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THE MARKET FOR POLITICAL PARTIES IN GHANA

*KOFI OTENG KUFUOR**

I. INTRODUCTION

In recent times, liberal democracy, including the transfer of political power through the ballot box has gained increasing credence in parts of the world that, hitherto, held such notions of constitutionalism as either western political constructs that had no or very little applicability to the non-western world, or that multi-party democracy was a burden or luxury developing countries in particular could not afford to shoulder on account of their pressing developmental needs. Interests averse to liberal democracy argued, *inter alia*, that the common national goal of economic prosperity would only be undermined if a variety of political parties were allowed to exist, each with its vision of the direction the nation should take in its development goals. However, recent trends indicate a shift away from these arguments and Africa has not been left out of the global move towards liberal democracy.¹

Amongst African countries, Ghana in particular is seen as a country that is deepening its liberal and democratic culture through, *inter alia*, electoral competition for state power.² This paper explores some aspects of Ghana's political development through the lens economic theory. In using economic theory to unpack our analysis, we will describe Ghana's political competition as being akin to market processes. Our use of market analogies is influenced by two scholars, Samuel Issacharoff and Richard Pildes who, critiquing United States constitutional doctrine, have argued that democratic politics are not dissimilar to competitive markets whose existence is enhanced through two underlying features: first, when there are transparent institutions to facilitate

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1. See JOHN A. WISEMAN, *THE NEW STRUGGLE FOR DEMOCRACY IN AFRICA* (1996). This development is part of the discrediting of alternatives to liberal democracy, and also the embrace and universalization of notions of liberal democracy as being the end point of mankind's ideological evolution. See Francis Fukuyama, *The End of History?*, 16 *NAT'L INTEREST* 3-18 (1989).

2. Since the return to constitutional rule in 1992, Ghana has seen two incumbent governments lose political power to the main opposition party. I stand to be corrected but, at the time of writing, this might be unprecedented in Africa.

market processes and second, when there is the periodic threshing of weak and inefficient market actors, through the bidding for votes.³

Issacharoff and Pildes further assert that just as anti-competitive practices stifle or destroy markets, so too can such practices subvert political markets. Political anti-competitive behaviour is basically geared towards extending for as long as possible, the hold incumbent parties have over the state apparatus even if their market rivals develop the products and/or organizational wherewithal needed to mount a successful political challenge to their hold on power. It is to preserve their control over the state apparatus that motivates competition-frustrating behaviour by the dominant political class described by Issacharoff and Pildes as the elected officials and political parties in a particular polity. This class of officials is supposed to seek and obtain the renewal of their mandate to govern through the re-evaluation and verification of their rule by those "equity holders" in the political market known as the electorate.⁴ Market-stifling behaviour, also referred to as political lockups, is manifested in two ways. First, there are pre-commitment pacts among existing elites that makes difficult, if not impossible, entry into the political market by new market entrants. The second is when ruling political parties exploit the state apparatus to mount entry barriers against potential third-party challengers.⁵ Ghana's political market, as we shall see, manifests traces of both types of lockups.

Research on Ghana's political evolution has not seen that much application of economic theory. The leading texts on politics in Ghana,⁶ detailed and analytical as they are, have not drawn, for example, on the rich literature in the New Institutional Economics (NIE) research programme to interpret developments in the search for power from Ghana's independence in 1957 to date. Thus, our application of economic theory to Ghana's political development draws largely, but not exclusively, on the NIE research programme. NIE traces its roots to Ronald Coase's two path-breaking papers *The Nature of the Firm*⁷ and *The Problem of Social Cost*.⁸ In *The Problem of Social Cost*, Coase asserted that transaction costs are determined to a large extent by the existence and design of institutions, while in *The Nature of the Firm*, Coase showed why and how

3. See Samuel Issacharoff & Richard H. Pildes, *Politics as Markets: Partisan Lockups of the Democratic Process*, 50 STAN. L. REV. 643, 646 (1997-98).

4. *Id.*

5. *Id.* at 651.

6. Among the excellent works read by the author, arguably, Dennis Austin's detailed account is best for the period that it covers. See DENNIS AUSTIN, *POLITICS IN GHANA: 1946-1960* at 1 (1964). See also BEN AMONOO, *GHANA 1957-1966: THE POLITICS OF INSTITUTIONAL DUALISM* 1 (1981) and MIKE OQUAYE, *POLITICS IN GHANA (1972-1979)* at 1 (1980).

7. Ronald H. Coase, *The Nature of the Firm*, 4 *ECONOMICA* 386 (1937).

8. Ronald H. Coase *The Problem of Social Cost*, 3 *J. OF L. & ECON.* 1 (1960).

entrepreneurs confront the uncertainty that arises in the course of transacting.⁹ Transaction costs include the opportunism of parties to a bargain, or the costs associated with crafting numerous short-term contracts by parties to a bargain instead of a single long-term contract. Transaction costs are incurred on the open market when individuals transact with each other using the Coase termed “price mechanism.” Thus, for Coase, the firm is created to attempt to minimize the cost of transacting by bringing open market activity under its umbrella. In effect, the Coasean firm is not a unit that exists to convert inputs into outputs, rather, it is a governance structure that brings under its roof activity that is carried out using the price mechanism.¹⁰

Coase’s argument can be applied to explain why the Convention Peoples’ Party (“CPP”) has declined as an effective market participant, incapable of engaging in the purchase of votes from consumers. The thrust of the argument in this regard is that the cost of transacting under the CPP’s umbrella is far more complicated in current times, than when it first appeared as a market participant. These complications in costs can be traced to changes in technology and how those changes have facilitated collective action.

Following on from Coase, other NIE scholars that have relevance for analysis include Harold Demsetz¹¹ and Gordon Tullock.¹² Scholars draw on the work of Harold Demsetz and Gordon Tullock to explain the swing in Ghana from a multi-party system to a single-party state culminating in the partisan lockup of the political process that Issacharoff and Pildes have discussed in their work. As noted above, the use of economic theory is not limited to the NIE research programme. The study stretches beyond the boundaries of the NIE schools to incorporate additional insights from property rights that are not necessarily grouped under the NIE school, including studies into the “tragedy of the commons” and the “tragedy of the anticommons.” This aspect of the work is influenced mainly by Garrett Hardin, Elinor Ostrom and Michael Heller. Their theories on how individuals relate to the commons can be used to dissect recent political developments in Ghana.

Why there is a paucity of work that draws on economic theory to explain political markets in Ghana is beyond the scope of this paper. What the paper seeks to achieve, however, is to demonstrate how economic theory is an

9. See Coase, *supra* note 7, at 386, *see also* Coase, *supra* note 8, at 1. An assessment of Coase’s impact is found in Oliver Williamson, *Ronald Harry Coase: Institutional Economist/Institution Builder*, in *INSTITUTIONS CONTRACTS AND ORGANIZATIONS: PERSPECTIVES FROM NEW INSTITUTIONAL ECONOMICS* 48-53 (Claude Menard ed., 2000).

