



# Constitutional economics of Ghana's decentralization

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## ABSTRACT

This paper concerns the rules that are often chosen to frame decentralization in Ghana. It perceives the challenges of multi-level governance in postcolonial sub-Saharan African countries, such as weak local government capacity for urban planning, as effects of ill-conceived constitutional rules. The paper draws ideas from constitutional political economy (CPE) to problematize the constitutional rules underlying Ghana's current state of decentralization. I argue that these constitutional rules, embodied in Ghana's 1992 Constitution and Local Government Act (462), evince both continued dominance of state control over local governance and a systemic transfer of the logics and instruments of the authoritarian Provisional National Defence Council (PNDC) military regime to the choice of constitutional rules for Ghana's decentralization. In other words, Ghana's decentralization patterns and processes must be examined in the context of the constitutional regime from which they were born. One such pattern is the creation of new local governments (a gerrymandering strategy) by successive governments without commensurate improvement in local democratic and pro-poor developmental outcomes. The paper's discussions, largely conceptual but interlaced with empirical moments, serve to stimulate debate about the relationships between the constitutional rules for decentralization and their socioeconomic and political effects. I conclude by reflecting on the conceptual and methodological challenges of using CPE to analyze constitutional rules for decentralization and offer ideas to address these challenges in future research.

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## 1. Introduction

"They [individuals] are independent units of consciousness, capable of assigning values to alternatives...they live together...But to do so, they must live by rules that they can also choose" (Buchanan, 1990, p. 18)

The institutional environment of Ghana's prevailing decentralization system is not predetermined. It emerges from deliberate choices of historically contingent constitutional rules, which are embedded in the country's political-economic and cultural history. This paper wrestles with the rules of the game that actors choose and with which they interact in Ghana's political decentralization paradigm. Specifically, rather than adopting a normative policy framework of decentralization (e.g., perceived advantages of local government being closer to the people), which often characterizes the discourse on Ghana's decentralization, this paper employs an analytical approach to pose deeper questions: What is the basis of the constitutional rules from

which decentralization develops? What are the procedural mechanisms for these rules? What are the effects of these rules on issues such as democratic governance? With these questions, this paper seeks to stimulate conversations on these and other questions about the relationships among constitutional rules, decentralization patterns, and the socioeconomic and political effects of such rules.

The paper begins by analyzing Ghana's prevailing decentralization doctrine from the 1980s, when the PNDC government, a military regime, established fundamental legislation, the Provisional National Defense Council Law (PNDC Law) 207, that undergirds current decentralization practices in Ghana (Gilbert, Hugounenq, & Vaillancourt, 2013). This initial legislation was later enshrined in Chapter 20 of the 1992 Constitution, which this same military regime also promulgated. The military regime, after winning the 1992 general election, transitioned to a democratically elected government called the National Democratic Congress (NDC). The Local Government Act of 1993, hereinafter referred to as Act 462, became the cornerstone legal instrument for Ghana's decentralization and consolidated the PNDC Law 207 and provisions in Chapter 20 of the 1992 Constitution (Ahwoi, 2010a). Focusing on these two constitu-

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tional rules,<sup>1</sup> the paper explores the following broad, overlapping questions: Can there be a system of freedom and exchange in the choice of constitutional rules under a populist, authoritarian military regime? How are the constitutional rules for decentralization chosen under such an authoritarian military regime? What are the political, economic, and social effects of constitutional rules chosen under such a regime?

Scholars have extensively explored Ghana's prevailing decentralization doctrine, using different disciplinary perspectives and methodological approaches. For instance, some have sought to identify what, exactly, was decentralized—i.e., whether it is political, administrative, and/or fiscal decentralization (Awortwi, 2010; Debrah, 2014). Others have discussed the powers or lack thereof (e.g., taxation powers) of decentralized local governments (Awortwi, 2010; Inanga & Osei-Wusu, 2004; Moguees & Benin, 2012; Yeboah & Obeng-Odoom, 2010). Some have analyzed the relationship among decentralized local governments, local democracy, and pro-poor development (Aye, 2003; Crawford, 2009; Crook, 2003; Crook & Manor, 1998). Others still have probed the role of District Chief Executives (DCEs) (Debrah, 2016) and traditional chieftaincy institutions<sup>2</sup> in local politics and governance processes (Aikins, 2011; Lentz, 1998). The intersection of decentralization, state sovereignty, and Ghana's experience under structural adjustment programs (SAPs) has also been thoroughly discussed (Aye, 2001; Hoffman & Metzroth, 2010; Mohan, 1996). However, we have yet to analyze the problematic historically contingent rules within which actors interact and the process through which such rules have emerged to shape the country's decentralization paradigm.<sup>3</sup> These rules, and the processes of choosing them to shape the political-economic order of decentralization in Ghana, are the variables of analysis in this paper. By focusing on the constitutional regimes and the processes through which constitutional rules for centralization are chosen, this paper differs from earlier conceptual and empirical studies of decentralization, such as Falletti's (2005) sequential theory of Colombia's and Argentina's decentralization, which Awortwi (2011) uses in his comparison of Ghana's and Uganda's decentralization paradigms.

This paper first maps the theoretical landscape of CPE. It delineates three key elements for contextualizing the discussions on Ghana's decentralization. Next, the paper synthesizes, within these three CPE elements, a wide-ranging empirical literature on Ghana's decentralization. The analysis problematizes the constitutional rules that frame the prevailing decentralization paradigm in Ghana. It also stimulates conversations about how this framework helps to develop theoretically driven empirical narratives on the relationships between constitutional rules for decentralization and the socioeconomic and political effects of such rules. The paper is primarily conceptual rather than evidentiary. While limitations

exist in qualitative discussions of the relationships between constitutional rules and their effects, such narratives, interlaced with empirical details from the literature, are necessary for abstract discussion (see similar methodology in Elster, 1993) and the framing of questions for quantitative research. The paper concludes with reflections on the conceptual and methodological challenges of using CPE to analyze constitutional rules for decentralization, and offers ideas to address these challenges in future research.

## 2. Constitutional political economy: The institutional-constitutional structure of decentralization

“Constitutions are chains with which men bind themselves in their sane moments that they may not die by a suicidal hand in the day of their frenzy” (John Potter Stockton in Finn, 1991, p. 5)

A constitution “contains the rules and procedures for producing public goods” (Voigt, 1997, p. 23). Constitutional political economy, or constitutional economics, applies the rational choice method to analyze the choice of rules (Buchanan & Tullock, 1962; Kurrild-Klitgaard, 2012). Specifically, whereas standard economics applies rational choice to analyze *choices made within rules*, CPE applies this method to analyze the *choice of rules*. Individuals do not only make choices within rules, as though these rules were predetermined; they also choose the rules within which their choices are made. In reflections on the foundational text on CPE, *The Calculus of Consent* by Buchanan and Tullock (1962), Kurrild-Klitgaard (2012, p. 408) presents three overlapping lessons that ground the CPE literature: demand for symmetry in modeling human actors, economic analysis of decision rules, and economic consequences of constitutional rules. Symmetry in modeling human behavior means that individuals must be presumed to possess the same mindset and therefore be capable of exercising the power they possess, whether within market rules or political rules. However, the nature of the rules (i.e., the extent to which the rules constrain actions), not the mindset of individuals, determines the differences between individuals working within market rules and those working within political rules (Brennan & Buchanan, 1985). Because the rules vary across institutional settings (e.g., market and political settings), an economic analysis of rules must analyze how individuals act in accordance or conflict with the rules of their institutional setting, based on the cost of either complying with or violating those rules (Buchanan & Tullock, 1962; Buchanan, 2002). Finally, if individuals alter their actions based on the cost of violating or complying with those rules, then an economic analysis of constitutional rules must analyze patterns of outcomes (social economic, political policies, and governance systems) that emerge from different rules governing an institutional setting.

