

KENYA: Smoke and Mirrors

We have come full circle.

Delegation is subject to much academic discussion – particularly amongst liberal institutionalists and as concerns the European Union. Delegation meaning the transfer of core state (Executive) powers either ‘upwards’ to supranational bodies (like the EU), ‘horizontally’ to independent regulatory authorities (covering everything from electricity to elections) or ‘downwards’ to decentralised or devolved governments.

The breadth and depth of the public policy domains now effectively governed through delegation has led, it is argued, to the rise of the ‘regulatory state.’

Why delegation?

Rationally, there is the ever-increasing need for expertise in public policy domains, which typical public service bureaucracies are unable to keep up with and provide – think here, for example, of regulation of information technology. Beyond the rational is the political – the two more cynical reasons given for delegation are that the state (Executive) needs to, first, demonstrate ‘credible commitment’ to resolving a public policy problem and, second, shift blame for the fact that the public problem remains unresolved.

The consequences of delegation?

One small word: Brexit.

Sticking with the EU example, one of the biggest debates concerning delegation upwards has to do with legitimacy and the social contract. When a state (Executive) cedes power upwards, all sorts of principal-agent questions arise. The principal remains in charge of its agent – through any number

of control measures. But the agent can also act more or less autonomously, depending on the strength or weakness of those control measures.

EU regulations now cover a huge swathe of public policy domains. With enforcement powers through its courts. EU citizens may indeed have been perfectly content to flit about from place to place, following employment opportunities or the right to pension in the sunny south – where the Euro stretches further. But not every EU citizen was nomadic. Quite a few EU citizens got more and more perplexed by how constrained by EU regulations their own governments' fiscal and public policy space was. Which perplexity populist and xenophobic political parties were more than happy to turn into the on-going campaign against the EU.

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Moving closer to home, one of the biggest debates as concerns delegation horizontally has to do with 'layering' – the creation of the new independent regulatory authorities that parallel, and obfuscate how truly ineffectual and politically-compromised the underlying public institutions are.

Nowhere has this been truer than as concerns dealing with the theft of public resources. As though we didn't have laws, policies and institutions to deal with theft, we saw through the 1990s and into the new Millennium an astounding array of new 'anti-corruption' laws, policies and institutions. Most epitomised by delegation from the criminal justice system to the new 'anti-corruption' commissions that now (uselessly) litter the continent.

The reasons for this explosion were the same as anywhere – the need for our states (Executives) to, first, demonstrate ‘credible commitments’ to ending the theft of public resources and, second, shift blame from those who’d been doing the stealing – ie. themselves.

The consequences?

A whole lot of energy and time is spent perfecting the laws, expounding on them ad nauseum. A whole lot of energy and time fighting to give the new ‘anti-corruption’ commissions legislative and then constitutional protections. A whole lot of energy and time arguing about whether they should have just investigative or also prosecution powers. Another whole lot of energy and time arguing about the principal-agent control measures – how to appoint to them, how to budget for them and so on and so forth.

Thus we find ourselves where we are today. Where the amounts of public resources stolen from us boggle belief. Where the ways in which they are stolen are crystal clear – no stone has gone unturned when it comes to devising ways to thief from the public purse. And yet...where precisely who (!!!) has stolen from us remains muddled and vague – trotting out people before the courts who were evidently proxies – or only nominally in charge of how public monies moved within the system – simply doesn’t cut it. Where jail terms remain a rarity. Where the seizure and return of our(!!!) assets and money simply never happens.

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What happens next?

In the face of rising public anger at the real costs of this theft – to public service delivery, to the cost of living as public plunder is money-laundered back through the housing market and so on – the state (Executive) does an about-turn. The principal declares the agent useless. The principal personally takes charge instead. The principal personally ‘ensures’ that institutions of the criminal justice system swing into action.

We let the irony pass us by. The principal is, in fact, telling us that political compromise of the criminal justice system persists – in what world does the Executive need to personally ‘ensure’ that criminal investigators and public prosecutors do their jobs?

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We let even bigger ironies pass us by. That this particular principal comes from a family which presided over the ‘original sin’ – the first massive plunder of public resources (like land). And yet he has the nerve to imagine we’ve forgotten that or that time has served a whitewashing purpose. That that ‘original sin’ has now been compounded by what is effectively the re-monopolisation – within just five years(!!!) – of almost all ‘private’ sector domains that family entered into thanks to public plunder.

It is sickening. Delegation may have run its course as concerns ‘anti-corruption’ here, just as it’s under real threat in the United Kingdom and beyond as concerns the EU. But the public policy problem it was intended to sort out persists – our money’s being stolen. Not a damn thing is being done about it.

It is a game of smoke and mirrors. We are nowhere near angry enough.