10. See Coase, *supra* note 7, at 392-3.

11. Demsetz main contribution to NIE is in his paper *Toward a Theory of Property Rights*. See Harold Demsetz, *Toward a Theory of Property Rights*, 57 *AM. ECON. REV.* 347 (1967).

12. One of their meaningful contributions include JAMES M. BUCHANAN & GORDON TULLOCK, *THE CALCULUS OF CONSENT: LOGICAL FOUNDATIONS OF CONSTITUTIONAL DEMOCRACY* 3 (1962).

additional and rewarding path of intellectual inquiry into the cycles identified in Ghana's political market. Recognizing a number of political cycles: the first was in the colonial era, from the launch of the nationalist struggle in 1947, with the formation of the United Gold Coast Convention ("UGCC"), to the early electoral struggles between the UGCC on the one hand and its rival for state power; the CPP on the other. The second cycle that is identified is the period when gradually, the incumbent political party in power immediately after decolonization, the CPP, eliminated its electoral rivals. This was the beginning of the lockup of the political market. Whilst the primary arena for securing this lockup was the legislative assembly, we also identify the judiciary as a handmaiden in the process.

In the third cycle, ostensibly, there was a swing back to open electoral competition of the type that marked the pre-decolonization era. However, we can also categorize two distinct features in this cycle that calls for a relaxation in any presumption of an open, unrestrained market: first, the re-configuration of the political market in the third cycle sought to create conditions that ensured that the legislative assembly could never become a site for the kind of predatory behaviour in the second cycle that culminated in closing off the market to all participants except the ruling political party. Second, and paradoxically, in the electoral market's third cycle, there was the exclusion of those socio-political forces that had engaged in the rapacious behaviour in the second cycle of the electoral market. The fourth cycle covers the third republic to present times. Here, the focus is on recent developments which had an impact on the fortunes of the once-dominant firm in the first and second cycles, the CPP. This paper seeks to explore the fortunes of the CPP by integrating perspectives from law, economics, organization theory and technological change.

This paper therefore proceeds as follows: Part II examines the formative stage of the market for political parties in Ghana. Part II spans the period from the development of the first mass political parties in 1947 to 1958. Part II notes this began as a period of minimal market regulation but ended with the construction of the first barriers to market entry. Part II also explores how and why, when it captured state power, the ruling party raised entry barriers to this market by restricting the emergence of rival political parties. In Part II we note the impact this raising of entry barriers had on its early political hegemony.

Part III explores the return to the type of market that existed in the market's first cycle. This cycle saw the outlawing of predatory behaviour in that legislation to establish a one-party state was made unconstitutional and outlawing the CPP embedded this legislative deal between elites. Thus the first part of the second cycle saw a mix of entry barriers and at the same time, market liberalization.

Political parties are firms that exist to minimize, if not reduce, the cost of transacting on the open market. Ever since Coase set out his arguments as to

why we should see firms as relationship systems instead of limiting our scope to firms as mechanisms to convert inputs into outputs, a wealth of literature has sprung up around the theory of transaction costs implicit in Coase's argument. Included is that one should not restrict the transaction costs as an explanation for firms to market situations. Rather, one can extend the application and analysis of transaction costs to non-market situations. Describing political parties as firms, one can then seek to explore and explain the decline of the once paramount firm in Ghana's political market: the CPP. Part IV notes and explains the fragmentation of the CPP into a number of mini-firms. Part IV argues that failure to re-organize the CPP as a single firm is partly a consequence of the complexities associated with the contemporary changes in technology.

Part V applies property rights theories to further enable one to understand the decline of the CPP. Part V asserts that the CPP faces two separate yet interrelated dilemmas – the tragedy of the commons and the tragedy of the anti-commons. The paper argues that the name of the CPPs' founder has become akin to the commons through its "remorseless working" for political gain. The impossibility of enclosing the founder's name as private property has created a tragedy of the commons with the attendant ruin that this tragedy predicts. Thus the paper argues in Part V that the exploitation of Nkrumah's name serves to explain, partly, the myriad of parties that claim descent from the CPP he led during the nationalist struggle and into the post-colonial era. An additional rationale for the fragmentation of the CPP is the recent developments in technology. This has created an ever-increasing number of parties that have weakened the CPP as a market actor. Part V also explores the concept of the anti-commons and its implications for the CPP. Part V points out that collective action dilemmas the CPP faces stem, in part, from an anti-commons-type paralysis. The thrust of the argument here is that the persistent failure to overcome fragmentation of the CPP is compounded by the tendency of the various groups to holdout on an agreement and this renders unification difficult, if not impossible.

At the time of this writing it is important to note, although a political party called the CPP exists, there are a number of other parties that claim to be the direct descendant of Nkrumah's CPP. To avoid confusion, we have decided to call the CPP founded by Nkrumah as CPP-1949. We have also extended this description to 1979 when the Peoples' National Party was formed by Nkrumah's followers. Reference to the various political parties that came into existence in 1992, on the eve of Ghana's fourth republic, and that claim to be descended from CPP-1949, will be called CPP-1992.¹³

13. The following political parties in existence at the time of writing claim ideological descent from the CPP-1949: The Convention Peoples Party, the Democratic Peoples Party, the Great Consolidated Popular Party; The National Reform Party; and the Peoples National Convention. See Democratic Peoples Party, *available at*

II. THE GHANAIAN POLITICAL MARKET: 1947-1958

The first mass political movements formed in the Gold Coast (later to become Ghana at independence in 1957) were nationalist parties that sought to end colonial rule in that country. 1947 saw the formation of the UGCC and in 1949 the CPP formed as a breakaway faction of the UGCC. Thus by 1949, two political parties had emerged and the political market began to be driven by collective entities.

A notable feature of this first cycle was the virtual lack of state-mandated entry barriers to political participation. If there were any barriers to the market at the time, they were essentially economic and not legal entry barriers. Entry barriers are those barriers that established firms (in this respect political parties) in particular industry have over firms that seek entry thus creating a strategic advantage for the former over the latter through suppression of new competition.¹⁴ An example of economic entry barriers in a political market would be the incumbent's hegemony. Another feature of the first cycle was that the early entrants did not have to confront and overcome well-entrenched rivals in the market. In many industries, established competitors control channels of distribution through long-standing relationships. In order to persuade distribution channels to accept a new product, new entrants must often provide incentives in the form of price discounts, promotions and cooperative advertising. Such expenditures act as a barrier by reducing the profitability of new entrants.

