

Book Review

Executive-Parliament Interface in the Legislative Process (1993-2006): A Synergy of Executive Powers? by Kwame A. Ninsin (Accra: Institute for democratic Governance, 2008) Pb Pages 87

Introduction

Several assertions have been made that are almost all subjective regarding executive dominance in the power contest with the legislature in the legislative process of Ghana's Fourth Republic. Ninsin's book, "Executive-Parliament Interface in the Legislative Process: A Synergy of Executive Powers?" provides for the first time scientific and empirical bases for this claim. The book identifies four main tendencies in the interface between these two organs of state-

- (i) Dynamic cooperation and Coordination – First Parliament;
- (ii) Qualitative Improvement in Dynamic Cooperation and Coordination
- (iii) Increasing Hostility and Open Confrontation
- (iv) Ultra Majoritarianism

These categorizations are based on plausible evidence. However, there are certain exogenous factors that the author could have considered in seeking to explain these tendencies. First, the personality of the Speaker of the First and Second Parliaments, who transited from the position of a de facto No. 2 person in the preceding government of the Provisional National Defence Council (PNDC), the late Justice Daniel Francis Annan, cannot be divorced from the performance of those Parliaments as far as their relationship with the Executive was concerned. The PNDC leader-

ship formed the National Democratic Congress (NDC), the party that dominated First Parliament as the virtual one-party, and also had an absolute majority in the Second Parliament. This historical connection made it easier for the Speaker to manage Parliament's relations with the Executive in a cooperative and collaborative manner during the First and Second Parliaments. After all, President Rawlings, Chairman of the erstwhile PNDC government, who was then President of the Republic of Ghana during the period, had been his "boss".

Second, the boycott of the elections to the First Parliament by the minority parties pushed political opposition from parliament to the media, to the courts and into the streets with the opposition winning several notable court victories that impacted positively on the evolving democratic process in the country. The cases included: *NPP v. IGP* [1993-94] 2 GLR 459 (Police Permit Case); *NPP v. AG* [1993-94] 2 GLR 35 (31st December Holiday Case); *NPP v. GBC* [1993-94] 2 GLR 354 (Equal Access for Political Parties Case). By the time the minority parties entered Parliament in 1997, a political bond appeared to have been established among especially the NPP and the media, the courts and civil society. This was a factor that must have influenced the NDC Parliamentary majority of the Second Parliament in their dealings with the NPP minority and therefore made possible what the author describes as a "qualitative improvement in the dynamic cooperation and coordination" between Parliament and the Executive.

Third, the 2001 transition was rancorous in the extreme despite the seeming peace and tranquility with which it was effected. The extra-Parliamentary accusations and counter-accusations, the vituperations, the investigations and prosecutions, all poisoned the prevailing political atmosphere which was transferred into the deliberations of Parliament. Once the parties outside were not talking to each other, it was difficult to see how the Parliamentary parties would be talking to each other. This was clearly one of the major reasons for the increasing hostility and open confrontation identified by the author in the Third Parliament.

Fourth, the continued investigation and prosecution of members of the erstwhile NDC government, and especially the prosecution of the former First Lady, Mrs Nana Konadu Agyeman-Rawlings, worsened the

atmosphere in the period of the Fourth Parliament and clearly affected the relations between the two major political parties in the House, making cooperation extremely difficult. In those circumstances, the NPP government felt compelled to employ the full force of its majority in Parliament; hence the tendency toward ultra-majoritarianism. Naturally, the government suspected that the NDC minority could embarrass the President if given the slightest chance.

The choice of legislation and other parliamentary transactions reviewed in the book would at first appear to be arbitrary; but in fact it is not. The choice was based largely on two areas of fundamental concern to the citizenry and the two areas most prone to controversy; namely, representation and taxation. Hence the choice of legislation such as the Value Added Tax (VAT) Bill and the National Health Insurance Scheme (NHIS) Bill (both having to do with taxation); and the approval of Ministers, the Political Parties Bill and the Representation of the People (Amendment) Bill (ROPAB) (all related to representation). Nevertheless other important, critical and controversial legislation and transactions should have been mentioned, if only to explain why they were not included in the study. The following readily come to mind:

First Parliament

- Criminal Code (Amendment) Act, 1993, Act 458 (on “willfully causing financial loss to the state”);
- Serious Fraud Act, 1993, Act 466 (setting up a white collar crime investigation unit outside the Police Service)
- Public Order Act, 1994, Act 491 (removing the requirement for the police permit for public demonstrations)
- Securities and Intelligence Agencies Act, 1996, Act 526 (first post-Independence legislation on intelligence agencies)
- Constitution of the Republic of Ghana (Amendment) Act, 1996, Act 527 (amending the Constitution and introducing “dual citizenship”).

