

THE NEW SOUTH AFRICAN PARLIAMENT: AN EVALUATION OF PARLIAMENT'S OVERSIGHT FUNCTION OF THE EXECUTIVE

BY TORILL MONSTAD

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LIST OF ABBREVIATIONS

ACDP	African Christian Democratic Party
ANC	African National Congress
Codesa	Convention for a Democratic South Africa
Cosatu	Congress of South African Trade Unions
DP	Democratic Party
FF	Freedom Front
GNU	Government of National Unity
IDASA	Institute for Democracy in South Africa
IFP	Inkatha Freedom Party
MP	Member of Parliament
NA	National Assembly
NCOP	National Council of Provinces
NNP	New National Party
NP	National Party
PAC	Pan Africanist Congress
PMG	Parliamentary Monitoring Group
PQ	Parliamentary Question
SACP	South African Communist Party

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ABSTRACT

The aim of this study is to evaluate how the new and democratically elected South African Parliament as an institution has been able to hold the executive accountable for their activities. Accountability of the rulers has been identified as a central element in democratic government. In representative democracies there are two major models of government: presidential and parliamentary government. These two models have different methods for dealing with the issue of legislative oversight. Literature shows that this function is more effective in presidential systems than in parliamentary systems, since the presidential model provides a stronger constitutional framework for legislative oversight. The model that can be used to analyse South Africa is closely linked to the parliamentary model. However, the role of the President, the sovereign Constitution, and the anti-defection clause makes South Africa more of a hybrid-parliamentary model. As South Africa can be linked to the parliamentary model, this implies that Parliament will not be able to hold the executive effectively accountable. There are other non-constitutional factors that have an impact on Parliament's oversight function. In South Africa, the non-constitutional factors that have been in place in these five first years of democracy enhance the consequences of the parliamentary model. This means that these factors add to the existing provisions for ineffective accountability of the executive by Parliament. These are the large majority of the ANC, the strict internal discipline of the ANC, the weak opposition in Parliament, the lack of resources and staff in Parliament, and the lack of capacity, experience and expertise by the MP's. As the example of Sarafina 2 shows, these factors, and especially the large majority of the ANC in Parliament, add to the inability of the new South African Parliament to effectively hold the executive accountable.

1.0 INTRODUCTION

1.0.1 Introduction

The purpose of the first section is to develop a background for the topic of this dissertation. South Africa's apartheid past will briefly be identified, there will be a description of how the new democracy was created, including how the interim Constitution and the final Constitution were negotiated. I will establish why it is important to conduct this study at this point in time. In the next part the topic and focus of this dissertation will be stated. The next part of this section gives an outline of the contents of the different chapters of this study. The last section is devoted to methodology. Under this section there will also be a brief outline of limitations in this study.

1.1 SIGNIFICANCE OF THE STUDY

1.1.1 Background

Between 1948 and 1989, the National Party (NP) won every election in South Africa. The NP, or the New National Party (NNP) as it has been called since the end of 1998, introduced several policies that are good empirical examples of a “divide and rule” strategy. These policies and this party produced the well-known concept of apartheid. Apartheid was based on racial and ethnic classifications and divisions of people, and favoured, advanced and justified white people’s economic, cultural and social interests. “Apartheid was a new term but an old idea. It literally means ‘apartness,’ and it represented the codification in one oppressive system of all the laws and regulations that had kept Africans [and others] in an inferior position to whites for centuries.”¹ Apartheid can be classified as a product of an authoritarian regime, that banned, jailed, tortured and killed its opponents.

Exactly when the transition to democracy started in South Africa is difficult to pinpoint. However, the unbanning of the African National Congress (ANC) and other liberation movements in President F.W. de Klerk’ opening speech in Parliament

¹ Mandela, N. Long Walk to Freedom: The Autobiography of Nelson Mandela. London: Little, Brown Braafontein. 1994. p 127.

February 2nd 1990, and the release of jailed freedom fighters like Nelson Mandela can be said to be the beginning of the formal transition to democracy.

“The formalised constitutional process started with ‘talks about talks’ in May 1990. A year and a half later, in December 1991, the first formal negotiations started at the World Trade Centre, Kempton Park, outside Johannesburg. This was the first session of Codesa.”² The purpose of the Convention for a Democratic South Africa (Codesa), was to negotiate an interim Constitution, and thereby to lay the foundation for the move towards a new and democratic South Africa. The interim Constitution was adopted on November 18th 1993. “The interim Constitution of 1993 stands as a major landmark in the South African constitution-making process. It is the ‘truce’ that ended the first round of the battle for a democratic constitution in South Africa, by enabling the transition from apartheid rule in the April 1994 elections.”³ The whole world watched as the first democratic elections were held in South Africa on April 27th 1994. The negotiations for a final Constitution started after the elections in 1994. It took place in the Constitutional Assembly, where democratically elected Members of Parliament from all parties in both chambers of Parliament took part in the negotiations. Public participation in this process was also encouraged. The final Constitution was adopted on May 8th 1996, and finally certified on December 4th 1996. The new South Africa is, on paper, a liberal democracy with a sovereign Constitution. It has now been five years since the first elections. I think it is important to analyse the practical experiences with democracy in South Africa, hence, how democracy has functioned so far in South Africa. An examination of this new democracy can also give an indication as to how democracy will develop in South Africa. An important aspect of such an analysis is accountability, which is the topic of this study.

1.1.2 Finding a focus

“South Africa during the apartheid era, provided an environment which was structurally conducive to corruption where systems and habits shrouded in secrecy resulted in a lack of transparency and accountability advantageous to criminality.”⁴ It is widely accepted that during the former regime a culture of maladministration, secrecy

² Gloppen, S. *The Battle over the Constitution*. Ashgate Dartmouth: Aldershot. 1997. p 201.

³ Ibid. p 199.

⁴ Camerer, L. *Derailing the Gravy Train: Controlling Corruption in South Africa*. Pretoria: Institute

and corruption developed in the public sector. Many examples in the new democratic South Africa, for example in Mpumalanga, have shown that corruption, maladministration, abuse of power and irresponsible government is still present to a large extent in this country. These are elements that are not desired ingredients of any democracy.⁵ One mechanism to counter abuse of power, corruption, mismanagement and secrecy is holding the rulers accountable for their activities. This is an essential component of democracy, and this aspect of democracy has been acknowledged to be important in both the interim and final Constitution. There are several ways in which the rulers constitutionally can be held accountable in the new South Africa. The Bill of Rights provides the people with broad rights against abuse of state power. Chapter 9 of the final Constitution provides for several state institutions that are created to strengthen constitutional democracy and accountability of the rulers in this new democracy. These are the Public Protector, the Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious, and Linguistic Communities, the Commission for Gender Equality, the Auditor-General, and the Electoral Commission. The Constitutional Court is the highest court in all constitutional matters, and makes the final decision on constitutional matters. This makes this Court a powerful factor in holding the rulers accountable for their activities. The media, civil society and a critical public also play a role in disclosing and refusing to accept corruption, maladministration and abuse of power in the public sector.

1.1.3 The South African Parliament's oversight function of the executive

Accountability of the rulers is a very broad topic to examine, and due to space and time limitations it has been necessary to narrow the focus of this thesis. One of the new South African Parliament's roles and functions is to hold the executive branch of government accountable. This is explicitly stated in Chapter 4 and 5 of the final Constitution. It is this oversight function that is the focus of this dissertation. Various institutions fall under Parliament. The state institutions in Chapter 9 of the final Constitution are all accountable to Parliament, or rather the National Assembly. Parliament as an institution with its committees and the institutions described in

for Security Studies. 1997. p 9.

⁵ Ibid. See also other articles by L. Camerer; Governance and Corruption: An Agenda for Change. op cit; Poverty and Corruption in South Africa: Government Corruption in Poverty Alleviation

Chapter 9 perform an oversight function of the executive branch of government. Due to lack of time and space it has been necessary to exclude the institutions in Chapter 9 from this study and focus on Parliament's ability to hold the executive accountable as an institution in itself.

The reason why Parliament is the focus of this dissertation is because it is the constitutional body which represents the citizens of South Africa.⁶ It is the "institutional centrepiece of [this] new democracy."⁷ The new Parliament is also an interesting institution to study seeing that it "has been transformed from a part-time, cynical rubber-stamp into a full-time, vibrant place of work."⁸

The aim of this study is to evaluate how Parliament as an institution has been able to hold the executive accountable in this new democracy. There are two major models of democratic government, and these have different methods for dealing with the issue of legislative oversight. An examination will be conducted as to what model is most applicable for describing the South African case. The design of the political system in place in South Africa has an impact on how Parliament is able to hold the executive accountable. In addition to this, there are also other non- or extra-constitutional factors that influence Parliament's ability to hold the executive accountable. The example of Sarafina 2 will show how the design of the political system and these factors have impacted on the new South African Parliament's oversight function of the executive.

1.2 OUTLINE OF STRUCTURE

1.2.1 Second chapter

In the theoretical framework section, the concept of democracy will briefly be described. The section will describe how a balance of power and separation of government authority into different branches are essential parts of democracy. Accountability is an important ingredient of democracy and the concept of

Programmes. op cit.

⁶ Committees Key to Democracy. Parliamentary Whip. March 22nd 1996.

⁷ Calland, R. and L. Nijzink. Nothing Ventured, Nothing Gained. Chambers and Committees in the New South African Parliament: An Exploration of the Limits of Constitutional and Institutional Design. Cape Town: IDASA. 1998. p 1.

⁸ Calland, R. All Dressed Up with Nowhere to go? The Rapid Transformation of the South African Parliamentary Committee System in Comparative Theoretical Perspective. In Governance in Southern Africa. Occasional paper No. 4. Cape Town: School of Government, University of Western Cape.

accountability and its importance will be outlined. The focus in this chapter is the relationship between the legislative and executive branch of government, and accountability of the executive by the legislature. There are two major models of government: presidential and parliamentary government. These two models provide for different relations between the legislature and the executive, hence the two models have different methods for dealing with accountability of the executive by the legislature. The oversight function of legislatures over the executive is more effective in a presidential model than in a parliamentary model. These two models will be outlined. The USA will be drawn on as an example of the presidential model, and the UK as an example of the parliamentary model.

1.2.2 Third chapter

Which of the two models is most applicable to the South African case? A parliamentary model is more applicable to South Africa. This is linked to South Africa's historical relations with Britain. The development of the South African Parliament will be briefly traced, and the relations between the legislature and executive pre-1994 will be outlined. A description of the new South African Parliament will then follow. This description will show that South Africa is still based upon the parliamentary model. However, what is present in South Africa today, is more of a hybrid-parliamentary model than a pure parliamentary model. This is related to the role of the President, the sovereignty of the Constitution and the anti-defection clause. Since the South African political system is based on the parliamentary model of government, this should theoretically mean that Parliament has not been able to effectively hold the executive accountable for their activities in these five first years of the new democracy.

1.2.3 Fourth chapter

How does the fact that a hybrid-parliamentary model can be applied to the South African political system affect legislative oversight? When examining this, it is necessary to stress that there are extra-constitutional factors that have an impact on a legislative oversight. In the case of South Africa, these factors are the large majority of

the ANC, the strict internal discipline of the ANC, the weak opposition, the lack of resources and staff in Parliament, and the inexperience of the MP's. I argue that these non-constitutional factors, and especially the large majority of the ANC, enhance the effects of the parliamentary model of government. This means that the new South African Parliament is ineffective and unable to hold the executive accountable for their activities. This will be shown by using the example of Sarafina 2, a classical and well-known example where Parliament attempted to hold the executive accountable for their actions.

1.2.4 Fifth chapter

This is the conclusion chapter, and in this section the findings in this study will be summarised and placed in a wider context. The question of whether Parliament in the near future will be able to use the extensive powers provided for this role in the Constitution, will be examined.

1.3 METHODOLOGY

1.3.1 Data collection

The theoretical framework section is based on literature review. The data for the following sections has been gathered from a range of articles and newspapers. An interview has been conducted with Jim Matemane, a researcher with the Parliamentary Research Unit. I worked directly with him during my last internship in Parliament. Gaile Moosemann, the Managing Editor at the Parliamentary Monitoring Group (PMG) has also been interviewed.

1.3.2 Limitations in this study

A comprehensive study of parliamentary resources is not available. However, IDASA has published research for the first three years of this first Parliament, and this material will be used to indicate parliamentary reality. Although I have not been able to conduct a thorough study regarding parliamentary resources, my own research has shown that the situation has not changed much after 1996.

A limitation to the study is the discussion on democracy in chapter 2. The concept of

democracy is very complex, and so much has been written about democracy. Time and space restrictions have made it necessary to limit the discussion on democracy.

One limitation that can be identified is the deliberate lack of discussion of the public administration in South Africa. As a student of democratic governance and public administration, I am aware of the complex relationship between the politicians and the administration in the executive branch of government. When analysing accountability of the executive in South Africa, an in-depth discussion and outline of the public administration and how it relates to the new Cabinet might have been appropriate. However, in an attempt to keep this dissertation focused, in addition to a lack of space and time, it has been necessary to not deal with this issue.

In a comprehensive study of Parliament's ability to hold the executive accountable, it would be necessary to include an analysis of institutions like the Public Protector and the Auditor-General as have been outlined in Chapter 9 of the final Constitution. Due to time and space limitations it has not been possible include these institutions in this study, hence Parliament's full potential to hold the executive has not been fully examined. This is a limitation in this study.

Information in the theory chapter about how to achieve accountability was acquired from personal communication with my supervisor, Professor Schrire. This is due to the fact that there was no literature available on this specific aspect of accountability.

2.0 THEORETICAL FRAMEWORK

2.0.1 Introduction

In this section the concept of democracy will be identified, and the legitimacy of this form of governance will be shown. In modern states today the form of government being practised is representative democracy with power separated into different branches. An explanation why this is done will be provided. The government branches and their functions will briefly be identified and described. The main focus of this dissertation is accountability. This section will show what accountability is, why it is important to hold the rulers accountable, and how the rulers can be held accountable. Accountability will then be narrowed down to mean legislatures' oversight function of the executive. There are two major models of democratic government: presidential and parliamentary government. How legislative oversight is dealt with in these two models will be described. The USA and the UK will be used as empirical examples of the models.

2.1 DEMOCRACY

2.1.1 Defining democracy

The root of democracy comes from the concept of “rule by the people” from the fifth century BC Greece. Since ancient Greece, democracy has come to mean many different things, and there are many different definitions, understandings and models of democracy. Hirst writes that “there is not democracy in the singular, rather there are a variety of doctrines of democracy and a variety of political mechanisms and decision procedures which are claimed to be democratic.”⁹ Lipset writes that democracy is “culturally based; one would expect differences in outlook between a Central European trade union supporter and a subsistence farmer in sub-Saharan Africa. The definition [of democracy] will also be historically conditioned; for example, citizens of countries that emerged from colonialism after 1945 will have different perceptions of democracy than will citizens of long-established countries. And a person’s definition of democracy

⁹ Hirst, P. Representative Democracy and its Limits. Oxford: Polity Press. 1990. p 22.

will be influenced by any number of other factors as well.”¹⁰ In the 20th century, democracy has gained worldwide legitimacy. Held states that “democracy seems to bestow an aura of legitimacy on modern political life: rules, laws, policies and decisions appear justified and appropriate when they are democratic.”¹¹ Liberal democracy or liberal representative democracy seems to be the best or at least the most legitimate model of democracy in the world today. It is this definition and understanding of democracy that will be drawn on in this dissertation. Diamond defines liberal democracy as having “regular, free, and fair electoral competition and universal suffrage, [liberal democracy also] requires the absence of reserved domains of power for the military or other social and political forces that are not either directly or indirectly accountable to the electorate. [...] in addition to the vertical accountability of rulers to the ruled (which is secured most reliably through regular, free, and fair elections), it requires horizontal accountability of officeholders to one another; this constrains executive power and so helps protect constitutionalism, the rule of law, and the deliberative process. [...] it encompasses extensive provisions for political and civic pluralism, as well as for individual and group freedoms.”¹² Liberal democracy includes values, virtues and ethics in its definition of democracy, and not just regulations, provisions, structures and a form of government. As Diamond’s definition makes clear, accountability is a central and essential aspect of legitimate democracy today.

2.1.2 Representative democracy

In ancient Athens democracy meant that the people governed themselves. All male citizens over 18 were directly involved in governing the polis. This has been termed by Held as a classic democracy model, and the way the city-state of Athens was governed has come to be known as “direct democracy.” It has also been called “participatory democracy.” Hirst states that democracy in this simple form, is the “direct rule of people themselves as a body without superior authority set over them.”¹³ In a modern state, direct democracy is not really considered an option because of the impracticalities it would lead to should everybody be directly involved in governing the

¹⁰ Lipset, S.M. Introduction. In Lipset, S.M. (ed. in chief) *The Encyclopaedia of Democracy*. Washington DC: Congressional Quarterly. 1995. p 1v.

¹¹ Held, D. *Models of Democracy*. Cambridge: Polity Press. 1990. p 1.

