

DEMOCRATISATION AND ACCOUNTABILITY OF THE SOUTH AFRICAN STATE**Yvonne Muthien****INTRODUCTION**

(I shall dispense with the platitudes of democracy and democratic theory, with due apologies to all those in the industry and simply start off with a quote from:) Public accountability constitutes a pivotal foundation of democratic governance and public administration. The centrality of democratic accountability is appropriately captured in this quotation by James Madison in the *Federalist*;

If men were angels, no government would be necessary. If angels were to govern men, neither external or internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. (cited in Schwella, 1991)

(Of course if women were to rule the world...!)

Accountability is embedded in the system of liberal democracy, premised on the election of public representatives and the separation of powers between the legislature, executive and the judiciary. Moreover, accountability is exercised through a complex system of institutional checks and balances which limit political authority.

The sustainability of democracies can in part be tested against the strength of these institutions of accountability (Diamond, 1992; Weingast, 1997, Huntington, 1997).

The history of liberal democracy has been one of setting limits on government. These limits are enshrined in constitutionalism, the upholding of a rule of law through an independent judiciary.

I shall examine government accountability through the prism of 3 institutions charged with that task: the legislature, 'institutions supporting democracy', public service accountability, with very brief comments on each, drawing on my experience in government over the last years, from 1994-1997.

THE LEGISLATURE

In our system of parliamentary democracy, the legislature constitutes the supreme authority as the elected representatives of 'the people'. The executive derives its authority from the legislature and is accountable to the legislature for its actions. As the law-making authority, the legislature assumes the role of final arbiter of government policy and has the task of balancing the diverse interests of the broader society. The effectiveness of the legislature to hold government accountable depends on the quality of the elected representatives in terms of professional expertise and direct accountability to constituencies. Both of these conditions have been compromised with the exodus of skilled professionals from parliament and the party electoral system. The degree of democratic accountability in the modern state is further compromised by

- the complexity of modern public administration which more often requires technical expertise that is not always available among the lay representatives in the legislature;
- the volume, complexity and time constraint in enacting legislation; and
- the fact that legislation originates in the executive and is seldom initiated by the legislature; thereby ceding control to the executive on content and substance.

Specialised committees, e.g. select committees on public accounts and finance, the holding of open public hearings and proceedings of parliamentary committees, as well as the provision of research support, enhance the capacity of the legislature to scrutinise government accountability. On balance there has to be an accommodation between the interests of governance and public scrutiny. In the first two years of democratic rule in SA, the portfolio committees tackled their responsibility of holding government accountable with great gusto. The newly elected representatives distrusted the old guard civil service as the initiator of legislation. Legislation was duly scrutinised leading to considerable delays and constraining the ability of the new executive to enact new policy and a near power struggle ensued between the new executive and the newly elected representatives. The pressure of the parliamentary time schedule and the tension within the majority party of embarrassing the new executive with too close scrutiny, together with appeals to comradely support, and the departure of many talented professionals from parliament, dissipated the tension between executive and legislature in the same party. This set the stage for classic oppositional politics within the legislature, with the opposition spearheading the drive for public scrutiny and the majority party in the legislature 'defending' the interests of

the executive. Portfolio committee chairs thus also called the civil service to task more specifically, especially scrutinising their commitment to the goals of the majority party.

That there is a robust opposition and scrutiny of government actions cannot be doubted, but that by and large the majority of parliamentarians do not add value to this function, other than in the form of howling is also clear. Overall the transparent functioning of portfolio committees and the dedication of a key number of parliamentary activists in committee work bode well in terms of accountability.

INSTITUTIONS OF ACCOUNTABILITY

The South African constitution has enshrined an elaborate array of institutions supporting constitutional democracy, that serve as systems of check and balance on political and administrative authority. These include the Public Protector, Auditor-General, Public Service Commission, Human Rights Commission, Commission for Gender Equality, Electoral Commission and Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities. Moreover, the independence and impartiality of these institutions are enshrined with an injunction to be impartial and “perform their functions without fear, favour or prejudice”. Furthermore “other organs of state... must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions”, and “no person or organ of state may interfere with the functioning of these institutions”.(RSA Constitution, 1996). A powerful set of protections indeed and quite necessary. For South Africa has emerged from a history

of violation of human rights and the rule of law by a bandit state machine! Yet the practice of exercising political power nevertheless produce major strains on the operation of exercising scrutiny and limits to governance.

