim to be representing the people or the voice of the people etc. though they, in fact, rarely do other than impose their will on the people and compel them to accept it as theirs and, critically, the occasion for them to arise often lies in the absence of public outlets for dissent or dissatisfaction and any sense of public control overruling class decision-making. Vibrant multipartyism is not only a good in itself, it is also a preemptory environment against dictatorship.

A Historical Overview Of Political Party Activity In Ghana

The 1992 Constitution ushered into Ghana a completely new political culture, notwithstanding the rhetoric of continuity that all the major political parties of its earliest days claimed[23]. Together with the statutes and regulations issued under its auspices, it not only provides the sort of guidelines on political party formation and activity that are common in democratic countries, it also articulates some of the rules that are ordinarily developed over time through conventions or by political necessity.[24] Article 55 of the

22 Barber (n20) at 137.

23 It is unclear why no party was willing to admit that it was a new creation in the Ghanaian legal world. Each party claimed to be the successor of a major political party from a previous republic. The New Patriotic Party (NPP) claimed to descend from the United Party, nearly every other party claimed to be Nkrumaist. Ie following the school of thought of Kwame Nkrumah, Ghana's First President. See Joseph Aryee, The Evolution of the New Patriotic Party in Ghana 2008) 15(2) South African Journal of International Affairs 185; Kwesi Jonah, "Political Parties and the Transition to Multi-Party Politics in Ghana," in Ghana: Transition to Democracy, ed., Kwame A. Ninsin (CODESRIA and Anthony Rowe Ltd., 1998), 83-107.

24 For example, PDCL 280, §9(c) (repeated in toto in Act 574 §9(c), required a political party to be organised in each region of Ghana and in 2/3rds (i.e. one hundred and seventy-four) of the districts to be eligible for registration. Barring ethnic, religious or gender or other sectional fixation, there should be no need to issue this edict. A political party that does not have national reach is unlikely to ever acquire national force and is therefore unlikely to do much or survive long. The absence of this rule would have in time looked no different than its presence. However,

Constitution sets out the representation rights and the parameters of the surrounding infrastructure. The importance of a multiparty character to this new order is articulated forcefully in article 56, which states that Parliament shall have no power to pass a law that purports to impose a common political or religious agenda on the country. The implication of this provision is that political agenda of varying forms and foci are necessary to the small-c constitution[25] of the fourth republic.

After the traumatising experiences of the one-party state and military rule,[26] the value of multiparty democracy in Ghana, has been enshrined in all its constitutions.[27] The Akan[28] expression for multiparty democracy, developed by broadcast media at the beginning of the Fourth Republic *'kamamekabi amanbuo',* translates as 'governance by saying your piece and letting me say mine.[29] It shows how closely, in the minds of the Ghanaian public, the idea of real choice is tied to the variety of viewpoints which political parties offer and represent, and therefore how invested in multipartyism we are.

The Political Parties Law 1992, PNDCL280, revised into the Political Parties Act 2000 (Act 574), and Election Regulations, issued periodically via Constitutional Instrument, are the main tools by which the constitutional provisions for multipartyism are elaborated. Article 55 of the Constitution guarantees all citizens the

because of the extremely limited national exposure to multiparty activity, the earliest framework for multiparty politics found it necessary to spell out what a few cycles of elections would have taught the legal order.

25 For a full discussion on the distinction between small-c and big-C constitutions, see eg Adam Chilton, Mila Versteeg, 'Small-c constitutional rights' (2022) 20(1) *International Journal of Constitutional Law* 141–176.

26 Ghana has had five coups d'etat: 1966, 1972, 1978, 1979, 1981.

27 Articles 42 & 43,1979 Constitution, article 3, 1969 Constitution (expressly states Parliament shall not have the power to turn Ghana into a one party state)

28 Though native of only about 50% of the country, it is the local lingua franca and most widely spoken Ghanaian language cluster. https://wisc.pb.unizin.org/lctlresources/hon./about-akan-twi/#:~:text=Akan%20is%20spoken%20in%20the,Ivory%20Coast%20and%20central%20Togo.

29 developed by Peace FM, the first Twi-speaking news station in Ghana, it has become the widely accepted local expression for multiparty democracy.

right to join[30] or form[31] any political party, and parties can adopt any cause or position that is not incompatible with the Constitution.[32] The main limitation on the freedom of association as manifested by political parties is the prohibition on ethnically, religiously, or regionally focused parties[33] or party symbols or tokens.[34] This is an important multipurpose limitation. Ghana is a very diverse country with over eighty languages[35] and three major religious groupings[36] as well as several minor ones.[37] Additionally, its borders, decided inorganically by colonial experience, contain several historical enemy groups, further complicating the internal cohesion and national integration challenges. Thus, the prohibition serves not only to ensure that political parties become vehicles of national life, not tribal, ethnic or regional interest; it insures the longevity of the nation-state by forcing different groups to associate and collaborate.

Political parties are also obligated to adhere to democratic principles in the management of their internal affairs.[38] The provision may, at first glance, appear redundant since the idea that a political party, established to participate in democratic governance would be naturally inclined to democratic conduct seems obvious. However, the long exposure to dictatorship combined with the cultural deference to authority prominent in most Ghanaian traditional cultures[39], made the drafters of the Constitution hesitant to leave

30 Constitution of the Republic of Ghana, 1992, art 55(1).
31 Constitution of the Republic of Ghana, 1992, art 55(2).
32 Constitution of the Republic of Ghana, 1992, art 55(3).
33 Constitution of the Republic of Ghana, 1992, art 55(4).
34 Constitution of the Republic of Ghana, 1992, art 55(7).
35 D R Sabirova and R Tenkorang, 'Preservation and Development of Indigenous Languages in the Republic of Ghana' (2021) 4(1) Казанский лингвистический журнал 93.
36 Tim Heaton, Spencer James, and Yaw Oheneba-Sakyi, 'Religion and Socioeconomic Attainment in Ghana' (2009) 51(1) Review of Religious Research 71–86.
37 Elom Dovlo, 'New Religious Movements in Ghana' (2002) 4(1) Journal of Religion and Theology in Namibia 1–34.
38 Constitution of the Republic of Ghana, 1992, art 55(5).
39 Joseph Taabazuing et al, 'The Relationship Between Traditional Authorities and Decentralized Structures in Ghana: Conflicting Roles or a Struggle for Power and Legitimacy' (2012) 2(03) International Journal of Development and Conflict 1250017.

this rule implied, and their caution has been proved wise. The three decades of the Constitution's life have seen several cases challenging undemocratic and/or unconstitutional action by party leadership.[40] In the lead-up to the 2024 elections, Majority Whip in Parliament, Hon. Habib Iddrisu, said on national television that a member who stood for election as an independent could, if the National Council decided so, retain their party membership, despite the party constitution listing that act as one which automatically and immediately terminates membership.[41] It is very concerning to think the leaders of one of the two biggest political parties; a party that has run the state for a cumulative period of sixteen of the democracy's thirty-one years of life should take this undemocratic view in respect of its own affairs. Without the constitutional obligation for parties to be internally democratic, the democracy would have been reduced to superficial acts of election at the national level.