There are both normative and positive approaches to CPE analysis. The normative approach, based on contractarian political philosophy, seeks to propose “Pareto-superior rules” that serve as the basis for normative evaluation of constitutional rules (Voigt, 2011, p. 206).<sup>4</sup> Based on social contract theory, the normative approach to CPE interrogates whether constitutional rules are based on previous constitutional contracts agreed on by individuals (preconstitutional stage) operating within a system of freedom and exchange; if such

<sup>1</sup> Constitutional, constitutional level, or constitutional choice rules are synonymous terms that refer not only to the decentralization rules in the 1992 Constitution. This term derives from Ostrom's Institutional Analysis and Development (IAD) framework to describe the processes of defining and legitimizing collective-choice rules, such as the process of constituting relevant collective entities and actors in the making of policy decisions (McGinnis, 2011; Ostrom, 2005). Both the 1992 Constitution and the Act 462 (which is legislation) encompass the constitutional rules that set forth the entity and actors (e.g., the National Development Planning Commission) charged with making Ghana's collective choice rules (e.g., urban planning policy decisions).

<sup>2</sup> Chieftaincy institutions refer to the indigenous political institutions headed by a chief (king). The stool is a symbol of the chief's office in the southern parts of Ghana, and the skin of an animal symbolizes the chief's office in the northern parts (Northern, Upper East and Upper West Regions).

<sup>3</sup> This is not to say that researchers have not studied the constitutional rules for Ghana's decentralization. For instance, Aye (1992a) uses empirical examples to discuss the constitutional rules on Ghana's decentralization. This paper builds on such contributions in the literature by discussing how CPE provides opportunities to further develop theoretical explanations of the relationships among constitutional rules, decentralization patterns, and the socioeconomic and political effects of such rules.

<sup>4</sup> Pareto-superior rules are based on Buchanan and Tullock's (1962) application of Wicksell's insights on *unanimity* to constitutional rules. From neoclassical economics, the logic of Pareto optimality implies that people would consent to rules when such rules are considered efficient—that is, consent flows from efficiency. However, Buchanan and Tullock (1962) stand this logic on its head by arguing that the rules that people consent to are inherently efficient (efficiency flows from consent), and such consent, according to the “Wicksellian efficiency” logic, must be obtained through a constitutional rule of unanimity, which is the basis for constitutional democracy (see detailed explication in Van den Hauwe, 1999).

a contract exists, the constitutional rules and the relationship between individuals and the state under such rules become legitimate (Boettke, 1987; Buchanan, 1990; Voigt, 2011).

Analysis of how different outcomes emerge from alternative constitutional rules and changes in these rules characterizes the positive approach to constitutional economics: positive CPE (Voigt, 1997, 2011). Necessary questions include identifying how constitutional rules are chosen and their effects (economic, social, and/or political). Fig. 1 below represents a basic framework of the procedures in terms of aggregating inputs (individual preferences and external collective factors, which are discussed below with examples). These inputs influence the constitutional rules chosen. The constitutional rules also have economic, social, and political outcomes. The purpose of CPE generally and positive CPE specifically is to explain the relationships between chosen rules and their outcomes (Buchanan & Tullock, 1962; Buchanan, 1990; Voigt, 1997). I will use this basic framework to discuss constitutional rules for decentralization and their possible political, economic, and social effects.

### 2.1. Procedures for choosing constitutional rules

Procedures are the means through which inputs (individual preferences and external collective factors) are aggregated in the choosing of constitutional rules (Voigt, 1997). In terms of positive CPE, there is a relationship between different procedures and the types of constitutional rules that actors choose. Elster (1993, p. 170) refers to this as “mechanisms of constitution making.” These mechanisms include but are not limited to these elements individually or in combination: 1) the composition of the constitution assembly by a democratic process or a ruler; 2) open versus closed proceedings; 3) rational discourse about the public good (mostly associated with open proceedings) versus bargaining among interest groups (mostly associated with closed proceedings); 4) visible military force or threat of such force; 5) adversarial and/or compromised discussions; and 6) decision by referendum, two-thirds majority of legislators, legislative veto, executive veto, and so forth (Elster, 1993; Goldwin & Kaufman, 1988). These procedural mechanisms also influence the nature of constitutional rules that actors choose in areas such as voting arrangements, flexible versus inflexible constitutional rules (or provisions), public versus private versus institutional interests in the rules, protection of minority versus majority interests (ethnic, race, income, age, groups), protection and enforcement of individual rights and property-right

regimes, separation and delegation of powers, and so forth (Elster, 1993). Positive CPE analyzes the effects of this procedures-rules relationship (Blume, Müller, Voigt, & Wolf, 2009; Persson & Tabellini, 2003; Voigt, 2011). This paper examines the relationships among the procedural mechanisms, the constitutional rules on decentralization, and the current socioeconomic and political effects of Ghana's decentralization paradigm. As Elster (1993, p. 194) notes, these relationships should not be taken as a “causal theory” but as “raw materials” that could help to explain “frequently occurring patterns of causal interaction” in, for instance, Ghana's prevailing decentralization paradigm.

### 2.2. Constitutional rules as a function of inputs (preferences and restrictions of individuals)

The second CPE element examines the relationship between constitutional rules and two categories of inputs: individual preferences (e.g., citizens and their leaders' time and risk preferences) and external collective factors (e.g., use of other country's constitutions as models, pressure from external collective groups, distribution of resources in society, and values and norms) to understand how these inputs structure constitutional rules. Due to its commitment to methodological individualism (Brennan & Buchanan, 1985; Buchanan & Tullock, 1962; Elster, 1982), CPE requires that boundedly rational individuals (i.e., those who choose the most useful or satisfying option based on their cognitive ability and available information) be autonomous in choosing constitutional rules in a manner that promotes consent while also allowing for individual preferences (Buchanan, 1990). Thus, subjecting the decentralization paradigm of a country like Ghana to the CPE framework allows one to pose and analyze both normative and positive CPE questions. In a normative CPE analysis, one can ask whether boundedly rational individuals (e.g., citizens and members of a constitution-making committee) were sufficiently autonomous to choose relatively good constitutional rules for Ghana's decentralization paradigm. In terms of positive CPE, one can also question the relationship between Ghana's constitutional rules and inputs, such as individual preferences and external collective factors: Did the procedures, and resulting constitutional rules on Ghana's decentralization paradigm allow individual preferences while also driving a coherent decentralization agenda? Do the constitutional rules on Ghana's decentralization paradigm reflect individual preferences more than they reflect external collective factors, or vice versa?

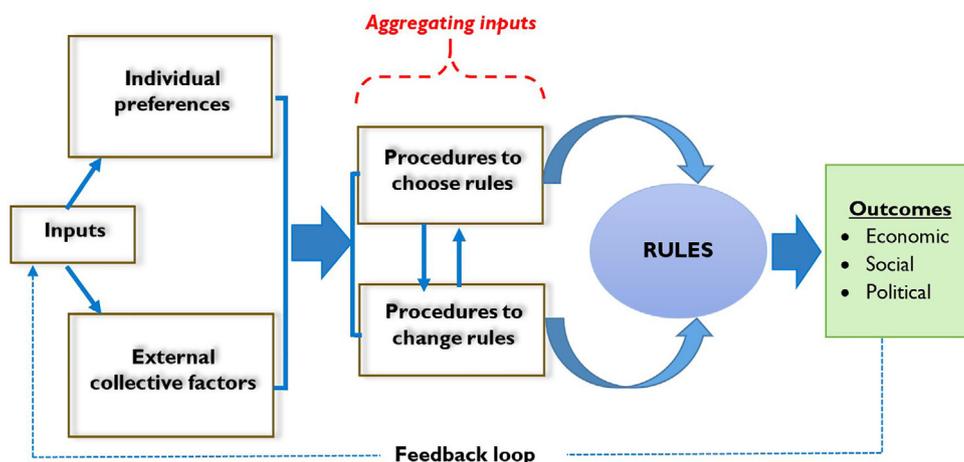


Fig. 1. Framework for (positive) CPE analysis.

