

**SELECTED ISSUES PERTAINING TO DEMOCRATIC CONSTITUTIONALISM IN SOUTH AFRICA:  
THE JUSTICE, CRIME PREVENTION AND SECURITY PARADOX**

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**INTRODUCTION**

Social transformation to promote equity and equality is taking place in many countries worldwide (Todaro 1997). Currently the emphasis is even more on the ideal-type norms of social responsiveness and redress, since the social setting in South Africa requires such action in order to deal properly with the transformation process. However, the experience is that tension manifests itself between the higher order democratic ideals and the normative principles which are of criminogenic significance. Obviously, this poses specific challenges to the administrators charged to deliver justice, crime prevention and security services.

In most of the countries where these changes are taking place the implementation of democratic norms and principles in society and the workplace seems to be a central point in the debate. However, competing interest groups view these principles in a very diverse way. It is interesting to note that reformers in eastern and central Europe are scrutinising the democracies of western Europe for better ideas, whilst reformers in western Europe are questioning the traditional models of service delivery to address emerging societal challenges. This is a clear indication that the *locus* and the *focus* of the justice, crime prevention and security field is dynamic in nature and keep on changing as a result of external and internal variables (Kuhn 1970). At one level there is a more institutional type of approach where the older legalistic ways are questioned. In this case the challenge is to implement new management techniques with the aim to promote more efficient, effective and productive public services. At another level, the approach is more

political in nature, and here the changes of thought are more fundamental. The main argument at the political level is about changing the role and reducing the size of the public service. What it implies is that the state should remain responsible for regulating public services and the rest should be left to parastatal and private undertakings. The main objective of this approach is to make public services and their personnel more responsive to the needs of the citizens (Denhardt 1995: 21; Levine, Peters & Thompson 1990: 188; Rosenbloom 1989: 434).

From the literature consulted it is evident that public service delivery is currently in a state of flux. This is particularly relevant in South Africa due to the transformation that is taking place. Older models of public service delivery are being challenged and new models tested. Since the mid-1980s the public services of Western countries have undergone major changes. It is argued by certain authors that these changes represent a paradigm shift from traditional models to modern public management (Hughes 1998: 1-2). This modern approach to public management has received different names in different public sector settings. Since its introduction it has been referred to as “managerialism” (Pollit 1990); “new public management” (Hood 1991); “market-based public administration” (Lan & Rosenbloom 1992); the “post-bureaucratic paradigm” (Barzelay 1992); or “entrepreneurial government” (Osborne & Gaebler 1992). But what has caused all these changes? During the mid-1980s many governments tried to respond to the challenges of a turbulent environment which was characterised by technological advancement, globalisation and international competition. Clearly, the underlying philosophies sustaining change at the

present time, are radically different compared to those of earlier periods. Whereas the bureaucratic concepts of unity, hierarchy, command, control, and long tenure of staff members, had informed the attempts to change the public service during the 1960s and 1970s, it is clear that the opposite concepts of democracy are now in vogue (Isaac-Henry, Painter & Barnes 1993: 1). In contrast to the bureaucratic values, democracy requires plurality, dispersion of power, equal access, liberty, freedom, election, openness, responsiveness, accountability and participation (Hays & Kearney 1995: 292). In addition, South African public service delivery has, since 1994, been confronted with a phenomenon referred to as “democratic constitutionalism” that gives another dimension to the debate. Until recent years, it would have been rare to find a text on South African public service delivery devoted to a discussion on “democratic constitutionalism.”

The objective of this article is to lay the foundation for democratic public service delivery by imparting an understanding of the tensions between the South African public service and democratic constitutionalism. Although the contents of the article represents a “generalist approach” to the basic tenets of public service delivery, the author will also consider its particular significance to the justice, crime prevention and security services. The focus will be on how democratic principles have been realised in the reform programmes of the present South African government. Emphasis will be placed on selective elements of democracy, and three key issues in which democracy and public service delivery meet, namely, constitutional accountability, political responsibility and managerial responsiveness, will be analysed. In general, the article is a description of the democratic values and principles stated in the Constitution of the Republic of South Africa 108 of 1996. In addition, it is offering a basic analysis of how the Government has dealt with these and even side-lined some of the

democratic issues. This illustrates the difficulty to promote democracy in practice since there are many opposing interest groups who do not share the same values. An attempt is also made to illustrate what should be done (the normative approach) to promote democratic public service delivery.

### **CONCEPTUALISING DEMOCRATIC PUBLIC SERVICE DELIVERY**

The concept of democracy has been analysed, interpreted and defined in many ways. From the literature it is obvious that political theorists are primarily concerned with the basic ideals of democracy. These ideals include phenomena such as freedom, individual recognition, equality and citizen participation in the political process (in other words, the process through which conflicting value preferences in a society are reconciled in an authoritative manner by means of the exercising of power). One should bear in mind that democracy is a concept which derives its meaning from a specific political and social setting. The values and principles that are dominant in that society will be reflected in the structures that emanate from the underlying democratic processes. Therefore, democracy in a specific political context may be democratic for some and undemocratic for others. Democracy takes shape according to the dominant political culture. This is evident in South Africa at this point in time. The dominant values and principles that characterised the former administrations are gradually making way for a new value orientation system with its own unique challenges. Contemporary theorists are more interested in new public service delivery concepts such as individual welfare, fair representation, participation in the workplace, citizen participation, community action, adaptive public administration, ethical responsibility and client-directed public services. These concepts are almost related to a post-bureaucratic theory which, in turn, can be viewed as a phase of new paradigm thinking (Jun 1986: 17).