Thirdly, an organisation cannot hold itself out as a political party unless it is registered as such by the Electoral Commission.[42] This provision allows the Electoral Commission (EC) to properly supervise the operations of political parties and, thereby, the obligations of inclusivity and national cohesion the Constitution imposes on them. Without active supervision, the deep fault lines that run through the nation would have splintered political activity into religious or ethnic or perhaps even gendered groupings. Even so, the danger remains that the Electoral Commission is able to end political opposition to government by revoking the registration or refusing to register a political party or refusing to allow them to contest an election. In the 2024 elections, the EC's disqualification of several presidential aspirants including the Progressive People's Party (PPP) candidate

40 *Afoko v NPP* (2016) JELR 107359 (HC*); Zigar v* NDC [2016] DLHC 4007*; NPP v Ibrahim Felix* [2016] DLCA 4461.

41 Habib Iddrisu on Joy Newsfile, 19 October 2024 edition

42 Constitution of the Republic of Ghana, 1992, art 55(6); Political Parties Act, 2000 (Act 574), s 4(1).

for errors in their filing documents which it refused to identify[43] shows that the danger is not merely hypothetical. It appears then that though multipartyism is guaranteed by the Constitution, the fate of individual parties is not nearly as well protected.

In awareness of the public-private nature of political parties, the Constitution attempts to balance the need for public accountability with the right to privacy and freedom for political parties. Thus, rights more obviously suited to public bodies are granted them. In exchange for this, they are subject to interference private bodies do not normally have to endure. For example, despite a party's right to populate its ranks as it chooses (subject, of course to the restrictions discussed earlier), it cannot have a person not eligible to be a Member of Parliament (MP) as a founding member or party officer;[44] a requirement which excludes citizens of unsound mind(a term no longer as uncontested and obvious as it once was),[45] dual citizens, and formerly criminal citizens- including those convicted of minor traffic offences.[46] It can also not refuse or impose membership to any sane, non-criminal Ghanaian, however offensive, or in the alternative, desirable, party leadership or even the entire membership might find them. This interference is counterbalanced by the equal access to state media guaranteed all political parties even though they are private entities.[47] This delicate effort to limit the excesses that political parties could, as purely private entities, indulge in, while also expanding their reach as public entities is useful and has generally proved successful.[48]

43 Leroy Hawkson, 'EC Disqualifies 11 Presidential Candidates Ahead of December Polls' (*Asaase Radio*, 20 September 2024) <https://www.asaaseradio.com/ec-disqualifies-11-presidential-candidates-ahead-of-december-polls/> accessed 15 November 2024.

44 Constitution of the Republic of Ghana, 1992, art 55(8).

45 are citizens on psychiatric prescriptions for depression, insomnia etc who take their medications religiously caught in this category or is it limited to lunatics roaming the streets unkempt? What about a respectable, high achieving citizen who had a nervous breakdown three years ago?

46 Constitution of the Republic of Ghana, 1992, art 94.

47 Constitution of the Republic of Ghana, 1992, arts 55(11), (12).

48 Gaining such resonance that they have been enforced by constitutional litigation in landmark cases like New Patriotic Party v Ghana Broadcasting Corporation (equal access to state media)

Not all the frameworks the Constitution has sought to build around political party activity have managed to rise off the sheets they are written on, however. In August 2019, GN Bank, the financial powerhouse founded by Dr Paa Kwesi Ndoum, Founder and then presidential candidate of the PPP, had its banking licence revoked. The downturn in its fortunes led to a drying up of the party's funding and its near asphyxiation.[49] The effect of Groupe Ndoum's fall on the PPP illustrates the importance of regulating and scrutinising political party financing in Ghana. Who is powering the two major political parties (hereafter, 'the Big Two')? What do they do? What do we know about them? Why do they do it? How much should they be allowed to give? etc.

The answers to these questions should have been known, for article 55 sets out clear and detailed accountability mechanisms for the people to keep track of how financiers are impacting election outcomes. It requires all political parties to declare their assets, revenue and the sources thereof,[50] and to publish their audited accounts annually. It also prohibits parties from taking donations from non-citizens.[51] The Political Parties Act 2000(Act 574) elaborates on these provisions by adding timelines for compliance. It requires a publication of assets and revenue at least twenty-one days before an election, and of expenditure in an election not later than six months after the election.[52] All these requirements notwithstanding, party finances remain shrouded in mystery. Efforts to obtain the financials reported for the election cycle of 2020 for this paper have proved futile.[53] Nor

and Sumaila Bielbel v Adamu Dramani.

49 See Emmanuel Debrah, Isaac Owusu-Mensah, Alex D. K. Frempong, Maame Gyeke-Jandoh, and Samuel Okoto Amankwa, *Needs assessment of political parties in Ghana* (Danish Institute for Parties and Democracy) para 3.6.4.

50 Constitution of the Republic of Ghana, 1992, art 55(14).

51 Constitution of the Republic of Ghana, 1992, art 55(15).

52 Political Parties Act, 2000, s 14.

53 Electoral commission head office directed my team to go to the corporate office, which sent them back to head office, which reiterated that corporate was the right place to go. After a bit of tag, I was instructed to write a letter addressed to the Electoral Commissioner with the data request and the reason therefor. As at the time of writing this, the letter is yet to be acknowledged.

is any mention made in the media of reported figures. Such writings as can be found on the topic of campaign financing all indicate that their information is unconfirmed.[54] It is, thus, beyond doubt that these provisions are not, in fact, governing party financial decision making.

The incredible levels of corruption in government officials and the clientelism that has become so known that even banks ask for a declaration of political affiliation to decide creditworthiness[55] are the result of this unsupervised arena of party activity. In 2022, President Akuffo-Addo appeared incapable of sacking his finance minister and cousin, Ken Ofori-Atta, even in the face of multiple calls for him to be sacked, a petition by 98 MPs from his own side to that effect, and eventually a Parliamentary censorial hearing.[56] Similarly, President Mills, when his own Attorney-General, Martin Amidu, exposed a corrupt deal to siphon money to a major party financier through judgment debts, declared his intolerance of corruption and then fired Amidu.[57] These incidents, only two in a long list over the decades, demonstrate just how captive to their financiers Ghana's politicians become. This critical gap must be plugged if the democracy is to mature into a truly transparent, accountable state. Nevertheless, despite its not insignificant failings, the 1992 Constitution can be said to provide for the flourishing of multipartyism as an integral element to this democratic quest.

54 William Nyarko (lead consultant), *Understanding How Dirty Money Fuels Campaign Financing in Ghana* (Adam Smith International and CDD-Ghana, 11 June 2021) <https://cddgh.org/wp-content/uploads/2022/02/Final-Report-CDD-Campaign-Financing-FCDO-11th-June-2021.pdf> accessed 15 November 2024.

55 Maame AS Mensa-Bonsu, 'Why Electoral Reforms are Urgently Needed in Ghana' (2021) 29(2) African Journal of International and Comparative Law 185.

56 Government was falsely ruled to be a judgment debtor to Alfred Woyome to the tune of over GHS 52 million (about $9million) https://dailyguidenetwork.com/woyome-still-owes-ghana-gh%C2%A232-7m/JoyNews,19 Jan 2012, 'Amidu was sacked after making press statement about it. https://www.myjoyonline.com/attorney-general-martin-amidu-has-been-sacked/ last accessed 21 November 2024.

57 Cornelis Kweku Affre, '98 NPP MPs to boycott budget presentation, Finance Ministry business if Ofori-Atta is not sacked immediately' (MyJoyOnline 15 November 2022) https://www.myjoyonline.com/98-npp-mps-to-boycott-budget-presentation-finance-ministry-business-if-ofori-atta-is-not-sacked-immediately/ accessed 21 November 2024.

