

Free legislative,
executive, and
judicial authority in
the hands of
unelected civ...

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Introduction

In modern democracies in general and American in particular, the key principles to constitutional democracy is the separation of powers and rule of law. These principles are damaged by the administrative state where much power is vested in unelected government officials or bureaucrats. In a political system with separation of powers like that of the United States of America, the constitution divides policy making powers among the three branches of government. The Congress is charged with the responsibility of making laws, the executive branch is charged with the implementation of the laws formulated by Congress while the judiciary interprets the laws. The constitution provides the framework that guides the interaction between the various branches of government. The history of the development of the political system in United States of America was one aimed at achieving an arrangement that is cohesive yet responsive (Woolf, 2005).

Placing judicial, legislative and executive authority in hands of unelected officials

It is often the idea American laws are passed by the Congress and because the members of the Congress are people who are elected by the people and the general population are consented indirectly to the laws. The reality with this is quite different, much of the federal laws are created by government departments and agencies, all these make up the national bureaucracy and not by the Congress. The United States Congress passes laws that delegate legislative, judicial and executive powers to the departments and agencies; the bureaucrats or the unelected officials to come up with laws that we have

to comply with. Every modern democracy is considered very unique, in its own structure and organization. What is common among all mature democracies is the fact that they have three arms of government namely: Judiciary, executive and legislature. Each of these arms has unique roles and duties that it can perform as provided for by constitution. No branch can perform the role of the other and any delegation should be provided for by law. I, therefore disagree with the placement of judicial, legislative and executive authority of the government in the hands of unelected civil servants.

There has been a debate as to why a government agency that is run by unelected government officials is allowed to make massive decisions that affect the operations of the country. This is considered as an affront to the tenets of republican governments and against the principle that all laws in a democratic government have to be passed by elected Congress. A government under elected officials often undermines the rule of law because bureaucrats or the unelected government officials often make exemptions to regulations that they create. Bureaucrats are charged with the duty of writing and executing the laws; they are prone, therefore to execute the political groups from the very same laws (Waldo, 2009).

Vesting government powers on the hands of unelected government officials violates the doctrine of separation of powers because it breaks the divisions between the three branches of government provided by the constitution. Government power is transferred from the elected congress to government departments and officials despite the fact that they are not accountable to any individual or arm of government; this reverses the checks and balances

provided by the government. The three branches of government should work together to control the administrative apparatus often combining the three branches of government: executive, legislative and judicial branches.

The combination of the three arms of government makes the running of the government efficient but the agencies and the departments that are run by unelected government officials. These possess legislative powers together with judicial and executive powers hence violating the basic doctrines of separation of powers that is central to American constitution. The delegation of judicial, executive and legislative powers to administrative agencies and departments and to make laws that are considered to legally bind threats constitutional dispensation of America. The unelected government officials make laws that are binding to the general public and the citizens. These can be fined or imprisoned for the violation of the established rules. This is against the constitution that demands that legislative power is only granted to elected members of the Congress.

The executive arm of the government has two main functions, namely: formulation of policies and the implementing of those policies. Formulation of policies is undertaken by elected politicians under the President or the Prime Minister and a cabinet that is appointed. The implementation of the policies is carried out by non-political class of professionals, otherwise called the civil services. In the second half of the 21st century, people in the developed democracies have started demanding for better services from government. There has been an emerging need for a powerful executive branch of government to deal with increasing demands. This has been addressed by the use of powerful clique of unelected government officials in the name of

civil services. The unelected government officials that include the cabinet and chief executive have been involved in various aspects of the policy. There has emerged a great deal of delegation or the handing over of certain government responsibilities that has resulted in placing more powers in the hands of powerful, but unelected government civil servants. This has made it very difficult for the legislature to act as an effective monitor of executive power. The unelected government officials have been very much involved in areas of policies relating to homeland security and foreign policy. During times of national crisis such as the September 11 attacks, a decisive decision is often required and the unelected government officials enact policies without consulting the other arms of the government. During these times, the legislature will have little opportunity to scrutinize the activities of the executive.