Fortunately the concept of democracy has been modified to suit specific contexts. This indicates that it is not always easy to institutionalise democratic principles and values in society universally, especially in heterogeneous societies. Since public service delivery is the activity part of government, it is the task of the public administrator to operationalise the values and principles of democracy in such a way that it is reconciled with social stability. Alongside the development of democracy, public service delivery has also evolved as a profession and a discipline in an attempt to realise some democratic values and principles. Unfortunately, there has not always been parallel growth in the institutionalisation of democracy through the processes and procedures of public service delivery. This could be attributed to the fact that the institutionalisation of democracy is routinised through formal or informal procedures that hamper the process. Worldwide there is a tendency to idealise procedures and systems of this nature with the embodiment of democracy as the main focus (Lee 1990: 129).

The root of the problem relating to the sustaining of democracy in government, the workplace and society, centres around power. In practice, society consists of numerous power bases. Normally, these power bases originate from groups such as the rich, the propertied, large business and commercial enterprises and special organised groups such as labour and health as well as interest groups in the security field and agriculture. For a governmental system to be successful and to uphold democratic values and principles, the power of the different role players should be held within certain limits so that the balance is not threatened (Jun 1986: 18). It was the Frenchman Montesquieu, who in his book *The Spirit of Laws*, clearly differentiated between the three power branches of government. In large part, the arguments of Montesquieu was based on the fact that state power is too complex in nature to be concentrated in one entity. Therefore, he argued that state power be demarcated into three branches,

namely the legislature, the executive and the judiciary in order to avoid supreme authority (this aspect is further discussed below under “constitutional accountability”). Generally speaking, the democratic values and principles are continuously influenced by competing societal values (elections) that determine the practice of public services in its entirety. These values and principles are translated into political demands that may emerge in the form of legislation (public policies), executive orders (regulations) and judicial decisions (Tompkins 1995:53). In the implementation of public policies and the issuing of executive orders public administrators in general, but justice, crime prevention and security officials in particular, need to take the current democratic values and principles that persist into consideration. The conception of democracy embedded in this society’s political culture is mainly found in the Constitution of the Republic of South Africa 108 of 1996 (hereafter referred to as the New Constitution). The New Constitution emphasises, amongst others, constitutional accountability, political responsibility, managerial responsiveness and related democratic concepts. These three concepts repeatedly surface in debates around democratic public service delivery in South Africa. In order to elaborate on these three concepts, it may be helpful to briefly review some of the key characteristics thereof in the broader context of the transformation process.

#### **TRANSFORMATION OF JUSTICE, CRIME PREVENTION AND SECURITY SERVICES (JCPS DEPARTMENTS)**

The fledging years of the emerging democratic South African nation saw a struggle between a number of problematic factors that bedevilled efficient and effective public service delivery. Some of the more notable problematic areas in the JCPS departments include: (1) a lack of representativeness of all the citizens of South Africa in terms of race, gender and disability; (2) a lack of integrity and legitimacy; (3) their mandates and functions were vague; (4) they

were not subject to overseeing and control mechanisms; (5) they violated most human and civil rights and were mainly used to defend apartheid; (6) service delivery was discriminatory and exclusionary, particularly towards blacks - here the term black refers to African, Indian and Coloured communities; (7) centralised control and top-down management; and (8) a lack of accountability and transparency (Towards a Ten Year Review October 2003: 44; White Paper on the Transformation of the Public Service 1995: 17).

Many of the above problems did not automatically disappear when the present Government came into power in 1994. In fact, the continued existence of these problems emphasised the importance of transforming the justice, crime prevention and security services. More recent efforts have indicated that transformation was inevitable in bringing about legitimacy, accountability and effectiveness. While there were only sporadic efforts to transform the JCPS departments in the past, the movement towards transformation was gaining momentum over the last few years. In this regard, clustering of the JCPS departments has constituted an important element of the transformation process. All these transformation interventions have, to a certain extent, yielded positive results in public service delivery. The Policy Co-ordination and Advisory Services Unit (PCAS) of the Presidency produced a report in October 2003, entitled *Towards a Ten Year Review*. This report indicates that the justice, crime prevention and security strategies and plans of the Government have been anchored within the National Crime Prevention Strategy (NCPS). The report distinguishes between two elements of the NCPS that have borne visible results in terms of public service delivery, namely the Integrated Justice System (IJS) and the National Crime Combating Strategy (NCCS or "Operation Crackdown"). According to the PCAS there is evidence that the Government is beginning to make an impact on the crime situation. It was also stated that the IJS (through the awaiting-trial prisoner project; the

reception, channelisation and trial-readiness programme; and the pre-trial services programme) has brought shorter court cases, better quality dockets, and higher conviction rates (up from 78 percent in 1999 to 81 percent in 2002). During recent times the justice system also saw the introduction of Saturday and Additional Courts that lighten the load of the judicial system. However, it is disappointing to discover that in many instances there is a shortage of skilled and experienced black lawyers and that the conditions of service are not attractive enough to lawyers who could be considered for appointment to the Bench (Towards a Ten Year Review October 2003: 45-48).