The Political Party Situation On The Ground

For all thirty years of the 1992 Constitution's life, Ghana's government has been formed by either the National Democratic Congress (NDC) or the New Patriotic (NPP). But unlike many other democracies with two towering political parties, Ghana also has a slew of political parties of varying degrees of viability. They include the Convention People's Party (CPP), the Progressive People's Party (PPP), the People's National Party (PNP) and the Ghana Union Movement (GUM). There is also, in each election cycle, a small number of individuals who run for office—presidential and parliamentary—as independents. Few of them win. Increasingly, the space for independent candidates to win in parliamentary elections has shrunk toward zero.[58] As for presidential elections, there is not an independent who has ever done well enough to be known by name.

The language of political left, centre and right is not in common use here. Despite some half-hearted rhetoric to the contrary, there is no discernible ideological posture that can be attributed to either party in their activities and policies.[59] In the earliest days of this Fourth Republic, the NPP claimed it believed in a property-owning democracy[60] and the NDC claimed to be Nkrumahist.[61] To the

58 For a discussion of independents in Ghana's parliament over the last 30 years, see why electoral reforms are urgently needed in Ghana.

59 For example, though they claim different ideologies, Obeng-Odoom's analysis of their 2012 campaigns shows that both parties adopted an economic liberalist posture. Kweitsu & Akuamoah's data which included interviews with leading members of both parties found a wide chasm between the espoused political ideologies and the understandings of members of same. See Richard Kweitsu and Ernest Mensah Akuamoah 'Social Democrats or Property-Owning Democrats? Contending Political Ideologies in Ghana's Fourth Republic' (2021) 6 Journal of African Political Development 18; Franklin Obeng-Odoom, 'The nature of ideology in Ghana's 2012 elections' (2013) 12 (2) Journal of African Elections 75.

60 K D Fordwor, *The Danquah-Busia Tradition in the Politics of Ghana: The Origins, Mission, and Achievements of the New Patriotic Party* (Unimax Macmillan 2010); J Ayee, 'The Evolution of the New Patriotic Party in Ghana' (2008) 15(2) South African Journal of International Affairs 185-214.

61 R Kweitsu and E M Akuamoah, 'Social Democrats or Property-Owning Democrats? Contending Political Ideologies in Ghana's Fourth Republic' (2021) 6 Journal of African Political Economy and Development.

extent that Nkrumahism is a meaningful ideology,[62] it connotes socialist inclinations. The Convention People's Party (CPP), being supposedly successor party to Nkrumah's own party, the original CPP, had the strongest claim to Nkrumahism. But it has yet, three decades later, to articulate what that means in practical terms, and its place on the political landscape is increasingly dwindling.[63] Over the course of the 1992 Constitution's life, many political parties have been formed and disappeared[64] and much longing for a viable third party has been expressed.[65] Yet the space for these tinier parties has gotten smaller, and, I have argued elsewhere that it is critical to reform our electoral system to create greater space for minority parties.[66] The result is that the small parties in existence are not real political parties in any serious sense of the word. For instance, GUM, which was the third best performing party in the 2020 elections,[67] has no known senior members. There are no known public figures affiliated with it who could be expected to be deployed in government. It has issued no public statements about any happenings in the country in the past four years. Only its presidential candidate is known. Its manifesto, though publicly launched,[68] cannot be found in the public domain.

62 For a third party and ex post facto attempt to articulate nkrumaism G M Brophy, 'African Socialism: The Theory and Practice of Kwame Nkrumah' (PhD Thesis, The Australian National University 1972).

63 It has gone from 2 parliamentary seats in the 1st 4 parliaments, to 1 in the 5-6 parliaments to none in the last 2. Its presidential candidate has gone from the third best performing in 2008 to the 6th best performing party in the 2020 elections.

64 E.g. Democratic Freedom Party which contested the 2008 elections and then merged in 2011 with the NDC, Every Ghanaian Living Everywhere (EGLE) which has not contested any elections since 2004, People's Heritage Party which did not survive its defeat in the 1992 elections, & the National Reform Party, New Vision Party, Power Unity Party and the Yes People's Party

65 Eric Yobo, & Ransford Gyampo, 'Third parties and electoral politics in Ghana's fourth republic' (2015) 8(2) Journal of Politics and Law 8; Enoch Randy Aikins, 'Can the Movement for Change break Ghana's biparty democracy?' (Institute for Security Studies Africa 14 May 2024) <https://issafrica.org/iss-today/can-the-movement-for-change-break-ghana-s-biparty-democracy> ; John Osae-Kwaponng, 'The NDC-NPP Duopoly in Ghana's Multiparty Democracy' https://cddgh.org/wp-content/uploads/2023/03/The-NPP-NDC-Duopoly_blogpost-O-.pdf

66 M A S Mensa-Bonsu, 'Why Electoral Reforms are Urgently Needed in Ghana' (2021) 29(2) African Journal of International and Comparative Law 185-203.

67 0.04% of the vote, https://ec.gov.gh/2020-presidential-election-results/

68 Timothy Ngnenbe and Juliet Akyaa Safo, 'GUM launches manifesto' (Graphic Online, 10

For the brief period of 2011-2017, the PPP, under Dr Nduom, showed promise of becoming a viable third force. It campaigned actively against the 'wasted vote syndrome'. i.e., the fear many Ghanaians have of wasting their vote by giving it to a minority party only to have the majority party she/he less prefers win the election.[69] But, as noted earlier, with the downturn in the fortunes of the Nduoms, the Party's activity has shrunk significantly and it cannot seriously be said to be the third force in Ghanaian politics anymore.[70] Be that as it may, the point to note here is that despite the proliferation of parties on the ballot every election year, the political landscape of Ghana has been fully captured by the Big Two. Multiparty existence is rich in Ghana. But actual political party activity has become in essence a duopoly.[71]

Section 4: The Eighth Parliament of the 1992 Constitution

Against this background, it is easier to understand the expectations of the public about the hung parliament's potential and assess its performance. The official tenure of the 8th Parliament of the 4th republic was 7th January 2021- 6th January 2025. However, in practice, it worked from 7th January 2021- November 2024,[72] when

Februray 2020) <https://www.graphic.com.gh/news/politics/gum-launches-manifesto.html>.

69 Effah, 'Don't fall for wasted vote propaganda- PPP' https://www.pulse.com.gh/ece-frontpage/election-2016-dont-fall-for-wasted-vote-propaganda-ppp-tells-ghanaian-voters/0zc157z; A vote for the PPP will be wasted? https://www.peacefmonline.com/pages/politics/politics/201210/138998.php

70 Indeed, without de-registering them, and with no notice to them the Electoral Commission left them out of the balloting for positions on the ballot sheet for the 2024 elections. Information revealed in discussions with Brigitte D zogbenuku, September 2024

71 For a discussion of the statistics of political party participation in governance, see John Osae-Kwapong, 'The NDC-NPP duopoly in Ghana's Multiparty Democracy', https://cddgh.org/wp-content/uploads/2023/03/The-NPP-NDC-Duopoly_blogpost-O-.pdf

72 Normally, in elections years, Parliament recesses in early November until January 3rd of the next year to allow members to campaign. In 2024, however, an unprecedented standoff between the Supreme Court and Parliament which could have led to a violent constitutional crisis was averted by the Speaker of Parliament adjourning the House indefinitely. https://citinewsroom.com/2024/10/bagbin-adjourns-parliament-indefinitely/. It reconvened in January only to conclude the formalities of its term and be officially dissolved.

in an unprecedented and tragicomic constitutional crisis,[73] Speaker, Alban Bagbin suspended it *sine die*. It was a pioneer in Ghanaian political history, being the first ever Parliament with no majority. The ruling NPP lost thirty-two seats in the 2020 elections to bring its seat strength down to 137. The opposition NDC gained thirty-one seats to bring its seat strength up to 137. Then a lone independent won the seat of Fomena and thus completed the population of Parliament. Ghana's parliament has grown from 200 in 1993[74] to 230 in 2005[75] and finally to 276 in 2013.[76] A petition against the results for the Santrokofi-Akpafu-Likpe-Lolobi (SALL) constituency which remained unresolved throughout that Parliament's term left it with an odd 275 seats. A hung parliament was always, previously, merely a theoretical possibility. Indeed, the vocabulary of hung parliament was not known in Ghanaian public discourse. It is an odd twist of fate, that it was only when the structure of Parliament was altered to render a hung parliament seemingly impossible that it became reality. How has this Parliament performed? What has been the effect of the even split on party politics, interparty relations, and government business? Has this helped or prevented them from performing the functions of political parties in a democracy? The answers to these pertinent questions will be the subject of this section.