CPP-1949 had two advantages over the UGCC that made it a more effective market actor in the first cycle. First, led by lawyers, merchants and educated elites, the UGCC was always elitist in outlook and cautious in approach to the nationalist struggle. Thus, although it did seek to extend its influence across all of the Gold Coast, the consensus is that it never really achieved this aim. Scholarly works on the Gold Coast's political history repeatedly stress the UGCC's limitations in this regard.¹⁵ Hence, the argument here is that the UGCC had not developed any effective long-standing relationships with voters; it had failed to consolidate its political hold over the Gold Coast and this made market

[http://en.wikipedia.org/wiki/Democratic_People%27s_Party_\(Ghana\)](http://en.wikipedia.org/wiki/Democratic_People%27s_Party_(Ghana)) (last visited Mar. 24, 2009) (noting that the above parties are all descendants of CPP-1949), *see also* Political Parties of Ghana, available at <http://www.ghanaweb.com/GhanaHomePage/republish/party.php> (last visited Mar. 24, 2009).

14. *See* JOE BAIN, BARRIERS TO NEW COMPETITION 3 (1956). *See also* R. Preston McAfee, Hugo Mialon & Michael A. Williams, *When are Sunk Costs Barriers to Entry?: Entry Barriers in Economic and Antitrust Analysis*, 94 AM. ECON. REV. 461, 461-65 (2004).

15. Dennis Austin suggests that the fact lawyers dominated the leadership of the UGCC made them approach politics with a lawyers' caution. *See* Dennis Austin, *The Working Committee of the United Gold Coast Convention* 2 J. OF AFR. HIST. 273, 273-74 (1961).

penetration by rivals less daunting.¹⁶ Second, in its early years the UGCC had relied on Nkrumah in his capacity as General Secretary to coordinate and play a major role in the campaign for self-government.¹⁷ As a consequence, this raised Nkrumah's political profile. Ultimately, CPP-1949, when formed under Nkrumah's leadership, was not new to the political market. Its leader already had forged links with Issacharoff and Pildes' equity holders. As a result, this lowered further the CPP-1949's economic barriers to entry.

The CPP-1949 had other advantages in that at the time of its emergence the UGCC had not secured any legal entry barriers to the political market. Legal barriers to a market are supposedly more injurious than economic barriers. Arguably, it is for this reason that market participants lobby to have legal entry barriers erected to protect them from possibly more efficient new rivals.¹⁸ The argument here is that the UGCC did not secure regulatory standards from the colonial administration that would have severely weakened the ability of CPP-1949 to enter and operate in the political market. Thus, there was very little electoral legislation during the colonial era.¹⁹ For instance, there were no requirements that the parties have offices in all the constituencies and neither were there strict requirements that could have limited party funding.²⁰ Legislation of this sort would most probably have raised the operations cost of CPP-1949 operating in the Gold Coast's political market.

16. Other political parties around the time were so insignificant that not much is mentioned of them in the literature. They were the Gold Coast Liberal Party, the Freedom Defence Society, The National Democratic Party (which had absorbed the Ratepayers Association), the Mambii Party, and the Ghana Freedom Party. See DAVID E. APTER, *THE GOLD COAST IN TRANSITION* (1955), *republished as GHANA IN TRANSITION* 172 (1963) (noting that the fact that they existed, some of them were formed before the UGCC, makes plausible the argument that there were virtually no legal entry barriers to the political market during at the time).

17. Nkrumah was appointed General Secretary of the UGCC and his duties took him all over the country. This made him a recognizable figure and made easy his move to form the CPP-1949. See *Ghana: The Politics of the Independence Movements*, LIBRARY OF CONG. COUNTRY STUD., Mar. 10, 2009, [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+gh0022\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+gh0022)).

18. George Stigler, *The Theory of Economic Regulation*, 2 BELL J. ECON. & MGMT SCI. 5 (1971).

19. Elections in the Gold Coast began to be regulated in the 1950s. The two major pieces of legislation were Elections (Legislative Assembly) Ordinance, No. 29 (1950) (Gold Coast), and the Electoral Provisions Ordinance, No. 33 (1953) (Gold Coast). It is really doubtful if any of these imposed any burdensome requirements on political parties.

20. With independence, successive acts of parliament and military decrees have increased the organizational and financial costs of forming a political party for the purpose of winning state power. For instance, current law governing political parties in Ghana states, *inter alia*, that all political parties must have branches in all of Ghana's regions and must also be organized in at least two-thirds of districts of each region. Also, only Ghanaian citizens can make political donations. CONSTITUTION OF THE REPUBLIC OF GHANA (1992) arts. 55(7)(b), 55(15).

Whilst the CPP-1949 faced minimal legal barriers to the political market, if any at all, with complete independence in 1957, it proceeded to erect legal barriers that progressively and effectively destroyed the ability rival political parties to compete with it. Thus, before an exploration of the rationale for the CPP-1949 killing of political competition, one should point out that CPP-1949's political hegemony in post-independence Ghana was not derived solely from the superiority of its ideas and its organizational excellence. A more comprehensive explanation for its electoral dominance must include its manipulation of the political market culminating in the 1964 absolute monopolization that legally prevented any of its rivals for bidding for power.

CPP-1949's move to market monopolization can be explained by reference to a number of theories: the public interest theory of regulation, rent-seeking and rent-extraction. Public interest theory takes for granted that government decision-makers are munificent and omniscient and that laws and administrative rules that government officials pass and issue are geared towards the benefit of society as a whole through the maximization of aggregate measure of social welfare. Public interest regulation therefore achieves its goal by substituting unrestricted market processes with rules. The public interest theory of regulation has its socio-political acceptability grounded in its appeal to concepts of equality and justice. Given that public interest legislation is geared towards aggregate social welfare, proponents tend to overlook the specific content of such legislation, so long as that social collective is for the benefit of the public.²¹ Thus the ring-fencing of Ghana's political market to the exclusion of all other political parties save CPP-1949, whilst ostensibly a violation of fundamental freedoms of association, and the right to participate in government, was deemed necessary on the basis of the expected public interest outcomes; namely the political cohesion and economic development of the new country. As we shall see below, Nkrumah and CPP-1949 couched the partisan lockup of Ghana's electoral market in public interest terms.

Without discarding the validity of public interest theory, as this paper does not seek to pit public interest theory against any other rival theories, the author does examine alternative motives for the re-wiring of Ghana's political market so as to give the CPP-1949 a monopoly. This objective then leads us to examine the relevance of theories of rent-seeking and rent-creation as plausible explanations for the shutting down of competition towards the latter stages of the first cycle. Gordon Tullock's thesis on rent-seeking behaviour contends that people acting individually or as interest groups seek to manipulate legal and political processes for the purpose of creating an environment that enables them

21. For an overview of public interest theory, see Steven P. Croley, *Public Interested Regulation*, 28 FLA. ST. U. L. REV. 7, 7-107 (1999); see also BARRY BOZEMAN, PUBLIC VALUES AND PUBLIC INTEREST: COUNTERBALANCING ECONOMIC INDIVIDUALISM I (2007).

to extract wealth from the state. This is done through state-authorized suppression of the production of rival particular goods and services above that which would be the norm if privilege had not been sought and obtained through rent-seeking.²² At the heart of Tullock's model is the politician or bureaucrat as a supplier of legislation to those special interests that are keen to pay for the privilege. The argument in this paper is that once in power, CPP-1949 motivated by the rents available, engaged in market activity on behalf of itself and as such acted simultaneously as broker and client in the demand for and supply of legislation that gradually raised legal entry barriers and finally closed off the market for rival political parties.

