ASSIGNMENT OF RESPONSIBILITIES TO THE SPHERES OF GOVERNMENT: TOWARDS A THEORETICAL BASE

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ABSTRACT

As required by constitutional principle XVI, government in South Africa is structured at national, provincial and local levels (subsequently redesignated "spheres"). The inference to be drawn from this requirement is that each sphere of government will be a worthy one, charged with responsibilities appropriate to that sphere. The article highlights the importance of the assignment of responsibilities in relation to the country's system of government and administration, before proceeding to a critical examination of the assignment scheme that is operative in South Africa at present. A theoretical model for the assignment of responsibilities to the spheres of government is presented, against the background of various shortcomings evinced by the present scheme, and in the light of wider research into the assignment question. The model making a contribution to a Public Administration approach incorporates a proposed technical language, a purpose-specific classification scheme, a number of principles which are assumed to be valid, and a particular methodology.

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INTRODUCTION

In the vast majority of states, more than one level or sphere of government has been found necessary for the performance of the multitudinous activities required for the satisfaction of community needs. The plurality of governments in a state has far-reaching implications for its system of government and administration. The key question which arises is how the responsibilities for the performance of public functions are, or perhaps should be, distributed among the various levels or spheres of government. Despite the obvious importance of the distribution or assignment of such responsibilities from both a political and an administrative perspective, there is a paucity of scientific knowledge concerning the phenomenon. In South Africa, the movement to a totally new constitutional dispensation in the recent past served *inter alia* to underline the fundamental importance of the assignment question. The present article looks at the assignment question from a Public Administration perspective and presents a possible theoretic approach to dealing with this matter.

TERMINOLOGY

Some key terms need to be elucidated briefly at this point; these are "public function", "levels or spheres of government", and "Public Administration".

Public function

Although various authors have defined the term "public function" (Cloete 1995: 33; Fox & Meyer 1995: 33; Botes *et al.* 1996: 297-302), in this article the following formal definition of the term "public function" is proposed: "A complex, logically inclusive composite of activities undertaken by one or more government departments, or other public institutions, and which is directed at the satisfaction of a particular need of the community, or part of the community". Colloquially stated, a public function is something which a government department or other form of public institution does, a programme it carries out, or a service it renders (Robson 2006: 69-72).

Levels or spheres of government

The Constitution of the Republic of South Africa, 1996 dispensed with the well-known term "levels of government" – with reference to the national, provincial and local governments – and replaced it with the term "spheres of government" (Robson 2006: 73-74). For purposes of discourse on the assignment of governmental responsibilities, these two terms are considered to be interchangeable.

Public Administration

The convention established in South African academic circles of spelling Public Administration with a capital "P" and a capital "A" when referring to the discipline or science based on the study of public institutions and their activities – *vide* for example Marais (1993:118-119); Wessels (1999: 365, 369); and Pauw (1999: 9) – is followed in the present article. There is therefore a particular reality or practice (public administration) and a science based on that reality or practice (Public Administration).

IMPORTANCE OF THE ASSIGNMENT QUESTION

The assignment of responsibilities to governments is important, in the first place, as it is tantamount to the distribution of executive and legislative authority within the state. Secondly, it sets in place a basic structure for representative government, with concomitant arrangements for the exercising of political power at or in the respective levels or spheres of government. The content and the limits of governmental authority, as well as the power relationships between governments at or in the various levels or spheres of government, are determined, thus providing clarity as to the legally permissible role of each government. In the process, the task of governing the country is divided up and the portions spread vertically and horizontally throughout the state. As the assignment of responsibilities is accompanied by the fixing of accountability, the

locus of accountability in respect of any particular public function can be determined, and the process of enforcing accountability facilitated.

The performance of public functions has a determining influence on public attitudes to government. Public acceptance and, ideally, public appreciation, of the structures and functioning of government will be enhanced to the extent that there is a general perception that political power has been effectively harnessed in the service of the community, and that the distribution of power among the various levels or spheres of government is sensible in terms of the kinds of needs to be satisfied at each level or in each sphere. An assignment scheme can affect, either positively or negatively, the general perception among members of the public at large of the relative closeness or remoteness, accessibility or inaccessibility, responsiveness or unresponsiveness of government.