As noted earlier, the eighth Parliament contained a single independent MP from Fomena, Andrew Asiamah Amoako. Though he won the seat as such, it must be stated that Amoako's independent status does not reflect a lack of historical political affiliation. He was the MP for

73 in which the Supreme Court overstepped and stayed an administrative declaration by the Speaker and to avoid a head-on collision of either the two arms or the two. Sides of the House, Speaker Bagbin adjourned that Parliament until its last day in office. https://citinewsroom.com/2024/10/bagbin-adjourns-parliament-indefinitely/#google_vignette

74 D Nohlen, M Krennerich, and B Thibaut, *Elections in Africa: A Data Handbook* (Oxford University Press 1999) 435.

75 'Election Results' (Parliament of Ghana, December 2004) <https://repository.parliament.gh/handle/123456789/585>

76 S Brierley and G Ofosu, 'The Presidential and Parliamentary Elections in Ghana, December 2012' (2014) 35 Electoral Studies 382-385.

that constituency on the NPP's ticket but lost the primaries. He left the party after alleging that the constituency chairman manipulated the primaries in favour of his protégé against the general will of the members.[77] Whether true or not, he stood as an independent in an NPP stronghold and defeated the party candidate. In view of the way in which he came to be independent, it had not been thought that he would automatically toe the line of the NPP in Parliament, and so there was much excitement about the hung Parliament.

In some quarters, the excitement was uneasy. It was felt that without a clear majority, the deep and seemingly acrimonious divide between the two sides would cripple the House and no business would get done.[78] In others, there were high expectations and eager anticipation. Many scholars, I myself included, considered it a new and unparalleled opportunity for the NDC, which had lost the presidential race to be a stronger and more effective opposition. The historical trend has been that with a clear majority and the dangling of ministerial appointments; the executive always got its way in Parliament.[79] That strong executive power had kept multiparty activity from being able to offer much beyond elections. With the hung parliament, it was earnestly hoped that the opposition would be able to hold the ruling party more accountable.

The term has not been without its victories for the opposition and by extension, accountable governance. Most notably, the party was able

77 Nana Yaw Gyimah Mensah, 'NPP MP for Fomena files nomination as an independent candidate' (MyJoyOnline.com 7 October 2020) <https://www.myjoyonline.com/npp-mp-for-fomena-files-nomination-as-an-independent-candidate/ > accessed 8 August 2024.

78 The Afrobarometer team in Ghana, led by the Ghana Center for Democratic Development, interviewed a nationally representative sample of 2,400 adult Ghanaians in April 2022 on the effects of a hung parliament on the democracy of Ghana. https://www.afrobarometer.org/wp-content/uploads/2022/08/R9-News-release-Ghanaians-split-on-impact-of-hung-Parliament-Afrobarometer-26august2022-final.pdf

79 Rasheed Draman, 'Parliamentary Oversight and Corruption in Ghana Policy Brief, Presenting Key Issues & Lessons Learned' (mcgill.ca,) <https://www.mcgill.ca/scs-parliament/files/scs-parliament/ghana_policy_brief.edited.pdf > ; Rick Stapenhurst, Rasheed Draman, Brooke Larson, and Anthony Staddon 'Anti-Corruption Evidence: The Role of Parliament in Curbing Corruption' (Springer 2020) 51.

to prevent the entering into force of a new constitutional instrument that would have affected the right to vote of a substantial number of Ghanaians. The draft Constitutional Instrument, laid before the House in 2023 by the Electoral Commission,[80] abolished the guarantor method of voter verification[81] and instituted the Ghana card—Ghana's recently introduced ECOWAS identity card—as the only form of verification acceptable for voter registration. With all the problems of the guarantor system,[82] it would not have been difficult to sell the new rules to the Ghanaian public. But by the National Identification Authority's own estimation at the time, more than 2.5 million Ghanaians remained without the Ghana card.[83] The NDC was able to get the CI withdrawn because Adwoa Safo, NPP MP for Dome's absence meant the NPP could not get it passed without the opposition. Though the Opposition ought to be commended for this firm resistance, the self-serving nature of this victory engenders some cynicism about it. After all, they stood to collectively and individually lose significant numbers of the voters they cultivated in the previous election. Still, it was a heartening example of the opposition party exerting a check on unpopular or undesirable government action.

Another noticeable way in which the opposition was useful to the democratic venture in this hung parliament was in the way it kept public discourse on government action alive. In a country with such low literacy rates and economic urgency, people lose interest

80 Public Elections (Registration of Voters) Regulations 2023

81 A system where a registered voter who can provide personal details that link them to the person they are guaranteeing, vouches for, or guarantees that the information provided by the individual seeking to register, or vote is accurate. This is to help individuals who may not have proper documentation, register and vote in elections.

82 Such as groups of foreign settlers and nomads standing as guarantor for each other and acquiring Ghanaian citizenship thereby etc. see Center for Democratic Development-Ghana, Voter Registration: guarantor System most abused, needs brainstorming https://cddgh.org/2023/04/voter-registration-guarantor-system-most-abused-needs-brainstorming-cdd-ghana.

83 Kizito Cudjoe 'Over 800,000 Ghana Cards uncollected' (thebftonline.com, 6 July 2023) <https://thebftonline.com/2023/07/06/over-800000-ghana-cards-uncollected/#:~:text=Meanwhile%2C%20the%20NIA%20said%20it,registered%20and%20issued%20their%20cards>

in specific political affairs quickly. Issues that look like they will decide the government's fate do not even come up during election cycles unless they happened that year.[84] A 2007 report noted that political parties had become electioneering machines interested only in gathering votes, not in disseminating information or shaping the political will of the people as per the Constitution[85]. Party politics therefore hit a sad low where it 'moved away from the politics of principles and ideas to the politics of insults and defamation'.[86] Parliament's work has been, in this term, under significant media scrutiny and in the public discourse. The need to break the tie in seat strength meant every edge, however minor, was viewed as useful for the next elections. This motivated opposition MPs to engage more fully with the public, make talk show appearances, issue press releases and statements and generally try to rouse public opposition to the present government. In doing so, they forced government to respond to matters of importance to the public in ways that, for previous governments, their sound parliamentary majorities rendered unnecessary.