¹² Diamond, L. Is the Third Wave Over? In *Journal of Democracy*. Vol. 7, No. 3, 1996. Baltimore: Johns Hopkins Press. p 23.

state. What happens in a modern state, which might have a population of hundreds of millions, is that the people elect representatives who will represent their views. Instead of people directly governing themselves, they elect representatives who govern on their behalf. This is termed ‘representative democracy’. People elect these representatives through democratic elections. Not all rulers are elected directly by the people, but those who are elected must choose those who are not elected. The people then indirectly elect these rulers. These “representatives - whether directly or indirectly elected - do most of the real work in modern democracies.”¹⁴ The people retain their sovereignty in a passive or potential sense, where elections mean periodic legitimisation of the representatives. However, in representative democracies elements of direct democracy can take place. The people can participate in a more direct way through, for example, referendums.

2.2 POWER IN DEMOCRACY

2.2.1 Balance of power in democratic government

When the people elect representatives, they entrust the rulers with power to govern on their behalf. “Since Aristotle, Montesquieu [...] John Stuart Mill, [and Lord Acton] we have learnt that power corrupts and absolute power tends to corrupt even more.”¹⁵ Despite rulers’ “yearning for justice, human beings remain only human, and are therefore plagued by the sins of avarice and desire, influenced by self-interest, victims of prejudice, and affected by pride and the desire for authority.”¹⁶ Since power corrupts and rulers remain only human, there is a need to limit and balance power in democratic government. “There is a general recognition that all governmental power needs to be limited and contained, no matter how democratically elected or legitimate the government.”¹⁷ The French political theorist, Montesquieu, argued that for liberty

¹³ Hirst, P. op cit. p 23.

¹⁴ Schmitter, P. C. and T. L. Karl. What Democracy Is and Is Not. In L. Diamond and M. Plattner. (eds.) The Global Resurgence of Democracy. Baltimore: John Hopkins University Press. 1993. p 44.

¹⁵ Karpen, U. The German experience. In H. Kotze. (ed.) Parliamentary Dynamics – Understanding Political Life in the South African Parliament. Stellenbosch: Dep. of Political Science, University of Stellenbosch. 1996. p 16.

¹⁶ Brynard, D.J. Administrative Justice in the Public Service: A Public Administration Interpretation of section 24 of the Constitution. In M. Faure and J.E. Lane. (eds.) South Africa: Designing New Political Institutions. London: Sage. 1996. p 181.

¹⁷ Calland, R. and M. Taylor. Parliament and the Socio-Economic Imperative: What is the Role of the

and justice to thrive it was necessary to balance power by separating governing authority into sections or branches. He formulated the idea of separation of powers. “The accumulation of all powers, legislative, executive and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.”¹⁸ This means that power is balanced or separated in so that no government branch has all the power.

2.2.2 Three branches of government

There are three branches of government. The branches have different functions and roles. The branches, or government arms, are the legislature, the executive and the judiciary. Welsh states that “conventionally, [...] the executive branch carries out (or executes) laws passed by the legislature, which is the law-making body, and the judiciary enforces the laws...”¹⁹ He adds that it is more complex in reality. The legislature and the executive branches are elected, whereas the judiciary is not elected. Due to lack of space and time, and the fact that the focus of this study is the legislature and the executive, it has been necessary to exclude the judiciary from this section.

2.2.3 The executive

The executive includes the head of government and his or her Ministers, and is referred to as the Cabinet. The head of state can also be included in the executive in some political systems. The departments, bureaucracies or public administrations the members of Cabinet are leaders of, are also included in the term ‘executive’. It is necessary to point out the fact that the executive consists of more than the political leaders. However, the relationship between the political leaders and the civil servants is an aspect that will not be dealt with extensively in this dissertation, but will be briefly mentioned in the next part of this chapter. The executive, or rather the leader of the executive, can either be directly or indirectly elected.

Calland and Taylor state that in a modern government, the government branches do not conform to the clear-cut model as shown above. “Many of the decisions about the use of public power occur by way of delegated legislation [from the legislature to the

National Legislature? Cape Town: IDASA. 1997. p 5.

¹⁸ Madison, J. Federalist Paper no. 47. In D. Welsh. The Institutions of the Democratic State. Cape Town: University of Cape Town. Undated. p 2.

executive], regulation or ad hoc policy. Policy is determined extensively by the executive arm of government, with the legislature in reality confined to the task of scrutinising policy and making recommendations to government on policy.”²⁰ The executive is the government, hence, this branch has the authority to run the country. This arm of government is responsible for proposing programmes, laws and budgets to the legislature. “It is increasingly recognized that the executive is the engine of the political system in the modern state.”²¹

2.2.4 The legislature

Legislatures are either unicameral or bicameral.²² This means that the legislatures consist of either one or two Houses or Chambers. If there are two Houses in a legislature, the members are often elected or selected through different procedures, and can have different mandates. The people always directly elect the Lower House. Legislatures around the world vary greatly in size.²³

Calland writes that legislatures tend to be best known for their plenary sessions, hence, when the whole legislature is gathered. It is not easy for the legislature to discuss details of legislation, negotiate and make decisions in such a forum, and this is the reason for the existence of parliamentary committees. The committees developed from ad hoc arrangements to more permanent and specialised elements of legislatures. The committees often shadow the executive departments. It is the committees that often do the work, whereas the plenary sessions in the legislature often have a more symbolic or speech-making purpose for the MP’s and political parties. Committees are also the answer to a large workload, where the work is divided between the committees, and the members of the legislature often gain specialised knowledge because of the committee work.

Legislatures’ main role is to make and pass laws submitted to it by the executive. Legislatures also have to approve the budget prepared by the executive. The legislature

¹⁹ Welsh, D. *Ibid.* p 1.

²⁰ Calland, R. and M. Taylor. *op cit.* p 6.

²¹ Schrire, R. *The President and the Executive.* In Faure, M. and J.E. Lane. *op cit.* p 72.

²² There have been exceptions, for example in South Africa where the 1983 Constitution provided for three Houses of Parliament, hence, a tricameral Parliament.

²³ Mahler, G.S. *Comparative Politics: An Institutional and Cross-National Approach.* Second edition. Englewood Cliffs, N.J: Prentice Hall, 1995. p 78. He states that recent studies have shown that the size of legislatures vary from as little as 16 in the Caribbean island of St. Vincent to 3 000 in China.

can also provide political recruitment to the executive. These are not the only roles of legislatures. “An equally important function is to act as a watchdog over the activities of the executive.”²⁴ It is this oversight role that is the focus of this study.

2.3 ACCOUNTABILITY IN DEMOCRACY

2.3.1 The importance of accountability of the rulers

Welsh states that: “Democratic government must be accountable government.”²⁵ In Diamond’s definition of liberal democracy, quoted above, it is stated that accountability of the rulers is an essential part of a democratic state.

What is accountability and why is it such an important element in a democracy? When the people elect their representatives to govern on their behalf, does it then mean that these representatives and the government will keep the promises they made during the election campaign? That they will implement the programmes they promised the voters? Does it mean that the rulers will perform their functions in a responsible manner? Does it mean that the representatives will act in the best interest of the people and not in their own self-interests? Does it mean that the representatives will show a social conscience when they govern? Does it mean that the representatives will not be corrupt, misuse public funds and run the country poorly? Does it mean that the individual branches of government will not try to gain more power? Does it mean that the executive will not try to gain as much power as possible? How will we know the answers to these questions? The way to get close to the answers of these questions can be through accountability of the rulers.

In a representative democracy the rulers are given the responsibility to govern on behalf of the people.²⁶ The citizens will through these representatives decide on the activities and structures of public institutions. The public institutions and the functionaries are expected to promote the general welfare and common good of the people. In being given this responsibility, in being authorised by the people to govern on their behalf, the rulers must be accountable to the people. The people must ensure

²⁴ Welsh, D. op cit. p 1.

²⁵ Ibid.

²⁶ Cloete, J.J.N. Accountable Government and Administration for the Republic of South Africa. Pretoria: Van Schaik Academic. 1996. p 18.

that the rulers will render account of their failures and successes in this promotion of the common good. Pitkin writes that: “A representative is someone who is to be held to account, who will have to answer to another for what he does. The man or men to whom he must eventually account are those whom he represents.”²⁷ Representatives must essentially be responsible to the represented. “Anyone who exercises delegated responsibility should be accountable to the sources from which he derives his causal capacity.”²⁸ In short, accountability of the rulers is important because the rulers are given the powers by the people to serve their interests and their general welfare. It is therefore necessary to hold the rulers accountable for these general responsibilities to ensure that they perform their functions accordingly.

In the democratic state, the public institutions cannot be self-interested. “This means that a public institution or functionary cannot perform legislative, governmental, administrative and judicial functions to serve self-interest or a specific personal or sectional interest (for example, the interests of a person, a political party or an interest/pressure group) to the detriment of others.”²⁹ To ensure that the public institutions and rulers adhere to these responsibilities, it is important to hold them accountable for their activities.

Madison stresses the importance of accountability of the rulers. “If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”³⁰

The modern state has many functions, and is complex and diverse. Over the years the public has called for “government intervention to cure social ills and to promote common endeavours. This [has resulted] in more power for the state as it attempts to satisfy the collective needs of the society.”³¹ Since the state has become bigger and has

²⁷ Pitkin, H.F. *The Concept of Representation*. Berkeley: University of California Press. 1967. p 55.

²⁸ Spiro, H.J. *Responsibility in Government: Theory and Practice*. New York: Van Nostrand Reinhold. 1969. p 142.

²⁹ Cloete, J.J.N. *op cit*. pp 21-22.

³⁰ James Madison. *Federalist Paper no 51*. In R. Calland. *State Ethics and Executive Accountability*. In W. James and M. Levy. (eds.) *Pulse: Passages in Democracy-building: Assessing South Africa’s Transition*. Cape Town: IDASA. 1998. p 23.

³¹ Dwivedi, O.P. and J.G. Jabbra. *Public Service Responsibility and Accountability*. In J.G. Jabbra and

a wide power base, “more power is concentrated in the hands of ministers”³² and other public officials. “The effects of the political conduct of party officers, legislative representatives, chief executives, cabinet ministers, and administrators are bound to reach every citizen.”³³ This is another reason why accountability is important.

2.3.2 The function of accountability

Cloete writes that in a democracy “every public institution [...] is subject to accountability. This means that the institution must account for (give an explanation or a reckoning of) the manner in which it performed every function for which it has been made responsible.”³⁴ Accountability means that institutions and the rulers must explain the results of the functions they have been made responsible for. Accountability is linked to information. The rulers must provide the public with accurate information about how they have performed their functions. This is done to determine responsibility for actions and decisions. However, “it must be stressed that accountability must be something more than answerability which could mean nothing more than justification of what was done or left undone by merely providing an explanation.”³⁵ It is followed by punishment for wrongdoings, removal from office and potentially compensation to the parties prejudiced by the wrongdoings. Caiden writes that: “The idea of holding all public officials answerable and ultimately removable for their conduct of public business is fundamental to all government.”³⁶ Accountability is also linked to make the rulers act with responsibility. The fact that the public institutions have to account for the functions they have been made responsible for, can be a mechanism to insure that these functions are performed in a responsible manner. Pitkin writes that rulers who know they will be held accountable, are more likely to “act responsibly and respond to the desires of those to whom [they] must account.”³⁷ Accountability can also hinder abuse of power, irresponsible governance, corruption and misappropriation of funds. It serves also to counter poor management and

O.P. Dwivedi. Public Service Accountability: A Comparative Perspective. West Hartford, Connecticut: Kumarian Press. 1989. p 1.

³² Ibid.

³³ Spiro, H.J. op cit. p 141.

³⁴ Cloete, J.N.N. op cit. 1996. p 18.

³⁵ Ibid. p 20.

³⁶ Caiden, G.E. The Problem of Ensuring the Public Accountability of Public Officials. In J.G. Jabbra and O.P. Dwivedi. op cit. p 17.

promotes transparency.

2.3.3 Achieving accountability

How is accountability of the rulers achieved? What are the mechanisms for holding the rulers accountable for their actions and inactions? Accountability is the consequence of complex factors. There are three types of categories that contribute towards accountability of the rulers. These categories are all necessary to hold the rulers accountable, however, individually they are not sufficient to achieve accountability. This means that if only one of these categories is present in a state, this is not enough to hold the rulers accountable.

The first of these categories is the institutional framework. These are the structures, rules and institutions of government that provide for rulers being held accountable for their activities. It is the rules and laws set out in a Constitution and separation of powers. It is also internal audits, codes of ethics, a Bill of Rights, checks and balances between the branches of government and institutions set up to monitor the rulers, like the ombudsman and the Auditor-General. This can be referred to as internal means to reach accountability.

The second category is the political behaviour of political actors and the public. Hickok³⁸ writes that the most basic manner in which the people can hold the rulers accountable is through the exercise of the ballot. To secure accountability in this way there is a need for a critical, rational and interested public. The electorate must follow politics and be prepared to change their vote. By voting in or out rulers in free and fair elections, the people evaluate them and their performances. It is the responsibility of the people to hold government accountable, hence use their power as voters through the mechanism of elections to hold the rulers accountable. To ensure accountability there is a need for reasonable party balance between the political parties. One party must not dominate the party balance, hence, be in a government position for a long time. In political terms there must be a political balance, which ensures that the opposition is a credible contender for power. This means that the ruling party can be replaced with another party. It also means that the party in power can be forced to be sensitive and responsible in their actions if there is a reasonable balance between the

³⁷ Pitkin, H.F. op cit. p 58.

political parties in the state. In other words, people's votes must count. It must also be competitive to ensure that all the political players are prepared to play by democratic rules.

The third category is a vibrant civil society. To ensure accountable rulers it is necessary with a vigorous civil society and a free and independent media to inform the public and other political structures about the actions and non-actions of the rulers. These last two categories can be referred to as external means to reach accountability.

2.3.4 Accountability of the executive by the legislature

One of the ways in which the rulers can be held accountable is through checks and balances between the branches of the government. The focus in this study is legislatures, and their oversight role of the executive branch of government. The legislature is responsible for overseeing the performance of the executive. The opposition in a legislature will be more interested in holding the executive accountable than the party that has the governing position. As has been stated above, the executive is the engine in the political system. It therefore has the potential to be very strong, and acquire or attract much of the power in the political system. Legislatures can delegate the power to make regulations to the executive. This is done "to avoid Parliament being clogged up with unnecessary detail – regulations are supposed to be used to give detailed effect to the laws passed by the legislature. If abused or over-used, the power to make regulations can amount to legislation through the back-door."³⁹ This can add to the power of the executive branch. Such a potentially powerful branch of government needs to be held accountable for its activities.

Accountability can ensure that the executive does not override the legislature. If the executive always has to inform and explain their actions to the legislature, then this has the potential to limit and balance the power of the executive. The purpose of executive accountability is for the legislature to secure information and explanations of executive actions and inactions. However, this can lead to the legislature pressuring the executive to change a decision. The information can also be used to blame or praise actions. "It may even be that some hope the exposure of blame will secure a propitiatory outcome, such as an apology, a dismissal or a resignation. In each case the common assumption

³⁸ Hickok, E.W. Accountability of Public Officials. In S.M. Lipset. op cit. pp 9 -11.

is that the possibility of such outcomes will influence the decision-makers who are being held to account, so that they will act in a way which is responsive to the wishes of those who are holding them to account. Sanctions such as dismissal or enforced resignation are perceived to increase the likelihood of such responsiveness. Even when accountability produces only wider availability of information and explanation, responsiveness may be increased through what has been called the ‘mobilisation of shame.’³⁹⁴⁰ This means that since the executive expects and anticipates that they will be held accountable for their actions and decisions, hence, if they do not perform their functions in a responsible manner, they will be criticised and sanctions might follow. This has the effect that the government will attempt to perform their functions in a responsible manner. It leads to the government trying to be sensitive to its responsibilities. If the executive has made mistakes, the executive must demonstrate that the mistake has been corrected and that it will not happen again. It is up to the legislature to ensure that they get the answers from the executive. Giddings⁴¹ states that there is an understanding that the executive will not volunteer information, because there is no point in giving free ammunition to one’s critics. How does the legislature hold the executive accountable? There are different ways the legislature can hold the executive accountable. Ministerial responsibility or accountability refers to the political leader of a government department. The Minister is personally responsible for the actions and activities of that particular department, and must report and answer to the legislature. This means that the responsibility for policy formation and administration of the department rests with the Minister. It is then the Minister who takes full responsibility irrespective of the Minister’s personal responsibility in the case. Hence, the Minister then takes responsibility for something civil servants in the administration did. It has been argued that this system limits true accountability, since the blame for administrative error is not placed with the person who is actually responsible for the error. Some democracies allow for the legislature to hold civil servants accountable as well as members of the Cabinet. The legislature can hold the Minister accountable in plenary sessions. Committees of the legislature can also be empowered to call Ministers and public servants to account for their actions.

³⁹ DP Wants Guard on the Back Door. Parliamentary Whip. June 20th 1997. p 7.

⁴⁰ Giddings, P. Parliament and the Executive. In Parliamentary Affairs. Vol. 50, No. 1, 1997. London: Oxford University. p 87.

Legislatures also can involve or request other institutions, like an ombudsman or auditor-general to take cases further. These institutions are often independent officers of the legislature who are accountable to the legislature.

Legislatures are an arena for the institutional framework and a stage for political parties.

This means that what impacts on legislative oversight is the constitutional framework in place and the balance between the political parties. If there is no constitutional framework that ensures legislative oversight, the party balance can still enforce accountability. However, this means that accountability of the executive does not directly lie with the legislature but with the public as voters.