The assignment of responsibilities to governments determines to a large extent the structures and processes of the country's public administration. The assignment decided upon provides the basis for the design of organisational structures at or in the various levels or spheres of government, and determines the need for and the nature of intergovernmental arrangements. In financial administration, the assignment scheme determines the size and shape of national, provincial and local budgets, and provides the basis for revenue sharing as well as auditing and the enforcement of accountability. In human resource management, the assignment of responsibilities determines the deployment of public servants throughout the country, as members of either a single public service or a plurality of public services.

The conclusion to be reached is that the assignment of responsibilities is of fundamental importance to a country, providing the *raison d'être* for the authorities instituted at or in the various levels or spheres, and giving direction and coherence to the manifold activities in the public domain of the state.

THE EMPIRICAL SITUATION

Exploratory research has been done into the assignment of responsibilities in a selection of other countries; these are Australia, Belgium, Germany, Spain and the United Kingdom (Australia Constitution; Blaustein & Flanz (eds) 1971, 1991; Rydon 1991: 63; the Belgian Constitution; Senelle 1990; the German Constitution; the Spanish Constitution; Scotland Act, 1998; Government of Wales Act, 1998). In all five countries, responsibility for the performance of the public functions concerning defence, foreign affairs and public finance is assigned to the highest level of government; as regards other public functions, there is no obvious uniformity evident as to the assignment of responsibilities to the various levels or spheres of government. The various assignment schemes are focused generally on the national level of government and the level immediately below the national level. Constitutional provisions concerning local government are sparse, with local government being regulated essentially by laws enacted by higher levels of government. Taxonomically viewed, the treatment of the assignment of responsibilities is generally poor. Matters for which various governments are responsible are listed without categorisation and in no particular order; the language used in referring to matters lacks precision and consistency; references are mostly to *subjects* (for example, "education") rather than to *public functions* (for example "the provision of education"); and there is little sign of an effort to deal systematically with the reality that many public functions are deployed over more than one level or sphere of government (Robson 2006: 93-123). An outstanding feature of the various assignment schemes is that of complexity, with the resultant problem of accessibility encountered by anyone wishing to know what each level or sphere of government is actually responsible for. The general conclusion reached from the research was that none of the countries studied have achieved a clear, comprehensive formal demarcation of governmental responsibilities.

Concerning the assignment scheme that is operative in South Africa at present, the die was largely cast by the 1993 Constitution, but with a significant degree

of elaboration in the 1996 (present) Constitution. To be of force and effect the text of the latter Constitution had to be certified by the Constitutional Court as complying with a set of constitutional principles incorporated in the earlier constitution as its schedule 4 (1993 Constitution: section 71); this the Court did at the second time of asking (CC 1996a, 1996b). Of the thirty-four constitutional principles adopted, eleven have a bearing on the assignment of responsibilities (these numbers are I, VI, XVI, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV and XXXIV). However, on examination it will be found that the principles are not formulated as principles *per se*; the set of statements could be described more accurately as a set of specifications to be complied with in drafting a constitution. Nevertheless, a number of actual principles are to be discerned in the formulations; these are the principle of national unity, the principle of economic unity, the principle of equality, the principle of provincial autonomy, the principle of co-operation, and the principle of cultural self-determination (Robson 2006: 174-179).

Moving on to the assignment scheme as such, Parliament has the authority to make laws concerning any matter, subject to certain provisos as stipulated in the Constitution (1996 Constitution: section 44). The Constitution devotes a chapter (chapter 11) to the public functions of defence, police, and national intelligence, which are referred to as "security services". The defence function and the national intelligence function are established clearly by the Constitution as the responsibility of the national government (sections 200-204, 209-210). The Constitution goes into some detail regarding the respective responsibilities of the national and the provincial spheres of government in relation to the policing function (sections 205-208); however, on analysis, it is apparent from the research (Robson 2006: 250-253) that the basic responsibility for policing is vested in the national government, with the provinces cast essentially in an oversight role.