As already indicated, the NCCS also forms a central part of the NCPS and is beginning to impact seriously on crime levels in South Africa. As a result of the implementation of the NCCS, crime prevention and security actions have, amongst others, brought about the following positive results:

- Since 1994 murder has decreased by 30,7 percent.
- Action against crime and corruption helped to bring down high profile robberies, such as vehicle hijacking and bank-related robberies, from 33,7 percent and 52,2 percent respectively since data was first recorded in 1996.
- Community policing has made general policing activities more effective. It is through Community Police Forums and the partnership with Business Against Crime that street crime has been reduced by 80 percent in targeted city centres.
- Border control has resulted in the deportation of thousands of illegal immigrants, the confiscation of stolen vehicles and illegal fire-arms, as well as the confiscation of fraudulent and illegal identification documents and passports.
- Over 80 000 illegal firearms have been destroyed.

- Escapes from prisons have been reduced from 1 244 in 1996 to 325 in 2002 (Towards a Ten Year Review October 2003: 46-56).

In spite of all these constructive efforts to improve service delivery in the justice, crime prevention and security field it is equally important to recognise that there will always be a negative side. The following sections on democratic constitutionalism is not intended to induce a sense of pessimism or hopelessness. It is rather an indication of the magnitude of challenges involved in making the JCPS services more accountable, responsible and responsive to the public as is expected in terms of the New Constitution.

### **CONSTITUTIONAL ACCOUNTABILITY**

The concept of “constitutional accountability” has evolved and taken on more issues over time. This section will briefly summarise some of the issues that should be considered with regard to the enhancement of democratic constitutionalism in terms of an accountability perspective.

#### **Respecting human rights**

The first basic democratic element in the New Constitution is related to accountability. The fact that each citizen in South Africa has basic human rights and freedoms (fundamental rights) implies that public servants should in the day-to-day public service delivery ultimately comply with this constitutional element. These fundamental rights are protected in Chapter 2 of the New Constitution. Prior to 27 April 1994 South Africa did not have a good record of respecting human rights because of a political system (called “apartheid”) that was at its root non-democratic in nature. In the previous political system people were deprived of their basic human rights and were not in a position to enjoy such rights as equality, human dignity and freedom (African National

Congress 1994: 2-4). After 1994 a new government came to power with new policy guidelines where the emphasis is placed on democracy, development and human rights. It is obvious that any new government will be faced with a number of challenges in order to rectify the imbalances of the past. One of the challenges, with regard to fundamental human rights, will be the normalising of its status in the international human rights arena. When the Government came to power in 1994 it was legally committed to five international human rights treaties, three slavery conventions, a convention on human trade and prostitution as well as a convention on marriages. Alongside the signing of these treaties and conventions the Department of Foreign Affairs has already instituted a Human Rights Directorate with the responsibility of administering and managing South Africa's foreign interests with regard to human rights. On 21 March 1995 this country also celebrated its first Human Rights Day initiated by the Government. All these events are indicative thereof that South Africa cannot distance itself from the international world and has become part of a global society with the intention to develop a democratic human rights culture. However, due to the diversity of the South African population and a clash of interest amongst many groups, this will be very difficult to realise in practice. The problem is worsened by the declining capacity of the state to comply with its basic functions. The concept of the “soft state” will address this issue (Hyden 1982).

#### **Providing for formal statutory democratic mechanisms**

In Chapter two of the New Constitution a comprehensive list of fundamental rights appears which, amongst others, include the right to equality, life, religion and freedom of association. To ensure that these fundamental rights are properly protected certain formal institutional mechanisms have been provided for in the New Constitution. If legislation,

which is executed by public officials, should affect the individual's right on any governmental level, an appeal could be lodged to the Constitutional Court. Subsequently it will be the responsibility of the Constitutional Court to declare the acts made by the legislature, and actions of government and other executive institutions which clash with the content of the Constitution, invalid. The Constitutional Court has the final say over all matters relating to the interpretation, protection and enforcement of the provisions of the New Constitution. Probably the most important mechanism of power the Constitutional Court has at its disposal with reference to public service delivery, is that the New Constitution enables it to declare any law or any provision thereof invalid where it is inconsistent with the Constitution. In order to ensure good governance and administration, which ideally serves the interests of the public at large, the Constitutional Court should be competent to instruct Parliament, or any other competent authority, to correct the defect in the law or provision (cf. article 167 of the New Constitution). The involvement of the Constitutional Court in this regard is well illustrated in *South African National Defence Union v. Minister of Defence*. Judge J Hartzenberg of the Transvaal High Court declared a provision in the Defence Act 44 of 1957, that prohibited members of the Defence Force from becoming members of a trade union, as constitutional. However, the declaration by the High Court judge was not sufficient. For the declaration to have any effect, it had to be confirmed by the Constitutional Court. The case was then taken to the Constitutional Court. In a majority judgement, delivered by Judge J O'Regan, the Court decided that since the New Constitution guarantees freedom of association soldiers are entitled to form unions to look after their employment interests (The Constitutional Court 1999).