The powers vested in the hand of unelected government officials has been growing. The executive has been losing control over the management of the government. The executive branch has emerged as too big for the president to meaningfully control and hence the delegation of policy making authority unelected government officials; the unelected government officials has in itself emerged as a legislative force in itself. The more powers in the hands of the unelected government officials have continued to compromise the republican and the democratic dimensions of the American republic.

Several countries are today not governed by the elected officials but by unelected bureaucrats. The Congress has been forced to vote on each administrative regulation establishing the rule of private conduct. This has the potential of changing the operations of the government. There has been

the perceived inability of elections to change the direction of government. This has been linked to the popular aggrandizement of unelected government elites. It has been argued that voting on several policies will overwhelm the congress; this is because the bureaucrats churn out several policy issues and regulations that may require immediate attention. The process of making laws by the congress is considered tedious and cumbersome; it can take a lot of time and hence not fit for decisions or politicizes that require immediate attention. This is the situation when the delegation of power and authority to bureaucrats is recommended. The president selects the heads of government departments and agencies based on merit. This makes them better placed to run the affairs of the government competently and efficiently.

The executive authority is derived from the powers delegated by the legislature. The legislature delegates its law making powers to the executive branch that is ran by unelected bureaucrats. I am a strong opponent of the placement of judicial, legislative and executive power on unelected government officials. The civil servants are very independent and highly qualified. This makes them qualified to formulate quality policies that are balanced and which can withstand test of time. Unelected bureaucrats do not owe allegiance to any individual or party but are driven by their patriotism. Unlike the major players in the Congress and the Exudative such as the president, unelected bureaucrats are not motivated to pleasing voters or the general population but are only interested in serving the government of the day.

Traditionally, the executive and legislative arm of the government has been

delegating a lot of power to various bureaucracies to enhance the organization of the government. The case, however, was that unelected officials acted under the direct supervision of politicians elected by the people to serve in the Congress and Executive; these politicians retained the ultimate power to make decision. In modern government operations, much power is being delegated to bureaucrats who act with absolute independence.

In modern practice, different sections of unelected civil services have different degrees of independence from the other arms of government. Civil services systems provide specialized training courses for staff and administrative agencies that are aimed at promoting their autonomy in decision making. Heads of various government agencies and departments have been provided with formal independence from the executive, particular in relation to operational matters. This move has been considered to be deliberate to lessen the weight of the executive from political accountability and control. Constitutions of various countries have continued to differ on the autonomy and delegated duties that the bureaucrats should be given by the executive. The significant executive and bureaucratic powers emanate from the executive. This is delegated in the form of prerogative powers that include the power to make treaties, war and peace and other administrative duties. The placement of the power to make war by the executive to unelected government officials has sparked debate in the Congress and Courts. People have questioned the power of an unelected civil servant to authorize American military to go to war. On such sensitive situations, I strongly support the delegation of powers to bureaucracy because they

make decisions that are influential, but with the interests of the nation at heart (Woolf, 2005).

The placement of legislative and judicial powers by the executive in the hand of unelected government officials has several ramifications. This is because of the debate as to whether control can have powers to control unelected civil services when delegating their authority. The congressional placement of responsibilities amounts to the abdication of their roles that they are constitutionally provided for; that of policy making. The elected legislature has on many occasions abdicated their policy making duties and legislative powers to the powerful clique of civil servants. This has resulted in a political system where special interests reign supreme. These policies will be a reflection the special interests at the expense of the citizens. The placement of judicial, legislative and executive functions in the hands of powerful, unelected civil service threatens the doctrine of separation of powers and checks and balance that forms the core of American constitutional democracy. This is an indication that the delegation of duties does not serve the best interests of the American government and people, but only serves selfish interests. It will also amount to politicizing the civil service, which is often supposed to be non-partisan and neutral (Krason, 2012).

The delegation of power to the hands of unelected bureaucrats amounts to blatant violation of the constitution. The constitution only recognizes the congress as the only organ entrusted with the formulation of laws. The constitution did not envisage that this function could be delegated. There is a strong fear that power concentrated in the hands of one arm or branch of government is very risk. Furthermore the power to make laws should be left

to elected individuals who are directly related to the electorate who are the consumers of the policies and who are directly affected by the laws (Waldo, 2007).