To understand CPP-1949 monopolization of the political market requires an extension of Tullock's rent-seeking thesis. As noted, governments act as brokers in the quest for legislative privilege. Taken at face value, this would raise questions as to why the CPP-1949, being the government of the day, did not act as the provider of privilege in the legislative market but, instead, chose to become a market participant in its own right and so supply legislative favours to itself. Fred McChesney has explained this type of behaviour and has thus reformulated and extended Tullock's research work. McChesney's theory is that in instances where it is easy for governments to benefit from rents paid by special interests, governments assume the classical posture as set out in Tullock's work. However, there are times when the government can identify rents to be appropriated because its attention is attracted to that particular market and in such instances, governments seek rents for themselves by descending into the market and acting as demanders of privilege and also as suppliers of the same.²³

Rent-seeking and rent-extraction on the one hand, and public interest legislation on the other, can be inferred from various episodes in the second cycle of the political market. As far as the public interest is concerned, on occasions, the CPP-1949 sought to forge a unified country and thus passed legislation for this purpose that impacted on its rivals. In other instances, aware of the enormous rents available to the party in power, CPP-1949 sought to frustrate participation by any of its rivals in Ghana's electoral politics. The first measure CPP-1949 took was the *Avoidance of Discrimination Act* ("ADA")²⁴ The ADA prohibited political parties organized on purely tribal, regional or religious basis. As the nationalist struggle in the Gold Coast gathered pace a

22. See Gordon Tullock, *The Welfare Costs of Tariffs, Monopolies, and Theft*, 5 W. ECON. J. 224-32 (1967) (author notes that the Western Economic Journal is now published as Economic Inquiry); see also Anne Krueger, *The Political Economy of the Rent-Seeking Society*, 64 AM. ECON. REV. 291-303 (1974).

23. See Fred McChesney, *Rent Extraction and Interest-Group Organization in a Coasian Model of Regulation*, 20 J. LEGAL STUD. 73, 82-85 (1991).

24. See *Avoidance of Discrimination Act*, No. 38 (1957) (Ghana).

number political parties emerged in the wake of the UGCC and CPP-1949. These parties were narrow in their membership and political base. As a collection of ethnically-based or religious organizations, none of these parties were organized on a national basis. The National Liberation Movement and the Togoland Congress were the main examples of the particularistic tendency to organize for independence, separate from the Gold Coast, or federation, as was the case with the National Liberation Movement, or the integration into another country, Togo to be precise, as was the objective of the Togoland Congress.²⁵ The ADA thus prohibited any organizations that “established substantially for the indirect or direct benefit or advancement of the interests of any particular community or religious faith” from participating in elections.²⁶ On its face, and as alluded to above, this was a public interest decision: it was an attempt to correct the failure public interest theorists tend to associate with unregulated markets through the creation of a socially superior market with tight control over entry.²⁷ However, we should note here the ADA had unintended consequences. It led to an outcome where CPP-1949 now had to confront a forced amalgamation of the pre-existing parties, called the United Party (“UP”) that was organized across the entire country and also had in effect a forced paramount objective – the electoral defeat of CPP-1949.²⁸

CPP-1949 erected additional legal barriers that again had an impact on participation in the electoral market. In 1958 it passed the *Preventive Detention Act* (“PDA”).²⁹ The PDA authorized the arrest and detention without trial for a maximum of five years of any person who acted in a manner prejudicial to the defence of Ghana, the relations of Ghana with other countries, or the security of the state.³⁰ A detention order could be extended for another three years as long as the PDA was in force.³¹ This length of extended detention orders was later amended to five years.³² The PDA was useful to blunt any challenge mounted

25. Other parties existed with a variety of agendas. These included: The Muslim Association Party that was formed to cater for the interests of Muslims living in squatter settlements. The Anlo Youth Organization (AYO) committed to unifying all the Ewes in French Togo, British Togoland and the Trans-Volta Region. The Northern Peoples Party formed out of fear of the people in the Northern Territories becoming dominated by southerners after independence. Its aim was to win respect for the culture and peoples of the Northern Territories. See Austin, *supra* note 6, at 183-9.

26. See Avoidance of Discrimination Act, No. 38 art. V (1957) (Ghana).

27. See Burton A. Weisbrod, *Conceptual Perspective on the Public Interest: An Economic Analysis*, in PUBLIC INTEREST LAW: AN ECONOMIC AND INSTITUTIONAL ANALYSIS 4-29 (Burton A. Weisbrod, Joel F. Handler & Neil K. Komisar eds., 1978).

28. See Austin, *supra* note 6, at 384 (noting the various political parties organizing as a single entity).

29. See Preventive Detention Act, No. 17 (1957) (Ghana).

30. *Id.* arts. 2(1), 4(1).

31. *Id.* art. 5(2).

32. See Preventive Detention Act, No. 250 art. 3 (1964).

by CPP-1949's political opponents as a large number were detained without trial.³³ This then became a disincentive to engage in opposition politics and, accordingly, the PDA enabled CPP-1949 to dominate the Ghanaian political market notwithstanding whether its products were what Ghanaians continued to desire.

The courts reinforced the role of the PDA as an entry barrier. Applications to review orders made under the PDA were made in *Re Okine and Others*³⁴ and in *Re Dumoga and 12 Others*.³⁵ In both cases, the courts denied relief to the applicants on the grounds that the Courts are precluded from inquiring into those matters in respect of which the Governor-General states that he is satisfied for purposes of the PDA³⁶ and that once Parliament had duly passed the PDA there is little or no point in resorting to the courts.³⁷ In *Re Akoto & 7 Others (1961)*³⁸ the Supreme Court was called upon to review the validity of the PDA as being inconsistent with the rights in the 1960 Constitution. In ruling that the rights in the 1960 Republican Constitution were not legally binding obligations that the President had to obey, the Supreme Court declared the validity of the PDA itself could not be challenged.³⁹ With this, the recourse to the Constitution for protection against the PDA was circumscribed and made easier the weakening of CPP-1949's rivals.⁴⁰

The final manipulation of the political market resulting in its complete lockup in favour of the CPP-1949 was the purging of all rival parties from the political market.⁴¹ The referendum of 1964 transformed Ghana from a multi-

33. See generally Austin, *supra* note 6, at 385-6 n.39, 387 (noting for example in one constituency that the UP won in 1959 with a majority over the CPP, the sitting MP was detained after three years and the CPP captured the seat unopposed. Austin notes that 13 of the by-elections held in Ghana were as a direct result of the PDA) *see id.* at 418 n.91.