It is important for policymakers to monitor the performance (control) of the public service in order to promote democratic governance. There are many ways to construct monitoring of this nature: one of the best routes to follow is to establish statutory institutions. This aspect of democratic control will be approached by concentrating on the institutions which have been decided upon and listed in the New Constitution. With the acceptance of the New Constitution, Parliament decided to take its responsibility to provide an oversight of public affairs more seriously. Supplementary to the task of the Constitutional Court (that has already been dealt with above) provision is also made in the New Constitution for operationalising other formal institutions in order to protect the citizen from the misuse of government authority. It is determined that a Public Protector be appointed to investigate, amongst others, things such as maladministration in connection with the affairs of government at any level of public administration (cf. Section 182 of the New Constitution). Furthermore, it is stipulated that a Human Rights Commission should also be established to, inter alia, make recommendations to public institutions at all government levels where the Commission considers such action advisable for the adoption of progressive measures aimed at the promotion of fundamental rights (cf. Section 184 of the New Constitution). The New Constitution also provides for a Commission on Gender Equality. The objective of this Commission shall be to promote gender equality and to advise and to make recommendations to Parliament or any other legislative body with regard to any laws or proposed legislation which affects gender equality and the status of women (cf. Section 187 of the New Constitution). Another institutional mechanism of democratic control that has the responsibility to provide an oversight of human resource management in the public service is the Public Service Commission (cf. Section 196 of the New Constitution). The Public Service Commission

has the important task to monitor human resource activities in the public service. More specifically, it controls the public service democratically by doing, amongst others, the following: (1) Promoting the democratic values and principles enshrined in the New Constitution; (2) investigating, monitoring and evaluating the organisation and administration, as well as personnel practices; and (3) proposing measures to ensure effective and efficient performance. In moving towards the execution of these tasks the Public Service Commission has already investigated, monitored, evaluated and reported on issues such as “the state of representativeness in the public service” (July 2000); “career management in the public service” (July 2000), “survey of compliance with the *Batho Pele* policy” (August 2000) and “the verification of qualifications of senior managers in the public service” (August 2001).

An example of an investigation in which the Public Service Commission reported comprehensively could give an indication of what such an exercise (of democratic control) might entail. The Public Service Commission undertook a survey for the period from October 1999 to February 2000 in order to determine the degree to which selected government departments (including the South African Police Service-SAPS) were implementing the principles highlighted in the White Paper on Transforming Public Service Delivery of 1997 - *Batho Pele*. Findings made at police stations regarding the application of two selected *Batho Pele* principles of service delivery are as follows:

- Setting service standards. Here the requirement is that citizens should be told what level and quality of public service they will receive so that they are aware of what to expect. It was found that the SAPS have set service standards, but that these standards are not made public at service delivery points. As far as surveys are concerned, it was found that surveys are undertaken to determine the degree of public satisfaction with services

rendered by the SAPS. One example of such a survey is “Project Protect” that was conducted during 1998. The main findings of this project were: (1) Sixty-four percent of adults felt very or fairly safe in their neighbourhood at night. Seventeen percent, however, felt very unsafe. (2) Thirty-seven percent of adults had less trust in the SAPS in comparison to the previous years’ results. (3) Fifty-seven percent of the respondents agreed that the SAPS is friendly and polite in helping citizens, whilst thirty-one percent disagreed and twelve percent did not know.

- Increasing access. In this regard the requirement is that all citizens should have equal access to the services to which they are entitled. The survey indicated that in some instances it was almost impossible for citizens to obtain services from police stations (especially in remote areas). It was further indicated that, due to the layout at a large number of police stations, the elderly and disabled could not gain access easily (Survey of Compliance with the *Batho Pele* Policy August 2000: 34-35).

#### **Formalising the tripartite division of government authority**

The New Constitution also provides for a separation of powers between the legislature, executive and the judiciary. This is another key characteristic of democratic governments in the Western world. An important component of the concept of separation of powers is that government authority needs to be divided and not vested in one person or institution. This is evident in Chapters 4, 5 and 8 of the New Constitution. Government authority, simply by virtue of its size and the range of its activities, cannot operate at one level only. For this reason the New Constitution stipulates in section 40 (1) that: “In the Republic, government is constituted as national, provincial and

local spheres of government which are distinctive, interdependent and interrelated.”