2.4 TWO MAJOR MODELS OF DEMOCRATIC GOVERNMENT

. 2.4.1 Two major models

In his article Welsh⁴² states that the major variations in form in democracies, revolves around the relationship between the three branches of government. “Over the past two centuries, two major models of democratic government have evolved: presidential and parliamentary.”⁴³ In these two models, the difference or variations is linked to how the branches relate to each other, hence, the design of the political system. Their functions will be influenced by how the relationship is structured between the branches. In these two models, the focus is on the legislature and the relationship between the legislature and the executive. These two models provide differently for legislatures’ ability to hold the executive accountable.

2.4.2 Other models

It is important to state that the parliamentary and presidential models of government, are polarities. This means that there are models of government that lie between these two models. These can be referred to as hybrid models, and means that they combine elements of both models, or add other elements to either of the models. Another model of government has been called semi-presidentialism, where France is the best empirical

⁴¹ Ibid.

⁴² Welsh, D. op cit. p 1.

⁴³ Lipset, S.M. op cit. p 1xvii.

example.

2.4.3 Presidential government

Presidential government is based upon the principle of separation powers. In this model the three branches of government have different powers and functions. These branches must be kept distinct from each other. This also implies that there is no overlap in personnel and staff between them. “The three branches of government are not splendidly isolated from one another; rather each is given a number of ‘checks’ with which it can keep the others in proper ‘balance.’”⁴⁴ In this system, the executive is lead by a President, who is both the head of state and head of government or chief executive. This means that symbolic authority and effective power is combined in one person. The President is elected directly by the people for a fixed term of office. In this model the President cannot be re-elected indefinitely. The legislature is also elected directly by the people. As both the President and the legislature are directly elected, both branches have democratic legitimacy. In the presidential model, it is unusual for the legislature to be able to remove the President. The opposite is also true, the President can in most applications of this model not dissolve the legislature. The President can also not be removed by his or her political party. In this model, the legislature chooses its own leadership. This means that the legislature chooses its Speakers and committee chairpersons. The Constitution is sovereign in this model. Stepan and Skach argue that the sufficient characteristics of this model are: “The legislative power has a fixed electoral mandate that is its own source of legitimacy. 2. The chief executive power has a fixed electoral mandate that is its own source of mandate.”⁴⁵

2.4.4 The USA as an example of the presidential model

The United States of America is the oldest and best example of this type of government. This model of government is seen in most Latin American countries. This model has also been called the congressional system. In the USA the Constitution is

⁴⁴ Ranney, A. Governing: An Introduction to Political Science. Third edition. New York: Holt, Rinehart and Winston. 1982. p 298.

⁴⁵ Stepan, A. and C. Skach. Constitutional Frameworks and Democratic Consolidation: Parliamentarism and Presidentialism. In World Politics. Vol. 46, No. 1, 1993. Princeton: Princeton University Press. p 4.

sovereign. The model of government in the US is based on the principle of separation of powers and the system of checks and balances. In the US there is not only an election of representatives for the legislature, but also the leader of the executive is directly elected. This means that the Congress and the President separately have fixed electoral mandates. The people elect the President and the Vice-President as a team. The political parties nominate an individual (or rather a President and a Vice-President as a team) to be their candidate for the presidential elections. The President and the Vice-President are elected for a fixed term of 4 years in office. They can be re-elected for another term in office, but no President can stay in office for more than two terms. The President is both the head of state and head of government. Members of Congress cannot be members of the executive at the same time, hence, there is no overlap in personnel between these two branches of government. The President cannot dissolve Congress, but Congress can, through an intricate process of impeachment, remove the President. A political party cannot remove the President and Vice-President. The US Congress is considered to be the strongest legislature in the world. Welsh⁴⁶ states that this is linked to the built-in tension in this system of separation of powers, with checks and balances between the executive and Congress. Each branch has a will of its own, and has ambitions that are set up against the ambitions of the others. Congress is empowered to check the President by refusing to pass bills, withholding appropriations for the executive and denying approval of the President's nominations for Cabinet and other posts.⁴⁷ Congress elects its own committee chairpersons and leadership, hence Congress decides upon its own leadership without the influence of the executive. "The separation of powers is the source of the enormous influence that Congress exercises over both the broad outlines and minute details of public policy..."⁴⁸ Congress has the power to relax or tighten the executive discretion. Welsh⁴⁹ states that because of this, the President often has to battle to get his legislative programme passed, because he often has to deal with a hostile Congress. When it is passed, it is often in a substantially amended form. Congress has also great independence in that its members can vote against their political party and President.

⁴⁶ Welsh, D. op cit. pp 1 – 6.

⁴⁷ Ranney, A. op cit. p 298.

⁴⁸ Wilson, J.Q. Does Separation of Powers Still Work? In Public Interest. No. 86, Winter 1987. Washington DC: National Affairs. p 36.

⁴⁹ Welsh, D. op cit. p 5.

This can be linked to the low party discipline and the important role of constituencies in the US. Special and regional interests are stronger than party programs in the USA, hence the “concept of party label is less significant in terms of its usefulness in helping us to predict legislative behaviour.”⁵⁰ The political parties are more significant at a local and state level than at a national level, and they are loose and broad coalitions of interests. The parties’ political programs are also not consistent and clear.⁵¹ To be nominated or re-nominated to Congress depends mainly on the local voters, and can only be marginally affected by national party leaders.⁵² Therefore the partisan pressure to toe the party line in the Congress does not play a major role. This means that it is not only the opposition in Congress that can go against policies submitted by the executive, but also the President’s own party in Congress can go against the executive. Welsh also states that Congress has developed into being individualised and decentralised, and that there is not a strong leadership in the Congress. This adds to the difficulty of the President negotiating effectively with the Congress.

Fabbrini⁵³ states that in a system of separation of powers, with checks and balances, this leads to more of an institutional conflict rather than partisan conflict, hence the tension is between the executive and legislature rather than between the political parties in the legislature. This is linked to the independence of the legislature in a system of separation of powers. Wilson writes that the Framers of the US Constitution did not attempt to create a government that would discern national goals and act effectively. What they were trying to create was a “limited government that would serve only those goals that could survive a process of consultation and bargaining designed to prevent the mischief of factions and the tyranny of passionate majorities or ambitious politicians.”⁵⁴ This is done to ensure individual liberties and limit the power of the executive. In addition to the system providing for a stronger legislature, Congress has also a powerful committee system and the resources to monitor executive activities. Calland et al.⁵⁵ write that the typical congressional committee

⁵⁰ Mahler, G.S. op cit. p 79.

⁵¹ Spiro, H.J. op cit. p 146.

⁵² Ranney, A. op cit. p 316.

⁵³ Fabbriini, S. Presidents, Parliaments, and Good Government. In *Journal of Democracy*. Vol 6, No. 3, 1995. Baltimore: Johns Hopkins University Press. p 354.

⁵⁴ Wilson, J.Q. op cit. p 43.

⁵⁵ Calland, R., D. Emling, and S. Jacobs. Extracts from PIMS Discussion Paper: The South African Parliamentary System in a Comparative Perspective. Cape Town: IDASA. 1997. p 6.

could have between 50-100 staff members. The committees have been able to extensively scrutinise legislation and keep checks on the executive. The committees have the power to call anybody to appear before it, in other words, the committees can call civil servants as well as state secretaries (Ministers). King writes that Congress has delegated legislative powers to the executive. “What does Congress retain when it delegates? The standard answer is that Congress is responsible for overseeing the performance of executive agencies. For almost a century, legislative oversight has been promoted as the means by which Congress can ensure that executive power is wielded properly and in accord with legislative expectations.”⁵⁶ The Legislative Reorganisation Act of 1946 stated that every standing committee should exercise watchfulness of the executive branch which was in the jurisdiction of the committees. In the 1970s Congress decided that every committee should submit reports on their oversight and review activities of the executive. Oversight sub-committees were also established. Every committee had to prepare oversight plans at the beginning of every congressional year. Sundquist states that “Congress has a virtually unlimited oversight authority, to review, examine, and investigate – the limitation being only the undefined boundaries of executive privilege. [...] These bodies, and individual members, possess so many means of making life miserable – or pleasurable - for officials that they can often control administration simply by making suggestions.”⁵⁷

2.4.5 Accountability in a presidential system

This model provides the legislature with the potential to effectively hold the executive accountable for their activities. This is linked to the separation of powers between the branches and the system of checks and balances. There is no overlap of personnel in the executive and legislative branches. The legislature and the executive have different electoral mandates. This increases the legislatures’ independence. In this model, the legislature is able to choose their own leadership independently of the executive, therefore, the executive has no influence on who is chosen for these positions. The leadership of the legislature is not dependent on support from the executive to stay in their positions. This increases the independence of the leadership, hence, the

⁵⁶ King, A. Both ends of the avenue: The Presidency, the Executive Branch, and Congress in the 1980s. Washington DC: American Enterprise Institute for Public Policy Research. 1993. p 164.

⁵⁷ Sundquist, J.L. The Decline and Resurgence of Congress. Washington DC: Brookings Institution.

legislature. It makes the legislature in this model an institution independent of the executive. In this model, the legislature can call any official to account for any action. The political party is not dominant at a national level in this model, therefore, tension does not lie between the political parties but between the legislature and the executive. Due to the legislature's independence as an institution in this model, the legislature has the potential to effectively hold the executive accountable for their activities. In the USA the constitutional framework is strong and ensures legislative oversight. In this political system balance between the political parties is of less importance in securing legislative oversight.

2.4.6 Parliamentary government

This model of government is not organised according to the principle of separation of powers between the three branches, but this is not to say that the notion of separation of power is lost in a parliamentary model. As has been noted above an essential part of democracy is allowing power to be held by different institutions, and not clustered in one institution, person or group. However, in this model there is more a separation of functions rather than powers between the branches. This does not relate to the judicial branch, which is separated from the two other branches by having its own powers and functions. This model provides for a fusion of powers. "Power is fused and centralised in a parliamentary system because the executive is composed of members of the legislature, selected by the legislature, and traces its power based to the same apparent mandate received from the general election. [...] effective political power ironically comes to rest in the executive (cabinet) which comprises a type of sub-committee of the majority party caucus, which itself is a type of sub-committee of the legislature-as-a-whole."⁵⁸

In this model the people directly elect representatives to the legislature, and not to the executive, hence, democratic legitimacy rests with the legislature. The executive is indirectly elected from the legislature, which means that the leader of the party that wins the elections takes up the position of Prime Minister and head of government. The Prime Minister and all the Ministers remain members of the legislature while in Cabinet. This means that there is an overlap of personnel in these two branches. The

1981, p 317.

legislature and the executive branches are in other words joined or fused. Stepan and Skach state that pure parliamentarism is a system of mutual dependence. They further state that a sufficient characteristic of this model is: “1. The chief executive power must be supported by a majority in the legislature and can fall if it receives a vote of no confidence. 2. The executive power (normally in conjunction with the head of state) has the capacity to dissolve the legislature and call for elections.”⁵⁹ In a parliamentary system, both the legislature and the executive have the potential power to remove each other from power. The legislature can remove the executive with a vote of no confidence, and the executive can dissolve the legislature and call for new elections. Stepan and Skach argue that in this model there is a greater opportunity for the executive to implement their programs. This is because the executive comes out of the legislature, and needs a majority to be elected to the executive. “The Prime Minister and his or her government cannot survive without at least the passive support of a legislative majority.”⁶⁰ This again means that because they then have a certain majority or base in the legislature, it is easier to implement the policies that are on that party’s or coalition’s political program. This does not mean that any particular government will necessarily be efficient in formulating policies, or that the government necessarily will be stable. Fabbrini⁶¹ states that in this model, the political party is strong. The institutional arrangements enhance the influence of the party, or coalition, which is in power. The political party in the parliamentary model is stronger and more important than in the presidential model. It is the governing party that appoints the chairpersons and Speakers in the legislature. In other words, it is the executive that determines the leadership in the legislature. In this system, the representatives are elected on a party banner, and not as individuals. The political party has a great impact on the behaviour of MP’s. This means that these representatives, once elected, must toe the party line to be “promoted” or to be re-elected. In this model, if an MP chooses to leave the party under who’s banner that member was elected and joins another party, that member continues to be a member of the legislature. Once an MP is elected, that seat belongs to that individual MP, and not the political party. However, if that MP wants to be re-elected, the party will de-select the members who did not toe the party line. In this

⁵⁸ Calland, R. and M. Taylor. op cit. p 5.

⁵⁹ Stepan, A. and C. Skach. op cit. p 3.

⁶⁰ Ibid. p 18.

model, there is a separation between head of state, and the head of government. The head of state can be a monarch or a President who has only symbolic powers. This means that in this system, there is a separation between real power and symbolic authority. The head of government or Prime Minister can stay in power for as long as his or her party is able to stay in power, and as long as the party chooses to have the same leader. Hence, there is not fixed term in office for the executive or leader of the executive. The Prime Minister is, in other words, a creature of the party. In the Parliamentary model, the legislature has formal dominance in this model. This means that the legislature or Parliament is sovereign.

2.4.7. The UK as an example of the parliamentary model

Britain is considered to be the best example of parliamentary government. Because Britain is linked so closely to this model, it is often called the Westminster model. In Britain there is no written Constitution, and Parliament is sovereign. In the UK the people directly elect representatives to the legislature, the House of Commons. The party that gets the most votes wins the election, takes up the governing position and forms a Cabinet. The Prime Minister is the leader of the ruling party. The Prime Minister is the head of government, and Queen Elisabeth is the head of state. Hence, there is a separation between the head of government and the head of state. The Prime Minister can stay in power for as long as the electorate and the party allows him or her to do so. In the UK all Cabinet members are also members of the legislature, in other words, there is an overlap of membership between the two branches of government. The executive can be described as being a “senior committee of parliamentarians.”⁶² This means that the legislature and the executive are fused. Parliament has the power through a vote of no confidence to remove the executive from office, and the executive can dissolve the legislature and call for new elections. The governing party appoints the leadership of the legislature.

Party discipline is strong in the House of Commons, and the party system as a whole is strong in the UK. This means that the MP's are expected to toe the party line. The MP's “rarely dare to cross the aisle in the House of Commons. If they refuse to vote

⁶¹ Fabbrini, S. op cit. p 356.

⁶² The Economist. What checks? Which balance? In the Economist. Vol. 313, No. 7629, 1989. London: The Economist Newspaper. p 39.

the party lines, they risk losing the party label and, therefore, re-election.”⁶³ This is linked to the party and electoral system in Britain. Without party support a candidate has little chance of being nominated and winning an election. This is the opposite of what is found in the US. MP’s will also not be promoted to a post in the executive if they give the impression that they do not agree with the party policies. The electoral system in Britain is based on the first past the post system. It is also constituency based, and MP’s belong through constituency units to a national party. The party system in the UK is unified and strong at a national level. This is also the opposite of what is found in the USA. The seat in the House belongs to the individual MP. “Most of the time, issues of public life in Britain are discussed in a highly partisan way, with those expressing loyalty to one party or other expected to act as their party has determined. In these circumstances, it is not clear how the ‘sovereignty of parliament’ provides much of a check on what government does.”⁶⁴ The executive “exercises nearly absolute control over the proceedings and decisions of the House of Commons.”⁶⁵ They can do this because the party controls its members. The ruling party also seems to be able to force through any policies it wishes.⁶⁶ However, the majority party can not completely ignore resentment and critique from its own party members and the opposition. If the ruling party is not sensitive to the views and opinions of the public, it can be forced out of office at the next election. The minority parties stand for criticism and opposition to majority policies, and are ready to take over government should the voters decide to give them the majority in the next election. The UK model is completely party based or “party government [..], in the sense that party organizations and operations are the very core of its legislative and executive processes.”⁶⁷

In the UK the system of Ministerial responsibility is in place. “Ministerial responsibility, it is suggested, has become a governmental defence against accountability instead of a weapon against government and a mechanism for accountability. Civil servants remain for the most part anonymous, without personal responsibility to members of the public with whom their departments deal or, most importantly, to Parliament and its select

⁶³ Spiro, H.J. op cit. p 144.

⁶⁴ The Economist. op cit. p 39.

⁶⁵ Ranney, A. op cit. p 313.

⁶⁶ Ibid. p 322.

⁶⁷ Ibid. p 313.

committees. They can never express their own views about government action, for which ministers alone are ‘responsible.’”⁶⁸ In 1979 a decision was taken to introduce a set of backbenchers’ select committees to shadow departments and hold the executive accountable. Calland states that: “Committees have increasingly been perceived to provide legislatures with a more efficacious modus operandi. The case for a system of committees has traditionally rested on the view that, since the mid-nineteenth century, the increasing strength of the party system has caused the national legislature to lose control of the executive, at least in Westminster-based systems of government.”⁶⁹ These committees have the formal power to examine policies and expenditure made by the government departments, and to take evidence in a non-partisan manner from minister, civil servants and outsiders. They can also send for records and papers. This committee structure was based on the committee system in the USA. So far there has been a mixed result in the record of these committees. The government has often “frustrated committee inquiries by refusing to allow relevant civil servants to give evidence.”⁷⁰ This is because the executive has the power to determine committees’ parameters. The committees have also found that there are limits to bipartisanship, and they have worked best when it comes to more technical subjects and not issues that are politically charged. Oliver⁷¹ writes that there has been recognition of Parliament’s limitations to control and hold the executive accountable due to the nature of the parliamentary model, and of the convention of Ministerial responsibility. There has been a search for other non-parliamentary methods to hold the executive accountable. A resource that has been employed has been the law. The office of the Parliamentary Commissioner for Administration has been established. The Commissioner is empowered to inquire into complaints of maladministration in government. This office is also known as the ombudsman. This office can also recommend remedies such as payments if complaints are upheld. The public has to go to their MP with the complaint first, then the MP alone can refer complaints to the office. The office of the Controller and Auditor General, and the National Audit Office have the authority to monitor public expenditure. “The National Audit Act of 1983 placed the audit and control of

⁶⁸ Oliver, D. Parliament, Ministers and the Law. In *Parliamentary Affairs*. Vol. 47, No. 4, 1994. London: Oxford University Press. p 643.