The provisions of the Open Democracy Act, which safeguards whistle-blowing and independent access to public information as well as institutions buttressing democracy bode well in terms of accountability. However the strength of these institutions and their ability to set limits on the arbitrary exercise of power are dependent on:

- their location, standing and status within the system of governance
- the standing of their champion/guardian/protector within government; ie. minister or president
- the unqualified support of the legislature in the exercise of their functions
- their level of resourcing and ability to fulfil their constitutional mandates.

On this scoreboard, the auditor-general has the standing and resourcing to fulfil its functions, and has demonstrated the unqualified parliamentary support it enjoys through recourse to parliamentary rules when it came under attack from cabinet ministers. Parliament sanctioned the behaviour of the executive in infringing on the autonomy of the auditor-general on two occasions: (i) in the case of the Minister for the Public Service, Dr. Zola Skweyiya, who challenged the sweeping and sensational statements made by the auditor-general that the 'public service was like the Titanic heading for an iceberg'. The minister both challenged the auditor-general on his silence on apartheid mismanagement and to acknowledge the extent of reform initiatives, pointing out that the auditor-general had himself been a beneficiary of

guaranteed job security by the new democratic government. (i) the second instance was the Minister of Mineral & Energy Affairs, Dr Penuel Maduna, who challenged the auditor-general for allegedly covering-up past secret transfers of funds in his department. In both instances the ministers were cautioned by parliament. This level of parliamentary protection has not quite been demonstrated with the other commissions, who equally battle to gain government co-operation and compliance in the exercise of its functions.

ACCOUNTABILITY IN PUBLIC ADMINISTRATION

The tension between institutions of accountability and government departments is not unexpected as the former are often considered a nuisance and an impediment to administration. The critical question remains who places a check on these institutions? This question was sharply demonstrated in the fusion of roles of 'referee and player' of the Public Service Commission. The role of Public Service Commissions as a check on administration and the political executive finds its origins in the English civil service of the mid-nineteenth century. Their task was to uphold the merit principle and guard against cronyism and nepotism, as well as to protect the career civil service from arbitrary political abuse. The SA Public Service Commission however, assumed both the functions of establishing the rules of administration and checking the exercise thereof (see Muthien, 1996; Motala, 1997). Moreover, the commission held all executive powers in administration, with the power to refuse ministerial requests for increased staffing, salary increases, conditions of service and organisational changes. It is interesting that the segregationist and apartheid states ceded all executive powers in administration to this over-centralised, omnipotent and omnipresent body. It

enabled those regimes to escape accountability for executive decisions and allowed for the scape-goating of the commission. Control over the commission was exercised through appointment mechanisms and the fact that the commission had to implement the policy of the government of the day. The PSC was thus the monolith that operationalised the objectives of the segregationist and apartheid state machinery and regulated it.

The unbundling of the PSC and the separation of its executive and scrutinising functions was an attempt to democratise the SA state and can be seen as a major achievement of administrative reform (Muthien, 1996). The establishment of public service regulations, conditions of service, organisational structures, etc, was located with a line function ministry; executive decision-making was devolved to cabinet ministers, together with greater managerial autonomy of line-function agencies; and the PSC assumed a purely oversight function. The contradictions of its previously fused functions however, brought it under fierce attack and hostility, with neither the executive nor the legislature accepting guardianship of the body. The reach of its oversight function would need to be established, as well as its protection by the legislature, as it pursues its new mandate of securing public accountability.

The unbundling of the commission has also been criticised in international reform circles as perhaps too far-reaching in that no mechanism of recourse was left to intervene or redress the upholding of the merit principle. The commission simply monitors the making of appointments from a distance. However, the provisions of labour legislation and recourse to the public protector and the courts provide further checks and balances. The ability of these institutions to serve as a check on the

executive is dependent on the levels of co-operation it secures and the ultimate sanction that parliament can exercise to secure public accountability.