In the case of external collective factors, there is a tendency to analyze Ghana's decentralization paradigm by overemphasizing the role of the Bretton Woods institutions while deemphasizing the role of Ghana's collective norms and values, especially those embedded in its socio-cultural, economic, and political histories and practices (cf. Ayee, 1997; Debrah, 2016; Hutchful, 2002; Mohan, 1996). This paper seeks neither to downplay nor to overemphasize the systemic neoliberal restructuring efforts that shaped Ghana's political-institutional arrangements, especially in the 1980s. The use of positive CPE allows a historically contingent analysis of how different factors (both individual preferences and external collective factors, including collective norms and values) shaped Ghana's prevailing decentralization doctrine.

### 2.3. Procedures to change constitutional rules

Changes to constitutional rules occur explicitly (i.e., modifying the text of the rules) and implicitly (i.e., reinterpretation of the text) based on formal (legal or constitutional) or informal (illegal or unconstitutional) procedural mechanisms (Voigt, 1997, 2011). The procedures to change constitutional rules, according to Voigt, can therefore be classified into four groups: explicit constitutional, explicit unconstitutional, implicit constitutional, and implicit unconstitutional. Explicit constitutional procedures imply that constitutional rules are changed through an established rule-amendment process (e.g., legislative amendment), whereas implicit constitutional procedures mean that rule changes occur through established rule-interpretation processes (e.g., judicial proceedings). Unconstitutional procedures (whether implicit or explicit) involve ignoring established or constitutional rule-amendment and -interpretation procedures. Explicit and implicit (constitutional or unconstitutional) changes to constitutional rules are effected by different actors (e.g., members of the executive, legislative, or judicial arms of government and interest groups) and under different conditions (e.g., the rigidity of the constitutional rules and/or amendment process) (Lorenz, 2005; Lutz, 1994; Rasch & Congleton, 2006; Voigt, 1997). Key interrelated issues that can be interrogated within a CPE framework include the following: 1) which procedures (explicit versus implicit, and constitutional versus unconstitutional) are used to change the constitutional rules for decentralization?; 2) under which conditions are these different procedures enacted, who are the actors involved, and how do these conditions and actors shape constitutional rules for decentralization? Some of these questions are discussed in the analysis below.

## 3. The constitutional political economy of decentralization in postcolonial Ghana

This section synthesizes the literature in terms of the three CPE elements previously discussed: procedures to choose constitutional rules, constitutional rules as a function of inputs (individual preferences and external collective factors), and procedural mechanisms to change constitutional rules.

### 3.1. Procedural mechanisms for choosing the constitutional rules for decentralization

This discussion focuses on how populist discourse and rhetoric, which was backed by military force or the threat of such force rather than rational discourse, characterized the procedures for choosing Ghana's constitutional rules for decentralization (cf. Ayee, 2008; Crawford, 2009). This procedural mechanism and the evidence discussed is one of many mechanisms to be identified and analyzed as scholars continue to scrutinize Ghana's constitu-

tional rules on decentralization in terms of the CPE framework. Riedl (2014, p. 88) defines this populist discourse as including “revolutionary language” in the PNDC era. The language focused on alleviating citizens' suffering (e.g., economic decay, corruption, etc.) under previous regimes by ensuring economic prosperity for all Ghanaians based on grassroots participation, local initiatives, and nonpartisan consensus-building. This populist discourse also included, according to Ayee (1996b, p. 32), promises of ensuring “new democracy, a true democracy, real democracy and a participatory democracy,” and manifested in the establishment of “populist institutions, like the Peoples' Defence Committees (PDCs) and Workers' Defence Committees (WDCs) in 1982,” whose local activities were mainly negative.

Specifically, after the successful coup in 1981, the PNDC military regime, led by Flt. Lt. Rawlings, announced its commitment to building a more decentralized governance system, through rhetoric such as “power will not be concentrated at the top any more” (Yeebo, 1985, p. 66 cited in Awortwi, 2011), “give power to the people,” and “participatory development” (Gilbert et al., 2013, p. 109; Ayee, 1997). A year later, the regime released their “decentralization manifesto” in what was dubbed the eleven-point decentralization plan, which, according to Gilbert et al. (2013, p. 109), reflected “a desire to seat the government's power on popular support rather than as a true intent to share political power with the local levels of government.” For instance, some observers argue that despite increasing the number of local governments (i.e., district assemblies, DAs) and holding nonpartisan elections for two-thirds of DA members, the PNDC government's appointment of the heads (i.e., District Secretaries or District Chief Executives, DCEs) of these DAs signaled the regime's capture of these local governments, especially to build its “rural power base” (Ayee, 1996b, p. 48; Gilbert et al., 2013). This, according to case studies by Ayee (1996b), revealed how difficult it was for other DA members to oppose these DCEs because their position was backed by the PNDC regime's military force or threat of such force. This left little room for rational discourse in formulating constitutional rules in the 1980s (e.g., PNDC Law 207) because as Awortwi (2011, p. 358) notes, this regime, mostly of low-ranking and politically inexperienced soldiers and their few socialist-leaning technocrats, “felt insecure and considered political decentralization premature.”

While using the mechanism of populist rhetoric backed by military force to mobilize and appeal to its coercive base—mostly the military and paramilitary forces (Oquaye, 1995)—the PNDC regime also deployed multiple interrelated measures or strategies to ensure the central government's control of local governments in the choice of constitutional rules for Ghana's decentralization. For instance, in 1990 the National Commission for Democracy (NCD) organized, as part of the constitution-making process, seminars in all ten regional capitals of Ghana. Rather than being an open forum for rational discourse on proposals for constitutional rules, these seminars “became a carefully orchestrated plan to foist a no-party system of government... debates to canvass positions known to be favored by the government... a platform to attack the evils of the multi-party system, the failure of past politicians and the sanctity of the coups of 4 June 1979 and 31 December 1981...” (Ayee, 1996a, p. 435). In his detailed historical account, Oquaye (1995) notes that the PNDC regime engineered its survival by manipulating the forums and the procedural mechanisms used to make Ghana's constitutional rules. Ayee (1996a) and Gyimah-Boadi (1991b) provide historical accounts of how the Consultative Assembly (CA), which was established by the PNDC Law 253 to prepare the 1992 Constitution, was criticized as being 1) packed with pro-PNDC supporters from the DAs and with “identifiable bodies,” which included associations such as the Butchers, the Hairdressers, and the Bakers Associations and excluded others

(possible anti-regime associations) such as the Ghana Institute of Management, the Ghana Veterinary Medical Practitioner, and as being 2) *gagged* by stipulating in the PNDCL 253 that “Nothing in this section shall be deemed to relieve any person [i.e. members of the CA] from any action or proceedings . . . in respect of anything said or done by him against the Head of State and Chairman of the Council or any member of the Council of a PNDC Secretary.” The next section will discuss the silencing of dissenting views in the constitution-making process.