In line with the principle of separation of powers, the federal power has been restrained. This makes the choice of making laws the function of the legislatures and the duty to execute them is left to the executive government. This makes the government and its arms strong to govern itself. The role of the administrators has been restricted and its influence in the running of the government has been left limited hence making it wrong to delegate the powerful functions of government to unelected bureaucrats. The constitution provides for the separation of powers among the three arms; it defines the roles and responsibilities of each branch of government. Placing legislative, judicial and executive authorities in one arm of government violates the constitution. The constitution does not provide any arm of government the express will to delegate its responsibilities. The problem with bureaucratic powers lies with the use of their expertise and judgment to carry out activities that are considered as political; the unelected or insulated government officials determine who gets what, when and how. Placing powers on the hands of these unelected government officials poses a lot of threat to democracy. Unelected civil servants are problematic to democracy. It silently creates alternative centers of power hence hindering effective function of government and curtailing coordination among the various government agencies.

In the United States of America, the unelected civil servants are charged with responsibilities that include the running of the government and

implementation of policies; though these are duties of civil service in every advanced democracy, the bureaucrats in America have been tasked with politically charged duties such as policy formulation; this is supposed to be the province of politically elected leaders. Civil servants are supposed to be neutral and not tasked to undertake political tasks, the delegation of judicial, legislative and executive works is likely to make the civil services a political one and this is against the principles of democracy. The neutrality has been difficult to sustain because of the increased involvement of unelected civil servants in political issues.

The unelected civil servants in the United States of America are very powerful lot; they enjoy a high degree of job security and if it means their removal, it will involve a high disciplinary procedure that is exhaustive. This makes it hard for them to be responsible for policy blunders associated with the elected politicians. Delegating legislative, judicial and executive authority to unelected civil servants will be a great threat to the stability and legitimacy of the government. It is responsive for the citizens to think that their politically elected leaders often influence the appointments of unelected civil servants. This results in patronage hence inadequate service delivery and the misuse of government revenue. Unelected civil servants serve at the mercy of elected leaders and owe them a lot of loyalty. Placing government operations under the unelected civil servants can affect the quality required of government policies since it will not be guided by public interest but instead motivated by their masters. Their jobs can also be terminated at any time hence leaving them vulnerable. Delegating government authority to them will not be sustainable, neither is it feasible

(Krason, 2012).

The placement of judicial, legislative and executive authority to unelected civil servants is considered as an assault to the principles of constitutionality such as individual rights, separation of powers and government by consent; it is the pursuit of short-term gain. This should be discouraged by any functioning democracy. The constitution has enumerated the powers of each arm of government and how it should be exercised; it does not envisage the delegation of the powers.

The delegation of judicial, legislative and executive authority to unelected bureaucrats has battered the system of checks and balances of the government. This has been the cornerstone of American democracy. It has resulted in the concentration of power in the hands of few agencies and departments of the executive hence paving way for an aggressive development of powerful clique of civil servants charged with formulation government policies and performing other functions of the Congress. The main advantage of unelected government officials is that they are permanent, do not stand for elections and they cannot be fired. This makes them safe hands to entrust government duties, their power is real, safe and unchallenged. The downside of this is that, although they are not elected, bureaucrats favor the incumbents and are nurtured through gerrymandering. Incumbent governments often misuse them.

Unelected civil servants are manipulated at the whims of the president. Because they serve under the executive arm of the government; they are subjected to political control by the president hence making them effectively political and partisan. Delegating the authority of running the government to

them is a risky endeavor because they can be compromised and influenced. Concentrating power on the hands of unelected bureaucracy contravenes the principle of popular sovereignty and rendering the elected leaders irrelevant. The president is slowly losing grip of executive control over the unelected officials; this is because of the security of tenure of the unelected civil servants and tough procedures of their removal. The president can no longer hire and fire unelected government officials, the alternatives to this system involves observing and implementing the constitution to the latter; the constitution stipulates the duties of every arm of government (Woolf, 2005).

References

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