### **Establishing of democratic values and principles for public service delivery**

An action orientation towards democratic constitutionalism requires that the author should focus on what public servants are entitled to actually do in terms of the content of the New Constitution. This touches on the public management part of public service delivery. Public management is associated with the executive branch of government and entails the implementation of the laws of the country in goodwill (Rosenbloom 1989: 14). In sum, the challenges associated with being a public manager in the South African public service are broad and exciting. The most important axiom of public management might be that the public service does not operate in a vacuum. The public manager’s mandate to manage public affairs in pursuit of the values and principles of the New Constitution is at the heart of democratic public service delivery in South Africa. To summarise this point, basic values and principles governing public service delivery is highlighted in the New Constitution. Section 195 (1) of the New Constitution provides the first major description of the values and principles all public managers need to adhere to, for example, public service delivery must be development-oriented, efficient and effective enough while good human resource management must be at the order of the day. How does one operationalise these values and principles in practice?

Development values and principles include the ability to have, amongst others, political skills, facilitation skills and networking skills. This implies that public managers must have a knowledge of political and legal institutions and processes (Starling 1993: 15). The overall question that occupies the mind in this regard is “What have public managers done to realise the political ideals of development in this country?”

According to the Public Service Commission’s Report on the State of the Public Service (November 2001: 16), this question can be broken down into a number of components. One of the issues of concern is the fact that many development programmes are not properly monitored and evaluated. It is a cardinal requirement that strong monitoring and evaluation mechanisms be developed at the centre of Government, especially within the Presidency. Another weakness in development terms is that there is a lack of consensus on what constitutes a development orientation. Many of the development issues that should be promoted by the public service still need to be given real meaning and the implications of their adoption rigorously debated (Dwivedi 1994).

Efficiency and effectiveness refer to an understanding of programme management and also to an understanding of and proficiency in the methods and techniques necessary to accomplish public service tasks. In the public service, programmes are usually designed to provide structure and direction to statutory requirements. That is to say that public managers assist in achieving the aims and objectives of public policies. One such an example is the Public Service Act 103 of 1994. From the perspective of a public manager, one could ask what characterises the most effective and efficient public management. The author will address this issue in the section dealing with managerial responsiveness which follows below. This section flags a number of key questions that is at the heart of democracy in terms of public service delivery practices.

Since public service delivery is so labour intensive - for example, about 50,8 percent of the public service budget is allocated to salaries - good performance is ultimately based on human resource skills (cf. Public Service Review Report 1999/2000: 23). Although managerial policies, plans and strategies play an important role in public service goal realisation, the

bottom-line is that it is people who possess the capabilities that are required for institutional success. At a deeper level, one needs the skills, discipline, motivation and intelligence of people in order to survive. The New Constitution is very clear on the matter of good human resource management [cf. Section 195 (1) (h)]. From an accountability point of view, the main argument is that good human resource management policies should be in place. This implies that the Government complies with constitutional guidelines. But what has Government been able to achieve in practice? According, to the Report on the State of the Public Service (November 2001: 19), implementation of human resource management policies remains a challenge. Set against the tenets of democracy there are inconsistencies between human resource management policy and implementation. One reason for not realising policy implementation guidelines is that the time lines for broader transformation have mostly been over-optimistic. This implies that public managers wrestle with the timeous operationalising of human resource policies and have begun to experience that one has to take into account the strategic and capacity implications of policy matters as well. Another problem facing public managers is that there are too many policy shifts on the policy agenda of the politicians. The main point, of course, is that constant changes in human resource policy have created a high degree of uncertainty that has had a negative effect on the public service overall. Interestingly enough, in the human resource management case, “transformation fatigue” has manifested itself as a characteristic of public service delivery activities in general. The result is that many important roleplayers have been made immune to well-intentioned efforts to promote change in the human resource field. Over the last few years the activities of public servants have come under the spotlight, and most rightly so, because they are operating in the so-called “gold fishbowl.” Bad practices such as teachers drinking with school children, offices being non-functional during lunch

breaks and high-level corruption incidents have sometimes blurred the achievements of democratic public human resource management (cf. Public Service Review Report 1999/2000: 68). By now it should be evident that democratic public human resource management involves a number of complex issues that, if not handled properly, could have a damaging effect on accountability. These examples of constraints on the management of public affairs in the context of constitutional values and principles are indicative of how things can go wrong.

Given the long list of human rights, provision for state institutions supporting constitutional democracy, the tripartite division of government authority and the basic values and principles governing the public service, theoretically South African public service delivery can undoubtedly be typified as a democracy. What more does this new approach of constitutional accountability expect of public servants? It certainly summarises the concept of overhead constitutional democracy (Levine, Peters & Thompson 1990: 190), and is a method of controlling public servants by making them subordinate to the will of the New Constitution. Section 2 of the New Constitution states that: “This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.”

This new approach of constitutional accountability recognises that South African public service delivery operates within the constitutional framework. In accordance, the Constitutional Court and other courts play a supreme role in every day public service delivery (Lee 1992: 7-8), while public servants are held accountable to the New Constitution. Most observers agree that the approach engenders a new administrative and management culture in the South African public service. On reflection, today’s public servant needs to be conversant with the decisions taken in the Constitutional Court and other courts that

may have a direct impact on public service affairs. Actually, what it requires is for public servants to anticipate the constitutional and other legislative preferences and to adjust their behaviour accordingly. Although constitutional values are at the core of democratic public service delivery, this new approach does not negate the concept of political responsibility as a concern of central importance.