34. In *re Okine & Others*, [1959] G.L.R. 1-6 (Ghana).

35. See In *re Dumoga & 12 Others*, [1961] G.L.R. 44-56 (Ghana).

36. See In *re Okine*, [1959] G.L.R. at 2, 6.

37. See In *re Dumoga*, [1961] G.L.R. at 55-6.

38. See In *re Akoto & 7 Others*, [1961] G.L.R. 523, 523-35 (Ghana).

39. The applicants in this case had charged that the PDA had become unconstitutional in the wake of the promulgation of the 1960 Constitution. *Id.* at 527.

40. The 1960 Constitution did not contain a bill of rights. What it did provide for was the President, on assuming office, to declare his adherence to a number of fundamental principles including honouring and maintaining freedom and justice, and that no person, subject to conditions necessary for preserving public order, morality or health, should be deprived of freedom of religion, speech, the right to move and assemble without hindrance or the right of access to courts of law. See CONSTITUTION OF THE REPUBLIC OF GHANA (1960) arts. 13.

41. This was a surprising *volte face* by Nkrumah. When he became the Leader of Government Business in Parliament in 1951 he expressed the view that young democracies would benefit from a strong two-party system and thus the CPP-1949 was doing everything to strengthen the opposition in Parliament. See CONSTITUTION OF THE REPUBLIC OF GHANA (1960) art. 13(1).

party system into a *de jure* one-party state.⁴² The grounds for this re-stated the public interest as the prime goal. The amendment to the 1960 Constitution as approved by referendum stated the basis for a single-party system was “in conformity with the interests, welfare, and aspirations of the People”.⁴³ This legislative decimation of all real and future competition was done at a time when the CPP-1949 faced a crisis. By 1964 the growth and development Ghana enjoyed in the immediate post-independence era began to be eroded⁴⁴ and it was this downturn that led to a gradual decline in the popularity of CPP-1949 causing it to lose the broad and immense appeal it had during its early years.⁴⁵

We extend our application of economic theory to understanding the dynamics of Ghana's political market in its first cycle to include perspectives on property rights. Key to our analysis in this regard is the work of Harold Demsetz on the transition from communal rights to individual property rights. Demsetz argues that an efficient market revolves around the allocation of property rights to market participants. For Demsetz, property rights start to emerge when transaction costs and information asymmetries start to bedevil markets. Thus the re-design of property rights regimes, either through the granting of new rights or the termination of existing ones, is normally in response to re-configuration of technology and relative prices.⁴⁶ Demsetz's argument does not assign any role to the state or government in creating property rights, rather the re-arrangement of property rights occurs through the agreement of private parties.

However, alternative explanations for a re-alignment of property rights exist and which do not give paramount importance to private transactions. Property rights regimes can be created or adjusted as a consequence of state-driven, top-down processes. Saul Levmore has reservations about what he regards as an overly sanguine interpretation of transformation of property rights regimes and thus he is reluctant to embrace the bottom-up approach espoused by Demsetz.⁴⁷ For Levmore, a more plausible explanation for new property rights regimes is by assigning change to the role and preferences of governments bent on extracting as much tribute as possible from their subjects, or on account of lobbying by well-organized interest groups seeking favour from incumbent

42. The process was gradual to some extent. Although the referendum was in 1964 it was the consequence of a private member's motion in Parliament calling for the establishment of a one-party state. This motion was approved by Parliament in 1962. See Austin, *supra* note 6, at 415.

43. See Constitution (Amendment) Act, 1964 Act 224, Article 2.

44. See Ernest Aryeetey, Augustine Fosu, and Mahamadu Bawumia, EXPLAINING AFRICAN ECONOMIC GROWTH AND PERFORMANCE: THE CASE OF GHANA, 3-4 (2001).

45. See generally, T. Peter Omari, KWAME NKRUMAH: THE ANATOMY OF AN AFRICAN DICTATORSHIP (Hurst & Co. 1970) (hereinafter Omari).

46. See DEMSETZ, *supra* note 11, at 347-50.

47. See SAUL LEVMORE, *Two Stories About the Evolution of Property Rights*, 31 J. LEGAL STUD. S421-51 (2001).

governments. For Levmore, this top-down interpretation is a more plausible explanation for the emergence, functioning and decline of particular property rights regimes.⁴⁸

The power of these explanations is beyond our remit. Either way, we can see in Ghana's political market traces of Demsetz and Levmore's accounts for the shift in property rights. First, there was obviously an increase in the cost of transacting triggering off the demand for a Demsetz-type re-alignment of property rights between the CPP-1949 and its political rivals. The potential of losing what was an obviously valuable asset, i.e. the state and the rents to be extracted therefrom, was one of the reasons behind the sweeping political change across all of post-independence Africa that resulted in virtually all of the liberal constitutions bequeathed at the end of the colonial being shredded and replaced with authoritarian systems that permitted only a single political party. Ghana was no exception to this development. However, the re-design of property rights, and the allocation of a monopoly to CPP-1949 was a top-down process, driven by the state and its agents and this process mirrored the trajectory of privatization described by Levmore.

III. THE THIRD CYCLE: THE RETURN TO COMPETITIVE MARKETS

The market for political parties entered a new cycle in 1969. With the overthrow of the first republic, the military junta decreed a return to competitive, liberal politics. A new market was to be constructed as a consequence of meaningful decisions taken by individuals. Accordingly, we note here, political markets can be constructed or designed according to what Douglass North has described as mental models. Mental models enable individuals to understand the world. Mental models are derived, in part, from the intergenerational transfer of knowledge, values and norms within society.⁴⁹

The second republic saw the creation of new market institutions aimed at creating the kind of market that would prevent the kind of predatory behaviour of the first republic. First, the second republican constitution expressly entrenched the rights set out in it and prevented creating the conditions for market disequilibrium that were called into existence in the wake of *Re Akoto and 7 Others*.⁵⁰ Second, constraints were placed on parliament's ability to

48. *Id.* at S426-32.

49. See DOUGLASS NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE 92-6 (Cambridge University Press: Cambridge 1990).