Second Parliament

- Public Office Holders(Declaration of Assets and Disqualification) Act, 1998, Act 550 (extending the category of public officials to declare their assets)
- Citizenship Act, 2000, Act 591 (conferring “dual citizenship”)

Third Parliament

- Public Holidays Act, 2001, Act 601 (abolishing June 4th and 31st December as public holidays)
- National Reconciliation Commission Act, 2002, Act 611
- Debt Recovery (Tema Oil Refinery Company) Fund Act, 2003, Act 642
- Electoral Commission (Amendment) Ac, 2003, Act 655(splitting responsibility for voters’ identification and national identification between the Electoral Commission and the National Identification Authority)
- The International Financial Consortium (IFC) Loan

Fourth Parliament

- National Lotto Act, 2006, Act 722 (abolishing private lotto operations)

It would have been interesting to analyze the workings of the Parliamentary Committee of the Whole, what matters are referred to it and why, and the kind of “deals”, if any, that are “cut” in that Committee, whether these have anything to do with power contestation between the Executive and the Legislature; and the reasons for such outcomes. For example, it was at the Committee of the Whole that the decision was taken to establish the MPs’ Constituency Common Fund out of the DACF, which has resulted in so much friction between MPs and DCEs and between MPs and Metropolitan, Municipal and District Assemblies (MMDAs)

The analysis of the attitudes of the two Presidents, who served under the Fourth Republic Constitution, to Parliament (Presidents Rawlings and

Kuffour), could have gone beyond simply alerting the reader to the paradox of a military leader being more accommodating with Parliament and a civilian leader who adopted a more hard-line attitude to Parliament. The book should have examined what could have accounted for these different attitudes. For example, did it have anything to do with their advisers? Did it have anything to do with the various influences that operated on them? If yes, what was the nature of those influences?

There are a few analytical oversights in the book. In describing the architecture of the Constitution at the beginning, the feature of a party-based central government superimposed on a non-partisan local government system is unique enough for it to have been mentioned, and its implications discussed. Further, it is stated at page 46 that "the highest levels at which policies are formulated is the legislature". This may not be entirely accurate. The highest level at which policy is formulated is the executive. The legislature only comes in when policy has to be converted into legislation otherwise the legislature is not really involved in policy.

Throughout the publication, the author describes the Supreme Court decision in the "Retained Ministers Case" as having gone against the NDC majority. The fact is that the Supreme Court delivered a very "Solomonic" judgement and virtually declared the case a "draw", which is what enabled the two sides of the House to reach a compromise to proceed with business of the House. The decision of the Supreme Court is that all Ministers needed "prior approval" but that "prior approval" is not a "term of art". In other words, prior approval did not necessarily imply Parliamentary vetting. So what the NDC using its majority in Parliament got the minority to agree was that in the case of the "retained Ministers" their "prior approval" would not require Parliamentary vetting and that the approval given at the time of the minority boycott of Parliament was sufficient for purposes of "prior approval".

In the discussion of the CNTCI loan at pages 29-31, as was the case with the previous IFC loan which unfortunately is not discussed in the study, an important development which is not discussed at all is the role of the media in the legislative process in particular and in democratic governance in general. In both cases, the loans had been approved and that should have ended the matter. But the media raised questions about the loans in such forceful terms as to force the re-opening of the debates

by Parliament. In the IFC case, the Government finally backed down while it did not in the case of the CNTCI loan. The important lesson to be learnt from these 2 instances is that where Parliament fails, the media can become the voice of society; and that it is possible for the media to effectively play its constitutional role of holding Government accountable (Article 162 (5)) and as the "Fourth Estate of the Realm". In discussing the CNTCI loan at page 53, the author does not comment on the significant fact that the loan, though approved twice, never materialized and the lesson for policy makers, legislators and advocates of majoritarian rule is that the majority is not always right.

At pages 43-35, the entire Ghana-USA "Non-Surrender Agreement" is discussed without any reference to what the Agreement was about. The reader who is not conversant with the subject-matter of the Agreement is left confused as to the reason for the controversy at all.

There are inconsistencies in the book concerning the dates the ROPAB was passed into law, given Presidential assent and gazetted (see pages 35, 37 and 40). A thorough check shows that 23rd February 2006 was a Thursday and 24th February 2006 was a Friday as indicated on p. 35 of the book. Still on the ROPAB, an important point should have been made about the procedure by which it was brought to Parliament. As a law that was changing the electoral law by which the citizenry exercise their franchise to make and unmake governments, it ought to have been tabled in Parliament by way of an inter-party consensus. Though this is not a requirement of the Constitution, it is almost a universal convention in established democracies. That the Government tried to use its majority to pass such a fundamental law meant that the action contained within it the seeds of its own destruction and offers a very good example of what the author describes as "the abuse of ultra-majoritarianism".

Finally the statement at page 73 that Rawlings never refused to assent to any Bill during his two terms is factually inaccurate. Rawlings actually refused to assent to the National Communications Bill and returned it to Parliament with copious comments. All his comments were incorporated into the Bill before it was finally passed and returned to him for assent which he did for it to become the National Communications Act, 1996, Act 524.

These comments notwithstanding, the publication is a very fine piece of intellectual work; and it is highly commended. To enable Ghana's young democracy to grow, there is need for similar studies in respect of other centers of power which are supposed to act as counterpoints to the power of the Executive, in particular the Judiciary, the Commission on Human Rights and Administrative Justice (CHRAJ) and the media.

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