⁶⁹ Calland, R. The rapid transformation... op cit. p 2.

⁷⁰ The Economist. op cit. p 39.

⁷¹ Oliver, D. op cit. p 630.

public expenditure on a more secure statutory basis, making the Controller and Auditor General an officer of the House, independent of the government and enjoying security of tenure. He reports to the Public Accounts Committee of the House of Commons, and he and the National Audit Office have coercive powers and access to documents in the course of their work of investigation.”⁷² The Economist⁷³ writes that one form of holding the executive accountable in Britain that has been and is very effective, is the ballot box. In Britain the people have the opportunity to vote in to government either of the two, more or less, equally large parties. This means that since either of the two major parties in the UK have the possibility to get voted in to a Cabinet position, hence, the opposition can take up a government position. In other words, the citizens’ votes are not wasted.

2.4.8 Accountability in a parliamentary system

How does the legislative branch of government hold the executive accountable for their activities in this model? In this model, the members of Cabinet are also Members of Parliament. The functions of the executive and legislative branch of government can be said to be separate, but their power is fused. There are not the strict checks and balances between the branches as found in a system with a more strict separation of powers. The political party in this model is unified, strong and a national phenomena. Through the nature of the parliamentary model, the executive needs the support of the legislature to govern. Since the executive consists of more senior members of a political party, this means that the party that holds executive post has the ability to direct, influence, and control the behaviour of their members in the legislature. This leads to strong party discipline in this model. The majority party chooses the leadership of the legislature. This means that the party in government appoints the committee chairpersons and Speakers in the legislature, hence, these individuals are then dependent on support from their party and on the executive to stay in their positions. The tension in a parliamentary system is more along partisan links than between the executive and legislature, hence, conflict is between political parties rather than the executive and legislative branches of government. So, how does the legislature in a parliamentary model actually hold the executive accountable? As the example of

⁷² Ibid. p 637.

Britain has shown, in a parliamentary system, it is not a simple task for the legislature to effectively hold the executive accountable. Due to the control the executive and ruling party has over their own MP's this makes it impossible for the legislature to act as an independent institution, hence, makes legislative oversight very difficult. It is also a fact that the opposition will be more eager to hold the executive accountable than the party that is in power. In this political system, parliamentary debate is only important to government if the press covers it. It is in other words, the media that creates issues and not the legislature. "In parliamentary systems, [it is] widely acknowledged that [the] executive has the upper hand: legislatures [are] often considered to be little more than rubber stamps."⁷⁴ In this model the constitutional framework for legislative oversight is weak. Accountability of the executive lies effectively outside the legislature, and party balance ensures accountability of the executive. This means that accountability can happen at the voting polls, where the political parties are the variable. In a state where the parliamentary model can be used to analyse the political system, balance between the political parties is important to ensure accountability of the executive. This model provides for democratic dictatorship between election where it is difficult for the legislature to conduct its oversight function over the executive. However, institutions, like the ombudsman and the courts, can be empowered to hold the executive accountable.

2.4.9 Conclusion

In this section the concept of democracy, representative democracy, the need for a balance of power in democracy, the branches of government, and the concept of accountability have been outlined. An outline of the two major models of democratic government, presidentialism and parliamentarism has been provided. This indicates that legislature's ability to hold the executive accountable is usually more effective in a presidential rather than a parliamentary system. In fact, it is only in the presidential model that the legislature is able to hold the executive accountable. The executive largely controls the legislature in the parliamentary model, hence, accountability of the executive takes place outside the legislature. What model can be used to analyse South Africa? This question will be answered in the next chapter.

⁷³ The Economist. op cit. p 39.

3.0 THE SOUTH AFRICAN PARLIAMENT

3.0.1 Introduction

This section will examine the South African Parliament before 1994. This is done because the history of Parliament has an impact on the model of government in place today. The features of the new Parliament, the structure between Parliament and the executive, and the powers of Parliament, especially regarding its oversight function of the executive will then be described. This will show what model of government can be used to analyse the South African case. I argue that South Africa is closer to a parliamentary model than a presidential model. However, South Africa does not have a pure parliamentary model, but rather a hybrid-parliamentary model.

3.1 THE SOUTH AFRICAN PARLIAMENT BEFORE 1994

3.1.1 History of the South African Parliament

The Union of South Africa was created on the 31st of May 1910, and was a union of four of the British colonies in southern Africa. The South Africa Act of 1909, which lead to the creation of the Union, was drawn up by South Africans but passed by the British Parliament. It stated that “legislative power of the Union shall be vested in the Parliament of the Union...which shall consist of the King, a Senate and a House of Assembly.”⁷⁴ This means that the Union had its own legislature, while still being a British colony. This Act did not provide for Parliament being the sovereign power of this union. The King was a constituent part of the Parliament. The executive powers were vested in the King of England. A Governor-General was appointed to act as the King’s representative. This Parliament was a bicameral legislature, composed of a House of Assembly and a Senate. The Union was a dependency of the UK until 1934, when the Status of the Union Act was passed. This provided Parliament with sovereign legislative power of the Union. The British brought with them their government and institutional structures to their colonies. The colonies had elections, political factions or parties and the rule of law while ruled by Britain. This means that the Westminster

⁷⁴ Welsh, D. op cit. p 6.

⁷⁵ Cloete, J.J.N. Parliaments of South Africa. Pretoria: Van Schaik Academic. 1985. p 15.

model, or the parliamentary model of government, was the form of government that was implemented in the Union of South Africa. It had, however, two variations to the Westminster model. “The franchise was restrictive and the legislature was unrepresentative.”⁷⁶ It was only white males and later females that could vote and be elected to Parliament. Although some of the other ethnic groups had political rights, none of them enjoyed full political equality with whites. This in fact meant that the majority of the population in the Union was unable to be elected to Parliament.

In 1961 the Union of South Africa became the Republic of South Africa with the Republic of South Africa Constitution Act. Cloete writes that when South Africa was no longer a British colony, “the parliamentary system which existed for the Union was retained with minimal changes.”⁷⁷ In 1961, the Republic of South Africa replaced the Governor-General with a President. Cloete writes that the President’s functions were the same as those of the Governor-General, and they were both nominal heads of state. This means that the President was the head of state only in a symbolic manner, and the Prime Minister was the head of government. At this point there were still two houses of Parliament. However, the Senate was abolished with effect from January 1st 1981, and instead the President’s Council was established. The State President appointed the 60 members of this Council. These members were mainly white, but for the first time non-whites were allowed to partake in governing the Republic. The role of this Council was to advise the President on matters of public interest, except draft legislation. In 1983 Parliament adopted the Republic of South Africa Constitution Act.⁷⁸ This Act provided for a new role for the President. The President was no longer merely a symbolic figure, but became the head of government as well as head of state, or head of the Republic as is stated in the Act. The Act provided for three Houses of Parliament; the House of Assembly, the House of Representatives, and the House of Delegates. Cloete writes that “some of the national political leaders had realised that a satisfactory constitutional dispensation for the Republic of South Africa could not be reached through separate development.”⁷⁹ This realisation was also brought about by pressure and dissatisfaction by non-whites and numerous whites. The solution at the

⁷⁶ Boulle, L. The Head of Government and the Constitution. In R. Schrire (ed.) Malan to De Klerk: Leadership in the Apartheid State. London: Hurst & Co. 1994. p 9.

⁷⁷ Cloete, J.J.N. Parliaments.. op cit. p 47.

⁷⁸ Act 110 of 1983.

⁷⁹ Cloete, J.J.N. op cit. b. p 49.

time was to bring in or “co-opt” Indians and Coloureds into the parliamentary system. All 80 members of the House of Representatives had to be Coloureds, and all 40 members of the House of Delegates had to be Indians.

Krause argues that even after 1983, the Westminster or parliamentary model was the form of government found in South Africa, even though the role of the President varies from the pure parliamentary model. He states that even when the Prime Minister’s role merged with the President’s role, “this [was] merely in name, for it is difficult to discern much difference between that office and the office of [the] Prime Minister.”⁸⁰ The 1983 Constitution provided for a committee system, and the tricameral Parliament had 13 committees.

3.1.2 The relationship between the legislature and the executive

Boule writes that: “All modern constitutions conceal as much as they reveal. In some cases they also distort, disguise and distract. The South African Constitution is no exception, particularly as far as executive authority is concerned. Some of the most important developments in relation of executive authority, its exercise and control, have taken place dehors the written instrument.”⁸¹

However, when the National Party came to power in 1948, there was a delicate balance of power in Parliament. In by-elections, the opposition reinforced Parliament’s potential control over the executive. “Political actors still had the memories of Parliament’s overthrow of the executive in 1939, the only occasion in South African history when this occurred.”⁸² The NP increased in strength throughout the succeeding general elections, and by manipulating the electoral system as far as coloured votes were concerned, this gave the NP a stronger majority in Parliament. The NP managed to implement their policies through the instrumentality of Parliament. In the apartheid years, the lack of separation of powers between the branches and the majority of the NP in Parliament, allowed the executive to utilise the parliamentary model and Parliament to give “itself wide discretionary powers, involving policy formulation, adjudication and administration. [There was a delegation of powers from the

⁸⁰ Krause, O. Westminster is Alive - and Living Surprisingly Well in South Africa. In Bridge or Barricade? The Constitution: A first appraisal. De Villiers. (ed.) Johannesburg: Jonathan Ball Paperbacks. 1983. p 80.

⁸¹ Boule, L. op cit. p 7.

⁸² Ibid. p 13.

legislature to the executive.] Once parliament had delegated authority, it retained little control over its exercise, other than some formal requirements such as the tabling of the titles of delegated legislation in the legislature.”⁸³ Power was increasingly centralised in the executive. “The Westminster legacy made this process technically easy: a first-past-the-post electoral system and weak provincial powers made the centralisation of power in the executive possible.”⁸⁴ When it comes to Parliament holding the executive accountable, the executive developed a technique to deny Parliament the information it requested. The executive claimed the importance of national security were at stake if the requested information was given to Parliament. This obstruction of Parliament was developed into a fine art. The fact that the executive was in Pretoria, while Parliament was situated in Cape Town also added to the weakening and weakness of legislative oversight. Parliament also operated only on a part-time basis. Under P.W. Botha in the 1970s and 1980s, “Parliament became increasingly subordinate to the cabinet and within the executive itself, power and authority became increasingly exercised by the president and his associates. Both Parliament and the formal cabinet suffered a serious decline in power and influence.”⁸⁵ The Parliament that developed throughout the apartheid era has been called a rubber-stamp, where power was centralised in the executive, and Parliament was unable to hold the executive accountable for their activities.

The NP stayed in power for over 40 years with mostly a large majority in Parliament. There was no change in the governing party between 1948 until the first democratic elections in 1994. There was no party that could challenge the NP at the voting polls, hence, there was no balance between political parties during the apartheid era. This means that the people’s mechanism of elections to hold the executive accountable in a parliamentary model did not take place. There was effectively a one-party dominance of the NP in the apartheid era.

⁸³ Ibid. p 15.

⁸⁴ Schrire, R. op cit. p 60.

3.2 THE NEW SOUTH AFRICAN PARLIAMENT

3.2.1 Parliament as the institutional centrepiece in South Africa

Calland refers to the South African Parliament as the institutional centrepiece of the new South African democracy.⁸⁶ The reason for this is based on the representative role of the South African legislature. The final Constitution states that the National Assembly (NA) “is elected to represent the people and to ensure government by the people under the Constitution.”⁸⁷ In other words, the people elect directly representatives to the National Assembly. The party that gets the most votes in the election forms a government. This means that the President is not directly elected. The President of South Africa is elected from amongst the Members of Parliament (MP’s), however the President is always the leader of the party that wins the elections. As soon as the President is elected, he or she vacates the seat in Parliament, hence the President ceases to be an MP. The President is both the head of state and the head of government. The President can not stay in office for more than two five-year terms. The President appoints the Ministers, Deputy Ministers and a Deputy President. The governing party appoints the leadership of the legislature, hence, it is the executive that decides who becomes the Speakers and Chairpersons in Parliament.

In the five first years of democracy, South Africa has had a special power-sharing government called the Government of National Unity (GNU). In this government, the executive consisted of all political parties that got more than five percent of the vote in the national elections in 1994. Three parties were able to get more than five percent. These were the African National Congress (ANC), the National Party (NP), and the Inkatha Freedom Party (IFP). In the spirit of nation building and reconciliation, and according to the interim Constitution, the President appointed two Deputy Presidents. The other Cabinet and Ministerial posts were divided amongst the three parties. However, the GNU does not change the structure of the system in place, hence the MP’s in the NA are directly elected and the executive is indirectly elected in both the interim and final Constitution. This means that democratic legitimacy lies with Parliament, and not with the executive. The Deputy President(s), Cabinet Ministers

⁸⁵ Ibid. p 62.

⁸⁶ See all the articles by R. Calland, especially R. Calland and L. Nijzink. op cit. p1.

⁸⁷ The Constitution of the Republic of South Africa. Act 108 of 1996. Chapter 4, Clause 42.3.

and Deputy Ministers, are members of the legislature, and continue to be so after being appointed to their executive positions. However, the final Constitution allows the President to select no more than two Ministers from outside the NA. These are then not Members of Parliament.

3.2.2 A bicameral Parliament

The new South African Parliament is bicameral. In addition to the National Assembly, there is the National Council of Provinces (NCOP). The interim Constitution provided for a Senate, but the final Constitution of 1996 provides for the NCOP. The NCOP represents the provinces in order for provincial interests to be taken into account at the national level of government, and by doing so it brings in an amount of federalism to reflect the South African political reality. The NCOP “does this mainly by participating in the national legislative process and by providing a national forum for public consideration of issues affecting the provinces.”⁸⁸

The NA and the NCOP have separate electoral mandates. The NA is elected in national proportional representation elections based on a party list system. “MP’s have, however, been allocated to notional constituencies, at least in the case of the two largest parties, the ANC and the National Party (NP).”⁸⁹ The NCOP is elected through provincial elections. In the NCOP, every province has 10 seats. Six of the seats are permanent for an entire parliamentary term, and are appointed by the provincial legislature according to the political parties’ election results. The other four seats are given to experts on topics being debated, and these seats rotate according to what issues are being debated in the NCOP. This type of seat is referred to as special seats, and the delegates are members of the provincial legislatures. As a result of this intricate membership in the NCOP, its members are neither directly elected nor indirectly elected.

The NCOP is smaller than the National Assembly. It consists of 90 members, whereas the NA at present consists of 400 MP’s. The final Constitution provides for a National Assembly of between 350 to 400 members.

“The formal powers of the NCOP suggest that in South Africa the second chamber is subordinate to the first chamber. Only the National Assembly can force the Cabinet to

⁸⁸ Ibid. Chapter 4, Clause 42.4:

resign by passing a motion of no confidence. And for most legislation a negative vote by the NCOP can in the last instance be overridden by the NA.”⁹⁰ Calland et al. state that “some quarters are already doubting as to how different or effective the NCOP would be from the Senate, which was effectively a rubber-stamp for legislation referred to it by the NA, and acted as a reward for long service to the liberation movement.”⁹¹ This is said because indicators show that ANC policy usually wins in the NCOP. As more or less a reply to this critique, the ANC have emphasised the importance of the NCOP. “In a significant address, [Deputy President Thabo Mbeki] laid out a vision for the NCOP that centres on its role as a mechanism for harmonising the interests of national, provincial and local government. Debates are aimed at achieving consensus on policy between the different spheres of government.”⁹² However, the NCOP suffers from a lack of clarity, both inside and outside the NCOP, on its place in the new institutional arrangements in Parliament.

3.2.3 Political parties in Parliament

In the election in 1994 the ANC won with a large majority. The ANC tripartite alliance with the South African Communist Party (SACP) and Congress of South African Trade Unions (Cosatu) got 62,65 percent of the votes. This translates into 252 members out of 400 in the National Assembly.⁹³

The NP now has 82 seats in Parliament, which translates into 20,39 percent. The IFP has 42 seats, which makes up 10,54 percent of the votes. The Freedom Front (FF) has nine seats, the Democratic Party (DP) seven seats, the Pan Africanist Congress (PAC) five seats, and the African Christian Democratic Party (ACDP) only two seats.

The party political make up is the same in the NCOP, hence, the ANC also has a majority in the NCOP with 60 out of 90 seats. This is due to the ANC being in power in seven of the nine provinces. KwaZulu/Natal is IFP governed, and in the Western Cape the NNP is in government. The ANC majority is, however, slim in the Northern Cape.