As far as the provincial sphere of government generally is concerned, the Constitution assigns to provincial legislatures both a *concurrent* competence

(with Parliament) in respect of stipulated functional areas and local government matters, and an *exclusive* competence in respect of certain other functional areas and local government matters (section 104(1)(b)). The scope of the concurrent category (thirty-three functional areas plus certain local government matters) is substantially wider than that of the exclusive category (twelve functional areas plus certain local government matters) (*vide* schedules 4 and 5 of the Constitution).

The utilisation of the concurrent powers mechanism raises the obvious question of legislative prevalence: Should Parliament and a provincial legislature make a law in regard to the same matter, whose law will prevail, and in what circumstances will it prevail? The Constitution answers this question by stipulating that national legislation will prevail if any of a number of conditions should obtain (section 146(2)), or if the national legislation is aimed at preventing unreasonable action by a province (section 146(3)). In professional parlance, the barriers to provincial legislative competence inherent in the provisions of sections 146(2) and (3) have come to be known as the "national overrides". The reach of the national overrides is noticeably wide, as is evident from the umbrella stipulation that national legislation will prevail if it deals with a matter that cannot be "regulated effectively" by the provinces. The functioning of the concurrent powers mechanism may be such as to inhibit the provinces in the exercising of their powers (*vide* Pottie 2001 and Murray 2001: 68-69).

As regards the *exclusive* legislative competence of the provinces, the competence given is not absolute, but conditional. Parliament may intervene in regard to a functional area or local government matter in the exclusive category when it is necessary in order to maintain national security, to maintain economic unity, to maintain essential national standards, to establish minimum standards required for the rendering of services, or to prevent unreasonable action taken by a province which is prejudicial to the interests of another province or of the country as a whole (1996 Constitution: section 44(2)).

Concerning the involvement of the national and provincial governments in the affairs of local governments, such involvement is limited to the extent set out in section 155(6)(a) and (7) of the Constitution. Section 155(6)(a) obligates a provincial government to provide for the monitoring and support of local government in the province "by legislative or other measures". Section 155(7) involves the national government as well, and, employing somewhat vague and convoluted language, stipulates that the national and provincial governments "...have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in schedules 4 and 5, by regulating the exercising by municipalities of their executive authority... ".

One may be forgiven for asking, what does all this mean in practical (public administration) terms?

The Constitution differs markedly from its precursors in providing lists of all matters which typically are or should be the responsibility of municipalities. The legislative and executive powers of local government are dealt with in a single section of the Constitution (section 156). Section 156(1) stipulates that a municipality has executive authority in respect of, and the right to administer, the listed local government matters referred to *supra*, as well as any other matters assigned to it in terms of national or provincial legislation. Only in the following section (section 156(2)) does the Constitution address the legislative authority of local governments by stipulating that a municipality may make and administer bylaws for the effective administration of the matters which it has "the right to administer".

The distribution of legislative authority between the spheres of government constitutes only part of the assignment scheme, albeit a fundamental part. Extensive provision is made in the Constitution for a "higher" sphere of government to assign or delegate some of its powers to a "lower" sphere. These provisions cover both legislative and executive powers (*vide* for example

sections 44(1)(a)(iii), 104(1)(c), 99 and 126). To obtain an accurate picture of the substance of the responsibilities of the respective spheres of government, one would have to embark on detailed research into the assignments and delegations operative at a specific point in time. The basic question to be answered remains, who does what? – And the answer is not readily apparent.

In evaluating the assignment scheme, it is insightful to look first at certain conceptual and technical aspects.

Conceptually, a functional area – as employed in the Constitution in relation to the area of concurrent powers – is not a *function*, and specifically not a *public function*. A public function, as defined *supra*, is essentially an action, or an activity, or a set of activities aimed at the satisfaction of a community need – it is something which is *done*. One cannot "do" agriculture, or the environment, or health services, or housing – which are all listed as functional areas in schedule 4 of the Constitution. In public administration one could, for example, *promote* agriculture or *render* health services, and assign such activities as a responsibility to be discharged by one or more public institutions. By contrast, a functional area as treated in the Constitution has the appearance of a *subject*. A subject – to follow the Concise Oxford Dictionary – is something which can be discussed or described or represented, or which could be treated or dealt with, but not something which can be *done*. Use of the term "functional area" therefore tends to obfuscate rather than to provide clarity as to the respective responsibilities of the three spheres of government. One serious consequence is that the reality that many of the major public functions – like those mentioned above – cannot be performed effectively by a single sphere of government, but required the involvement of all three spheres, remains veiled when it should be apparent. At a technical level, a major shortcoming has already been alluded to, *viz* a listing of functional areas coupled to a mechanism of concurrent powers provides no clarity as to the public functions or aspects of public functions which the national and provincial legislatures can legislate about. Some of the functional areas listed in schedules 4 and 5 of the Constitution are qualified by