50. The outgoing head of the military regime actually remarked that the constitution focused too much on preventing the rise of a dictator at the expense of providing structures and procedures for decisive decision-making. See Country Studies, The National Liberation Council and the Busia Years, 1966-1971, available at <http://www.country-studies.com/ghana/the-national-liberation-council-and-the-busia-years,-1966-71.html> (last visited June 7, 2009). Elites that had been

legislate political parties out of existence. Third, the actors that had decimated the opposition in the first republic were barred from entry into the market. Whilst this latter edict was somewhat akin to the kind of first republic predation by the CPP-1949, it was justified on supposedly public interest grounds. The third cycle therefore saw a general swing towards a liberal democratic construction of the market based on the model that had existed from 1947 to 1958. The new constitution denied Parliament the right to create a one-party state.⁵¹

Accordingly, the political market set a baseline that permitted, subject to fulfilling electoral requirements, the entry into the market by all political parties. However, notwithstanding this constitutional commitment to a greater degree of electoral openness that applied during the first cycle, the drafters of the constitution did still create firm-specific entry barriers. Arguing that the erstwhile CPP-1949 posed a threat to democracy, CPP-1949 and persons associated with it was outlawed and prevented from contesting parliamentary elections.⁵²

In sum, whilst patently more market friendly, a close examination of market relations does reveal some traces of the kind of lockups that Issarcharoff and Pildes identified. Incumbent elites, supposedly fearful of a return to the anticompetitive market arrangements of the first republic, took an ostensible public interest decision to foreclose the possibility of the return to predatory behaviour. We can therefore sustain the argument that this episode of a *prima facie* lockup of the political markets was a public interest decision. There was a re-affirmation of individual and collective rights to associate and to participate in government and the presumption was that to do so, necessitated banning CPP-1949. On the other hand there was the suppression of output consistent with rent-seeking theory and this was achieved by decimating the ability of the CPP-1949 to actively challenge the now resurgent UP tradition.

excluded from democratic processes in the first republic constituted the bulk of the delegates/representatives in the Constituent Assembly established to collect and discuss proposals for a new constitution.

51. See CONSTITUTION OF THE REPUBLIC OF GHANA (1969) art. 3(1). This was a departure from the classical concept of parliamentary sovereignty, which, in its original form, placed no limitations on the reach of Parliament's power. The Supreme Court in *Re Akoto & 7 Others* was of the opinion that Parliament was supreme, subject to the limitation that it could not alter any of the entrenched provisions of the constitution without the sanction of a referendum, that it could not on its own volition diminish the entrenched articles, and that articles which are not entrenched can only be altered by an Act which specifically amends the Constitution. See also *Re Akoto & 7 Others*, supra note 38, at 535.

52. Some ex-members of the CPP-1949 did organize their own political parties. These were the National Alliance of Liberals (under Komla Gbedemah, Nkrumah's former finance minister, among other portfolios) and the All Peoples Republican Party (under Patrick Quaidoo, Nkrumah's former minister for Social Welfare, among other portfolios).

IV. INSTITUTIONS, ORGANIZATIONS AND THE POLITICAL FORTUNES OF CPP-1992

The market conditions created in the third cycle persist to this day and further elaboration of political markets in the third and fourth republics will only amount to dragging out dry details of differences in constitutional provisions and electoral legislation. Our paper thus branches off from a study of the broad contours of the market and focuses on the fortunes of the once-dominant firm: the CPP-1949 in its incarnation as CPP-1992. We seek to explore the fortunes of this firm in the fourth cycle. Disillusioned with what he saw as the cautious approach to independence by the UGCC, of which he was General Secretary, and with sharpening ideological differences,⁵³ Nkrumah broke from the UGCC and launched the CPP-1949 as a political party that appealed to the broader mass of the Gold Coast. One of the fundamental differences between the CPP-1949 and the UGCC was the time-table for decolonization. CPP-1949 insisted on “Self-Government Now” for the Gold Coast, whilst the UGCC preferred the more cautious “Self-Government in the Shortest Possible Time”. Exploiting a well-organized machine Nkrumah and the CPP-1949 won a series of elections during the colonial era and in 1957, upon full independence, he became Prime Minister. In 1966, however, with peaceful avenues for change closed off on account of Ghana now a *de jure* one-party state with Nkrumah as life President, the army and police staged a *coup d’etat*.⁵⁴

As noted previously, the CPP-1949 returned to power in 1979 as the Peoples’ National Party.⁵⁵ However, after only 27 months in office, it was again overthrown in a *coup d’etat* in 1981. With the return to constitutional rule in 1992 the CPP-1949, a party that once dominated Ghana’s politics, has suffered a serious decline in its fortunes. Its collective share of the electoral vote in Ghana’s most recent elections is down to approximately 3%.⁵⁶ Its parliamentary fortunes have also declined and there are only 3 seats occupied by persons from political parties that trace descent from CPP-1949.⁵⁷ Fragmented, as we have noted above, into a mass of parties, CPP-1992 has been talking about unity for more

53. Nkrumah was a left-leaning politician whilst the UGCC was a collection of liberal elites. See APTER, *supra* note 16, at 167-68.

54. See generally PETER BARKER, OPERATION COLD CHOP: THE COUP THAT TOPPLED NKUMAH (Ghana Publishing Corporation 1969) (describing the background to the political and economic developments leading to the *coup*).

55. See JOSEPH G. AMAMOO, THE GHANAIAN REVOLUTION 216, (Jafint Publishers 1988).

56. See <http://www.ghanaweb.com/GhanaHomePage/election2008/election.results.php> (last visited June 8, 2009)

57. These are the PNC and its 2 seats in the Upper East and Upper West regions of Ghana, and the CPP and its single seat in the Western region of Ghana. See GHANAWEB, <http://www.ghanaweb.com/GhanaHomePage/election2008/election.results.parliamentary.php> (last visited 27 January 2009).

than fifteen years.⁵⁸ However, not only has CPP-1992 failed to make any meaningful headway, their political squabbles include the failure to agree over a cockerel or palm tree as a symbol for any unified front.⁵⁹ The puzzle then is why the CPP-1992 remains fragmented. What accounts for the failure of like-minded political actors to coalesce into a single entity and so shore up their chances of electoral success?⁶⁰ To decode this failure we draw on explanations for successful collective action and fuse them with recent advances in technological developments and the dissemination of the same. First however, we must note the tight hierarchical structure of the CPP-1949 with Nkrumah at the apex.

Herbert Simon has defined a hierarchy or hierarchic system as one that is composed of interconnected sub systems until some lowest level of elementary subsystem is reached. The term hierarchy or hierarchic system refers largely to a complex organization made up of sub-systems each of which is subordinated to other actors in the larger system.⁶¹ Stemming from this broad sketch of hierarchies, CPP-1949 was very hierarchical with considerable authority and power consolidated in its founder and leader, Nkrumah. The allegiance of the membership was so fanatical that he had no rival for power and stature in the party hierarchy.⁶² In the words of one observer, “the sections of Gold Coast

58. See *PNC urged to rejoin unity talks*, available at <http://www.mcglobal.com/History/Jun2002/> (last visited June 15, 2009).