Furthermore, never has a single MP's voice echoed so loudly across the legislative chamber as in this hung Parliament. As the incidents of the E-levy and approval of the KT Hammond batch of ministers (discussed below), demonstrated, every MP's vote has remained equal to everyone else's. In previous Parliaments, the majority was so clear that neither side lost much for the absence of a number of MPs in any regular business of the House. In the Hung Parliament, each MP's vote has counted in ordinary as in extraordinary business. Even more importantly, each MP's absence has, in the hung parliament, proved significantly weightier than ever before. Indeed, for the first

84 For a discussion of this phenomenon, see Maame A.S. Mensa-Bonsu, 'The Presidential Prerogative of Mercy' (2021) 15 Journal of Parliamentary & Political Law 25.

85 Open Society Initiative for West Africa, *Democracy and Political Participation* (Open Society Institute Network Publication, 2007).

86 Kwesi Aning, *Legal and Policy Frameworks Regulating the Behaviour of Politicians and Political Parties-Ghana* (International IDEA 2013).

time in Ghanaian history, the Speaker of Parliament referred three MPs to the Privileges Committee for absenteeism.[87]

Similarly, a dissent by an MP could have serious implications for his party's side. Every matter before the House therefore required every MP to take a stand. Of course, with such power in one's vote and presence, a new space for corrupt trading opened up. With so much influence on the outcome of a vote in the House, each MP became more vulnerable to bribery. Either interest groups external to the House could entice him with luxurious bribes,[88] or one side could make underhanded deals with individual members of the other side and thus undermine the posture of the party.[89] Even so, it cannot be overlooked how influential the parties have been in giving real teeth to the voice of each MP in this hung parliament.

A related benefit the political sphere received from the hung parliament is the clarity of the talent pool on each side of the divide. As noted in Section 1, political parties act as a democratic tool of governance by providing a talent pool for government formation. That pool has, in our experience, unfortunately, often shrunk to contain only persons to whom a reward for party loyalty or campaign assistance is required, and so, unsuitable party influencers have been known to end up with important public servant jobs.[90] The hung parliament has done better than previous Parliaments in living up to

87 Paa Kwesi Schandorf, 'Bagbin Refers 3 NPP MPs to Privileges Committee for Continuous Absence' (My Joy Online, 5 April 2022) <https://www.myjoyonline.com/bagbin-refers-3-npp-mps-to-privileges-committee-for-continuous-absence/> accessed 15 November 2024.

88 For instance, the Office of the Special Prosecutor abandoned its investigation of a businessman it named as having attempted to bribe a number of majority caucus MPs to withdraw their demand for President Akufo-Addo to sack his finance minister Ken Ofori-Atta for lack of cooperation by the NPP caucus. See report on the OSP's official site https://osp.gov.gh/our_cases/case_profile/24/cases/ .

89 Myjoyonline "Interior Minister tried to bribe NDC MPs with police recruitment slots' – Asiedu Nketia'

(Myjoyonline.com, 15 August 2024) <https://www.myjoyonline.com/interior-minister-tried-to-bribe-ndc-mps-with-police-recruitment-slots-asiedu-nketia/>

90 eg Hawa Koomson, and Fiifi Kwetey who's nomination was resisted on grounds of integrity, https://www.peacefmonline.com/pages/politics/politics/202303/485376.php?storyid=100&;

the idea of a talent pool. The need to engage with the public and present themselves as the competent alternative on every possible front led to a class of opposition experts being developed. There were by the end of its term opposition voices in and out of Parliament that spoke to the public on legal affairs, financial matters, health, etc. This was useful both for assessing the government and evaluating the capacity of the opposition. The failed presidential campaigns of Dr Sam Ankrah and Alan Kyerematen illustrate the point. Without the political machinery of party to round up talent to execute their missions, it was impossible for voters to assess the chances of delivery or even the intended goods to be delivered. There could therefore not develop any trust in these candidates, notwithstanding their appealing campaign slogans. By contrast, the members of the Big Two increasingly sought niches to be associated with, and in so doing, built up a holistic image of their governance capacity and intentions.

Even so, the Hung Parliament has left negative footprints on the democracy, which are important to identify and reflect on if their damage is not to be lasting. One negative outcome of this hung parliament was the intensification of party discipline. For the first time, the opposition began articulating specific positions on matters before the House and sought to enforce it among their members.[91] That, in itself was beneficial. What was inimical is that when an MP voted for a position other than the party's, it was immediately obvious and the response was so sharp and so swift[92] that the idea of the parties as opposed to each other has taken on new and undesirable levels

91 eg. the party announced it opposed the electronic transactions Act and promised its MPs would resist it

Kingsley Hope, 'NDC resolves to vote against E-Levy' (ghaiantimes.com.gh, 26 January 2022) <https://ghanaiantimes.com.gh/ndc-resolves-to-vote-against-e-levy/; Sammy Wiafe,'Approval of Ministers-designate may be by secret ballot – Joe Wise' (citinewsroom.com 1 March 2023) <https://citinewsroom.com/2023/03/approval-of-ministers-designate-may-be-by-secret-ballot-joe-wise/>

92 Citinewsroom, 'NDC MPs who supported approval of ministers must be taken out- Gbande' (citinewsroom.com, 24 March 2023) <https://citinewsroom.com/2023/03/ndc-mps-who-supported-approval-of-ministers-must-be-taken-out-gbande/>

of intractability.[93] When party discipline becomes the ruling rod of voting in the House, it causes political party activity to degenerate, if not into, then at least, toward factionalism; the very development political parties are supposed to deflect. The intransigence the intense party discipline has caused is not healthy. It encourages power clusters to form within the party either to determine or resist the positions being articulated by the party that will become enforced in its caucus. With our already firm borders of ethnoreligious division, political parties' ability to prevent factions is critical to the sustainability of both the democracy and the state. So, to see the parties descend into factionalism in the competition for parliamentary seats is more than a little worrying.

The first opportunity the NDC had to show itself as a force in opposition came with the vetting of the president's ministerial nominations. The size and quality of ministerial corps have long been a subject of complaint in Ghana. It had been believed that the overwhelming majority that the president's party had always enjoyed in Parliament was what had made this sub-optimal situation possible. Indeed, Fiifi Kwetey, nominated as Deputy Finance Minister in 2009, was rejected by the minority at the committee level but was approved by the full house through the NDC majority vote.[94] Similarly, in 2020, when the minority in the vetting committee rejected Otiko Djaba, as Minister of Gender, the NPP used its majority to push the appointment through in the full house.[95]

93 Isaac Yeboah, 'Blows in Parliament over E-Levy voting' (GraphicOnline.com, 21 December 2021) <https://www.graphic.com.gh/news/politics/blows-in-parliament-over-e-levy-voting.html>; GhanaWeb, 'Two weeks after my vetting, they are saying they will not approve me – K.T. Hammond laments' (ghanaweb.com, 2 March 2023) <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Two-weeks-after-my-vetting-they-are-saying-they-will-not-approve-me-ndash-K-T-Hammond-laments-1723940>

94 Daily guide, 'Fifi Kwetey Gets Nod' (modernghana.com 31 March 2009) <https://www.modernghana.com/amp/news/209009/fifi-kwetey-gets-nod.html>

95 MyJoyOnline.com, 'Otiko Evades Minority Resistance to Secure Ministerial Appointment' (MyJoyOnline.com, 7 February 2017) <https://www.myjoyonline.com/otiko-evades-minority-resistance-to-secure-ministerial-appointment/ > accessed 8 August 2024.