limitations of exclusion, subjection and restriction, while others are not qualified in any way, when conceivably they should carry some form of qualification. The use of the prefixes "provincial" and "municipal" in referring to some – but not all – functional areas and matters entrusted to the provinces and municipalities, as listed in schedule 5 of the Constitution, is technically puzzling and would appear to be unnecessary.

The Constitution provides a measure of legal certainty as to the powers and functions of the key role-players in government, and its provisions would seem to be amenable to legal interpretation should any dispute arise in the particular area. Conceptually and technically, however, all this comes at the price of a high level of complexity. To ascertain what the Constitution has to say about public functions requires a concerted effort; the provisions in question are neither readily accessible nor easily comprehensible.

As regards the realisation of assignment principles (*vide supra*), the Constitution presents a generally satisfactory picture, although some caveats need to be raised. Evidently, the principle of national unity, the principle of economic unity and the principle of equality have been fully realised (Robson 2006:209-10). The principle of provincial autonomy has been realised in the Constitution only to a limited extent. By its very nature, autonomy cannot be found in the mechanism of concurrent powers. Then again, as regards exclusive powers, it has been pointed out above that in this instance, exclusivity is a relative concept; the fact of the matter is that the national government can intervene in the "exclusive" category, albeit only to achieve a specified objective related to the national interest. The principle of co-operation is fully realised in the Constitution, indeed it could be said to be a cornerstone of the Constitution. Essentially, the Constitution requires the spheres of government to respect one another's powers, not to assume powers and functions and, in the exercise of their powers and the performance of their functions, not to encroach on one another's geographical, functional or institutional integrity. They are required to co-operate with one another and to strive to avoid legal proceedings against

one another (Constitution: section 41). While these are worthy sentiments, the opinion can be ventured that co-operative government ought not to be seen as a means of remedying inherent defects and shortcomings in the assignment scheme. The principle of cultural self-determination was already embodied in the 1993 Constitution, although not initially and in a token manner, with the provision for a Volkstaat Council (1993 Constitution: chapter 11A). The present Constitution, under a heading "Self-determination", holds out the possibility of cultural self-determination not only to the proponents of a Volkstaat, but to any community sharing a common cultural and language heritage (section 235). The recognition given to the principle is still passive and conditional; cultural self-determination is clearly not a cornerstone of the country's constitutional arrangements (Robson 2006: 259-61).

Moving on to the substance of the responsibilities assigned to the spheres of government, it needs to be stated at the outset that it is a well-nigh impossible task to obtain a complete and accurate picture in this respect. The reasons for this unsatisfactory state of affairs are examined below.

The centrepiece of the assignment of responsibilities to the national and provincial spheres of government is the mechanism of concurrent powers, a mechanism which has been found to be highly problematic by various authors – *vide* De Villiers (1996: 6-7, 9, 37), Levy and Tapscott (2001: 2, 6), Laufer (1991: 91-94), Pottie (2001) and Murray (2001: 68-69). The wide scope of the national overrides applicable to concurrent powers, which has the effect of masking the actual extent of the provinces' legislative powers, has already been pointed out *supra*. The key question to be answered is: Do the constitutional provisions regarding concurrent legislative powers provide sufficient clarity as to the public function responsibilities to be discharged by the national and provincial governments respectively? From a public administration point of view the answer is "No". As far as exclusive provincial powers are concerned, it has already been pointed out that these powers are conditional; the scope for Parliament to intervene is notably wide. It is possible that because of this, the