The pervasive question remains: how can the public service, thrice removed from the people, through its professional and career embeddedness, technocratic command and command over resources and hence the innate ability to dispense patronage; be made to function in a manner compatible with democracy? The history of the PSC demonstrated that excessive control of public institutions did not imply increased effectiveness, in fact quite the contrary, it can serve as a brake on efficient administration. Furthermore the creation of multiple accountability mechanisms and institutions does not in itself increase accountability. The new SA public administration has evolved by condensing broadly 4 models of state administration , i.e.:

- from the upper echelons of the civil service as agency specialists and technocrats,
- to these echelons as an elite style corps of civil service mandarins,
- to the upper echelons of civil service as a political machine
- to the upper echelons of civil service as corporate managers;

into a peculiar mix of contradictory identities. There can be no doubt that a professional career civil service, insulated from political power serves democracy best and that the triple distance from direct democracy in itself constitutes part of the system of accountability and limit to political power. The inherent problem of democratising the modern administrative state is vested in reconciling the political

imperatives of public accountability with the managerial imperatives of administrative flexibility and responsiveness. (Balfour, 1997; Ruscio, 1997)

CONCLUSION

Other central agencies of democratic accountability are the judiciary, especially the Constitutional Court, independent commissions of enquiry and the independent press. The government's discomfort with press scrutiny has been expressed in various attacks on the press, but it challenges the press more in terms of fair and accurate reporting, than challenge or threaten its right of independent enquiry. Clearly the most demonstrable commitment to democratic accountability is vested in the subordination of political rule to constitutionality through the operation of the Constitutional Court as the ultimate safeguard and recourse of citizens in the protection of individual civil rights and liberties.

The sustainability of democracy and the rule of law requires that political authority and public officials accept limits to the exercise of their authority, as well as subject themselves to public scrutiny, either through incentive or sanction. (Weingast, 1997) To apply effective public scrutiny of public figures require an informed citizenry, which is not accommodating to habitual corruption. This in turn requires a commitment to democratic value of clean government. When the political economy of corruption becomes embedded in the social fabric of communities or localities and particular citizens become the beneficiaries of corruption, the sustainability of democracy is fundamentally compromised. Hence public education must forge a shared value commitment to democracy and clean government as ends in themselves.

Thus far we have concentrated on the accountability of government to the legislature and through institutions supporting constitutional democracy. These forms of accountability, whilst public in nature, is nevertheless considerably removed from the majority of the population. A more direct form of accountability are contained in 'citizen charters', which render public officials accountable at the point of service delivery. The Batho Pele (meaning people first), White Paper on Transforming Service Delivery commit public servants to values of consultation, service standards, fairness, efficiency, courtesy, access, information, transparency, redress and value for money, at customer desks, together with the requirement of an annual departmental report to citizens on meeting service delivery targets. As in other instances, the promise of this policy depends on a citizenry informed of their rights and with the necessary public confidence to assert these rights, otherwise, like elsewhere, it can easily fade into social amnesia.

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rotation schemes, welfare NGOs, burial societies, private clubs, and professional bodies; some of these organizations' relationships with the state are complex. Some of these organizations do not relate to the state on political or social issues. Some do not exist to oppose the state; they simply take care of the interests of their members. They are, however, as much a part of civil society as those that do take an overt political stance. One cannot make broad generalizations about civil society on the basis of a limited set of organizations. Many civil society organizations do not have a clearly focused purpose and are therefore likely to play their role increasingly within the framework set by the state and not within one that is emerging autonomously from a position within civil society.

In most thinking on the European continent, the emphasis on civil society stresses autonomy from family and primary units of society. In Latin America, this issue is serious because many of the institutions of civil society are controlled by single firms, single families, and single ethnic groups, and are merely extensions, in an organizational form, of informal and primary non-elective affinities and memberships. In Latin America, one must examine not only whether organizations are autonomous from the state, but also whether they are independent of these basic units of human reproduction.

Session 6

An Accountable State

Terry Karl

Accountability is essentially the power of political institutions to satisfy the democratic demand for an effective government that respects the people who are the source of its rule. In most democratic theory, accountability is defined in terms of the relationship of the rulers to the ruled, primarily measured through the electoral process and party competition. I want to look at accountability in a

broader way—as a thick network of institutions and relationships that involve vertical and horizontal accountability.