Thus, it was expected that, without the ability to use a full house party vote to approve nominations, the president would not be allowed to appoint three deputies to one ministry or make other such obviously clientelist appointments. Moreover, the quality of approved nominees would improve. The seemingly firm and objective posture the NDC MPs adopted at the start of the process fed that public pleasure and anticipation of a truly controlled government. Disappointingly, despite the initial resistance by the NDC MPs, all the nominations went through,[96] including Hawa Koomson, nominated as Minister of Fisheries, who had to be taught by the Vetting Committee what a trawler was.[97] Public dismay about the mass approval was directed, not at the majority MPs, but at the NDC MPs.[98] Perhaps, accustomed to being blamelessly helpless, the NDC caucus had not expected public scrutiny of their choices. The public response to this incident suggested that the people were not only cognisant of the power the hung parliament had given the opposition, they expected the minority to use it to hold the government accountable.

If the first failure to hold government accountable was due to ignorance of their new power, the subsequent failures in the same regard cannot be thus explained. In 2022, the NDC roused hope in their government supervisory skills when public objection to the finance minister became impossible to ignore. NDC MPs began to pressure the president to remove him and eventually, Parliament

96 Kenneth Awotwe Darko, 'Parliament approves Akufo-Addo's nominees including Hawa Koomson, Oppong Nkrumah, Afriyie Akoto' (myjoyonline.com 4 March 2021) https://www.myjoyonline.com/parliament-approves-akufo-addos-nominees-including-hawa-koomson-oppong-nkrumah-afriyie-akoto/> accessed 8 August 2024.

97 Jessie Ola-Morris, 'Social Media Reacts to Mavis Hawa Koomson's Vetting' (18 February 2021) <https://www.myjoyonline.com/social-media-reacts-to-mavis-hawa-koomsons-vetting/> accessed 8 August 2024.

98 Jessie Ola Morris 'Social media reacts to Mavis Hawa Koomson's vetting' (myjoyonline.com 18 February 2021) https://www.ghanaweb.com/GhanaHomePage/NewsArchive/It-s-sad-Appointments-Committee-NDC-MPs-approved-Hawa-Koomson-as-a-minister-Awutu-Senya-East-NDC-1200874 accessed 8 August 2024>; BBC, 'New ministers in Ghana 2021 : Opposition NDC supporters get headache as President Akufo Addo swear in 28 ministers' (bbc.com 6 March 2021) <https://www.bbc.com/pidgin/tori-56303995; https://www.peacefmonline.com/pages/politics/politics/202103/440230.php?storyid=100&>

summoned him to a hearing in defence of a motion to pass a vote of no confidence in him. The summons was terminated by a House that, in a surprising volte-face, held itself to be without jurisdiction in the matter.[99] After winning public admiration for standing up against what was perceived as the President's intransigence about an incompetent minister, the opposition somehow came to heel, the motion disappeared, and the opposition allowed the matter to die out of the public discourse.

Another defeat for government supervision by the opposition was the successful passing of the Emissions Levy Act.[100] Government announced in early 2023 that it was introducing an emissions levy ostensibly to reduce carbon emissions. But in a country with no state transport system, no car industry and high rates of poverty that create perfect price elasticity,[101] people simply cannot afford green cars. At the same time, they cannot simply stay home forever. Consequently, the public response to the levy was negative. It was viewed as just another predatory move by an exploitative government.[102] In past parliamentary terms, the tenor of the public discourse would have been impotent anger. In light of the numerical weakness of the government side, the people, once again, turned their eyes to the opposition to resist the levy and when it successfully passed, it cost both the opposition and the democracy the people's faith.

99 Parliament was unable to get the required number of at least two-thirds of all members of Parliament as required under article 82 of Ghana's 1992 Constitution to pass the vote of censure against Ken Ofori-Atta. The ruling party lawmakers staged a walk out. Being unable to secure the votes however is a different thing from lacking jurisdiction to pass the vote.

100 Emissions Levy Act, 2023 (Act 1112).

101 Poverty rates are projected to be at 31.5% by 2025. https://www.worldbank.org/en/country/ghana/overview

102 Leticia Osei, 'Withdraw Emissions Levy, it'll worsen already acidic business environment – FABAG to govt' (citinewsroom.com, 2 Februaru 2024) < https://citinewsroom.com/2024/02/withdraw-emissions-levy-itll-worsen-already-acidic-business-environment-fabag-to-govt/>; Leticia Osei, 'GUTA kicks against VAT on electricity, Emissions Levy; Hamdia Mohammed, 'Emissions Levy is a nuisance tax – IES' (citynewsroom.com, 3 February 2024) <https://citinewsroom.com/2024/02/emissions-levy-is-a-nuisance-tax-ies/>

Dr Dominic Ayine, NDC MP for Bolga East and senior member of the Opposition attributes much of the failure of the NDC to live up to our supervisory hopes to structural deficiencies in the constitutional configuration of Parliament, and the Standing Orders of the House. Some of the bigger structural problems he identifies include the voting thresholds, which are constitutionally determined; and secret ballots, which spring from the Standing Orders.[103] Most of the business of Parliament does not require a supermajority. A simple majority suffices. Thus, for most of its work, 137 government MPs + 1 Independent could get government what it wanted. The initial posture of cooperation that the ruling party caucus adopted at the start of the term, quickly evaporated. According to opposition MPs, NPP worry about being straitjacketed by the opposition was evident in the conciliatory overtures the government MPs made to the opposition MPs. There were constant reminders of the need for the two sides to work together and other declarations of unity of purpose.[104] But by the middle of 2022, when government was able to get the budget, with its heavily despised e-levy through, despite initial opposition resistance,[105] a noticeable shift occurred in the posture of the ruling party's caucus.

The public response to the passing of the e-levy was, again, indicative of the understanding of Ghanaian voters of the role of the opposition. The NDC was severely criticised for not being able to prevent it. Ayine considers it the greatest loss of the opposition in that Parliament.[106] It cost not only the party, which lost much credibility as a check on government abuse, it cost the whole democratic enterprise because it made the public lose hope in the idea of Parliament as a check on government. Parliament being the main institution to which the 1992

103 Standing Orders of the Parliament of Ghana (27th June 2023) ord 140.
104 Dr Ayine, interview with author, 4 July 2024
105 https://mobile.classfmonline.com/news/politics/E-levy-vote-Gov-t-flew-Adwoa-Safo-down-on-a-private-jet-CoS-wired-120-000-to-her-Ken-Agyapong-30903
106 Dr Ayine, interview with author, 4 July 2024

Constitution entrusts executive supervision,[107] the NPP's insensitive inflexibility[108] and the NDC's blustering impotence, painted a bleak picture of the future of executive fetters.

The second structural problem is the secret ballot used to decide contentious issues.[109] I consider this practice one of the most constitutionally malevolent practices in our legal order. It should be abolished immediately. It allows MPs to conceal the direction in which they vote. The rationale, it is said, is to allow for political privacy and to protect voters from any means of unfair voter influencing, threats, or external attempts of bribery or coercion.[110] But this practice achieves exactly what it meant to prevent. It not only encourages corruption, but it also breaks the accountability loop between constituents and representative and thus renders the latter principal, when they were engaged as an agent. The secrecy allows nefarious horse-trading. Government, and indeed, interest groups, can bribe MPs and the knowledge that how they voted will never be known makes it easy for an MP to risk selling his vote. It also means constituents have no idea how the power they have delegated is being used. Like Burke, I reject the idea that the representative is like the waiter whose job is to fetch precisely what has been ordered even when they know it is bad for the customer. The representative is a trustee.[111] They must use their best judgment to decide what is best for their constituents and vote for that. There is a possibility that what they, in good faith, believe to be in their constituents' interests

107 For a full discussion on Parliament's intended supervisory role, see M A S Mensa-Bonsu, 'Who will bell the cat or rather who could?"