provinces, as in the case of concurrent powers (*vide supra*), may be inhibited in the exercising of their legislative powers in the exclusive powers category. Again, as in the case of concurrent powers, it is not possible to ascertain unambiguously on a reading of the Constitution what in practical (public administration) terms the provinces may or may not do in relation to functional areas in the exclusive category. Extending the search for substance to the local sphere of government, the subordinate status of local government is immediately apparent. The emphasis of the Constitution is on the *administration* of matters by the municipalities, with the making of bylaws a clearly supplementary responsibility (*vide* section 156 of the Constitution). It is certainly municipal executive rather than legislative activity which is the focus of the supporting and oversight roles to be performed by the national and provincial governments respectively in terms of section 155(6)(a) and (7) of the Constitution (*vide supra*). In the light of the situation as sketched, the general conclusion that the essential purpose of local government is to provide services in line with national or provincial legislation, is inescapable. If the true measure of substance in relation to the assigned responsibilities of a sphere of government is the extent of its own (original) legislative authority, the municipalities have received a noticeably meagre serving.

In summary, the Constitution employs a number of basic mechanisms for ordering the responsibilities of the spheres of government, *viz* concurrent powers for the national and the provincial spheres, qualified exclusive powers for the provincial sphere, regulatory oversight by the national and provincial spheres over the local government sphere, and utilisation of the local sphere in an essentially administrative role. In addition, and in line with the principle of co-operative government, ample provision is made for the assignment and delegation of responsibilities between the spheres of government. The resultant substance of each sphere's responsibilities is a function of the interaction of these mechanisms. However, while particular mechanisms can be examined, described and evaluated, it is not possible, without embarking on a great deal of detailed research, to obtain a reasonably accurate picture of the actual

substance of the responsibilities which each sphere of government is called upon to discharge. The Constitution does not of itself provide a credible and clear-cut deployment of responsibilities over the three spheres of government. In general it can be said that the primary power of the state, *viz* the power to direct and oversee the functioning of society by the making of laws, is located predominantly with the national government, while the legislative roles to be fulfilled by the sub national spheres of government are essentially supplementary ones. As far as the exercising of executive authority is concerned, the constitutional provision for the deployment of responsibilities for the rendering of services and the carrying out of programmes seems to be such as to ensure that all three spheres are involved in a substantial manner.

AN ASSIGNMENT SCIENCE?

Given the importance of the assignment question (*vide supra*), one may well ask, To what extent is a scientific approach to the question in evidence? Following Mouton (1996: 9-11) and Wessels (1999: 365 and 377), the following set of basic criteria may be used to constitute a scientific approach (Robson 2006: 292-8):

- Viewed generally, is there a distinct body of knowledge, characterised by components such as own concepts, typologies, explanatory theories, models, and paradigms in existence, and is there a group of people that possesses this knowledge and is contributing to its increase?

- Has the object of study, public functions, been clearly identified and defined?

- Is there an established conceptual framework or standardised terminology, properly defined, which can facilitate discourse on the assignment question?

Are there established typologies or classifications of public functions aimed specifically at the assignment of responsibilities to levels or spheres of government for their performance?

Is there a discernible paradigm which applies specifically to the study of public functions, or aspects of public functions, as assigned to levels or spheres of government as their responsibility?

Given that true scientific endeavour consists not only in the observation, description and classification of phenomena, but also in a concerted effort to *understand* phenomena, what propositions of an explanatory nature have been, or can be, put forward concerning the assignment of responsibilities, whether in the form of postulates or principles, models, hypotheses or other forms of theory?

An assessment has been done of the literature with a bearing on the study which includes post-graduate dissertations and theses presented at South African universities, the published reports of research institutes and other bodies which have produced research reports, books and journal articles in Public Administration and Constitutional Law (Robson 2006: 26-56), by means of the abovementioned criteria. This assessment has shown that a scientific approach to the assignment question is in evidence only to a limited degree. A distinct, dedicated body of knowledge is not apparent; the particular phenomenon is under-researched; expertise concerning the matter is not readily available; work remains to be done concerning the identification and definition of key concepts; a conceptual framework and standardised terminology to facilitate discourse is not readily to hand; an accountable classification of public functions is not in existence; a particular paradigm for the study of the assignment phenomenon has not become established; and little by way of explanatory theory has been put forward. However, the research (Robson 2006: 299-304) has revealed the presence of a number of principles

which would appear to underlie the assignment of public function responsibilities.