In the older democracies, the people are growing increasingly skeptical of elections as a key mechanism of accountability because the responsiveness of governments to electorates is problematic, even where there are well-developed constituency networks. Horizontal accountability involves control of the rulers by the ruled, accountability of the rulers to one another, and accountability of the ruled toward their rulers. This means that there are state agencies and private organizations empowered to oversee government performance and to stop unlawful actions or omissions by other agents of government.

One type of violation that needs to be regulated by these institutions is state abrogations of liberal freedoms and civil rights. Another is rent-seeking behavior by private and state authorities. How do you ensure that state agents act for the public rather than the private interest, especially when new rulers believe that they are entitled to benefit personally or to help relatives or comrades because they are, at the same time, trying to achieve goals that are for the public good? If you do not build institutions to counteract this notion, no clear boundary between the public and the private will be set. If you are in that situation, certain prohibitions become eroded over time. Some mechanisms of accountability are transparent media, an accountable electoral process, and a civil service that will not violate the rules.

Yvonne Muthien

I want to comment on three institutions of accountability—the legislature, the institutions supporting democracy, and the public service.

The effectiveness of the South African parliament in holding government accountable depends on the quality of the elected representatives—their professional expertise and direct accountability to constituencies. Both conditions have been

compromised by the exodus of skilled professionals from Parliament. Democratic accountability by the legislature is further compromised by at least three other factors—the lack of technical expertise among representatives in the legislature, the volume and time constraints on enacting legislation, and the reduction of the supremacy of the legislature over the executive because legislation originates in the latter.

The South African Constitution enshrines an elaborate array of institutions supporting constitutional democracy that serve as a check on political and administrative authority. The efficacy of these institutions is dependent on four factors—their location and status in the system of governance, whether they have a powerful champion in the governmental system, the unqualified support of the legislature in the exercise of their functions, and the level of their resources. Despite these institutions, the novelty of exercising political power produces major constraints on setting limits on government.

On the public service, the critical question is: How can it be made to function in a manner compatible with democracy? The history of the South African Public Service Commission, appointed after 1994 to administer the civil service, shows that excessive control over public institutions does not imply increased effectiveness. Nor does creating multiple accountability mechanisms and institutions by itself increase accountability. The solution to the problem of democratizing the modern administrative state lies in reconciling the democratic imperatives of public accountability with the managerial imperatives of administrative flexibility and responsiveness. A more direct form of accountability is exercised through citizen charters.

Discussion

Most of the discussion focused on the notion of horizontal accountability in democratic theory and the relevance of accountability in “suspended states” where the gap between state and society is so

wide that the two have very little to do with one another.

It was argued that democracy cannot be defined without the notion of vertical accountability of rulers to citizens through representation. The new emphasis on horizontal accountability, especially the notion that the strongest form of accountability is through the rule of law, is considered suspect by some. The *rechtsstaat* tradition, pioneered by the Germans, was used as an antidemocratic device; the law itself was antidemocratic, and accountability to the law was superior to accountability to parliament.

It was also argued that in the notion of horizontal accountability two assumptions are questionable. One is that the law itself is democratic, the other that the judiciary is democratic. Being held accountable to undemocratic laws is not democratic, and judges’ social origins are likely to make them prone to pay more attention to some laws than to others. If elected officials must be accountable to judges, why not to central bankers or the general staffs of the armed forces? The problem with horizontal accountability is that it does not identify the actors to whom one should be horizontally accountable.

A major lacuna in democratic theory was noted in the discussion. Most democratic theorists admit that you cannot trust democracies to themselves. Nondemocratically constituted powers, such as constitutional courts, central banks, and armies, are necessary in all democracies. Institutions of democracy are not equivalent to guardian institutions; the latter should be subordinate to the former and not the reverse. It is, for example, vital that the military be subordinate to elected representatives.

Finally, it was argued that for the judiciary to be democratic it has to be transformed to reflect the society in which it is located. If it becomes an instrument of the rich or one ethnic group, there is no democratic rule of law. Mechanisms to facilitate access to the law are also crucial to counter the effects of socioeconomic inequalities. The role of civil society