Particularly important in these historical accounts is how the PNDC ensured that rules for decentralization maintained the central government’s control over local governments through a constitution-making process in which “. . . serious policy discussion was de facto forbidden. . .” (Hayes, 1991, p. 416). For instance, according to Ayee (1996a), the committee of experts, which was led by Dr. S.K.B. Asante and established by the PNDC regime to formulate initial constitutional proposals based on the NCD’s report, ensured that constitutional rule proposals on issues such as decentralization and political parties were forwarded straight to the PNDC and not to the CA. It is therefore not surprising that Section 163(2) of Act 462 evidences the preservation of the regime’s decentralization rules (PNDC Law 207) that guide Ghana’s current decentralization paradigm. For instance, just as the PNDC regime appointed the political head (DCE or District Secretary) and two-thirds of the DA members under PNDC Law 207, the current constitutional rules on decentralization under this regime’s purview also ensure strong central government control over local governments by having the president appoint the DCE (Article 242 (d) of the 1992 Constitution and Section 5(1)(d) of Act 462) and 30% of the DA members (Article 243 (1) of the 1992 Constitution and Section 20(1) of Act 462).

The preservation of these rules broadly implies the preservation of the DA structure, logics, and instruments under this military regime. This includes but is not limited to constitutional rules that both preserve the central government’s interest at the local level and foster top-down, command-and-control style decision-making processes, with local governments having minimal or no ability to alter centrally directed decisions. Drawing on Fesler’s (1965) notion of “illusory decentralization,” Ayee (1996b, p. 49) concludes his case studies of decentralization (between 1988 and 1992) in Ho and Keta Districts in the Volta Region of Ghana by noting, “the PNDC government and administration remained highly centralized with regions and districts still taking directives from Accra, the nation’s capital.” Using survey analysis and interviews of citizens, DCEs, DA members, members of parliaments, and bureaucrats, Debrah (2016) also finds that the DCE’s administrative and political functions allow them to mobilize local support for the incumbent president. This further confirms Ayee’s (1996b) earlier findings that the logic and instruments used for the decentralization rules during the PNDC era allowed the regime to mobilize its local power and support base and were instrumental in the PNDC regime’s successful 1992 election. Given that the president appoints the DCE and 30% of DA members, the control and logic of the PNDC regime was conveniently transplanted into the constitutional rules for Ghana’s decentralization in the 1992 Constitution and Act 462. In his later reflections, the chief architect of Ghana’s decentralization under the PNDC and NDC regimes, Kwamena Ahwoi, opines, “In crafting the Constitution, the President was simply substituted for the PNDC. . . without as much as a debate” (Ahwoi, 2010b, p. 5).

Given these accounts, the question of whether constitutional rules for assigning political power can legitimately be chosen under a military regime and the nature of these rules are conceptual and empirical matters that require further comparative studies in different countries. In the Ghanaian case, however, the empirical account supports the view that even if *the letter* of the

constitutional rules allows for the devolution of power under a military regime<sup>5</sup>, *the spirit* of these rules can still remain ambiguous at best when the rules are put to the test. For instance, more than a decade after these constitutional rules for decentralization were enacted, Debrah’s (2014, p. 58) case studies of four DAs in the Greater Accra Region of Ghana—Ga West, South Dayi, Ashanti Akim South, and Gonja West in Greater Accra—showed that in practice, devolution still bears the remnants of the PNDC regime’s decentralization logics and instruments, because “the appointments [DCEs and 30% of DA members] have been based largely on political patronage, with appointments functioning largely as rewards to political notables who had helped in the mobilization of grassroots support for the incumbent government during the previous election” (see also Ayee, 1996b). In fact, the 2014–2015 Afrobarometer Survey reveals that 84% of Ghanaians think that DCEs are involved in corrupt practices.

In his detailed review of Ghana’s 1992 Constitution and Local Government Act, Ferrazzi (2006) notes that even though the letter of the rules seems to support devolution, ambiguity remains regarding whether the rules also favor delegated and/or deconcentrated modes of decentralization. For instance, Article 254 of the Constitution states that “Parliament shall enact laws and take steps necessary for further decentralization of the administrative functions and projects of the Central Government but shall not exercise any control over the District Assemblies that is incompatible with their decentralized status, or otherwise contrary to law.” Whether this provision supports devolution or deconcentration remains ambiguous. However, Debrah’s (2014) empirical work notes that even though central government functions have been transferred to these local government departments, in reality these deconcentrated departments still depend on administrative directives and resources from the national headquarters (see also Ayee, 2008). Kwamena Ahwoi aptly notes this in an interview with Awortwi (2010, p. 625): “Though in the spirit of the law the current decentralisation aims at promoting devolution, actual practice is deconcentration or at best nominal devolution.” In other words, one could argue that a military regime will inevitably introduce command-and-control mechanisms in the constitutional rules of decentralization and, at best, would deconcentrate decision-making rather than devolve political powers.

Ghana now remains saddled with inflexible, command-and-control constitutional rules that mostly transfer administrative responsibilities to local governments while also ensuring strong central control over those governments, to protect the central government’s local interests (see G. Crawford, 2009). The transition of the PNDC to the NDC after the regime won the 1992 election did very little to change these inflexible command-and-control constitutional rules. The rules provide scarce opportunities for Ghana’s decentralized system to function through self-adjustment, local participation, and evolutionary trial-and-error processes. As Ferrazzi (2006) notes, the fact that Article 240(1) of the 1992 Con-

<sup>5</sup> Some might argue that because 92% of Ghanaians supported the 1992 Constitution in the April 28, 1992 referendum, this fact calls into question this paper’s analysis. This issue lies within the domain of a normative CPE analysis, which can be addressed thoroughly in a separate manuscript. The abridged response is that, under a CPE framework, for there to be Pareto superior rules, there must be unanimous consensus (or at least something close to unanimity) in citizens’ acceptance of the Constitution (see footnote <sup>4</sup> and also Van den Hauwe, 1999). Thus, even though 92% of the 3,680,973 voters supported the Constitution, this still leaves out the remaining 8% as well as other adult Ghanaians who did not turn up for reasons such as those discussed by Ayee (1996b). In fact, Ghana’s country report titled “Constitution Writing and Conflict Resolution,” published online by Professor Jennifer Widner at Princeton University, notes that voter turnout in the 1992 referendum was 43.7%, which means that more than half of the adult population did not vote. Thus, in Ghana’s context, healthy debates should certainly occur regarding the process and measures through which constitutional rules are chosen and voted on. In addition, see footnote <sup>4</sup> for another possible interpretation of the 1992 referendum.

stitution states that “Ghana shall have a system of local government and administration which shall, *as far as practicable* (emphasis mine), be decentralized” limits the scope of decentralization to what is deemed “practicable” by the executive branch and legislature.

There are political consequences to enacting these command-and-control constitutional rules and limiting them to what is *deemed practicable* by the executive branch and/or legislature. For instance, Crook (2017) has discussed the challenges of legitimacy and local support of local governments. The 2014–2016 Afrobarometer Survey shows that only 14% of Ghanaians trust their DA members, 84% think that these members are corrupt, and 72% have never contacted their DA officials in the past year to discuss important problem or to give them their views. It is one thing to use military force or the threat of such force to legitimize local governments and their functions. However, within the confines of liberal democracy, other measures (aside from military force) are needed to engender local support, legitimacy, and collective efforts to ensure the effective functioning of the constitutional rules undergirding Ghana’s current decentralization paradigm. Again, the president’s appointment of the DCE and other local government officials continues to reinforce clientelism and citizens’ perception of corrupt local governments, which underlies the gradual erosion of trust and the legitimacy of relationships between citizens and their local governments (Crook, 2017; Paller, 2014). The Afrobarometer Survey indicates that, from 2005 to 2015, the percent of Ghanaians who think their DA members are corrupt increased by 17%, and those who “strongly disapprove” or “disapprove” of their DA members’ performance increased by 19%. Further in-depth empirical analysis from a positive CPE perspective is needed to examine the extent to which command-and-control versus flexible, bottom-up constitutional rules for decentralization relate to clientelism, legitimacy, trust, and support of local governments.