### **POLITICAL RESPONSIBILITY**

The political approach to public service delivery stresses the importance of establishing unique democratic values in the justice, crime prevention and security domain. Perhaps the most important underlying value is that of political responsibility - the second element of democratic public service delivery discussed in this article.

It is interesting to note that in the day-to-day delivery of public services, political responsibility often is in conflict with managerial responsiveness (the third value). On the one hand, the values of managerial responsiveness require that public servants meet the requests, demands and expectations of the citizens (cf. the section below). On the other hand, political responsibility implies that legislators (political representatives) should adhere to the explicit and implicit values of proper policy-making and implementation. Actually, it means that legislators should ultimately be responsible to the broader public on the "what" of public service delivery (Levine, Peters & Thompson 1990: 189). Presumably, legislators should be responsive with regard to public affairs or, come the next election, they will no longer be the representative legislators (Denhardt 1995: 20). Political responsibility can, however, sometimes be taken to extremes. Those in legislative institutions and other political representatives, such as ministers, can from time to time do strange things to shape public opinion for the next election. In this process, they mobilise support within government and bargain with

a variety of public and private interest groups to achieve their goals. Time after time political representatives may become overconfident regarding their ability to discern the concept of political responsibility. A case in point is the false assumption that political representatives sometimes make that those who disagree with their interpretation of the goals of a programme, represent "narrow, selfish interests" or they are "obstructionist" or are "uninformed." Moreover, political representatives (especially ministers), sometimes not only develop policies that guide their own interests, but also seek to influence the course of public policy on behalf of their own supporters (even family members). This implies that hyperresponsible political representatives can to a certain degree accede too readily to the demands of the public. In addition, excessively responsible political representative may lack flexibility and sensitivity in their task.

To summarise these points, it would be helpful to begin with a review of incidents that have occurred in the political arena in South African public administration. The discussion of political responsibility in the South African context will start by examining the role of political representatives as it unfolded during the last decade. Underlying most of these incidents is the idea that political representatives should not use their positions to subvert the general political goals being pursued by the elected component of government and the political community as a whole (Rosenbloom 1989: 218). It appears as if political representatives are not always committed to the democratic norm of responsibility, should an analysis of government activities over the last decade be made. At the most fundamental level accusations of nepotism against senior politicians have been made on numerous occasions. Nepotism should be avoided at all costs because it is regarded as one of the hallmarks of a so-called "banana republic" – most certainly, a characteristic this country would not like to be associated with. Obviously, nepotism does not

benefit responsible political behaviour at all, because in most of the cases, service delivery is hampered in the process. During recent decades different types of nepotism have been detected routinely at all three levels of government. There is evidence that various key positions in government are occupied by family members of senior political representatives. According to a Corruption Barometer report, the lack of training and skills in public management and administration has been a contributing factor to the high corruption levels the country experienced between 1994 and 1998. Needless to say, nepotism plays a central role in these high corruption levels. Nepotism of this nature represents streams of elitism and the consolidation of family members' interests at the expense of service delivery priorities and political responsibility (Du Bois 1998: 6).

However, there are other forms of public behaviour that shows a lack of political responsibility. Before the election in 1999 political parties published criteria in respect of their election lists with which their potential candidates had to comply. These criteria were very specific and excluded members convicted of corruption, theft and ill discipline, as well as those who had violated the party's code of conduct. A great variety of cases come to mind involving practically all of the above criteria. During the past decade numerous rules were violated by key political representatives and that poses a serious question with regard to their political responsibility towards the public. These transgressions include: (1) suspensions from prominent societal institutions for disciplinary reasons; (2) convictions of kidnapping; (3) termination of cabinet duties; (4) convictions of corruption; (5) jail sentences; (6) spending government funds on soccer games, prayer days and plays; (7) convictions of rape; (8) fraudulent transactions involving the parliamentary medical aid scheme; (9) contempt of court charges; and (10) spending unauthorised government funds on overseas trips (*Beeld* 19 September 2003: 1; *Beeld* 21 October 2003: 4; *Beeld* 24 October 2003: 2; *Citizen*

1999: 2; Van Zilla 2000: page unknown). Whatever the legal viability of these cases, it is clear that the judicial system has expressed a commitment to a politically responsible system and that court cases in this regard have emerged as a central element of today's South African democratic public administration.

Today the quest for political responsibility in public service delivery is manifest to the greatest extent in "guarding the guardians." At the most fundamental level political representatives may be seen as the "guardians" of the public interest. More frequently, this is by *par excellence* the task of political representatives. At the heart of the system of political responsibility lies the fact that political representatives remain accountable to the citizenry. To this end, it is of fundamental importance that political representatives should avoid actions that clash with the democratic values of society as stipulated in the New Constitution. Democratic values are interpreted in a variety of ways in South African society, which makes the implementation thereof extremely problematic. What is more accurate is that political responsibility calls for political representatives to cling to a valid sense of right and wrong. It emphasises the fact that political representatives should show an active interest in the demands of society and be willing to make difficult decisions accordingly. At a very basic level, political responsibility requires respect for the rule of law and the dignity of ethics. Any assessment of the ethical character of political representatives must face the challenge of set ethical standards.