59. See Yaw Boafo, *Suitable Emblem for the Emerging CPP*, N.Y. TIMES, Feb. 7, 2006, available at <http://www.newtimesonline.com/index/php?option> (last visited June 20, 2009). This seeming triviality does have some powerful symbolism though. The CPP-1949 had the cockerel as its symbol. However, in 1979 the PNP (CPP-1949 in its reincarnation) was prevented from using this symbol as part of a grand sweeping away of symbols associated with political parties in the first and second republics. Thus the PNP chose the palm tree as its symbol. In 1992 the PNC, led by Hilla Limann, President of Ghana during the PNP administration, adopted the palm tree again as its symbol. The CPP however adopted the cockerel of the CPP-1949 as under the current political dispensation, the rule on old symbols no longer holds. In my opinion, the clash and intransigence over symbols lies in whether CPP or PNC is the lead party in any merger

60. All CPP members adhere to Nkrumahism. See generally PIERRE MOKOUKO MBONJO, *THE POLITICAL THOUGHT OF KWAME NKUMAH: A COMPREHENSIVE PRESENTATION* (University of Lagos Press 1998); see also Michael W. Williams, *Nkrumahism as an Ideological Embodiment of Leftist Thought within the African World* 15 J. BLACK STUD. 117-34, (1984). Whilst CPP-1949 did not split leading to the formation of a number of parties, we should not assume it did not have its internal wrangling. Beginning in the early 1960s and in the wake of a weak opposition that was being weakened even further, the CPP turned on itself. See AUSTIN, *supra* note 6, at 402-04.

61. See Herbert Simon, *The Architecture of Complexity*, 106 PROC. AM. PHIL. SOC'Y 467-482, 468 (1962).

62. See APTER, *supra* note 16, at 206. Not surprisingly Nkrumah, in addition to founder of the CPP-1949 became its life Chairman, General Secretary, and Chairman of its Central Committee. See also OMARI, *supra* note 45, at 87. Furthermore, by virtue of him becoming president-for-life, he also became CPP-1949's life presidential candidate. See also Michio Iijima, *Developing Charisma: Nkrumah as a "Cargo" Benefactor in Ghana*, 19 AFR. STUD. MONOGRAPHS 171-85 (1988) (exploring the development of Nkrumah as a charismatic leader). Indeed the development

society, marginalized before the CPP was formed, and serving as the bulk of the party had found a God – Nkrumah”.⁶³ Ultimately, Nkrumah assumed total control over the CPP-1949 holding positions, simultaneously, of life Chairman, General Secretary, and Executive Secretary. In 1962, the CPP gave him the power to unilaterally change the party constitution and the membership of the party’s central committee.⁶⁴

Holding together a political organization with a great degree of power concentrated in the organization’s centre is a far less complex endeavour than creating the same in a setting where there is the greater diffusion and availability of technology, such as pertains in the context of today’s information and technology revolution. We make this assumption because of the interface between hierarchical centralized organizations on the one hand, and the capacities of human actors to digest and understand complex and uncertain issues they have to confront on the other. In an information-poor society collective action is rather difficult especially by the kind of diverse and disaggregated interests that constituted CPP-1949, largely poor, and mainly semi-literate. As a consequence, we assert, the type of membership of CPP-1949 and the limits on access to technology was such that it made ideal the kind of organization that was extremely centralized in the way it functioned with Nkrumah as its un-challenged leader. It was this technological setting that gave Nkrumah the kind of authority needed to hold the CPP-1949 together and, as we have noted above, to dominate it completely.

However, the present-day information revolution has serious implications for organizational cohesion and hierarchical systems. The information revolution is radically lowering the cost of gathering and disseminating information. As a result hitherto dispossessed political actors with limited organizational and financial resources are now empowered to achieve their political and policy goals. Consequently we are in times marked by greater fragmentation and pluralism within political settings. These developments are likely to continue and will further empower specialized and narrow forms of collective action. New technology can facilitate collective action by bringing together and/or empowering actors who, in the past, had found it costly to organize. So important has new technology become that some scholars have used this to re-

of a centralized party system woven around Nkrumah was probably deliberate strategy on his part. See Selwyn Ryan, *The Theory and Practice of African One Partyism: The CPP Re-Examined*, 4 CAN. J. AFR. STUD. 145-72 (1970) (noting Nkrumah’s formation in 1948 of a Circle the members of which had to swear to accept his leadership as part of his belief that heroic and charismatic leaders were essential in political struggles).

63. See APTER, *supra* note 16, at 166.

64. See Dennis L. Cohen, *The Convention Peoples’ Party of Ghana: Representational or Solidarity Party?*, 4 CAN. J. AFR. STUD. 173-94 (1970).

visit and challenge Mancur Olson's thesis on efficient collective action being possible only if there is a small group of players prepared to allow for free-riding on their efforts, or there are selective incentives to entice recalcitrant actors into the cooperation matrix.⁶⁵

Hence, we argue here that the recent lowering of communication costs allows for the creation of tiny islands of influence and authority that can be used to subvert authority structures and so resist incorporation under the canopy of a single organization, in our case a single, unified organization of the type that was CPP-1949. In sum it is not too pessimistic to assume that CPP-1949, tightly organized under one leader will ever be re-created as the technological revolution has, arguably, made possible the fragmentation and individualization of a once unified front.

V. COMMONS, ANTI-COMMONS AND CPP-1992

The failure to bring the CPP-1992 under one banner can also be explained by reference to Garrett Hardin's tragedy of the commons. Hardin's tragedy of the commons develops when herdsmen overgraze natural resources. It is rational for this activity to take place because, as Hardin notes, each herdsman seeks to maximize his gain by "remorselessly" exploiting a resource that is of fixed quantity. Ruin is the inevitable consequence because of the very nature of the commons - freedom of use.⁶⁶ For Hardin, coercion is the solution to the tragedy so as to escape the horror of the commons.⁶⁷ The implosion of CPP-1949 into CPP-1992 is fertile ground to apply Hardin's thesis. Evidence of the grim picture Hardin painted can be found in the fact that Nkrumah's name, so cherished by his followers, cannot be enclosed. It is not private property, owned by one person and that can only be used on payment of a fee or the meeting of some regulatory standard. Anyone can call himself an Nkrumahist, lay claim to Nkrumah's legacy, and so expect to benefit from what the CPP-1992 hopes is the electoral attraction of their late leader's name.⁶⁸ However, with the

65. See Arthur Lupia & Gisela Sin, *Which public goods are endangered?: How evolving communication technologies affect the logic of collective action*, 117 PUB. CHOICE 315-31 (2003).

66. See Garrett Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243-48 (1968).

67. *Id.* at 1247.