Reliance on traditional chieftaincy institutions and their complex common-law system and incentives can engender local support, legitimacy, and collective-action efforts for local governments. However, Wunsch and Olowu (1990) and Therikildsen (2014) have noted that the role of these traditional chieftaincy institutions and common-law structures in the post-colonial governance of some African countries remains complicated at best and marginalized at worst. In the 2014–2015 Afrobarometer Survey, five out of ten Ghanaians trust their traditional leaders, while three out of ten trust their DA members. In the 2008–2009 Survey, Ghanaians were nearly split in their opinion of whether traditional authorities should be involved (45%) or independent (49%) of local government. Given historical events in Ghana and elsewhere, some scholars might question whether the incorporation of chiefs will undermine their traditionally autonomous position. For instance, in the post-war reconstruction of northern Uganda, chiefs lost their power and respect when they were incorporated into and paid allowances by the central government. This question is far beyond the scope of this manuscript because the issue of what should constitute a democratic vision for postcolonial Africa remains unresolved. In Ghana, the influence of chiefs in partisan politics and the influence of partisan politics in chieftaincy matters raise the question of what a legitimately autonomous chieftaincy means and whether it has ever existed. Chiefs were active in colonial politics and struggles; thus, why should their legitimacy and respect now be a function of whether they are independent of the postcolonial “formal” government apparatus? The failure to incorporate chiefs into formal government could stem from the inability of postcolonial governance projects to recognize and accept these traditional authorities and their embodied meta-constitutional rules as assets for postcolonial nation-building. Institutional design, according to Ostrom (2005),

evolves as a trial-and-error process. Thus, empirical and conceptual work is needed on how Ghana could continue to experiment with alternative arrangements to properly incorporate chiefs into formal government projects, beyond giving them symbolic seats at the local, regional, and national government levels or using them to mobilize votes for political parties. We should learn from (not stop at) past failures to properly incorporate chiefs into the post-colonial formal governance apparatus.

### 3.2. Individual preferences versus external collective factors in the constitutional rules on decentralization

The barrage of human-rights violations makes it almost impossible to identify individual preferences in the choice of rules under the PNDC/NDC regimes.<sup>6</sup> Gyimah-Boadi (1994, p. 77) summarizes the conditions in which citizens had to choose Ghana’s constitutional rules under this regime:

“The PNDC proceeded to impose a fairly severe brand of authoritarian rule, accompanied by rhetorical espousals of popular participation and the empowerment of the downtrodden. As was the practice under previous military regimes, the PNDC suspended the Constitution and resorted to rule by decree. It detained citizens indefinitely without trial, confiscated properties without assigning cause, chased citizens into exile or imprisoned them on nebulous grounds, conducted kangaroo trials (especially in the extralegal public tribunals where “revolutionary” justice was dispensed), and carried out many political executions.”

These historical accounts notwithstanding, and to avoid treating this section’s topic in an overly simplistic manner, I pose two overlapping questions to deeply interrogate the decentralization rules under the 1992 Constitution and Act 462: 1) Did the procedures and resultant constitutional rules on Ghana’s decentralization paradigm allow individual preferences (i.e., the preferences of Ghanaian citizens) while also driving a coherent decentralization agenda? 2) Do the constitutional rules chosen for Ghana’s decentralization reflect individual preferences more than they reflect external collective factors, or vice versa?

First, as discussed in the previous section, Ghana’s constitutional rules were chosen mainly through populist discourse, devoid of rational arguments and contestations by anti-regime groups. For instance, despite calls by anti-regime and pro-democracy forces, such as the MJF, GBA and NUGS, the regime remained largely hesitant on issues such as demands for the release of political detainees, the need for a multi-party democracy, repeal of repressive laws, and, according to Professor Adu Boahen, the need for a “genuine national debate culminating in a national referendum [on the 1992 Constitution] organized by an independent body” (cited in Ayee, 1996a, p. 436). As Boettke (1987) noted, a constitutional theory must recognize that 1) society consists of free individuals, free at least from deliberate political exploitation, and 2) the state can be used as a tool for deliberate political exploitation. To discuss the liberty or freedom of Ghanaians under this military regime, whether liberty is defined in a “positive” or “negative” sense (cf.

<sup>6</sup> Some might argue that people *choose* to live by oppressive rules. However, discussions on “faces of power” (e.g. Bachrach & Baratz, 1963; Digeser, 1992; Gaventa, 1980) describe how rulers sometimes employ different logics and instruments to systematize their rule, including making the ruled (citizens) think that it is their choice to live under certain systems. Whether this argument could be applied to the 1992 referendum, when Ghanaians voted on the 1992 Constitution, is still an open conceptual and empirical (and, perhaps, intractable) question. For instance, Ayee (1996a) notes bluntly that the PNDC regime “controlled and manipulated the agenda [including the process for choosing and referendum on the 1992 Constitution] and the timetable leading up to the [1992] elections” by using state resources (e.g., press, money, vehicles) to campaign, while starving the opposition parties.

Berlin, 1969), can be an ambiguous task at best. Haynes (1991) notes that despite the regime's attempts to promote grassroots political representation and participation through the DAs, there were no real, legitimate avenues for citizens or interest groups to speak on national political and economic issues. Citizens and even military members who opposed the regime's political and economic policies were treated as "subversives whose aim was to destabilize the state [e.g. the collective interests of all Ghanaians]" (Haynes, 1991, p. 401). Haynes further draws from Vincent (1986) to argue that there was a hierarchy of human rights that implied privileging collective rights over individual rights: "the rights of collectivities such as 'peoples' should enjoy at least equal dignity with those of individuals" (Haynes, 1991, p. 412). In other words, political and economic processes and policies under the regime must first meet what is perceived to be in the "national interest," which may or may not reflect individual citizens' preferences. The literature thoroughly discusses the contentious nature of Ghanaians' liberty (whether individual or collective) under this regime (Haynes, 1991; Jeffries & Thomas, 1993; Oquaye, 1995).

For our CPE analysis of Ghana's decentralization, we must ascertain whether a system of freedom and exchange that allowed citizens' individual preferences supported the choice of Ghana's constitutional rules for decentralization. That is, can citizens' preferences regarding the choice of rules exist in a populist, authoritarian military regime without the regime's use of the state as a tool for deliberate political exploitation? Apart from the many human-rights violations that characterized this regime (e.g., executing former heads of states and judges, banning political parties, detaining party leaders), the committee of experts that drafted the 1992 Constitution was handpicked by the PNDC government, and measures were established to silence dissenting voices (e.g., detaining opposing leaders such as Professor Adu Boahen and using state-owned press to scorn opposing groups' ideas) (Haynes, 1991; Oquaye, 1995). The rules for Ghana's constitution generally and its decentralization specifically were chosen within a system that lacked what Oquaye (1995) describes as the internal pressure to compel the regime and its pro-regime groups to sufficiently uphold the freedom, rights, and preferences of individuals and dissenting voices.<sup>7</sup> In light of these and previously discussed accounts, one wonders whether it is fair to question the legitimacy and democratic foundation underlying Ghana's constitutional rules. In fact, Haynes (Haynes, 1991, p. 413) observes that it is very concerning, and perhaps naïve, to imagine that a populist, authoritarian military regime such as the PNDC would support constitutional rules that tolerate individual preferences and genuinely devolve power to the people to govern themselves locally: "the failure to consult the 'people'-the very constituency which the [PNDC] regime claims to represent lays the government open to the serious charge of capricious and authoritarian rule which is incompatible with its claim to rule for the benefit of all Ghanaians."