Closely related to the idea of political responsibility is the question of managerial responsiveness. Managerial responsiveness is fundamental to the reality of democratic public administration, because it deals with the implementation part of political policies. The concept of "managerial responsiveness" could almost be regarded as the second level of political

responsibility.

### **MANAGERIAL RESPONSIVENESS**

The third element of democratic public service delivery entails the concept of “managerial responsiveness.” In every democratic state citizens expect public servants to be responsive to their needs, requests and demands. Closer to the concept of democratic theory is the fact that the citizenry have the right to a proper response when something has been asked from government. The crux of the matter is that these requests should be treated as legitimate demands. However, it is evident that difficulties arise when citizens expect too much of the government and it is not capable of responding. On the one hand, it is clear that the requests and demands of the citizens may be infinite, whilst on the other hand, the laws and resources (for example, financial and human resources) of government are limited (Levine, Peters & Thompson 1990:189). The contemporary acknowledgment of managerial responsiveness means that the evaluation of programme outcomes is seen as a vital part of democratic public service delivery. The ultimate objective of this acknowledgement is to ensure that the public service should be more efficient and effective (O’Faircheallaigh, Wanna & Weller 1999: 193). The bottom-line of this viewpoint boils down to the fact that some or other form of assessment should exist to ensure that goals and objectives are established efficiently and effectively.

Historically the public service is associated with poor service delivery, inefficiency and low productivity. Although it is unfair to expect satisfactory results within a relatively short term (1994) the current government is not very responsive with regard to meeting the requests and demands of the citizenry. If the realisation of the objectives of transformation, which was one of the key objectives of the Government after 1994, is taken as a criterion for measurement, the responses are not satisfactory as far

as serving the public in an efficient and effective manner is concerned. The implementation of the White Paper on the Transformation of the Public Service of 1995 inevitably places the democratic role of the Government’s managerial responsiveness under the spotlight. More specifically, it focuses on how the newly set principles and objectives are to be realised. However, it is very important to bear in mind that when the performance of the South African public service is assessed, it would be advisable to consider its managerial and administrative nature as well as political history. Almost all the transformation efforts since 1994 are imbedded in this country’s past. The past reflects a brutal and authoritarian state with 11 separate and distinct systems of undemocratic public service based on race and ethnicity which caused tremendous backlogs in terms of service delivery (Thornhill 1994: 8-9). Against the background of this illogical (undemocratic) system of public service delivery the Government has responded with numerous managerial programmes in order to transform a scattered and disparate public service based on racist values. Central to these changes was the implementation of the White Paper on the Transformation of the Public Service of 1995. Despite the achievement of important milestones in the transformation process, transformation objectives have only been partially reached. Important achievements in the transformation process during the first few years since 1994 have included, amongst others, the following: (1) the rationalisation of the public service; (2) the formulation of new public service regulations; (3) actions by the state to create a policy and operational framework for combating public service corruption; and (4) increased broad representativeness in the public service (Report on the State of the Public Service November 2001: 9).

In spite of these successes common strategic errors were also made. Amongst these, three errors that attributed to the lack of managerial responsiveness in the transformation process have been of special

importance. The first is devolution of authority to departments despite the recognition of a lack of capacity. In some instances responsibility has been devolved and decentralised from central departments to executing departments without any attempt to build capacity and develop the underlying systems, procedures and coordinating mechanisms at various levels. Obviously this has led, in certain instances, to dysfunctional departments struggling with responsibilities they cannot fulfil. In addition, they were not able to develop themselves in technical and managerial terms. Secondly, there is a tendency to ignore basic auxiliary activities such as keeping proper updated records. Examples of such activities include, amongst others, a failure to: (1) maintain sound filing and administration systems; (2) ensure compliance with procedures in financial and human resource matters; and (3) ensure that staff are productively employed for the whole working day (Report on the State of the Public Service November 2001: 10). A third error is the "brain drain" that took place during the late nineties and robbed the public service of its best skilled workers (Hartley 1997: 2). The former Minister of Public Service and Administration, Dr Zola Skweyiya, already admitted in 1997 that the voluntary severance packages had failed. The Minister once said: "It is the best people who are leaving the public service and you are left with the people you would like to have retrenched." The former Auditor-General, Mr Henri Kluver, added to this short-sightedness of the Government when it was highlighted in the 1995 audit report: "It is clear that the quality of financial management and administration in many institutions has deteriorated." (Hartley 1997: 18.) But acknowledgment of a lack of managerial responsiveness is not limited to the above cases. In the executive summary of the Public Service Review Report (1999/2000: iii) it is stated that the following lessons have been learnt over the last period: (1) management as a factor in leading successful transformation initiatives has not been adequately recognised; (2) the demands brought about

by policy overload outstripped managerial capacity; and (3) the public service is generally caught up in crises management.