PROPOSED THEORETIC MODEL

Following a Public Administration approach, a theoretic model for the assignment of responsibilities to the spheres of government seeks to delineate an accountable basis on which responsibilities for the performance of public functions can be assigned to sub-national governments. The main features of the model are encapsulated below.

Assumptions

- For purposes of the modelling exercise, four basic assumptions are made, *viz* that while guaranteeing freedom of religion, the state is essentially secular;

- that the state is organised on a geographic basis, with sub-national governments focused on provinces and, within provinces, on municipalities;

- that all subnational governments are viable, that is to say that they are capable in terms of human and material resources of discharging satisfactorily the responsibilities entrusted to them; and (d) that the assignment of responsibilities and the functioning of the executive must have a statutory foundation.

A Public Administration approach

The proposed model evinces a Public Administration approach (Robson 2006: 309-316) to the assignment question and it is necessary to examine briefly what such an approach entails. Firstly, there has to be adherence to certain value-based guidelines generally recognised within the discipline (for example Cloete

(1994: 63-88) and Botes *et al.* (1996: part III; chapter 5). Three of these guidelines are particularly appropriate, *viz* those regarding political supremacy; democratic requirements; and economy, effectiveness and efficiency.

Secondly, it is necessary to postulate a particular Public Administration view on the relationship between community needs, public functions, and government. Community needs can be ordered into three major groups, *viz* the need for safety and security, the need for order in societal living, and the need for an existence which is commensurate with human dignity. It follows, then, that there are three major groups of public functions to be performed by government, *viz* those focused on protection, those focused on regulation (of societal living), and those focused on the promotion of socio-economic development respectively. By extension, it can be postulated that the purpose of the state is to ensure for its people 'an existence that is safe, orderly, and commensurate with human dignity. The hypothesis can be advanced that all three spheres of government serve essentially the same purpose or, stated more accurately, are jointly and severally involved in the realisation of the all-encompassing national purpose, *viz* to ensure for the inhabitants of the country an existence which is safe, orderly, and commensurate with human dignity. Obviously the three spheres don't – or shouldn't – all do the same things, but there is no denying that all three are involved in one way or another in providing protection, maintaining order, and promoting an existence commensurate with human dignity. The key question to be asked is not which sphere should be responsible for a particular public function, but rather *to what extent each sphere should be involved in the performance of a public function.* There is evidently no easy answer to this question or a simple "one size fits all" approach which can be applied. Each public function would seem to require careful analysis if an accountable deployment of responsibility for its performance is to be achieved.

Finally, the application of a Public Administration approach to the assignment question entails that the formalisation in law of the responsibilities of the respective spheres of government should be readily accessible. As pointed out

supra, the present Constitution falls short in this respect, tending to obfuscate rather than clarify the roles of the three spheres of government in the performance of public functions.

Language

The study of assignment schemes in South Africa and other countries has shown throughout that one of the major shortcomings of such schemes is the confusing, inconsistent and generally poor use of language in setting out the public function responsibilities of levels or spheres of government. The proposed model requires its own, dedicated language if it is to be applied effectively and accountably. There are two aspects to the language requirement, *viz* the building of a purpose-specific conceptual framework, and the employment in a consistent manner of what can be referred to as "public function language". As regards the first aspect, it is proposed (Robson 2006:318-9) that a basic conceptual framework be constructed consisting of the concepts "public function", "assignment", "responsibility", "levels or spheres of government", "government", "activity", "subsidiary", "control" and "co-ordination". The conceptual framework is an initial one and can be expanded as necessary.

Moving on to the notion of a "public function language", the claim can be made that such a language will improve communication about public functions substantially. Precision and consistency in language usage can facilitate meaningful deliberation of assignment questions, and enhance the acceptability and accountability of the decisions taken.