The discussion above leads to our second question: Do the constitutional rules chosen for Ghana's decentralization reflect individual preferences more than they reflect external collective factors, or vice versa? Our formulations so far indicate that the procedural mechanisms for choosing the constitutional rules for Ghana's decentralization neither supported individual preferences nor delivered a coherent decentralization paradigm. Rather, the constitutional rules for Ghana's decentralization reflect the PNDC's agenda, which, as discussed further below, was also heavily influenced by external collective factors, to advance the so-called "collective interest" of all Ghanaians. These factors included the fear of secession and ethnic fragmentation, unequal distribution of natural resources, and

the regime's focus on meeting the neoliberal conditions underlying structural adjustment programs (SAPs) in the 1980s.

First, the constitutional rules for Ghana's decentralization were chosen amidst fear that the devolution of power could increase the already territorially and ethnically fragmented nature of Ghanaian societies, which the uneven distribution of natural resources within the country exacerbates (e.g., abundance of fertile soil and mineral reserves in the southern but not northern part of Ghana). In fairness, this fear lies at the core of how constitutional rules for decentralization were chosen under most of the postcolonial civilian and military government regimes: "A major problem facing post-colonial Ghana has been how to allow for a measure of local autonomy and self-government and promote effective local administration and efficient service delivery while keeping in check fissiparous tendencies at the local level and promoting national unity" (Asante & Gyimah-Boadi, 2004). To protect the collective interest or unity of Ghanaians, the 1992 Constitution contains several rules that indicate the state's desire to unite and integrate the country—see the Preamble of the Constitution and Articles 35(2), 35(5), 35(6)(a), 37(5), 39(2), 41(c), and 55(4). What, then, would motivate a regime fearful of secession and focused on uniting its people to devolve power to the very constituency it seeks to disempower? It is not surprising that the constitutional rules for decentralization vested nearly unfettered power in the president to organize and control key defining traits of true local governance, such as

- 1) Appoint the political heads of local governments, that is, District/Municipal/Metropolitan Chief Executives (Article 242 (d) of the 1992 Constitution and Section 5(1)(d) of Act 462);
- 2) Redraw the boundaries of and establish local governments (Section 1(2) of Act 462, which is in exercise of Article 241 (2) of the 1992 Constitution, and Section 43 of Act 462);
- 3) Appoint 30% of the members of each local government (Article 243 (1) of the 1992 Constitution and Section 20(1) of Act 462);
- 4) Appoint the administrator of the District Assemblies Common Fund (Article 252 (4) of the 1992 Constitution); and
- 5) Determine how the revenue collected by local governments will be shared (Section 86 of Act 462).

The discussions above demonstrate that these constitutional rules evince both continued state control over local governance and a systemic use of the logics and instruments of the authoritarian PNDC military regime in the constitutional rules for Ghana's decentralization (see similar sentiments expressed in G. Crawford, 2009, p. 8). In fact, in his notes on the constitutional transition process, Gyimah-Boadi (1991a, p. 16) aptly states, "the Ghanaian transition is not being imposed by the people, nor has it gone through a negotiating stage. So far, it remains largely a 'grant' from the PNDC." Addressing the current challenges of decentralization perhaps implies that the logic and instruments of the PNDC must be exorcised from the constitutional rules for Ghana's decentralization.

Second, the PNDC's transition to a democratically elected regime and its choice of constitutional rules for Ghana's decentralization, as widely discussed in the literature, were part of the neoliberal restructuring process of Ghana's economy under SAPs (Mohan, 1996). In this process, Ghana's governance was hitched to the "wheel of capital" (Hutchful, 1986, p. 166 cited in Haynes, 1991). The goal of the neoliberal restructuring process was to ensure constitutional rules for decentralization that reduced the size and responsibilities of the central government (Mohan, 1996). Gyimah-Boadi discusses how features of SAPs such as labor retrenchment, withdrawal of subsidies for social services, and

<sup>7</sup> See the history of planned boycotts by dissenting people and how the PNDC regime dealt with these voices in Ayeé (1996a).

increases in user fees were key to ensuring that the regime gained the approval of Western governments and financial institutions (e.g., the World Bank and IMF), which also helped the regime to entrench its benefits of incumbency: “The attitude of the international financial institutions and Western governments to Ghana and the PNDC regime seems to bear out Claude Ake’s (1991) claim that they [these institutions and Western governments] have become so fixated on structural adjustments that they will accept and protect any regime that submits to it” (Gyimah-Boadi, 1991a, pp. 9–10). The preferences of these international financial institutions and Western governments may also have helped to drive the PNDC’s agenda to transition to a democratic and decentralized governance system (Oquaye, 2001). However, some scholars believe the driving force was primarily internal collective factors: “It is likely that, at this stage, the known preferences of the international agencies and western donor governments exerted some influence with Rawlings, but this was almost certainly less important than domestic political considerations” (Jeffries & Thomas, 1993, p. 336). Further empirical analysis is needed to ascertain the relative importance of this external collective factor versus other collective factors (e.g., ethnic fragmentation and disproportionate natural resource distribution) in shaping the constitutional rules for Ghana’s decentralization.

A CPE analysis seeks to identify the effects of privileging collective factors (e.g., preferences of Western governments and financial institutions and the desire for national unity or interest) over the preferences of citizens in the choice of constitutional rules. For instance, scholars have explored whether decentralization has reduced the central government’s expenditures and improved government responsiveness to local problems (e.g. Ayee, 1992b; Hutchful, 2002; Nyendu, 2012). This research can benefit from a positive CPE analysis, which would further analyze how different constitutional rules in a country or among countries relate to levels of government expenditure and responsiveness to local problems. That is, how would different constitutional rules for Ghana’s decentralization influence government performance? A careful read of the 1992 Constitution and Act 462 allows us to impugn, albeit cautiously, the claim that government performance has improved under Ghana’s inflexible, command-and-control decentralization rules that focus mainly on deconcentration.

One might also explore how the current constitutional rules may have engendered effects such as local governments’ limited fiscal autonomy (Awortwi, 2010; Inanga & Osei-Wusu, 2004; Mogues & Benin, 2012; Yeboah & Obeng-Odoom, 2010) and limited improvement in local democratic processes and pro-poor developmental outcomes (G. Crawford, 2008, 2009; Crook, 2003; Crook & Manor, 1998). For instance, one can argue that the president’s power to (re)draw boundaries and create local governments (Section 1(2) of Act 462, which is in exercise of Article 241 (2) of the 1992 Constitution, and Section 43 of Act 462) encourages the central government to engage in “territorial fixes” of the social, economic, and political problems in local Ghanaian communities. This is the tendency of newly elected governments to create local government territories, as though they assumed that creating these territories would address issues such as poverty, poor sanitation, and the difficulty of including citizens in local government decision-making.

As of this writing, the newly sworn-in government, led by His Excellency Nana Addo Dankwa-Akuffo Addo, received approval from the Council of State to establish modalities for the creation of more regions (and associated local government units). Such territorial fixes<sup>8</sup> are akin to the concept of gerrymandering (manipulat-

ing the boundaries of an electoral constituency to favor a political party) and potentially affect both elections and the efficient delivery of public goods. Awortwi and Helmsing (2014) explore different hypotheses to explain the proliferation of local government districts in Uganda, which they see as inherently linked to the central government’s gerrymandering tactics. They discuss key provisions in the 1995 Constitution of Uganda (i.e., Article 179), which, *in policy*, granted constitutional powers to the government to create or alter local government boundaries, to ensure effective delivery of services to local residents. They note, however, that *in practice*, the constitutional provisions helped to feed the central government’s gerrymandering tactics “of forging an electoral alliance with small jurisdictions and to extend neo-patrimonial networks to win votes in order to stay in power” (Awortwi & Helmsing, 2014, p. 766). Restating their conclusion in CPE terms, we can infer that the constitutional regime of Uganda, which delineates district as electoral base for members of parliament and the introduction of party political competition, offered Yoweri Museveni the opportunity to use gerrymandering to fortify his position at the national level.