108 Ghana Web, 'Today in History: Osei Kyei-Mensah-Bonsu celebrates birthday with customized E-levy cake' (Ghanaweb.com, 9 February 2023) <https://mobile.ghanaweb.com/GhanaHomePage/NewsArchive/Today-in-History-Osei-Kyei-Mensah-Bonsu-celebrates-birthday-with-customized-E-Levy-cake-1711097 (MPs bought e-levy cake to celebrate)>

109 Constitution of the Republic of Ghana, 1992, art 109; ord 109(1).

110 GhanaWeb, 'Broad application of the Secret ballot system in the legislature does not promote legislative accountability' (ghanaweb.com, 16 May 2023) <https://mobile.ghanaweb.com/GhanaHomePage/features/Broad-application-of-the-Secret-ballot-system-in-the-legislature-does-not-promote-legislative-accountability-1768163>

111 Edmund Burke, 'Speech to the Electors of Bristol' (3 November 1774) *Works 1:446—48.*

is not in fact so. Or that what they chose is actually good for the constituents, but they are not grateful for it because it was not what they wanted. Constituents are entitled to assess how their trustee is using their power and vote her out if they are unsatisfied.

The secret ballot in Parliament resorted to, ironically, when transparency most matters, robs constituents of the information and therefore the power with which to make wise choices. It undermines the opposition's ability to be a firm force in resistance to government excesses by rendering it impossible to prove to the public its non-complicity in government policy or action failures. Thus, no matter how loudly the opposition may posture prior to the vote, they are unable to ensure the outcome they desire or prove their innocence in the undesirable outcome. This challenge was evident in the aftermath of the approval of the KT Hammond batch of ministers discussed earlier. Had the vote not been secret, the opposition would have had an easier time of distancing itself from the expansion of an already considered overlarge government. The independence of thought required in MPs for the multiparty democracy to actually offer home for differing views needs scrutiny to grow. The perniciousness of the secret ballot was obscured in earlier parliaments by the tyranny of the majority that prevailed before. The hung parliament has brought into sharp relief the weight of its effect on accountability, good governance and political party activity.

In each election cycle, the Big Two and a few of the smaller political parties issue manifestoes. But the election is hardly ever run as a battle of manifestoes.[112] More frequently, a catchy, pithy slogan or a single major issue is the focal point of the parties' social engagement. Indeed, some elections have been contested on no clear issues. For example, in the 2012 elections, John Mahama of the NDC won the election

112 So much so, that Kyerematen, once Minister in two NPP governments, declared on launching his independent bid that manifestoes are unnecessary.https://www.graphic.com.gh/news/politics/ghananewsghana-needs-plan-not-manifesto-alan-kyerematen.html

on the very vague platform of *'e dey be keke'*. The phrase translates roughly as 'it just rocks.' What rocks and for whom were not clearly articulated. Nana Addo Dankwa Akufo-Addo of the NPP lost that same election running an equally vague campaign of '*yeresesamu* (we are changing it up), move Ghana forward'. The manifestoes, generally launched to much fanfare, do not play much of a part in the electoral journey. This may perhaps have more to do with the general literacy levels across the country than with a deficiency in the parties themselves. But this, coupled with the unclear ideological positions of the parties, mean that voting has historically been based on matters other than the vision of the parties contesting or any important issue. The hung parliament offered an opportunity to bring clarity into that unrefined space of politics in Ghana. With such equal pull on public loyalties, the opposition could have, with a louder voice and greater, more clearly articulated resistance to undesirable government policies, created a coherent, alternative vision of state and government around which citizens could rally. But the opposition failed to take this opening.

While the force in Ayine's assertion about the inexact split is not denied, the opposition cannot blame their failure to organise the public into support groups for specific agenda bundles entirely on that. Yes, they raised objections to several issues throughout the term. But they did not attempt to draw the connections between their positions on each of those issues and their own governance strategy. For example, they objected to several taxes and the issuing of bonds with Bank of Ghana to raise funds for government, but the objection was always resisted as not necessary or insensitive. It was not situated in their own understanding of how a state should be run. They could have, in defining their principles in juxtaposition with the government's, crystallised for the country, the two ideologies of governance that dominate it. In sum, the hung parliament has, despite issuing elaborate manifestoes not brought any more ideological

clarity to citizens or furthered the interaction between adherents of similar ideological bent. Thus, all the advantages consequent to that interaction—policy revision and refinement, the continued alignment of government aims with government needs etc. —were lost to the nation.

One other development in Ghana's constitutional relations traceable to this hung parliament is the sharp rise in constitutional litigation on matters of the House by MPs. The earliest case under the 1992 Constitution in which the Supreme Court is invited into matters of the House *is JH Mensah v AG.*[113] In that case, the court held that it could only investigate allegations of improper procedure and unconstitutionality of legislative provisions. In every other way, the House was immune to judicial scrutiny. Thus, it held that a re-elected president's ministerial nominees all had to be approved expressly by Parliament even if they were ministers from the previous term of office being maintained in the same ministry. But whether that approval was done by tossing a coin or investigative reports, it was not in their purview to question. Between 1994 and 2020, there was very little litigation involving the legislature.[114] However, since 2021, when this hung parliament started work, there has been a considerable influx of cases before the Court, challenging legislative procedure, and legislative output. The litigation has included such landmark cases as *Ezuame Mannan v AG,*[115] *Nimfah v James Gyakye Quayson & 2 Ors,*[116] *Justice Abdulai v AG,*[117] and *Odoi v AG*[118] etc. In all these cases, the Supreme Court was called upon to overrule the legislature. To be sure, the court cannot be said to have overreached in handling these matters,[119] even where its decision was regrettable. However,

113 [1997–98] 1 GLR 227.

114 *Fewer than ten such cases can be found. Most notably Kpodo* v AG (2019) JELR 66405 (SC); (n 113).

115 (2022) JELR 109828 (SC).

116 (2022) JELR 109761 (SC).

117 (2022) JELR 109669 (SC).

118 (2024) JELR 112804 (SC).

119 Constitution of the Republic Ghana, 1992, art 2. gives the Court power to enforce the

this does not diminish the impact on the small-c constitution when Parliament is being so frequently called to order by the Court. It is telling of the weakness of the opposition in the House that their MPs have felt the need to solicit the help of the Court to resist the government side. What the long-term effect of such intense judicial supervision of the legislature will be is yet to be discernible. But it is something that should go neither unnoticed nor unscrutinised.

In the short term, what is immediately noticeable as a consequence of this spate of judicialization of parliamentary affairs is the greater interest both the public and the executive are taking in who is appointed to the Bench. It is concerning that some recent nominations to the Superior Courts do not commend themselves as based merely on merit.[120] Gaewu JSC, for example, was appointed to the High Court in 2020. Before he had even written a full judgment, and despite resistance by the opposition, he was elevated to the Supreme Court.[121] On what basis then was this promotion made? When such questions cannot be convincingly answered, it makes it hard to resist the accusations of court packing that have been repeatedly levelled at the NPP government.[122] Even if this perception (i.e. of court packing) were completely unfounded, the effect of its existence on the justice system is malignant. As I have long argued,

Constitution against every person or agency including Parliament and the President.