The political parties have party caucuses in Parliament. The ANC has started study

⁸⁹ Calland, R. and M. Taylor. op cit. p 14.

⁹⁰ Calland, R. and L. Nijzink. op cit. p 3.

⁹¹ Calland, R., D. Emling and S. Jacobs. op cit. p 27.

⁹² NCOP Driven to Play a ‘Harmonising’ Role. In Parliamentary Whip. June 5th 1998.

⁹³ Calland, R. and L. Nijzink. op cit. p 7.

groups in Parliament. The Study Group consists of ANC MP's of a particular committee, ANC members of the NCOP, ANC executives and ANC friendly guests. Party caucuses and the study groups are closed to the public.

In the South African Parliament, an MP's seat belongs to the party, and not the individual. It is therefore not possible for MP's to 'cross the floor' to another political party and still retain their seat in Parliament. This is referred to as the anti-defection clause. In South Africa the political parties are unified and strong at a national level, and party discipline within the parties is strong.

3.2.4 Committees in Parliament

The committees have been called the engine rooms of Parliament. This is where the work takes place. The final Constitution is clearer on the roles and functions of parliamentary committees than the interim Constitution. However, the interim constitution did give the committees the legal space to develop their own role. Shortly after the new Parliamentarians were sworn in on May 8th 1994, they started to revise parliamentary rules and procedures. Standing Rules for the Constitutional Assembly was adopted in August 1994, and Standing Rules for the National Assembly was adopted in February 1995. Rules regarding Joint Business and Proceedings of the NA and the Senate were also adopted in February 1995. "Although with regard to several aspects of parliamentary procedure there is a considerable continuity with the old regime, [however] the committee system changed almost beyond recognition. There was a rapid and comprehensive proliferation of committees and the new ideal of open democracy was implemented by opening committee meetings to the public and the press."⁹⁴

In the committees, the parties are represented according to their proportion in Parliament. The Speaker in the NA and the Chairperson in the NCOP formally allocate MP's to committees. However, the MP's do negotiate with their party's chief whips about committee membership. Most of the new MP's were inexperienced with parliamentary life, and there has been a large turnover and redeployment of MP's in these five first years of democracy. This has lead to many changes in the allocation of MP's to committees. The number of committees has also changed throughout these

⁹⁴ Ibid. p 10.

five years. An official website on Parliament⁹⁵ shows that in the NA, the new committee system currently consists of 27 portfolio committees. These committees shadow the national departments and executive ministries. In the NCOP there are at the moment 11 select committees. The Senate used to have 13 committees. The select committees have the same functions as the portfolio committees, and deal with issues related to the provinces. These are all legislative committees. There are also Constitutional committees, Statutory committees, and Ad hoc committees at the moment. Most of these are joint between the two houses. There are also sub-committees and joint sub-committees.

The size of committees is not fixed, and can be between 15 and 40. They can be no smaller than 10, and no larger than 40. Even if the committee has a membership of 40, there are never that many MP's present at meetings.⁹⁶ The reason for this is that MP's are simultaneously members of several committees. Committee meetings often clash with each other, and force MP's to focus or specialise on one or a few committees. The MP's can also practise committee hopping, which means that they will be running between committee meetings. MP's are not formally restricted when it comes to the number of committee memberships. This leads to MP's from the minority parties being members of many committees. PAC MP Patricia de Lille is a member of 15 committees in total. This is, however, the highest recorded number of committee memberships for one person in Parliament.

Calland states that "there is a great divergence of experience, with committees defining their roles in very different ways. In other words, there is not uniform 'system' as such."⁹⁷ This implies that the committees differ when it comes to effectiveness and activities. The committees are very dependent on their chairpersons. "The relationship between the chair and the Minister has proved to be a critical factor in determining the nature of the role that a particular committee has been able to carve for itself."⁹⁸ Calland and Nijzink⁹⁹ argue that there is a link between how active and effective a committee is, and the relationship between the chairperson and the Minister. They used

⁹⁵ See www.parliament.gov

⁹⁶ Through personal experiences with committees in Parliament, I have noted that there are rarely more than half the members present at meetings. This is a phenomena I have especially observed in large committees like the Constitutional Affairs Portfolio Committee.

⁹⁷ Calland, R. The rapid transformation... op cit. p 15.

⁹⁸ Calland, R. and L. Nijzink. op cit. p 13.

⁹⁹ Ibid.

the example of the Portfolio Committee on Constitutional Development. The chairperson of that committee, ANC MP Pravin Gordhan, who left his position in the beginning of 1998 for a civil servant position, had a longstanding relationship of trust and a very good working relationship with the Minister of the department his committee was shadowing, Mr. M. Valli Moosa. The relationship does not need to be as strong as it is or was between Mr. Gordhan and Mr. Moosa, to develop a meaningful role in the exercise of the powers of parliament. However, the chairperson needs to be proactive and strong, and the relationship with the Minister must be co-operative and based on trust. The fact that the personalities of committee chairpersons have an impact on how strong, active and effective a committee is, can be linked to the lack of institutionalisation of the committees. The powers of the committees have not yet been institutionalised. In a country like the UK we would not find that the committees would depend on the personality of their chairperson to be effective. This is because the committees in the UK have been institutionalised.

Most of the committees in Parliament have ANC chairpersons. This is linked to the ANC majority in Parliament. Calland and Nijzink state that in 1998 of the then 26 portfolio committees, only two were not chaired by ANC members. “Although the transition to democracy in South Africa was marked by its emphasis on consensus and power-sharing, this did not extend to committee chairpersonships, largely, it is submitted, because the NP in particular did not foresee the enhanced influence that the committees would play in the new system.”¹⁰⁰

3.2.5 Provisions in the Constitution for legislative oversight

What are the formal provisions of Parliament regarding its role of holding the executive accountable? “One of the Constitutional Principles established by the negotiations that lead up to 1994 and which bound the drafters of both the interim and the final constitution stated: ‘there shall be a separation of powers between the legislature, the executive and judiciary with appropriate checks and balances to ensure accountability, responsiveness and openness.’ In spite of this clearly stated principle, the interim Constitution said very little about the role of parliament in ensuring executive accountability and exercising oversight over organs of state – the only

¹⁰⁰ Calland, R. and L. Nijzink. op cit. p 13.

explicit reference being to members of cabinet having to account to Parliament. It stated simply that ‘the legislative authority of the Republic shall, subject to this Constitution, vest in Parliament, which shall have the power to make laws for the Republic in accordance with this constitution.’¹⁰¹ The interim Constitution also stated that “A Minister shall be accountable individually both to the President and to Parliament for the administration of the portfolio entrusted to him or her, and all members of the Cabinet shall correspondingly be accountable for the performance of the functions of the national government and for its policies.”¹⁰² The final Constitution is more detailed on the issue of Parliament holding the executive accountable. “The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration on issues, by passing legislation and by scrutinizing and overseeing executive action.”¹⁰³ It is only the NA “by a resolution adopted with a supporting vote of at least two thirds of its members, [that] may remove the President from office.”¹⁰⁴ The National Assembly can pass a motion of no confidence in Cabinet and the President and force them to resign.¹⁰⁵ The final Constitution states that the “National Council of Provinces or any of its committees may – (a) summon any person to appear before it to give evidence on oath or affirmation or to produce documents; (b) require any institution or person to report to it; (c) compel, in terms of national legislation or the rules and orders, any person or institution to comply with a summon or requirement in terms of paragraph (a) and (b); and (d) receive petitions, representations or submissions from any interested person or institution.”¹⁰⁶ Clause 55 of the Constitution is about the powers of the NA. “The National Assembly must provide for mechanisms – (a) to ensure that all executive organs of state in the national sphere of government are accountable to it; and (b) to maintain oversight of (i) the exercise of national executive authority, including the implementation of legislation; and (ii) any organ of state.”¹⁰⁷ The NA also has the same

¹⁰¹ Calland, R. and M. Taylor, op cit. p 6.

¹⁰² The Constitution of the Republic of South Africa. Act 200 of 1993. Clause 92. (1).

¹⁰³ The Constitution of the Republic of South Africa. Act 108 of 1996. Chapter 4, Clause 42. (3).

¹⁰⁴ Ibid. Clause 89. (1).

¹⁰⁵ Ibid. Clause 102.

¹⁰⁶ Ibid. Clause 69.

¹⁰⁷ Ibid. Clause 55.

rights as the NCOP when it comes to gathering evidence and information.¹⁰⁸ Clause 92 deals with accountability and responsibility of the executive. “(1) The Deputy President and Ministers are responsible for the powers and functions of the executive assigned to them by the President. (2) Members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions. (3) Members of Cabinet must (a) act in accordance with the Constitution; and (b) provide Parliament with full and regular reports concerning matters under their control.”¹⁰⁹ These provisions for Parliament’s oversight function of the executive, gives Parliament extensive powers over the executive.

Calland and Taylor write that Parliament in plenary session can hold the executive accountable through Parliamentary Questions. “Parliamentary Questions (PQs) provide MPs with a mechanism to extract information from the executive and, thereby, to hold the executive to account. There are three types of parliamentary questions: interpolations, questions for oral reply, and questions for written reply.”¹¹⁰ These Parliamentary Questions are used by opposition parties to criticise the Ministers of the majority party. They are also used by the majority party to bring to the fore favourable information and statistics about the work of the executive. Both the NA and the NCOP can ask questions on a weekly basis, and the Minister is obliged to answer them. “The other principal Parliamentary mechanism of note is the Motion. While motions rarely succeed in securing time for a debate, they are useful ways of putting on record a party’s concern about some issue and provide political parties with an opportunity to draw attention to a particular matter of public importance.”¹¹¹ As the Constitution has stated, the committees can call on anybody to testify before it, including civil servants and Ministers. Relevant experts and government officials often appear before the committees.¹¹² The committees can also call for any papers and reports to be submitted to them. The committees can call for public hearings, where they invite labour, business, civil society and interest groups to make public submissions. However, no formal minutes are taken at committee meetings, and few formal records are being made of submissions made at public hearings.

¹⁰⁸ Ibid. Clause 56.

¹⁰⁹ Ibid. Clause 92.

¹¹⁰ Calland, R. and M. Taylor. op cit. p 12.

¹¹¹ Ibid.

¹¹² In the committee I have spent most time with, the Portfolio Committee on Constitutional Affairs,

Calland et al. state that “South Africa boasts a committee system endowed with various constitutional and parliamentary procedural powers to enforce [...] oversight of the executive, initiation of legislation and scrutiny of government departments.”¹¹³

3.2.6 South Africa’s hybrid-parliamentary model of government

The old and the new South African Parliament have been described. What model of government is most applicable to the new and democratic South Africa? Gloppen argues that “the form of government in the ‘final’ constitution is best characterised as quasi-presidentialism [or parliamentary presidentialism].”¹¹⁴ She does this largely because of what she calls the unique role of the President. The South African President is both head of government and head of state. I disagree with Gloppen for a number of reasons. I argue that in the new South Africa there is a continuation of a parliamentary model of government. In a parliamentary model, there is a fusion of the executive and legislative branch of government. In South Africa, it is only the legislature that is directly elected. The executive is indirectly elected by the majority party. The Deputy President, the Ministers and the Deputy Ministers are members of the legislature at the same time as they occupy positions in the executive. This means that in South Africa there is an overlap in personnel in these two branches, which implies that the executive is largely fused with the legislature. Hence, there is not a separation of powers between the executive and legislature. This corresponds with the features of the parliamentary model. In South Africa it is the executive that effectively appoints the leadership of Parliament. The legislature can, through a vote of no confidence, remove the sitting government and the executive can dissolve the legislature and call for elections. The two branches having the potential of removing each other from power is a feature of the parliamentary model of government, and can not be linked to the presidential model. The political parties are also strong and unified at a national level.

However, what we find in South Africa is not a pure parliamentary model. South Africa has rather a hybrid-parliamentary model. This view is supported by Calland, who states that: “South Africa’s Parliament is a hybrid. It is, for colonial, historical reasons, based on Westminster, but South Africa is now a constitutional state,

there has usually been at least one government official or expert in attendance at committee meetings.

¹¹³ Calland, R., D. Emling and S. Jacobs. op cit. p 3.

¹¹⁴ Gloppen, S. op cit. pp 216-218.

although with an as yet undeveloped line of thought as far as separation of powers theory is concerned. [...] It is a system that is some way beyond the Westminster model in terms of both legal/constitutional powers, and yet still a long way short of the political power of the congressional committee system.”¹¹⁵ One of the reasons why South Africa has a hybrid-parliamentary model is because of the position of the role of the President. The President is both the head of state and head of government. This means that there is a fusion of the role of a Prime Minister, and the role of a monarch or symbolic President that we find in a parliamentary system. The President is also not a Member of Parliament. He or she is elected by the people to the legislature, but ceases to be a Member when taking up the Presidency. Two Ministers also do not need to be Members of Parliament. However, the President is a creature of the party and the leader of the majority party.¹¹⁶ The President can only hold office for two terms, hence, there is a fixed term of office for the President. In a parliamentary model, Parliament is sovereign. In South Africa the Constitution is sovereign. In South Africa there is an anti-defection clause, and the seat in Parliament belongs to the political party. It is not possible to ‘cross the floor’ and still retain the seat in Parliament. In a parliamentary model, the MP’s seat in Parliament belongs to that individual MP. These are other reasons why South Africa does not have a pure parliamentary model.

3.2.7 Conclusion

In this chapter the old and the new South African Parliament have been described. The political system in South Africa is based on a parliamentary model of government, however, what is found is rather a hybrid-parliamentary model than a pure parliamentary model. Legislatures’ ability to hold the executive accountable is more effective in the presidential model than in the parliamentary model, because in a parliamentary model, the constitutional framework to secure legislative oversight is weak. How able is Parliament to hold the executive accountable? Even though South Africa is linked to the parliamentary model, does the fact that the Constitution provides Parliament with extensive powers to hold the executive accountable, actually mean that Parliament is able to use these powers?

¹¹⁵ Calland, R. op cit. 1997a. p 5.

¹¹⁶ However, President Mandela resigned as President of the ANC at the party’s annual conference in December 1997, to allow Thabo Mbeki to take over as ANC President to prepare for the role of

4.0 ANALYSIS

4.0.1 Introduction

How has Parliament been able to hold the executive accountable for their actions and inactions? How has Parliament been able to extract information from the executive, and make the executive take responsibility for their activities? I argue that what we have seen in South Africa in these five first years of democracy, implies that Parliament has not been able to use the extensive powers provided in the Constitution. This is probably inevitable given the features of the parliamentary model in place. It is, however, related to other non-constitutional factors. This can be the majority of the executive in the legislature, and the resources and staff available in the legislature. In the case of South Africa, these factors are the overwhelming parliamentary majority of the ANC, its strict internal discipline, the weak opposition, the lack of resources and staff in Parliament, and the lack of expertise and experience of the new MP's. I argue that these non-constitutional factors enhance or add to the consequences for legislative oversight in a parliamentary model, rather than enable Parliament to use the extensive powers provided by the Constitution. This section will show how these factors enhance the parliamentary provisions, hence, makes it difficult for Parliament to use its powers. This will be done by referring to the case study of Sarafina 2.

4.1 SARAFINA 2

A brief outline of what the Sarafina 2 case involved will first be presented. The Department of Health decided in 1995 to put on a play to highlight the dangers of HIV/AIDS. This play was titled Sarafina 2, and toured South Africa. The Department spent R14, 27 million on this play, and was criticised for its expenditure by the media and by NGO's. "The expenditure itself was self-evidently, and grossly excessive. The purchase of a R1 million bus, complete with toilet, to cart the cast about represents extravagance even in the lavish realms of showbiz; in the context of a public works programme, it is little more than a grotesque distortion of spending priorities."¹¹⁷ The Health Minister, Dr. Nkosazana Zuma, stated that the play had not been funded by

President of South Africa.

¹¹⁷ Editorial: Lessons from Sarafina. Mail and Guardian. March 1st 1996.

taxpayer money, but [that] the entire amount had been donated by the European Union. According to the Mail and Guardian, the “EU maintained its insistence [...] that it knew nothing about the project and did not fund it. The EU said it had received no prior request for changes in budget allocations.”¹¹⁸ There was also a secret donor who covered the costs incurred in the project. The Department of Health was reluctant to reveal the identity of this donor. In early 1996, the Portfolio Committee on Health indicated to the Department of Health that it wanted the Minister of Health to appear before it. The committee wanted Minister Zuma to explain her policy, hence justify the expenditure of such a large amount of money. How successful was Parliament in holding the executive accountable in this case?

4.2 THE MAJORITY AND INTERNAL DISCIPLINE OF THE ANC

4.2.1 The executive attempted to hinder Sarafina 2 hearing

When the Portfolio Committee on Health requested the Minister to appear before it, Dr. Zuma refused to attend the committee hearing. It is known that she had gone to President Mandela for support, and that he had sided with her on the issue. Mandela apparently wanted the “matter resolved without needless public wrangling based on speculation rather than fact.”¹¹⁹ Parliament and the parliamentary committees have the constitutional right to call anybody to testify before them. What does this imply about the powers of Parliament and the executive, when the President supports a Minister that is unwilling to undergo the democratic procedures of being held accountable? It indicates an executive that is arrogant, sees the oversight role of Parliament as unnecessary, and has the power to ignore the requests from a committee for a hearing. However, Deputy President Thabo Mbeki intervened, realising the political damage that would follow from a refusal to obey a legitimate request from the committee. In the end, the Minister had to appear before the Committee. She was accompanied by three civil servants; Director General Dr. Olive Shisana, Aids Directorate Head Quarraisha Abdul Kareem and Chief of Support Services Hugo Badenhorst.