Lentz (2001) also notes that such territorial fix practices cause incongruity between the territorial and administrative jurisdictions of local government units and those of traditional chieftaincy authorities. This becomes an issue when, for instance, a local government unit attempts to regulate and plan (e.g., develop a zoning ordinance) for the use of land within its jurisdiction, but more than one traditional authority owns different parts of the land (Frimpong Boamah & Walker, 2017). In fact, this has become even more problematic in the governance of rapidly expanding urban areas in Ghana (cf. Agyemang, Amedzro, & Silva, 2017).

### 3.3. Procedures for rule change

As noted, procedures to change constitutional rules may be of four types: explicit constitutional, explicit unconstitutional, implicit constitutional, and implicit unconstitutional. Synthesizing discussions of the two previous CPE elements and a review of the 1992 Constitution and Act 462, Table 1 groups the procedures through which constitutional rules for Ghana’s decentralization have been and can be changed. The analysis considers the procedures (explicit versus implicit and constitutional versus unconstitutional) that have been used to change these rules. Prior to the adoption of the 1992 Constitution, Ghana’s decentralization rules were changed mainly through a combination of explicit constitutional and explicit unconstitutional procedures. With the adoption of the 1992 Constitution, changes to the rules have occurred mostly through explicit constitutional procedures.

The PNDC regime explicitly and unconstitutionally changed the rules for Ghana’s decentralization by introducing PNDCL 207 (the regime introduced this law when it took power in 1981), but the PNDCL 207 rules were also changed later through a quasi-democratic and quasi-constitutional process. That is, by establishing the NCD and the CA, the PNDC regime explicitly changed Ghana’s constitutional rules through a “participatory democratic” process. This so-called process was at best quasi-democratic and at worst unconstitutional, because it was characterized by military force or threat of such force and by political maneuverings to silence dissenting voices, mostly those of opposition party leaders. Most important, this process was quasi-constitutional because it superimposed the constitutional rules of PNDCL 207 and the logics and instruments of the PNDC regime onto the 1992 Constitution and later Act 462. Aside from substituting the president for the PNDC in the 1992 Constitution and Act 462 without debate (Ahwoi, 2010a), Section 163(2) of Act 462 evidences the preservation of explicit unconstitutional PNDL rules in Act 462: “Notwithstanding the repeals [of some PNDC statutes] under subsection (1) of this section any statutory instruments made or continued in

<sup>8</sup> I use this term loosely here to refer to the ideology and practices of focusing on territories (i.e. creating new territorial spaces) as though they are the panacea to the complex social dilemmas in Ghana. See in-depth conceptualization of the term in works such as Smith (1995), Brenner (1998) and Christophers (2014).

**Table 1**  
Matrix of procedural mechanisms to change constitutional rules.

	Explicit	Implicit
Constitutional	Changes in rules based on <ul style="list-style-type: none"> <li>• Legislative instruments</li> <li>• Executive instruments</li> <li>• Democratically initiated constitutional reforms and referendums</li> </ul>	Interpretation of rules based on constitutionally accepted procedures by the <ul style="list-style-type: none"> <li>• Judiciary</li> <li>• Executive</li> <li>• Designated administrative authorities</li> </ul>
Unconstitutional	Changes in rules based on <ul style="list-style-type: none"> <li>• Undemocratically initiated constitutional reforms mostly through coup d'état</li> <li>• Not following the appropriate practice and procedure in the use of legislative and/or executive instruments</li> </ul>	Interpretation of rules based on unconstitutional procedures by the judiciary, executive, or designated administrative authorities as a result of factors such as <ul style="list-style-type: none"> <li>• Ignorance of the right procedures</li> <li>• Corrupt practices</li> <li>• Strong influence from competing norms, values, and practices (e.g., customary laws and practices) that are consciously or unconsciously drawn upon in the interpretation of constitutional rules</li> </ul>

existence under any of them and in force immediately before the commencement of this Act, shall continue in force as if made under corresponding provisions of this Act.” The “statutory instruments made or continued in existence under any of them [PNDC statutes]” were the byproducts of the military regime’s explicit, unconstitutional change of constitutional rules for Ghana’s decentralization. Therefore, although one could argue that the change in the constitutional rules for Ghana’s decentralization leading to the 1992 Constitution and Act 462 occurred through explicit constitutional procedures, one could also argue that the PNDC regime’s control of the 1992 constitution-making process (e.g., the silencing of dissenting voices during the process and the appointment of pro-regime actors in the CA) made this process an explicit unconstitutional procedure.

With regard to the period after the inception of the 1992 Constitution, the rules for decentralization have been changed primarily through explicit constitutional procedures by means of legislative and executive instruments. Act 462 contains numerous stipulations that permit changes to and enforcement of the decentralization rules through executive and legislative instruments (e.g., Sections 1(2), 3, 12(2), 26, 34, 43, 63, 81, 149, 158, and 159). These rules confer authority on the president and the designated minister for local government (sometimes requiring cabinet or parliament consultation or approval) to perform functions such as creating districts (Section 1(2)), establishing district assemblies (Section 3), determining and enforcing planning and other functions of local governments (Sections 12 and 43(1)), determining the revenue powers of local governments (Section 34 and 86(4)), establishing building regulations (Section 63), developing model bylaws for local governments (Section 81), and designing regulations or amending provisions necessary to execute the rules (Sections 158 and 159). Several legislative and executive instruments and acts of parliament have been established to amend or execute the constitutional rules for decentralization in the 1992 Constitution and Act 462. These include the 1994 National Development Planning Systems Act (Act 480); the 1994 Local Government (Urban, Zonal, and Town Councils and Unit Committees (UCs)) Establishment Instrument (LI 1589); the 2003 Local Government Service Act 656; the 2003 District Assemblies Common Fund (DACF) Act 455; the Audit Service Act 658; the 2003 Procurement

Act 663; the 2004 Financial Administration Regulations (LI 1802); the Local Government District Tender Board Regulations (LI 1606); the 2008 Education Act (LI 778); and the 2016 Land Use and Spatial Planning Act (Act 925).

The changes to the constitutional rules for decentralization resulting from these explicit constitutional legislative and executive instruments present a challenge as well as political, economic, and social effects, which, as discussed below, require further empirical interrogation through CPE analysis. The use of subsidiary legislation, such as the legislative instruments (and executive instruments and regulatory notices), means that provisions in the instruments must be published in the Gazette and reviewed by parliament within 21 days. Ferrazzi (2006) aptly notes that this affords limited time to parliament and citizens for dialogue and to propose changes in rules enacted through subsidiary legislation.

Further in-depth empirical work is needed to refine these procedural-change categories of constitutional decentralization rules and to better understand their political, social, and economic effects. For instance, there is a need to interrogate how the constitutional rules and the procedures for changing such rules for Ghana’s decentralization strengthen the better-resourced central government’s control over under-resourced local governments, to “mobilise political support and disburse political patronage” (G. Crawford, 2009, p. 5). Will citizens trust and support local governments if the decentralization rules are chosen through explicit constitutional procedures versus other sorts of procedures? This question should be answered in the context of the Wave 5 (2005–2009) World Values Survey, which showed that only 6.2% Ghanaians believe that changing laws through referendums is not an essential characteristic of democracy; most Ghanaians think it is an essential characteristic. From a positive CPE perspective, empirical work also needs to explore how procedures for changing constitutional rules for decentralization reinforce issues such as a) local government’s upward accountability to central government and less (or no) downward accountability to the citizens and b) fewer opportunities for civil society and minority groups’ inclusion and participation in local governance (Aye, 2000; Nkrumah, 2000; Ofei-Aboagye, 2000).