A fair question at this point is whether there is only a negative side to managerial responsiveness? The answer is simple, most definitely not. In one of President Mbeki's State of the Nation Speeches it was said that an unsolicited report indicated that for the year 2001 the President made 43 promises to the public. By 8 January 2002 - 11 months after the speech was made - 65% of these have either been achieved or are credibly in progress - 16% have not been achieved. On the surface, the above figures look positive and points to very good performance in the public service. However, one should not forget that these statistics are based on one report only.

From the viewpoint of a public manager, one should ask: What is really required to ensure managerial responsiveness in the public service? Certainly, the above examples indicate that the key to managerial responsiveness undoubtedly lies within a professionalised public service. Although the Government has already started with the implementation of a "Senior Management Service" to professionalise the senior management echelon there is still not a profession of public administration nor a "public service profession" (Senior Management Service 21 December 2001: 1). But what can be done to achieve this? There are many ways in which this promotion of professionalism can be constructed. One of the best ways to operationalise the various provisions of the Public Service Act 103 of 1994 as well as the Public Service Regulations of 2001 (Thornhill & Hanekom 1995: 206), is to for example, obediently apply the rules for entry and promotion purposes so that the "best candidate" will get the job. The best candidate refers to those officials who wish to make a contribution to the solution of social problems and promote the democratic values and ethical standards stated in the New Constitution. In

other words, those who are passionate about the concept of serving the public and who do not enter the field of public administration for material and financial rewards only (Denhardt 1995: 28). In addition, there is a code of conduct. The Public Service Commission, who is responsible for ensuring that the code of conduct is complied with, will have to take active steps to promote compliance. Other ways to promote professionalism in the public service are: (1) the creation of a positive attitude in officials; (2) continuous application of the merit system; and (3) active participation of officials in the activities of professional institutes (Thornhill & Hanekom 1995: 207).

## **CONCLUSION**

The democratic ideals addressed in this article are of course in part, if not entirely, a manifestation of the South African political culture (environment). Therefore, the author made an attempt to outline the conception of democracy in the South African constitutional context. The corollary is that developments since 1994 indicate that the New Constitution emphasises most of these democratic ideals. At the root of the new constitutional system one would find, amongst others, concepts such as constitutional accountability, political responsibility and managerial responsiveness. These concepts were critically analysed and, although there were highlights, it was found that the Government was to a large extent unsuccessful in the application thereof in the processes of broader public service delivery, and in some cases in the field of justice, crime prevention and security services.

First, the Government is putting different systems, processes, procedures and mechanisms in place in an attempt to develop an accountable constitutional system. Amongst these, four have been of special importance to help shape the South African idea of democratic constitutional accountability. These are as

follows: (1) acknowledgement of basic human rights; (2) creation of certain institutional mechanisms such as the Constitutional Court, the Public Protector and the Human Rights Commission; (3) establishment of a tripartite division of government authority (the legislature, the executive and the judiciary) which should be a basic feature of any democratic state; and (4) identification of specific values and principles (for example, development-focus, efficiency and effectiveness and good human resource management) governing public service delivery. Although the New Constitution is full of democratic ideals, and different values and principles, the reality indicates that the public service, and more specifically the justice, crime prevention and security field, was to a certain extent, not successful in its application thereof. It is clear that the constitutional framework makes demands on public servants in many ways. It demands that the public service be accountable to the New Constitution by upholding the fundamental rights, respecting the decisions taken in such institutions as the Constitutional Court, be continuously aware of the separation of powers, and by responding to the constitutional values and principles. The public service needs to begin to embrace these democratic ideals if democratic public service delivery is to survive.

But democracy is defined not only in terms of constitutional accountability. At the heart of the inquiry into public service delivery is whether political representatives are responsible (“responsive”) in their daily activities in public affairs. A brief attempt was made to place the activities of South African political representatives under the spotlight and it was found that in many cases political responsibility were eroded or side-lined. It was argued that issues such as nepotism, violation of rules and corruption at the order of the day. It is obvious that political representatives must be educated and sensitised to the values and principles of democratic public administration. More specifically, it requires that they become aware of the

principles of the rule of law and develop a sense of ethical dignity.

Another important pillar of democratic public service delivery is that of managerial responsiveness. Managerial responsiveness means that the public servant should be responsive to the needs, demands and requests of the citizenry. Given the complexity of the past of separate and distinct systems of undemocratic public service, managerial responses were based on rectifying the backlogs created by this. One contemporary managerial response that has received considerable attention is the White Paper on the Transformation of the Public Service of 1995. Although successes have been achieved with the implementation of the White Paper basic errors have also been made. The question, then, is not so much whether to transform the public service, but rather to professionalise it. Transforming the past is not enough. One must indeed act in a way that is consistent with what is right in terms of responsiveness. The suggestions made in this article are that the best candidate be appointed for the job, active steps be taken to ensure compliance with the code of conduct, a positive attitude be developed in officials, and that there should be a continuous application of the merit system and participation in professional institutes. One might indeed add that the public service can only be responsive if professional public administrators are employed in basically all the ranks.

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