¹¹⁸ So Who Did Pay For the Aids Play Then? Mail and Guardian. March 8th 1996.

¹¹⁹ Two Arms of Government in a Tangle. Mail and Guardian. March 1st 1996.

4.2.2 Strict party discipline

“All the commentators who observed the committee meeting on 28 February 1996 were struck by the response of the ANC members of the situation. An hour and a half passed before an ANC member asked a question of the Minister and many of the ANC members looked uncomfortable throughout. Reputable party sources revealed the truth: the ANC members had been told by senior leaders ‘do not rock the boat’ and ‘be loyal to your Minister’.”¹²⁰ It is not unique that a political party in the legislature does not criticise its own Minister. However, Calland and Nijzink argue that the ANC has centralist tendencies.¹²¹ “Partly as a legacy from its liberation struggle past, the ANC has a tendency towards secrecy in its decision-making processes and an inherent deference towards its leadership, most of whom are members of the executive.”¹²² The ANC has had difficulties in adapting to its new role as a political party in a democracy. The ANC has had to adapt its old strengths of secrecy and loyalty, that was needed for the organisation and its members to survive the decades the ANC was banned, to the rules of transparency and accountability of democracy. Anonymous ANC MPs have stated that the internal discipline is very strict, and one has to toe the party line if one wants to continue ones Parliamentary career and climb the ladder. In an interview with Manto Tshabalala, the chairperson of the Health Committee at the time of the Sarafina 2 hearing, she was very cautious about criticising the executive. She praised the Minister for her contributions towards health in South Africa, but was guarded about discussing alleged maladministration and negligence in the Health Department over the Sarafina 2 case. “She believes the department should have been more transparent over the crisis, but is understanding about the inevitable self-protection that will be displayed when under attack.”¹²³ Tshabalala was appointed Deputy Justice Minister later in 1996. As we know in a parliamentary system, the executive effectively appoints, hence controls, the leadership of the legislature. Was the fact that Tshabalala did play a role in controlling and silencing her comrades of the health committee during the Sarafina 2 hearing, a way to prove her loyalty to the party? Was she promoted to the executive as a reward for being loyal and for toeing the party line?

¹²⁰ Calland, R. The rapid transformation.... op cit. p 13.

¹²¹ Calland, R. and L. Nijzink. op cit. p 6.

¹²² Calland, R. and L. Nijzink. pp 12-13.

Gloppen writes that the anti-defection clause in South Africa strengthens the party whip and prevents MP's from voting against their party's position. She argues that this clause has been and can be useful to the ANC "in terms of preventing splits, silencing dissident voices and keeping together its very broad church. While the clause initially appeared to favour minority parties, the ANC currently stands to gain the most. Preventing splits is an absolutely priority for the ANC. Without a split the party is likely to retain its clear majority for a very long time. It is thus not surprising that the ANC was set on retaining the clause."¹²⁴

4.2.3 The Holomisa affair

A very well known and publicised example of how the ANC treats its members who do not toe the party line, is the Bantu Holomisa affair. "The ANC's schizophrenia was revealed most dramatically [...] in the Holomisa affair: open, confident and self-assured at times; secretive, authoritarian and insecure at others."¹²⁵ The case started at the TRC hearings held in May 1996. The then Deputy Minister of Tourism and Environmental Affairs, General Bantu Holomisa, gave evidence that the ANC Minister of Public Enterprises, Stella Sigcau, had accepted a bribe in the 1980s. She received a R50 000 cut in a R 2 million bribe to then Transkei President George Matanzima. The bribe was allegedly paid by hotel and casino magnate Sol Kerzner to secure gambling rights.¹²⁶ This was an established fact. However, the ANC reacted strongly against Holomisa for recalling the bribe. A public clash followed between Holomisa and various ANC leaders. During this battle Holomisa accused the ANC and some of its leaders of corruption. Mandela proposed to Holomisa that he should apologise for what he had said, and no action would be taken against Holomisa. Holomisa refused to apologise since he had been trying to fight corruption in the Transkei government as well, and felt that he would compromise himself if he apologised to Sigcau and the ANC. "At the disciplinary hearing he faced on the 30th August 1996, General Bantu Holomisa faced a total of six charges, relating to *inter alia* violating the Code of Conduct bringing the organisation into disrepute, and refrained from observing loyalty

¹²³ Health Committee Fighting Fit. Parliamentary Whip. June 21st 1996.

¹²⁴ Gloppen, S. op cit. p 221.

¹²⁵ Calland, R. and S. Jacobs. Party Political Funding: Ethics and the Horns of Dilemma: Choosing the Right System for South Africa. Cape Town: IDASA. 1997. p 5.

¹²⁶ Holomisa Refused Mandela's Appeal. Mail and Guardian. August 2nd 1996.

and discipline, not dealing indirectly with disrepute, and publicly accusing senior colleagues. The ANC's disciplinary committee subsequently expelled Holomisa and stripped him of his seat in Parliament. The substance of the ruling party was that 'he is not charging individuals but officials and leaders of the ANC'. This is striking: it is as if his real crime was to take on the leaders of the party in public. It is unclear from the 'ruling' what rule or constitutional provision Holomisa had breached in order to justify the decision to expel him from the party. His dissent had cost him his seat."¹²⁷ It also ended his career in the ANC.

4.2.4 Close relationship between the ANC in the executive and legislature

The ANC parliamentary caucus of MP's and NCOP permanent delegates meet once a week. The caucus serves as a reference point for the decisionmakers. "The ANC parliamentary caucus is sub-ordinate to the ANC constitutional structures, such as the National Executive Committee and National Working Committee, and [...] these structures have been resolute in defining and maintaining party discipline, both in terms of day-to-day political decision-making and in more widely publicised cases such as the expulsion of General Bantu Holomisa."¹²⁸ It is, however, not the best forum for backbenchers to speak their mind, due to the size of the caucus, and the presence of ANC leaders like the President, Cabinet Ministers and other gatekeepers to advancement of backbenchers. In an interview, the former chairperson of the ANC caucus Baleka Kgositsile stated that ANC Ministers must attend caucus because separation of powers is not the caucus' preoccupation. "Our preoccupation as caucus is to say, 'we have been deployed here by the African National Congress and for our purposes as a caucus we are not executive and legislature, we are members of the ANC that have been deployed in parliament'"¹²⁹

There is a belief in the ANC, not just from the executive but also from ANC MP's in Parliament, that a separation of power between the two branches is not necessary. "Some senior ANC officials are in favour of decreasing the separation. Among them is [Arnold] Stofile [ANC Chief whip in 1996] who says: 'I think in 1996 it represents an unhealthy and artificial separation and does not make a lot of sense in terms of what

¹²⁷ Calland, R. and S. Jacobs. op cit. p 5.

¹²⁸ Calland, R. and M. Taylor. op cit. p 5.

¹²⁹ Only the 'Fittest' Survive in Caucus. Parliamentary Whip. August 30th 1996.

we want to do and how.”¹³⁰ In other words, he thinks there is a void between the executive and the legislature that should not exist. ANC MP Jennifer Schreiner argues that the line between the executive and legislature should not be clearly drawn, because if it is drawn this could mean that the legislature will return to its rubber stamp position of the apartheid era. She also argues that “interventions by the executive should not be seen by definition as negative.”¹³¹

4.2.5 The majority of the ANC

The ANC has 252 of the 400 seats in the National Assembly, and 60 of the 90 seats in the NCOP. The ANC has in other words an overwhelming majority in Parliament. The fact that the ANC can control their MP’s through the nature of South Africa’s hybrid-parliamentary model, linked to the overwhelming majority of the ANC in Parliament, has serious implications on accountability of the executive. As a result, the executive can ignore requests from the legislature. This has been shown through the example of the Sarafina 2 case. Calland¹³² writes that if the ANC MP’s do not start to criticise their own colleagues in government regularly, there will be a huge blur between the functions of the executive and the legislature.

He also argues that where the ANC has been eager to uphold the accountability role of Parliament “the recipient has invariably been a ‘soft target’ politically. The Public Accounts Committee gave Independent Broadcast Authority (IBA) commissioners a torrid time in April and May 1997; and the Portfolio Committee on Correctional Services has given Correctional Services Minister Sipo Mzimela (an IFP member) a hard ride ever since his appointment. Unlike Dr. Zuma, neither the IBA commissioners nor Minister Mzimela come from the ANC.”¹³³

4.2.6 The arrogance of the ANC

When Zuma answered the questions put to her at the Sarafina 2 committee meeting and from the press, she was very arrogant, refused to take any responsibility for the actions of her Department, and did not disclose the details of the case. Health Minister Zuma was not removed from office as a result of the scandal. This is related to the

¹³⁰ Changes at Parliament. Parliamentary Whip. February 9th 1996.

¹³¹ Two Arms of Government in a Tangle. op cit.

¹³² Calland, R. The rapid transformation... op cit. p 13.

general arrogance of the ANC in government towards opposition parties and the legislative branch of government. “Some have argued that the ‘Sarafina affair epitomises a tendency in the ANC to put party loyalty and protection of its leadership above issues of good governance and the need to fight corruption and mismanagement.”¹³⁴ Tony Leon stated in an interview that “when the government is under attack, where a Minister has misbehaved, where someone has abused [his or her] office, then there is no real accountability.”¹³⁵

4.2.7 The de Lille case

The ANC does not only seek to prevent criticism from their own party colleagues, but from opposition parties as well. In the De Lille case, PAC MP Patricia De Lille accused in the National Assembly ANC leaders, some of them members of Cabinet, of being spies for the apartheid regime. The ANC used their majority in Parliament to suspend De Lille from Parliament for a period of time, even though she formally apologised in the NA. ANC MP Professor Dirk du Toit chaired the first ad hoc committee meeting that dealt with the case. He arrived at the meeting with a pre-written condemnation of De Lille. From this it is possible to conclude that the ANC does not only silence its own members, but also attempted to silence any serious criticism of ANC leaders from opposition parties. De Lille took the case to the High Court, and it found that her suspension had been unlawful due to a breach of rules of natural justice.

4.2.8 The executive interferes with the work of Parliament

Mike Ellis from the DP has argued that there has been a move towards an intolerable situation where the executive interferes more and more with the work of Parliament. He used as an example the Education Policy Bill, which the ANC wanted rushed through Parliament. The minority parties took the matter to the Constitutional Court, where the Court found in favour of the opposition. The opposition would not have found it necessary to take the matter to the Court had the bill been afforded due

¹³³ Ibid.

¹³⁴ Camerer, L. Derailing the Gravy Train.. op cit. p 11.

¹³⁵ A Deft Hand in Game of Charades. Parliamentary Whip. November 5th 1997.

process with public hearings from interested parties.¹³⁶ Mandela has also gone on record by saying that he ‘pulled up’ the Joint Standing Committee on Defence when the committee was debating the issue of replacing Afrikaans with English as the language of command in the defence force.¹³⁷ There is also a tendency or an impression that the doors that were thrown open in 1994 when the new democracy professed transparency and an open Parliament, “are clanking shut one by one.”¹³⁸ The ANC has the power and ability to interfere with the work of Parliament because of its majority and because of the lack of separation of powers between the executive and legislature in South Africa.

4.2.9 Increasing tendency for back-door legislation

Moosemann has stated that there is an increasing tendency for back-door legislation. By this she means that in legislation being deliberated and passed, the ANC will try to increase the Ministers’ and the executive’s discretionary powers, hence, allow for decisions on details of legislation to be made by the executive. This view is supported by Finance Week. “FW has pointed out an increasing tendency to pass legislation giving great discretionary power to Ministers.”¹³⁹ This can also be supported by an example from a meeting in the Constitutional Affairs Portfolio Committee. During the deliberation of the Municipal Demarcation Bill¹⁴⁰ the opposition complained and stated the entire time that the ANC wanted to give the Minister as much power over the Municipal Demarcation Board as possible. The opposition claimed that this would inhibit the ability of the Board to act as an independent body as had been intended.

4.3 THE WEAK OPPOSITION IN PARLIAMENT

4.3.1 The small and weak opposition

Due to the ANC’s overwhelming electoral victory in 1994, there is a small opposition in Parliament. Only 148 of the seats in the NA belong to opposition parties, and this

¹³⁶ Two Arms of Government in a Tangle. op cit.

¹³⁷ Ibid.

¹³⁸ A Deft Hand in Game of Charades. op cit.

¹³⁹ Myburgh, J. Separation of Powers: Undermining Parliament. In Finance Week. Vol. 74, Issue 9, August 21st 1997. Johannesburg: Finance Week. p 34.

¹⁴⁰ [B36-98]

number is divided between 6 parties. Only 30 of the seats in the NCOP belong to opposition parties. There is not only a small opposition in the new South African Parliament, there is also a weak opposition. Even the ANC believes that “South Africa’s collective opposition is doing a terrible job.”¹⁴¹ The largest opposition party is the NP, or NNP, as they are now called. Calland argues that the NP made a limp effort at the Sarafina 2 hearing. “The NP members were about as penetrating in their questioning of Minister Nkosazana Zuma as the ANC members.”¹⁴² The second largest opposition party is the IFP. The NP and the IFP were members of the GNU. The NP left in June 1996, whereas the IFP has been a member of the GNU throughout the entire five years. Being a member of the government at the same time as being part of the formal opposition to the ANC has not been easy for these two parties. Calland and Jacobs state that this situation has “undoubtedly constrained the opposition parties in developing a character apart from the ANC.”¹⁴³ The NP left the GNU in an attempt to become a more viable opposition to the majority party. In an interview Roelf Meyer, who was then still a member of the NP, stated that “we have had to adjust to opposition after a very long time in power. We have found it difficult to adjust. We simply didn’t know how to fulfil the role of an opposition party.”¹⁴⁴

4.3.2 The ANC’s tendency to undermine the opposition

Calland and Jacobs argue that a reason why the opposition parties have performed poorly is because of “an individual and collective failure to come to terms with the philosophical adjustment required of opposition.”¹⁴⁵ This is not entirely the opposition parties fault. The ANC has been quick to regard any opposition as almost a personal attack. Marthinus van Schalkwyk, the leader of the NNP after de Klerk, states that “too often nowadays people who differ from the strongest party are branded as racist, obstructionist, not accepting the new South Africa, etc. The need for, and the critical role of, the opposition should be accepted and tolerated even by those who are inconvenienced by it.”¹⁴⁶ He states that there is a need to legitimise the concept of a strong opposition. In the same book, Tony Leon, the leader of the DP takes the

¹⁴¹ Weighing Up a Weak Opposition. Mail and Guardian. May 23rd 1997.

¹⁴² Meyer-Speak Keeps even Nats Guessing. Parliamentary Whip. April 4th 1996.

¹⁴³ Calland, R. and S. Jacobs. op cit. p 4.

¹⁴⁴ Meyer-Speak Keeps even Nats Guessing. Parliamentary Whip. April 4th 1996.

¹⁴⁵ Calland, R. and S. Jacobs. op cit. p 7.

opportunity to agree with Schalkwyk. There is a “danger which faces opposition: it is the growing tendency by certain government ministers and members to demonise their opponents by playing the race card. There is a tendency to reject all criticism and constructive opposition as being carping or being an appeal to an old order. While this is simply untrue, it does tend to underline a point which I have observed in the last fifteen months. The ANC verges on the neurotic when it comes to criticism or opposition. The tendency to demonise and shout down your opponents often becomes overwhelming in terms of the heat of political debate but often does long-term damage to the cause of a multi-party democracy taking roots in the process.”¹⁴⁷ Karpen also stresses the need for an opposition in a democracy. “Very often one finds, however, the misunderstanding that opposition means dissenting at all times and very often without good reason. [...] There should be consensus that there must be dissent, so that you gain more clarity and wisdom in decision making. That is why opposition is required.”¹⁴⁸

A small party in Parliament, the DP, has been the most active and constructive opposition party these five first years of democracy. “The NP has 82 members of the National Assembly, the DP seven. Yet, of the 1844 parliamentary questions asked over the first two years of the new Parliament, the DP had asked 681 (37%) and the NP only 572 (31%).”¹⁴⁹ At the Sarafina 2 hearing, it was DP MP Mike Ellis that asked most of the probing questions addressed to the Minister and the civil servants. The DP has been described as having had a huge impact in Parliament. Leon has also been paid the compliment of being the person in Parliament that irritates the ANC the most.

As has been stated above, South Africa can be strongly linked to the parliamentary model of government. The section above shows the strict internal discipline and the majority of the ANC in South Africa. In a parliamentary model it is largely up to the opposition to be critical of the executive and attempt to hold it accountable. With only a small and weak opposition these five first years of democracy, this role has not been easy to fulfil for the opposition.

¹⁴⁶ Schalkwyk, M. van. The National Party. In H. Kotze. Op cit. p 180.

¹⁴⁷ Leon, T. The Democratic Party. In H. Kotze. op cit. p 196.

¹⁴⁸ Karpen, U. op cit. p 17.

¹⁴⁹ Calland, R. and M. Taylor. op cit. p 7.