Finally, in-depth empirical work from a positive CPE perspective needs to explain how certain social, economic, and political conditions foster specific procedures to change constitutional rules. For instance, some might argue (and perhaps justify) why it was necessary for Ghana’s constitutional rules to be chosen under the PNDC’s procedures. Ghana experienced a maelstrom of poor economic policy and severe corruption for a considerable period; the regime’s coup on December 31, 1981 and its reign until it transitioned to a democratically elected government in 1992 resulted in social and economic benefits, thanks also to the SAP, even though the literature contests the SAP’s overall impact (see details in Gyimah-Boadi, 1991a).<sup>9</sup> Thus, the country could easily have remained a stalled, divisive society fragmented along ethnic lines and engaged in bloody fighting, if not for the PNDC’s intervention (i.e., coup).

U.S. history provides clear evidence of inherent imperfections in constitution-making processes. Indeed, Beard (1913, 1962) has argued that the processes executed in the adoption and ratification of the U.S. Constitution did not comply with the Articles of Confederation. Furthermore, in its attempt to address slavery, the U.S. suffered bloody conflict in the Civil War, and scholars have argued that Lincoln acted in constitutionally suspect ways to “save the union.” At times, particular historical circumstances provide a “tipping point” to move decentralization patterns and processes in dif-

<sup>9</sup> Historical accounts, debates, and other references on Ghana’s social, economic (e.g., SAP performance), and political situation before and after 1992 are provided by Gyimah-Boadi (1991a).

ferent directions (e.g., Uganda in the late 1980s and early 1990s and Ethiopia in the late 1990s). The U.S. example, however, indicates an interesting insight: local governments still maintain considerable (albeit varying) autonomy, although the U.S. constitution-making process was fraught with turbulent conditions (e.g., fear of secession and the use of force to quash opposition) not unlike those experienced in Ghana. Empirical insights into these multi-country experiences could identify the links among preconstitutional-era conditions (social, economic, and political), how they lead to any of the four procedures for constitutional changes, and the nature of constitutional rules for decentralization.

#### 4. Conclusion

This paper employed ideas from two theoretical constructs to stimulate debate about the need to interrogate the constitutional rules on decentralization. The discussion aimed to clarify patterns of decentralization and its social, political, and economic effects in postcolonial countries such as Ghana. First, it synthesized within the CPE framework a wide-ranging empirical literature on Ghana's decentralization. Next, it argued that the constitutional rules for Ghana's decentralization, embodied in its 1992 Constitution and Local Government Act (462) of 1993, evince not only state control of and dominance over local governing processes but also evidence of a systemic transfer of the logics and instruments of the authoritarian PNDC military regime to the framing and choosing of constitutional rules for Ghana's decentralization. The discussions included formulations on the potential social, economic, and political effects of these constitutional rules on decentralization, such as concerns about the trust and legitimacy of local governments, ineffective mechanisms to enforce rules, and limited fiscal autonomy of local governments.

The paper acknowledges the need for more in-depth comparative analysis of the relationships between constitutional rules for decentralization and the social, economic, and political effects of such rules. For instance, one could examine countries without military regimes, such as Tanzania and Kenya, to argue against the claim that an authoritarian military regime inevitably engages in a limited form of decentralization (e.g., deconcentration). Although these countries have no military regime, one could argue that they have centralized control and very limited forms of decentralization. Hence, more comparative methodological approaches, à la Goodfellow (2018), can help to identify other factors (apart from the constitutional regimes) involved, to produce robust statements concerning CPE's central tenets and decentralization.

It is apropos to reflect on the conceptual and methodological challenges of using CPE to analyze constitutional rules for decentralization and to consider initial ideas for how future research might address these challenges. CPE analysis assumes that one is dealing with a mono-statutory legal environment at a fixed national scale.<sup>10</sup> First, an analysis of decentralization in postcolonial countries such as Ghana must address two overlapping issues: 1) these are often plural legal countries governed sometimes by oppositional statutory and customary legal orderings; and 2) the scale of rules is fluid, and attention must be paid to the interdependencies between levels of government and the rules governing such relation-

ships. In other words, a CPE analysis of decentralization rules must address whose rules and at what scale? An analysis must ask, if the scale of customary rules is local and the scale of statutory rules is national, to what extent can a plural legal country bridge the scales of these two systems of rules without privileging one system or scale over the other? This is an invitation for future research to envision the details of reformed decentralization in a plural legal country. For instance, such future efforts might pair CPE with ideas from Elinor Ostrom's Institutional Analysis and Development framework (McGinnis, 2011; Ostrom, 2005) and the "rescaling" concept (Brenner, 2004), to explore the processes through which rules for decentralization are constituted, contested, and made malleable at multi-scale hierarchies by both state and non-state actors.

Second and finally, from a methodological standpoint there is also the challenge of establishing relationships among constitutional rules on decentralization, decentralization patterns, and the socioeconomic and political effects of such rules. This typically lies within the domain of positive CPE, and there are two overlapping dimensions to this challenge. The first dimension relates to the use of qualitative and/or quantitative methods to provide evidence of such relationships. Elster (1993), for instance, used historical narratives to qualitatively analyze the mechanisms and processes of constitution-making in six eastern European countries. The challenge with such qualitative methods, as this paper may also demonstrate, is that the author engages the subject from his or her disciplinary background (e.g., history, law, political science, and so forth.). Like Elster (1993), I chose to treat the subject mainly in political science and urban policy terms, thereby precluding to some extent the in-depth historical or legal analyses that an historian or legal scholar might produce. Engaging this topic from a political science and urban policy perspectives, however, permitted a more abstract and potentially more productive discussion on possible patterns in the relationships between constitutional rules on Ghana's decentralization and their political, social, and economic effects. Hence, using each of the three CPE elements discussed, the paper was able to frame questions suitable for quantitative analysis to determine relationships among constitutional rules, decentralization patterns, and the effects of such rules. This fact leads us to the second aspect of the methodological challenge.

Positive CPE studies have used quantitative methods to establish relationships between constitutional rules and the economic effects of such rules. However, discussing the challenge of quantitatively measuring constitutional rules and effect variables, Voigt (2011) addresses the work of Persson and Tabellini (2003), which has become a standard framework for such measurements. Voigt (2011), for example, criticizes the use of proxies or dummy variables, such as whether a country has a federal or central structure, in many of these quantitative studies to measure constitutional rules: "By necessity, dichotomous variables do not allow taking institutional detail into consideration. But if God (or the devil) is in the details, perhaps the details are worth a little of our time, and the construction of more precise indicators a worthy pursuit." One approach for addressing this issue in future studies of positive CPE and decentralization rules is to use the Institutional Grammar tool (S. E. Crawford & Ostrom, 1995) to develop indices on decentralization rules (find details in using this tool in Siddiki, Weible, Basurto, & Calanni, 2011), which could then be incorporated into a model to explore the relationships between the rules and their political, economic, and social effects. Most questions framed under each of the CPE elements in this paper are conducive to such quantitative analysis of the relationships among constitutional rules, decentralization patterns, and the effects of such rules. The usual caveat, based on Elster's (1993) advice, applies: even the use of such quantitative methods to explore these relationships does not imply causal links among the rules, patterns, and effects.

<sup>10</sup> Another critique of CPE is that it considers local government as a separate layer of government. Given CPE's U.S. orientation, it is very common for CPE-informed analysis (and U.S. literature in general) to suffer from this view, whereas a system view of government predominates in other countries. To exorcise this "separatist" ontological view of government in any CPE analysis, researchers should be aware of this and other assumptions. Again, CPE analysis should be conducted with an understanding of and interest in how fluid governance scales have become, especially in an era in which global and local institutional spaces are being reworked and sometimes blurred to foster greater interdependencies and collaborative governance.

## Conflict of interest

None.

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