The main features of the envisaged "public function language" (Robson 2006: 321-323) are as follows:

- Public functions are to be described consistently in terms of an activity or composite of activities (e.g. "the provision of education") and not in terms of a nominal subject (e.g. "education").

- In setting out public function responsibilities, qualifying phrases are to be avoided.

- The formal description of a public function, or aspect of a public function, should consist of a single, concise sentence; should capture as fully as possible all the underlying activities of the public function; should include in its envelope of meaning only those activities which make up the public function, excluding activities which belong to another public function; and should be worded so that the average, educated, adult person will readily understand on reading the description what the public function entails.

Classification of public functions

What is required – bearing in mind that many public functions frequently necessitate the involvement of more than one tier of government for their effective performance – is a classification of the activities which make up a public function into logically differentiated packages of activities which, where necessary, could be allocated to different tiers of government. Such a classification would be purpose-specific, but that is what classifications are intended to be (Copi & Cohen 1990: 450).

Building on work done by the then Commission for Administration in 1993 (CFA 1993a, 1993b), the theoretic model includes a fivefold classification of activities making up a public function, *viz* the rendering of a service, the putting in place of legislation to authorise and direct the service, the co-ordination of the actions of the role-players involved in the rendering of the service, control over their actions, and any other activities relating to the service which do not fall within the first four classes of activities. The five classes can be designated as "service delivery", "legislation", "co-ordination", "control", and "other activities". The five classes of activities are differentiated according to the generic sequence of public accountability. It is an assumption of this article that before any service can be rendered, legislation must be put in place authorising and specifying the service; where necessary the rendering of the service must be co-ordinated;

and to ensure compliance with legislative enactments, the rendering of the service must be controlled. A classification scheme as proposed (Robson 2006: 325-327) can be regarded as rooted in the science of Public Administration, and would appear to be compatible with both the legislative and executive arms of government.

Principles to be applied in assigning responsibilities

The principle of subsidiary has an obvious relevance and utility when decisions regarding the assignment of responsibilities to levels or spheres of government have to be taken. The principle can be defined as follows: "Higher levels of government should perform only those functions which lower level governments cannot perform equally well or better" (Robson 2006: 319, after Laufer 1991: 262). However, there are also other principles, already referred to *supra*, which need to be brought into the reckoning if an accountable deployment of responsibilities is to be achieved.

Where a public function, or aspect of a public function, has a direct and substantial bearing on the maintenance of national unity, its performance should be assigned to the national government (principle of national unity). If a matter has an impact on the economy, the principle of economic unity needs to be applied. However, a cautionary note needs to be sounded here: Even where there is a convincing argument in favour of placing a responsibility with the national government, there may still be a role to be played at a lower level. The principle of equality is tied directly to the Bill of Rights (Constitution: Chapter 2) and its application implies that individual members of the community should be treated equally, at least in so far as the involvement of the state in their lives is concerned. The principle may point to the national government taking the lead in policy-making and legislation, but not necessarily in service delivery, which could be devolved to lower levels of government. The principle of co-operation recognises the reality that public function responsibilities cannot always be assigned with complete precision, and that the spheres of government need to work together where necessary in order to promote the greater good. Almost

inevitably, the principle of provincial autonomy will come into the reckoning. The key question is not whether there should be sub national autonomy, but rather in which areas and to what degree sub national autonomy will be workable and generally acceptable. Ultimately, a decision needs to be taken within the political domain; however, such a decision would be facilitated if it were founded on the results of thorough, theoretically-based analyses.

Methodology

The methodology to be employed should be in harmony with the proposed public administration approach; should employ the special language considered necessary for dealing effectively with the assignment question; should incorporate the purpose-specific classification scheme which is proposed; and should accord due recognition to the assignment principles which have been identified. The main points of such an appropriate methodology (Robson 2006: 333-343) are summarised below:

- **Identification:** The public functions at issue are those which are focused on the satisfaction of community needs. Enabling and controlling activities such as the compilation and control of budgets, auditing, human resource management, and the supply of office and other accommodation are excluded.

- **Knowledge acquisition:** A public function is invariably vastly more complicated than may be suggested by its distinguishing name, such as "health" or "welfare". To understand a public function, requires thorough study by analysts with the training and experience to be able to embark on studies of that particular nature.