4.4 THE LACK OF RESOURCES AND STAFF IN PARLIAMENT

4.4.1 The Sarafina 2 committee meeting

When Dr. Zuma and the public servants came to the Committee to testify, the material the opposition used to question the Minister was “almost entirely derived from the press [and] most material documents were sought at the meeting itself, not in advance.”¹⁵⁰ Why were the MP’s not prepared? Why did they not have all necessary documents well in advance? Why did not their own staff provide them with information, so that the MP’s did not have to rely on the media? The reason is linked to a serious lack of resources and staff in Parliament.

4.4.2 An unprepared Parliament

When the new MP’s took their seats in Parliament for the first time in May 1994, they entered into an institution that was not equipped to cater for the increased number of MP’s, the increased workload, and generally the increased level of activity in Parliament. Parliament used to be a rubber-stamp, but was now to become a place of work. The new Parliament inherited the staff and infrastructure of the old parliament. In the old Parliament, each committee had one clerk, and there were only 13 committees in the old parliament. When the new parliament expanded the number and the activities of these committees considerably, the lack of resources was very noticeable. Kotze states that “up to the end of 1995 MPs had almost no secretarial and research support services – for example, ANC members had only one secretary for every 12 MPs and no researchers.”¹⁵¹ They also had one secretary per 10 senators, hence six secretaries. The NP had only one secretary per six MP’s and a research unit of four researchers and one secretary. The DP had four secretaries, two researchers and one part-time volunteer. The ACDP had two secretaries and one researcher and one lawyer. The IFP had five secretaries and one-two researchers. The FF had only one secretary and no researcher. The parties themselves have funded these secretaries and researchers. Often the MP’s themselves have had to “fork out [their] own

¹⁵⁰ Calland, R. The rapid transformation.. op cit. pp 11-12.

¹⁵¹ Kotze, H. The New Parliament: Transforming the Westminster Heritage. In M. Faure and J.E. Lane. op cit. p 266.

resources.”¹⁵² A survey on parliamentary resources¹⁵³ in 1996 compiled by IDASA shows that there has been an increase in the parties’ secretaries and researchers. However, there is a continued lack of resources and staff in Parliament. The ANC had one secretary per three MP’s and seven secretaries for the ANC senators. This staff has been provided for the ANC by Parliament. The NP has 10-12 secretaries and 37 computer experts, administration assistants and researchers funded by Parliament and the NP Federal Council. The IFP had one secretary per six MP’s and two or three researchers. The DP had three secretaries and two researchers on parliamentary payroll and additional administration assistants provided by the party itself. The FF had two secretaries and four researchers. The ACDP had three secretaries on parliamentary payroll and additional secretaries provided by the party itself. 40-50 percent of the MP’s had been given computers by Parliament. The rest either did not have access or used their own computers. Most of the political parties did not have access to the internet or e-mail. In 1994, the Parliamentary Committees did not have any secretaries and researchers to work for them. The staff that served the old Parliament with only 13 committees had to work for these new committees. It was only in 1998 that every committee was assigned a committee clerk. Before 1998, staff from other units had to fill in when the committees needed staff. The committees also shared the existing clerks, or the chairperson’s secretary or assistant would fill in. How is Parliament going to perform its oversight function when it does not have the necessary support staff? How is Parliament going to perform its functions, when the MP’s are busy filing documents and researching material for speeches?

4.4.3 Parliamentary Research Unit

The Parliamentary Research Unit was established in 1997, and was to work for the committees and not for an individual political party. The European Union funded the Unit. Initially there were nine researchers and one manager. These researchers were supposed to cover all the Portfolio Committees. Matemane, a Parliamentary Researcher, stated in an interview that the researchers initially covered four-five committees each. In addition to logistical problems with this, it created an enormous workload for the researchers. The number of committees was later dropped to two per

¹⁵² Parliamentary Resources. Parliamentary Whip. June 19th 1995.

researcher. This means that each parliamentary committee actually had no more than half a researcher. Matemane stated that the researchers are formally serving two committees, but are only coping with the work of one committee. The Unit has seen many of its initial researchers leave, mostly due to the workload. Matemane stated that there were only five researchers and one administrative assistant in 1999. However, the Unit has made a proposal to Parliament to increase the Unit to 37 researchers. The Unit has had to make the proposal to Parliament, because Parliament has taken over the funding of the Unit from the financial year of 1999/2000. Whether the proposal has been approved or not is still unclear at the moment.

4.4.4 An example of lack of resources and staff

An example of the lack of staff and resources is the Portfolio Committee on Constitutional Affairs.¹⁵⁴ This committee called for public hearings on the Green Paper on Local Government at the end of 1997. The committee did not have a clerk, so a few staff members from other sections of Parliament had to step in to ensure that the hearings went smoothly. The tasks of the clerks were to make sure that all the people with submissions had their written submissions copied up for all the participants of the hearing. Meals and accommodation has to be organised for the participants. The agenda for the hearings has to be updated, printed and copied. Staff also constantly has to answer administrative questions from the participants. In the beginning of 1998, the committee was assigned one committee clerk. This clerk was responsible for making the public hearings on the White Paper on Local Government go smoothly. Having only one person to perform all the necessary tasks mentioned above was inadequate, and the hearing suffered because of this lack of staff. Some of the participants only received their invitation to the hearings a few days before the hearing. This lead to submissions being sent in to the committee at a late stage, which often lead to

¹⁵³ Parliamentary Resources. Parliamentary Whip. September 13th 1996.

¹⁵⁴ I personally experienced this lack of resources when I had my first internship in Parliament at the end of 1997. I worked directly for the Chairperson for the Portfolio Committee on Constitutional Affairs, Pravin Gordhan. The committee had public hearings on the Green Paper on Local Government, and could not afford a researcher to document and compile a report based on the hearings and the submissions given. The person who was assigned to do this task had left because he had not been paid the last months he had worked there due to lack of funds. I was therefore asked if I would step in and attend the hearings and make the report. Throughout these hearings and my continued work in Parliament, I developed an understanding of how the administrative staff worked and works and the lack of resources in Parliament. I also attended the all the hearings on the White

submissions not being copied for the participants.

4.4.5 Young and unskilled staff

Another problem with resources and staff is that the new staff was and is often young and not properly trained for the job. Old bureaucrats also often supervise them. In January 1996 there was an increase from 24 to 85 staff members. In an interview with the Parliamentary Whip, staff supervisor Masibolele Xaso stated that “It has not been very easy. We couldn’t keep up with the demands of the parliamentarians. Most of the new intake were straight from university and they needed intensive training, but it has been necessary to train people on the job, because it is necessary to expose people to the feel of the committee. Many had never worked before – ‘so we had to establish a work ethic’, he said.”¹⁵⁵ In the same interview he stated that there has also been many resignations of experienced key staff. There has been an increase in staff, however, the staff has been largely new and inexperienced.

4.4.6 Work load

Calland and Taylor¹⁵⁶ use the budget as an example of how the lack of resources affects Parliament. They state that when the MP’s see the budget for the first time it is too late to have any real influence on it. It is impossible for Parliament without the technical resources to analyse a document that has taken government departments and experts 18 months to compile. “Some members feel that the resource crisis is linked to the majority’s party’s unease with their independence. One MP said in an interview that there is a sense that committees are ‘meddling in things that do not concern them’ and therefore the struggle to get resources from the political management.”¹⁵⁷ Time is also a resource that is lacking in Parliament. The MP’s are members of several committees. This often makes them run between committees, and makes it difficult for them to devote time and energy to each specific case they deal with. A large number of legislation has been passed in Parliament during these five years. On average over 100 Bills have been passed per year. With this amount of legislation, and the lack of resources and time, Parliament’s role regarding holding the executive accountable is at

Paper on Local Government.

¹⁵⁵ Changes Intensify Pressure. Parliamentary Whip. May 9th 1997.

¹⁵⁶ Calland, R. and M. Taylor. op cit. p 13.

a disadvantage.

4.4.7 Lack of resources and staff weakens Parliament

How can Parliament hold the executive accountable when it does not have the resources and staff to investigate and probe cases? The US Congress has between 50 – 100 staff members per committee. Even though the Research Unit might increase in number, how is it supposed to provide the kind of expertise that is needed for Parliament and Parliamentary committees to hold the executive accountable? How is Parliament, with the lack of resources and staff that has existed throughout the five first years of democracy, going to scrutinise an executive which consists of departments filled with experts. The lack of resources and staff in the South African Parliament reinforces the strength of the executive over the legislature that we find in the parliamentary model of government.

4.5 THE INEXPERIENCE OF THE MP'S

4.5.1 The Sarafina 2 committee meeting

At the Sarafina 2 committee meeting, the MP's did not have copies of the Sarafina 2 budget. "Thus, the civil servant responsible for the budget was asked, at the meeting, if he had a copy of the budget for the production of the play. He responded that he did, and a junior official was sent off in order to prepare copies. Opposition MP's then endeavoured to cross-examine the Minister and the senior civil servants over a complex budget that they had only just had sight of."¹⁵⁸ This is obviously linked to a lack of resources and staff, but the MP's should have had the expertise to request the budget before they attempt to hold the Minister and public servants accountable. They should have, through the committee chair, requested the documents ahead of the meeting. Calland¹⁵⁹ argues that an accountant should also have assisted them in going through the budget.

¹⁵⁷ Calland, R., D. Emling and S. Jacobs. op cit. pp 34-36.

¹⁵⁸ Calland, R. op cit. 1997a. pp 11-12.

¹⁵⁹ Ibid.

4.5.2 The new and inexperienced MP's

When the new Parliament was elected, the majority of the representatives had not set foot in Parliament, much less attempted to work there. Therefore the majority of the new MP's were highly inexperienced in the workings of Parliament. The MP's ability "to develop skills or gain experience in a particular field of government, [was] constrained by a lack of adequate back-up services and facilities to effectively monitor the executive. Some committees [have been] able to do their work better, but that is subject to the level of prior experience and the skills of members, particularly in justice and constitutional affairs."¹⁶⁰ When all these new MP's came to work in Parliament, there were very few resources in Parliament to teach and train them in parliamentary procedure. There were, however, NGO's that took on this role to a certain extent. The MP's have not yet been able to acquire specialist skills. The MP's who participate the most in debates in committees,¹⁶¹ are people with Teknikon or University education. The South African Parliament is good in a democratic manner that the MP's appear to come from all layers of the people. This increases the representativity of the people in Parliament. Yet, towards the end of these five years, it does seem as if the MP's without tertiary education still haven't been trained and been able to specialise their skills in the same way MP's with a tertiary education have. With the workload and the little training the MP's have received, how are they supposed to be able to do their job properly? How are they supposed to hold the executive accountable? In an interview Patricia De Lille states that: "For a number of reasons, it is clear that committees have not used or tested the powers assigned to them effectively. We lack the administrative capacity to exercise those powers as well as special training programmes to empower members to use them. We are working on the assumption that all members of committees understand their roles."¹⁶²

4.5.3 Experienced MP's leaving Parliament

There has been a remarkably high number of MP's that have been redeployed, especially by the ANC. This means that they have left Parliament mostly for careers in the executive or in the private sector. A number of the MP's that have left Parliament

¹⁶⁰ Calland, R., D. Emling and S. Jacobs. op cit. p 34.

¹⁶¹ This is a personal observation from the Portfolio Committee on Constitutional Affairs, which I have worked with between mid 1997 and the last session in 1999.

have also retired or died. “A total of 120 MP’s from a possible total of 490 – that is 24% - have resigned from the two Houses of Parliament in the last four years. The latest information obtained from the office of the Secretary of Parliament indicates that 101 members of the National Assembly, seven permanent delegates in the National Council of Provinces (NCOP) and 12 in the Senate [...] have resigned from their posts.”¹⁶³ “At a time when the institution is trying both to find its feet and establish a new ethos and fresh routine, this has been very destabilising, particularly in view of the fact that the majority of those who left were taking a leading role in the new parliament. There has been a very high turnover of Chairpersons of committees, which has been very unsettling.”¹⁶⁴

4.5.4 Conclusion

The non-constitutional factors that have been outlined and examined above, add to the consequences for legislative oversight that is found in the hybrid-parliamentary model in South Africa. This means that even though the new South Africa Parliament’s oversight role of the executive is already ineffective due to the weak constitutional framework provided in the parliamentary system, these factors enhance and enforce Parliament’s difficulties in performing its oversight function. This is especially true with reference to the majority and strict internal discipline of the ANC in Parliament, which lead to the executive effectively controlling its ANC MP’s, hence, makes it impossible for the new South African Parliament to perform its oversight function of the executive.

¹⁶² Still Unclear. Parliamentary Whip. May 9th 1997.

¹⁶³ MPs Dropout Rate at 24%. Parliamentary Whip. Sept. 18th 1998.

5.0 CONCLUSION

5.0.1 Introduction

In this section the aim of this study will be restated, and the findings will be summarised. The findings will be placed in a wider context, and the future of legislative oversight in South Africa will be addressed.

5.1 SUMMARY

The focus of this study has been on accountability of the executive by the legislature, and the aim in this dissertation has been to evaluate the new South African Parliament's ability to hold the executive accountable. In the theoretical framework section, accountability of the rulers has been established as a central element in democracy and any democratic state. There are two major models of democratic government in representative democracies: parliamentary and presidential government. The presidential model offers more effective legislative oversight than the parliamentary model, since it provides for a stronger constitutional framework that enables the legislature to hold the executive accountable. Through a description of the new Parliament, it has become clear that the design of the political system in South Africa is based on the parliamentary model. This is due to Cabinet Minister's membership of Parliament, the indirectly elected President, the fact that Parliament can remove the executive and that the President can dissolve Parliament, and the lack of separation of powers between the legislature and the executive. However, South Africa does not have a pure parliamentary model, rather a hybrid-parliamentary model. It is a hybrid due to the role of the President as both head of state and head of government, the fixed term of office for the President, the anti-defection clause, and the sovereign Constitution. Since the design of South Africa's political system is based on the parliamentary model of government, this means that the new Parliament is not able to effectively hold the executive accountable for their activities. There are also other non-constitutional factors that have an impact on a legislature's oversight function. In South Africa these are the large majority of the ANC, the strict internal discipline of the ANC, the weak opposition, the lack of resources and staff in

¹⁶⁴ Calland, R. and M. Taylor. op cit. p 10.

Parliament, and the low capacity and inexperience of the MP's. As the example of Sarafina 2 has shown, these factors enhance the consequences for legislative oversight of the parliamentary model. Even though the Constitution provides for legislative oversight, the linkage to the parliamentary model and these factors have not allowed Parliament to effectively use these powers.

5.2 EVALUATING THE FINDINGS IN A CONTEXT

This study has showed that Parliament has not been able to use the oversight powers provided for it in the Constitution. When placing this study in a wider context there are several aspects that have to be taken into consideration. It is necessary to remind ourselves that "Parliament has had to determine its exact role at a time when the institution itself – with all its many facets – is in a state of dramatic transformation."¹⁶⁵ It is only five years into the new democracy, and these years have been taken up with transforming an institution that was a rubber stamp for the executive. The first two years of the new Parliament MP's were also busy in the Constitutional Assembly negotiating the final Constitution. This took up much time from Parliament's other tasks.

As has been stated before in this dissertation, Parliament's oversight role of the executive is only one of many roles of a legislature. South Africa has emerged to democracy from the apartheid era with the laws that promoted inequality and segregation. In this context, it is important to enable the government to be strong and powerful enough to transform South Africa into a liberal, equal and productive society, with a state that can deliver effectively to all South Africans. This need for a strong, and potentially effective, executive can be the reason why the parliamentary model of government was chosen, or rather continued. The parliamentary model, as has been shown in the theoretical framework chapter, promotes and allows for effective government, instead of limiting government as can be seen in the presidential model. This means that perhaps the role of accountability of the rulers was not seen as the most important role of Parliament in the Constitution making process. The role of Parliament as a lawmaker might have taken precedence over its oversight role.

Although this is a study of South Africa, this country operates in the same context as

¹⁶⁵ Calland, R. and M. Taylor. op cit. p 9.

the rest of the world. Worldwide there has been a decline in the power of legislatures due to a decline in ideological issues, which is the sphere where legislators thrive. The move has been towards a focus on technocratic issues. This leads and has lead to power being centred in the executive and the bureaucracy at large. Power is moving away from legislatures to the executive, and to regional institutions like the European Union. Hence, South Africa's situation, where Parliament is not the centre of power and power is vested in the executive, is no unique.