68. What aggravates the problem is that there are considerable landmarks in Ghana's infrastructure for which Nkrumah was responsible. With a bank account that was in the black when he assumed power, a virtually non-existent national debt, inflation at around 1% per annum and an economy that was growing at the rate of 12% on account of the post-Second World War economic boom, Nkrumah made a lot of headway especially in the early years of his tenure and particularly in the development of social infrastructure.

impossibility of enclosure, the increasing predisposition to appropriate Nkrumah's name has resulted in the proliferation of CPP-1992 parties.⁶⁹

CPP-1992 has not agreed on the mechanism for the kind of coercion that Hardin saw was necessary to overcome the tragedy of the commons. Whether this is possible in the absence of a charismatic leader in the mold of Kwame Nkrumah is beyond the scope of our analysis. But solving the commons dilemma goes to the heart of winding up the various political parties that make CPP-1992 into a single entity that could stand some chance of resuming its role as the dominant player in Ghana's political market.

Yet, coercion need not be the solution to the problems associated with the tragedy of the commons. Elinor Ostrom sees a different path to overcoming the tragedy of the commons and her work has implication for the overgrazing of the multiple herds under the canopy of CPP-1992. Ostrom has argued that whilst or central government authority (or creation of private property rights thus for our study perpetuating CPP-1992) can avert the tragedy of overuse, these lines of action do not have the monopoly as far as the solution to the tragedy is concerned.

Ostrom has challenged the assumption by most economists of rational individual action traces of which we find in the model of the herder in Hardin's tragedy of the commons. Ostrom outlines experimental findings that suggest that self-seeking rationality does not necessarily completely dominate individual decision making. Instead, cooperative solutions to the tragedy of the commons can and do emerge. Ostrom sets out the case for the kind of person she calls the conditional co-operator, a person who will not defect from obligations as assumed in Hardin's work. For Ostrom, there is sufficient evidence to support the argument that conditional co-operators can influence rational egoists to cooperate to achieve socially beneficial collective outcomes. Gradually, Ostrom argues, humans have acquired the traits of conditional co-operators: they have developed a tendency to discover and grasp communal norms, those common understandings that glue society together.⁷⁰

Drawing on Ostrom's work, and without prejudice to our argument in the previous section on the divisive effects of technology, we can argue that whilst CPP-1992 has to confront the causes and consequences of overgrazing its own commons, a solution is not impossible based on the shared aspirations of their members, and the vision and beliefs that the founder of their tradition set out on his path towards the decolonization of what was then the Gold Coast. A non-coercive solution is possible in theory through fidelity to their common beliefs.

69. In CPP-1992's case the bargaining will invariably continue to be compounded by the question of who leads a united CPP front, this being arguably the biggest of all the benefits.

70. See Elinor Ostrom, *Collective Action and the Evolution of Social Norms*, 14 J. OF ECON. PERSP. 137-58 (2000).

Paradoxically, we can also explain the current state of the CPP-1992 by applying the theory of anticommons to our study. Michael Heller popularized the term the “Tragedy of the Anticommons”.⁷¹ Heller defines anticommons property as a property system in which several owners have formal or informal rights of exclusion in a scarce resource.⁷² Heller’s anticommons regime is marked by two critical characteristics: the absence of hierarchy and the absence of rules to resolve conflicts within the anticommons system.⁷³ Though not automatically tragic, an anticommons property is prone to the tragedy of under use.⁷⁴ A mix of transaction costs, holdouts and rent-seeking can come together to prevent the economic utilization of the property. Heller’s proposition can explain holdout against cooperation among the mass of CPP-1992 parties. There are rents to be derived from belonging to a CPP-1992 party, especially the PNC or the CPP. Post-election bargaining can yield dividends for parties with enough electoral votes or parliamentary seats to influence the composition of the winner at the polls. This would seem to be the case since the return to constitutional rule in 1992. Despite their meagre share of the votes and parliamentary seats, CPP-1992 especially the two main parties the CPP and the PNC) have consistently acted strategically to advance their own interests. In the 2001 election, they sided with the New Patriotic Party after the first round of the presidential elections did not produce a winner with 50%+1 vote. After the New Patriotic Party emerged victorious in the presidential run-off elections with the support of the CPP and the PNC, members of these latter two parties received ministerial portfolios as rewards. In the recent 2008 election which saw the opposition party emerge victorious, again after a run-off, the PNC on its part has sided with the new government in exchange for promises of ministerial positions for its members and seats on the board of public corporations. The support of the PNC in particular is crucial given that currently, pending the outcome of the courts resolving electoral disputes, the incumbent government does not have 50% of the seats in Parliament. It can only have a working majority if the PNC’s 2 MPs support it.

VI. CONCLUSION

Our study has demonstrated that we can analyze so-called non-market situations using tools drawn from economic theory. The evolution of political competition in Ghana does resemble competition in a market where firms bid to

71. See Michael A. Heller, *The Tragedy of the Anticommons: from Marx to Markets*, 111 HARV. L. REV. 621-88 (1998).

72. *Id.* at 668-673.

73. *Id.* at 635-637.

74. *Id.* at 673-675. An anticommons property, however, is not automatically tragic.

maximize economic and financial gain. Second, current market institutions, whilst lauded as a sign of embracing liberal democratic institutions, are not new. Rather since decolonization in 1957, a number of political arrangements have sought to move Ghana's constitutional arrangements along a liberal democratic trajectory.

Overcoming the tragedies of the commons and anticommons will most probably be a challenging and complex endeavour for the CPP-1992. To end the tragedy will mean collapsing all CPP-1992 parties into a single political entity and, subsequently, endowing this entity with the "rights" to the propaganda and electoral value of the founders' name. Whether the CPP-1992 can band together into a single firm is not as straightforward as one might be tempted to assume. Granted, the various parties share common ideology and, presumably, they should be able to quickly design a new set of institutions that will create a single organization to achieve their political objective of winning state power.

However, as Douglass North has explained, fundamental institutional and/or organizational change can be a complex endeavour. The main barrier to success will probably be the informal rules confronting CPP-1992. North argues that it is easier to effect changes in formal rules than to achieve the same with regard to the informal constraints that also structure human relations. Informal constraints such as norms, conventions or personal standards of honesty occur in a far more gradual process than changes in formal rules. Changes in informal constraints are a function of changes in individual behaviour consistent that in turn is shaped by individuals' perception of the costs and benefits arising from institutional stability or change. Informal rules are more likely to produce path dependencies that hold up or destroy completely any attempts at creating a new set of institutions. Path dependencies represent existing institutions and organizations.⁷⁵ As we have noted above, there are rents to be gained from the present schism within the ranks of CPP-1992. These rents, compounded by the availability of technology, make more durable institutional and organizational rigidity. They make it possible for vested interests to talk of formal change, yet hold back the creation of a single firm through rivalries and personal differences.

75. See NORTH, *supra* note 49, at 36-45.