120 Maxwell Opoku-Agyemang was nominated to the Court of Appeal, despite having admitted that he made some irregular unilateral admissions while Acting Director of the Ghana School of Law, the statutory body that offers the mandatory Professional Bar training in Ghana. His appointment fell through but it reflects ill on the President and feeds negative perceptions about the judiciary that he was nominated at all. See Daily Graphic, 'Admission of 10 students to GSL: I didn't seek approval, but it was in the interest of the school- Opoku-Agyemang' (graphiconline.com, 28 March 2028) <https://www.graphic.com.gh/news/general-news/admission-of-10-students-to-gsl-i-didn-t-seek-approval-but-was-in-interest-of-school-opoku-agyemang.html>

121 Iddi Yire and Elsie Appiah-Osei, 'Parliament approves Koomson, Gaewu as Supreme Court Justices' (gna.org, 25 March 2023) <https://gna.org.gh/2023/03/parliament-approves-koomson-gaewu-as-supreme-court-justices/>

122 Abigail Arthur, 'Akufo-Addo packing courts with NPP loyalists to escape accountability – NDC' (citinewsroom.com, 4 July 2024) <https://citinewsroom.com/2024/07/akufo-addo-packing-courts-with-npp-loyalists-to-escape-accountability-ndc/>; Abigail Teye, 'Ackah-Yensu: Akufo-Addo is not packing the Supreme Court' (asaaseradio.com 18 October 2022) <https://www.asaaseradio.com/ackah-yensu-akufo-addo-is-not-packing-the-supreme-court/>

the judiciary is the last bastion of the republic. When people lose hope, confidence, and trust in it, all the conditions for an overthrow of the legal order are ripe.

It cannot at this time be stated with all certainty whether the hung nature of parliament intensified the politicisation of the judiciary or only drew our attention to how widespread it had become. But whichever it is, this is not a development to be welcomed. When the executive controls parliament and the judiciary, we have only established a very expensive dictatorship, that also disingenuously claims our civic obedience as the root of its legitimacy. The multipartyism the Constitution enshrines is not intended to be a Potemkin village. The hung parliament has alerted us to slopes we are slipping on or nearing, and we should take the alert to heart.

Lessons in constitutional design drawn from the hung eighth parliament

It seems that paradoxically, the Constitution has provided for multiparty existence and activity in public life. But in the actual governance, its structure encourages a sort of constitutional dictatorship by a ruling party. There are several lessons Ghana and Africa's younger democracies can learn from our first experience of a hung Parliament.

Firstly, our legislatures must not operate on mere simple majorities. The simple majority vote has, as its greatest commendation, efficiency. But the costs in bipartisanship may not justify it. While the two-thirds majority Ghana's Constitution requires for contentious issues may be too high for everyday house business, a single vote more than the other side is also too easy to achieve and, in a divided society, unhelpful for seeding inter-party and inter-interest group collaboration. Perhaps three fifths majority might be a good compromise. It is high enough

to require cooperation between the sides without being so high as to make one side hostage to the other.

Second, independent MPs should not be allowed to caucus with either side. In the first place, it is unfair to the electorate. Both sides had candidates in the election that the electorate did not vote for. There is no reason why having rejected both sides, they should be compelled by their independent representative to tow one or other side's line. Furthermore, as Ayine points out, a proper equal split in the House is better for the opposition's effectiveness. If the independent candidate had been required by the Speaker to vote independently in each instance, the opposition might have had a reasonable chance of swaying him on some issues while the government side would have been able to secure his vote on others. But to simply join the NPP and turn them into a majority was wrong and accounts in large part for the ineffectiveness of the opposition in the eighth parliament. In Switzerland, opposition parties frequently threaten to send policy choices to referendum to encourage government to negotiate.[123] As Papadopoulos has pointed out, the threat is so effective, the opposition has rarely ever had to make good on it.[124] In similar vein, a threat of government paralysis could give opposition MPs bite to their bark in a hung parliament without actually resulting in government paralysis. Insisting on the independence of independents is critical to the efficacy of the mechanism.

Relatedly, Electoral Commissions on the continent should avoid odd numbers in the total number of constituencies into which their countries are divided. This does not prevent hung parliaments. Indeed, it is possible in a 200-member legislature to have 2 independents or small party MPs and 98 MPs on each side. The aim is not to prevent hung parliaments from ever occurring. The aim is to ensure that a

123 Yannis Papadopoulos, 'How Does Direct Democracy Matter? The Impact of Referendum Votes on Politics and Policy-Making', in Jan-Erik Lane (ed.), *The Swiss Labyrinth: Institutions, Outcomes and Redesign* (London, Cass 2001).

124 Ibid.

single independent will not defeat the constituents' choices and allow one side to circumvent the other without the legitimacy to do so that a clear ruling majority confers.

Finally, all ballots in Parliament should be public. Those who dare not openly declare their stand should not be entrusted with collective decision-making. The visibility of public ballots will trigger a culture of greater reflectiveness on the nature and quality of representation citizens are receiving from MPs both in the public and in the MPs themselves. The downstream effect will be better, more accountable, more constituency-responsive more ideologically grounded representation.

Conclusion

Political party activity in Ghana has grown in leaps and bounds since the 1992 constitution returned the country to democratic rule for the fourth time. Its eighth parliament is its most unique thus far for being the first ever hung parliament in the nation's history and therefore greatly changing the way parties have functioned in the political sphere of public life. This paper has highlighted those changes, noting the victories and failures of the opposition in the hung parliament. On the victory front, we note that the opposition has done a good job of keeping the public engaged with parliamentary and government action in the focused effort to break the tie in seat strength in the 2024 elections. We noted also that it had forced representatives on both sides to find an area of expertise where they could build credibility for the party. On the negative side, we marked the sharp increase in blind party loyalty and party discipline and the factionalism that are creeping into party politics as a result thereof. A further important contribution this study makes to Ghana's political and constitutional theory is to have highlighted how the simple majority vote and the secret ballot methodologies of deciding

government business structurally undermine the accountability mechanism that multipartyism is intended to be in a democratic order.

Without doubt, the opposition has been disappointing in their use of the increased leverage the split house gave or at least could have given them. Nevertheless, it has not been an unprofitable situation. If government was able to spend irresponsibly[125] resulting in the current Domestic Debt Exchange Programme[126] with such a weak majority, it causes shudders the idea of what they could have done had they had the sort of majority previous parliaments contained. While the hung Parliament did not live up to the high hopes of accountability held in the eager school of thought, neither did it live down to the fears of government paralysis in the anxious school of thought. The increased public scrutiny the opposition put government under has been a great benefit of this parliament. Should another election yield hung parliament, it would actually not be a terrible thing.

125 Kofi Ahovi, 'Government might have over-borrowed – John Kumah admits' (businessweekghana.com, 6 December 2022) <https://businessweekghana.com/government-might-have-over-borrowed-john-kumah-admits/>; Kabah Atawoge, 'Reckless spending to blame for Ghana's economic woes, not only COVID-19 – Kwaku Kwarteng' (citinewsroom.com, 15 March 2024) <https://citinewsroom.com/2024/03/reckless-spending-to-blame-for-ghanas-economic-woes-not-only-covid-19-kwaku-kwarteng/>

126 Richmond Atuahene, K. B. Frimpong & Isaac Kofi Agyei, 'One year on: Lessons from Ghana's Domestic Debt Exchange and its impact on the economy' (myjoyonline.com, 6 December 2023) <https://www.myjoyonline.com/one-year-on-lessons-from-the-domestic-debt-exchange-and-its-impact-on-the-economy/>