5.3 THE SIGNIFICANCE OF THE ANC MAJORITY

It is important to stress the significance the ANC majority has had these five first years of democracy. If the ANC had only won a 51 per cent majority rather than 62 per cent, it would have had to be more sensitive to the opinions of the opposition, the media and the public. If the ANC majority had been at stake in the next elections, the ANC would have had to show a more sincere interest in being responsible and accountable for their activities. However, it is important to stress that the ANC has been given a powerful mandate by the people in the first democratic elections to implement necessary and important changes in the new South Africa. "The government has the right, therefore, to apply the full might of the state's power and authority and the resources at its disposal to ensure that it meets its mandate. Yet, as the Constitution reminds us, no right is absolute; rights may be limited."¹⁶⁶

As time passes MP's will be more experienced and the resources available will start to function. Does this mean that Parliament will be able to hold the executive accountable? The answer is no. Due to a weak constitutional framework in the parliamentary model of government, accountability in this model lies outside Parliament. In this model accountability of the executive takes place mostly at the ballot box, hence the opposition being a credible contender for power is important. The balance between political parties is important in the parliamentary model to ensure accountability. The news are just in that the ANC won the 1999 elections with a 2/3 majority. It is important to stress that there is a belief that the ANC will win a solid majority in many elections to come.¹⁶⁷ It is not possible to predict the future with absolute certainty. The ANC tripartite alliance might split, and there might be other

¹⁶⁶ Calland, R. State Ethics and Executive Accountability... op cit. p 25.

splits in the ANC that could jeopardise one party dominance by the ANC. An opposition party or coalition independent of the ANC might prosper and challenge the ANC majority in the near future. In the 1994 election, the people of South Africa voted largely according to their skin colour and ethnic background. It is expected that this voting pattern will be repeated in future elections. If the people of South Africa continue to vote in this pattern there will be limited fluidity of votes, especially if the present political parties continue to cater for the same electorate they are targeting at the moment. This may mean that the public will not be critical and rational, hence, not use their votes to hold the rulers accountable. What does it mean if the ANC wins a solid majority in many future elections? What will the implications of this be for accountability of the rulers? A hegemonic ANC supported by 2/3 of the voters can not be held accountable in a meaningful way in a party-based political system. If the ANC stays in power for a long time, this can manipulate democracy. The opposition will become demoralised because they can not see themselves taking over power, hence, there will be no party balance to ensure credible opposition.

When Deputy President Thabo Mbeki takes over after President Mandela there will be a change in executive style. Mandela has acted largely as a General that brought together the voices of the people in a transitional period. Mbeki is expected to have an authoritarian hands-on management style. Mbeki is also expected to sit his two terms in office, hence 10 years as President. As the executive accumulates power and experience in addition to a hand-on management style, it is believed that the executive will increase its powers over Parliament. What will the ANC do with its powers? A one-party state has the potential to encroach the autonomy of civil society by intimidating the press, manipulating government media, and creating a business sector that is dependent on government. Is this the future of “democracy” in South Africa? In South Africa there is a centralisation of power at the national level. “Despite federal structures the ‘final’ constitution paints the picture of a relatively centralised state. The powers granted to provincial legislatures are limited, and the overriding powers of the national legislature considerable.”¹⁶⁸ What is the future of democracy and accountability of the rulers in South Africa, if power is centralised nationally in the hands of a party that might have a future as a dominant party?

¹⁶⁷ See literature by Herman Giliomee.

6.0 BIBLIOGRAPHY

BOOKS

Blondel, J. *Comparative Government: An Introduction*. Second edition. London: Prentice Hall/Harvester Wheatsheaf. 1995.

Blondel, J. *Comparative Legislatures*. Englewood Cliffs, N.J: Prentice Hall. 1973.

Boule, L. The Head of Government and the Constitution. In R. Schrire. (ed.) *Malan to De Klerk: Leadership in the Apartheid State*. London: Hurst & Co. 1994.

Brynard, D.J. Administrative Justice in the Public Service: A Public Administration Interpretation of Section 24 of the Constitution. In M. Faure and J.E. Lane. (eds.) *South Africa: Designing New Political Institutions*. London: Sage. 1996.

Caiden, G.E. The Problem of Ensuring the Public Accountability of Public Officials. In J.G. Jabbra and O.P. Dwivedi. (eds.) *Public Service Accountability: A Comparative Perspective*. West Hartford, Connecticut: Kumarian Press. 1989.

Calland, R. Opportunities. In H. Kotze. *Parliamentary Dynamics – Understanding Political Life in the South African Parliament*. Stellenbosch: Dep. of Political Science, University of Stellenbosch. 1996.

Calland, R. State Ethics and Executive Accountability. In W. James and M. Levy. (eds.) *Pulse: Passages in Democracy-building: Assessing South Africa's Transition*. Cape Town: IDASA. 1998.

Cloete, J.J.N. *Accountable Government and Administration for the Republic of South Africa*. Pretoria: Van Schaik Academic. 1996.

Cloete, J.J.N. *Parliaments of South Africa*. Pretoria: Van Schaik Academic. 1985.

Dwivedi, O.P. and J.G. Jabbra. Public Service Responsibility and Accountability. In J.G. Jabbra and O.P. Dwivedi. (eds.) *Public Service Accountability: A Comparative Perspective*. West Hartford, Connecticut: Kumarian Press. 1989.

Giliomee, H., L. Schlemmer and S. Hauptfleisch. (eds.) *The Bold Experiment: South Africa's New Democracy*. Johannesburg: Southern Book. 1994.

Gloppen, S. *The Battle over the Constitution*. Ashgate Dartmouth: Aldershot. 1997.

Gutman, A. Democracy. In R.E. Goodin and P. Pettit. *A Companion to Political Philosophy*. Oxford: Blackwell. 1994.

Hawkesworth, M. and M. Kogan. *Encyclopaedia of Government and Politics*.

¹⁶⁸ Gloppen, S. op cit. pp 223-224.

London: Routledge. 1992.

Held, D. *Models of Democracy*. Cambridge: Polity Press. 1990.

Heyns, S. *Parliamentary Pocketbook*. Cape Town: IDASA. 1996.

Hickok, E.W. Accountability of Public Officials. In S.M. Lipset (ed. in chief) *The Encyclopaedia of Democracy*. Washington DC: Congressional Quarterly. 1995.

Hirst, P. *Representative Democracy and its Limits*. Oxford: Polity Press. 1990.

Huntington, S.P. *The Third Wave: Democratization in the Late Twentieth Century*. Norman: University of Oklahoma Press. 1991.

Karpen, U. The German Experience. In H. Kotze. *Parliamentary Dynamics - Understanding Political Life in the South African Parliament*. Stellenbosch: Dep. of Political Science, University of Stellenbosch. 1996.

King, A. *Both Ends of the Avenue: The Presidency, the Executive Branch, and Congress in the 1980s*. Washington DC: American Enterprise Institute for Public Policy Research. 1993.

Kiplin, R. *Parliamentary Procedure: A Short Guide to the Rules and Practice of the House of Assembly of the Union of South Africa*. Pretoria: Juta. 1946.

Kotze, H. The New Parliament: Transforming the Westminster Heritage. In M. Faure and J.E. Lane.(eds.) *South Africa: Designing New Political Institutions*. London: Sage. 1996.

Krause, O. Westminster is Alive - and Living Surprisingly Well in South Africa. In *Bridge or Barricade? The Constitution: A first appraisal*. De Villiers. (ed.) Johannesburg: Jonathan Ball Paperbacks. 1983.

LaPalombara, J. *Politics within Nations*. Englewood Cliffs, N.J: Prentice Hall. 1974.

Leon, T. The Democratic Party. In H. Kotze. *Parliamentary dynamics - Understanding Political Life in the South African Parliament*. Stellenbosch: Dep. of Political Science, University of Stellenbosch. 1996.

Lipset, S.M. Introduction. In S.M. Lipset. (ed. in chief) *The Encyclopaedia of Democracy*. Washington DC: Congressional Quarterly. 1995.

MacPherson, C.B. *The Real World of Democracy*. Oxford: Clarendon Press. 1966.

Madison, J. Federalist Paper no. 47. In D. Welsh. *The Institutions of the Democratic State*. Cape Town: University of Cape Town. Undated.

Madison, J. Federalist Paper no 51. In R. Calland. State Ethics and Executive Accountability. In W. James and M. Levy. (eds.) *Pulse: Passages in Democracy-*

building: Assessing South Africa's Transition. Cape Town: IDASA. 1998.

Mahler, G.S. *Comparative Politics: An Institutional and Cross-National Approach.* Second edition. Englewood Cliffs, N.J: Prentice Hall. 1995.

Mandela, N.R. *Long Walk to Freedom: The Autobiography of Nelson Mandela.* London: Little, Brown, Braafontein. 1994.

Neuman, W.L. *Social Research Methods: Qualitative and Quantitative Approaches.* Third edition. Boston, MA: Allyn and Bacon. 1997.

Pitkin, H.F. *The Concept of Representation.* Berkeley: University of California Press. 1967.

Ranney, A. *Governing: An Introduction to Political Science.* Third edition. New York: Holt, Rinehart and Winston. 1982.

Schalkwyk, M. van. The National Party. In H. Kotze. *Parliamentary Dynamics - Understanding Political Life in the South African Parliament.* Stellenbosch: Dep. of Political Science, University of Stellenbosch. 1996.

Schmitter, P.C. and T.L. Karl. What Democracy Is and Is Not. In L. Diamond and M. Plattner. (eds.) *The Global Resurgence of Democracy.* Baltimore: Johns Hopkins University Press. 1993.

Schrire, R. The President and the Executive. In M. Faure and J.E. Lane.(eds.) *South Africa: Designing New Political Institutions.* London: Sage. 1996.

Schumpeter, J. Two Concepts of Democracy. In A. Quinton. (ed.) *Political Philosophy.* Oxford: Oxford University Press. 1967.

Smookler, H. Accountability of Public Officials in the U.S. In J.G. Jabbra and O.P. Dwivedi. (eds.) *Public Service Accountability: A Comparative Perspective.* West Hartford, Connecticut: Kumarian Press. 1989.

Spiro, H.J. *Responsibility in Government: Theory and Practice.* New York: Van Nostrand Reinhold. 1969.

Sundquist, J.L. *The Decline and Resurgence of Congress.* Washington DC: Brookings Institution. 1981.

PUBLISHED ARTICLES AND JOURNALS

Bellamy, R. The Political Form of the Constitution: the Separation of Powers, Rights and Representative Democracy. In *Political Studies.* Vol. 44, No. 3-5, 1996. Special

issue. Cambridge: Political Studies Association and Blackwell.

Bisseker, C. Power Shifting Away from Parliament. In *Financial Mail*. Vol. 145, Issue 7. June 20th 1997. Johannesburg: Financial Mail.

Bogdanor, V. Ministerial Accountability. In *Parliamentary Affairs*. Vol. 50, No. 1, 1997. London: Oxford University Press.

Calland, R. All Dressed Up with Nowhere to Go? The Rapid Transformation of the South African Parliamentary Committee System in Comparative Theoretical Perspective. In *Governance in Southern Africa*. Occasional paper No. 4. Cape Town: School of Government, University of Western Cape. 1997.

Camerer, L. *Poverty and Corruption in South Africa: Government Corruption in Poverty Alleviation Programmes*. Pretoria: Institute for Security Studies. 1997.

Caraley, D. Presidential and Parliamentary Democracies: Which Works Best? In *Political Science Quarterly*. Vol. 109, No. 3, 1994. Special Issue. New York: The Academy of Political Science.

Christianson, D. Is the Watchdog Toothless? In *Finance Week*. Vol. 75, Issue 2, October 2nd 1997. Johannesburg: Finance Week.

Diamond, L. Is the Third Wave Over? In *Journal of Democracy* Vol. 7, No. 3, 1996. Baltimore: Johns Hopkins University Press..

Fabbrini, S. Presidents, Parliaments, and Good Government. In *Journal of Democracy*. Vol. 6, No. 3, 1995. Baltimore: Johns Hopkins University Press.

Giddins, P. Parliament and the Executive. In *Parliamentary Affairs*. Vol. 50, No. 1, 1997. London: Oxford University Press.

Myburgh, J. Separation of Powers: Undermining Parliament. In *Finance Week*. Vol. 74, Issue 9, August 21st 1997. Johannesburg: Finance Week.

Norton, P. "Dear Minister" - the importance of MP to Minister correspondence. In *Parliamentary Affairs*. Vol. 35, No. 1, 1982. London: Oxford University Press.

Oliver, D. Parliament, Ministers and the Law. In *Parliamentary Affairs*. Vol. 47, No. 4, 1994. London: Oxford University Press.

Stepan, A. and C. Skach. Constitutional Frameworks and Democratic Consolidation: Parliamentarism and Presidentialism. In *World Politics*. Vol. 46, No. 1, 1993. Princeton: Princeton University Press.

Stultz, N.M. *Who Goes to Parliament?* Occasional paper No.19. Grahamstown: Institute of Social and Economic Research, Rhodes University. 1975.

Wilson, J. Q. Does the Separation of Powers Still Work? In *Public Interest*. No. 86,

Winter 1987. Washington DC: National Affairs.

The Economist. What checks? Which balance? In *The Economist*. Vol. 313, No. 7629, 1989. London: The Economist Newspaper.

UNPUBLISHED ARTICLES

Calland, R. *Acclimatisation, Adaptation, Assertion in a Time of Institutional Change: The ANC's Parliamentary Party, 1994-1996*. Cape Town: IDASA. 1997.

Calland, R. *Building a House of Integrity: Parliamentary Ethics: The Case of the New South Africa*. Cape Town: IDASA. 1997.

Calland, R. and S. Jacobs. *Party Political Funding: Ethics and the Horns of Dilemma: Choosing the Right System for South Africa*. Cape Town: IDASA. 1997.

Calland, R., S. Jacobs and S. Ngwema. *The Parliamentary Performance of Political Parties*. Cape Town, IDASA. 1997.

Calland, R. and M. Taylor. *Parliament and the Socio-Economic Imperative - What is the Role of the National Legislature?* Cape Town: IDASA. 1997.

Calland, R., D. Emling and S. Jacobs. *Extracts from PIMS Discussion Paper: The South African Parliamentary System in a Comparative Perspective*. Cape Town: IDASA. 1997.

Calland, R. and L. Nijzink. *Nothing Ventured, Nothing Gained: Chambers and Committees in the New South African Parliament: An Exploration of the Limits of Constitutional and Institutional Design*. Cape Town: IDASA. 1998.

Camerer, L. *Derailing the Gravy Train: Controlling Corruption in South Africa*. Pretoria: Institute for Security Studies. 1997.

Camerer, L. *Governance and Corruption: An Agenda for Change*. Pretoria: Institute for Security Studies. 1997.

IDASA. *An Introduction to Parliament*. Cape Town: IDASA. 1997.

Olsen, J.P. *Demokrati og Politisk Organisering*. Bergen, Norway: Dep. of Administration and Organisation Theory, University of Bergen. 1995.

Welsh, D. *The Institutions of the Democratic State*. Cape Town: University of Cape Town. Undated.

NEWSPAPERS

A Deft Hand in Game of Charades. Parliamentary Whip. November 5th 1997.

Attracting and Keeping Good MP's. Parliamentary Whip. September 18th 1998.

Changes at Parliament. Parliamentary Whip. February 9th 1996.

Changes Intensify Pressure. Parliamentary Whip. May 9th 1997.

Committees Key to Democracy. Parliamentary Whip. March 22nd 1996.

DP Wants Guard on the Back Door. Parliamentary Whip. June 20th 1997.

Editorial: Lessons from Sarafina. Mail and Guardian. March 1st 1996.

EU Working on Sarafina 2 Settlement. Mail and Guardian. April 19th 1996.

Funders Behind the Failed Rescue Bid. Mail and Guardian. September 13th 1996.

Health Committee Fighting Fit. Parliamentary Whip. June 21st 1996.

Health Minister Defends Aids Musical. Mail and Guardian. February 9th 1996.

Holomisa Refused Mandela's Appeal. Mail and Guardian. August 2nd 1996.

How Misfortune Becomes a Disaster. Mail and Guardian. July 8th 1994.

Meyer-Speak Keeps even Nats Guessing. Parliamentary Whip. April 4th 1996.

MPs Dropout Rate at 24%. Parliamentary Whip. September 18th 1998.

NCOP Driven to Play a 'Harmonising' Role. Parliamentary Whip. June 5th 1998.

Only the 'Fittest' Survive in Caucus. Parliamentary Whip. August 30th 1996.

Parliamentary Resources. Parliamentary Whip. June 19th 1995.

Parliamentary Resources. Parliamentary Whip. September 13th 1996.

Party Discipline, Whips and Political Bondage. Parliamentary Whip. September 15th 1995.

Press Booboo's of 1996. Mail and Guardian. December 20th 1996.

Sarafina Donor Still Secret. Mail and Guardian. July 12th 1996.

Sarafina Officials Cleared. Mail and Guardian. March 7th 1997.

Sarafina of the Health System. Mail and Guardian. March 22nd 1996.

So Who Did Pay For the Aids Play Then? Mail and Guardian. March 8th 1996.

Still Unclear. Parliamentary Whip. May 9th 1997.

The Biggest Issue of All. Mail and Guardian. September 13th 1996.

The Committees: Hitches Hamstring the System. Parliamentary Whip. August 30th 1996.

Two Arms of Government in a Tangle. Mail and Guardian. March 1st 1996.

Vested Interests Backed Zuma Criticism. Mail and Guardian. September 13th 1996.

Weighing Up a Weak Opposition. Mail and Guardian. May 23rd 1997.

Wake-Up Call on Corruption. Mail and Guardian. November 13th 1998.

INTERVIEW

Jim Matemane. Parliamentary Researcher at the Parliamentary Research Unit, Cape Town. February 1st 1999.

Gaile Moosemann. Managing Editor at Parliamentary Monitoring Group (PMG), Cape Town. April 22nd 1999.

GOVERNMENT PUBLICATIONS

The Constitution of the Republic of South Africa. Act 200 of 1993.

The Constitution of the Republic of South Africa. Act 108 of 1996. As adopted on 8 May 1996 and amended on 11 October 1996 by the Constitutional Assembly.

Official Web-page on Parliament: www.parliament.gov