- **"Bottom to top" approach:** Constitutional principle XVI is the shortest of the constitutional principles; it states simply that "government shall be structured at national, provincial, and local levels". The inference to be drawn is that not only the national government but also the provincial and

local governments should be *worthy* governments, democratically elected and accountable, and with substantial powers to exercise and functions to perform. The best way to ensure that full and proper attention is paid to each sphere of government is to look first at the local, then at the provincial and, finally, at the national sphere of government. Such an approach resonates well with the subsidiary principle (*vide supra*).

- **Analysis of public functions:** The analysis directed at the deployment of public function responsibilities should be done in two steps. As a first step the existing situation should be established through empirical study, with the data concerning the activities of service delivery, legislation, co-ordination and control sorted accurately according to the nature of the activity. The picture of a public function obtained in this way, should be validated with experienced practitioners. In the second step, a proposal needs to be developed regarding the manner in which responsibilities for the performance of the public function ought to be assigned. This will include in the main the identification and definition of the services encompassed by the public function, careful consideration of the sphere of government where responsibility for a service should be placed, followed by consideration of the optimal placement of activities regarding the generation of legislation, co-ordination, and control associated with the rendering of an identified service. A draft proposal should be submitted to officials with a sound knowledge of the public function, and finalised with due regard to any comments or suggestions received.

- **Formalisation of responsibilities:** Because of the fundamental (constitutional) importance of the matter, the public function responsibilities assigned to the three spheres of government should be incorporated in the Constitution. This could best be done by means of an annexure (schedule) to the Constitution, setting out the responsibilities – in public function language – of the sub national governments, to which the provisions in the main text governing legislative and executive powers could be linked. The

responsibilities of the national government need not be captured in the schedule, as these could be read into the residuary powers of Parliament.

A comment on co-operative government would seem to be apposite at this juncture. The need for co-operative government will not lapse because the assignment question is dealt with in a more scientific manner, nor will the principle of co-operative government be invalidated. No assignment scheme based on the diverse activities of a multitude of public institutions can be expected to achieve a deployment of responsibilities which will be precise and complete in every respect; grey areas will remain. However, it can be argued that a concerted endeavour to limit as far as possible the areas of uncertainty regarding the responsibilities of the respective spheres of government will contribute substantially to the strengthening of co-operative government.

CONCLUSION

Public Administration as a science, based essentially on the activities of public institutions, in other words on what they are given to do, has a fundamental interest in the assignment of public function responsibilities. "Fundamental interest" is here understood to be an epistemic (scientific knowledge-building) interest. The research into the assignment question (*vide* Robson 2006) has revealed that a scientific approach to the question is in evidence to a limited extent. A number of relevant principles have been identified, which, taken and applied together, could be said to provide an emerging principled base for dealing with the assignment of responsibilities. However, the scope for theory-building in the particular field is substantial.

A question to be addressed is whether a theoretic model as proposed can be applied in a thoroughgoing, formal redetermination of the public function responsibilities of South Africa's three spheres of government. Such a redetermination would entail an amendment of the Constitution, and a substantial one at that. The amendment of the Constitution would have to be

preceded by the development of assignment proposals based on an analysis of the full spectrum of public functions. The sheer size and complexity of the task may militate against its ever being undertaken, although this would be the best way of remedying present defects and shortcomings in the assignment scheme. However, there is another – even if sub-optimal – way of proceeding. An analysis as envisaged in the theoretic model could be done of any public function at any time. The exercise would undoubtedly contribute to a better understanding of the function and how its performance could best be deployed over the spheres of government. Nothing would be lost and much is to be gained by such an endeavour. It is also possible to implement real, substantial change without necessarily amending the Constitution. This could be done by utilising the flexibility built into the Constitution, regarding the exercising of both legislative and executive powers by the national and provincial spheres of government, to which reference has been made in this article. However, it needs to be observed that without a thoroughgoing amendment of the Constitution the problems concerning complexity, poor accessibility, and substance – so much an unsatisfactory feature of the deployment of public function responsibilities in the present Constitution – will remain.

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