

Shared aspirations: The imperative of accountability in South Africa's electoral system

By Dr Wilmot James and Mr Adrian Hadland,
Social Cohesion and Integration Research Programme, Human Sciences Research Council

1 Constitutional Considerations

"We can believe what we choose. We are answerable for what we choose to believe" -
John Henry Newman

In a country in which the constitution is supreme, it is no idle exercise to refer to its underlying values when considering possible changes to an institution as important to our national life as the electoral system. While the electoral system itself cannot by any means guarantee a perfectly democratic state, few would contest that the manner in which a society chooses its representatives plays a crucial role in determining the broader political climate. J.J. Rousseau argued two centuries ago that 'the instant a people gives itself to representatives, it is no longer free'ⁱ a claim resting on an overstated concept of radical individualism surely,ⁱⁱ yet it is true that electoral systems influence the way parties campaign, they mark the conduct of the political elite and can assist or retard political alliances.ⁱⁱⁱ It may also have a significant impact on the levels of representativeness experienced by women.^{iv}

There is no clearer guide to how society intends its political climate to operate than in the values that characterise its constitution. The validity of a constitutional value-check is, furthermore, bolstered by the courts' own precedents. As one commentator points out: 'South African courts have already indicated a firm commitment to a value-based approach to constitutional interpretation'.^v A bolder articulation of these values in the public discourse becomes an important step in assessing the suitability of criteria for the purposes of choosing a new electoral system. But which values are relevant?

The values underlying the South African Constitution draw on a variety of histories, bodies of knowledge and experiences. They come as tributaries of a river, now democratic in the ebb and direction of its flow, from our radical liberal, dissident Afrikaner, Africanist, black consciousness, charterist and Marxist streams, from Gandhi's 'Satyagraha', Ethiopianism and from African communal mores associated with 'ubuntu' rooted in the governance of small-scale hunter, gatherer and farming societies, and from centuries of legal, political and philosophical doctrine emanating from the various corners of the globe. And none of these too, for South Africans produced a unique charter under conditions of post cold-war globalisation, by extraordinary national consensus, and it bears the mark of the inspiration of our past and the challenges of our future.

The values that guide the Constitution are statements about a 'desirable state of affairs': they are 'ought' epistemological statements. Together, the constitution and its founding values sought to define, in the words of Judge Mahomed, the shared aspirations of a nation.^{vi}

But it would be untrue to say that every value selected for inclusion in the final constitution was done so with unanimity. The process of drawing up first an interim constitution in 1993 and then the final one in 1996 was nothing if not a testament to the human capacity to negotiate. The corollary of negotiation, naturally, is compromise.

Values were placed on the table and negotiated just as materially as civil service salaries and the shape of the economy. For instance, 'ubuntu' and the need of national unity and reconciliation featured clearly in the (post-amble) of the interim constitution but were either excised or downgraded by 1996.^{vii}

In all societies, values occupy a contested terrain. As history progresses, so sets of values compete, their constituent elements strengthening or diminishing. This can happen over short periods of time. But even as new codes of behaviour develop or consolidate in a society over the longer term, these are constantly challenged. In every arena, from the formal gatherings of a society's chosen representatives to the choices made deliberately or even subconsciously in an individual mind, values are assigned infinitely adjustable degrees of relative worth.

The 1996 Constitution contains within it many values drawn from a wide spectrum of human endeavour. Some suggest that the pattern of constitutional values has been left "deliberately vague"^{viii} to allow, perhaps, for the country's supreme law to adapt and evolve in the way that all bodies of law do. Certainly, South Africa's constitution is unique. Its drafters, for instance, decided not to model it on the United States Constitution, with its appended Bill of Rights, but rather to give central importance to the concept of human dignity and human rights.^{ix} Equally prominent is the Constitution's defining moral elevation: that South Africa will be guided by the principles of non-racism, non-sexism and democracy.

But there are other elements to the Constitution, other values, which are more of 'second tier' nature. This is, in part, to do with the evolution of constitutions themselves and with the changing of our collective understanding of human rights.

The international committee of distinguished philosophers that conducted the preparatory study for the *Universal Declaration of Human Rights* noted that the historical development and expression of our understanding of human rights has moved through three periods. Civil and political rights were the focus in the 18th century, economic and social rights were key in the 19th while cultural rights became important in the 20th.^x

The South African Constitution reflects this development as well as its own context and location. It begins, according to Richard Buchanan, with a statement of cultural rights, which were only formally discovered in the preparatory work for the *Universal Declaration*. Only then does it go on to seek 'to integrate civil and political rights, as well as economic and social, placing central emphasis on human dignity'.^{xi}

This matrix of rights does not support a uniform valuation, as the limitation clause itself makes clear. The relationship between a right and a value is naturally close. The essential content of the right, argues Harold Rudolph, is in reality no more than the values and practices the right is designed to maintain: 'In other words, the wording of the right encapsulates those values and practices that society considers important and therefore worthy of protection'.^{xii}

The prominence of 'second generation rights' clearly signals South Africa's 'African-ness', social democratic commitments, as well as its location in the developing world.^{xiii} Lourens du Plessis asks the question, how African is the 1996 Constitution? His initial answer is 'not very', based as the final constitution is on the accepted forms of liberal democracy.^{xiv} Du Plessis argues that compared to the *African Charter on Human and People's Rights* (the

so-called Banjul Charter), South Africa's own founding document 'appears to be rather un-African'.^{xv}

Unlike the Banjul charter, the 1996 constitution does not highlight, for instance, the primacy of family, individual duties or the rights of peoples. It nevertheless contains, Du Plessis points out, several elements (values) that signal its emergence from a country on the African continent 'showing Africa's colonial past as well as many of the predicaments that beset typical African societies'. The rights to have access to basic services, schooling, health care and clean water are clear markers. So too is the recognition of the status and role of traditional leadership, according to customary law.^{xvi}

Law doctrines of various kinds inform not only the Constitution itself but have much to do with the values considered to underpin it. Common law, for instance, is 'a resourceful body of doctrine that already recognises many of the rights that are now provided for in the Bill of Rights.'^{xvii} The foundational norms of criminal law, private law, due process, administrative law and the law of contract, 'reflect communal mores rooted in the legal tradition and enshrined in the Bill of Rights', argues Du Plessis.^{xviii}

And what about values that are more recently acquired, for instance the primacy of community consultation? Allister Sparks recalls that at the height of the turbulent 1980s, the United Democratic Front issued a policy statement concerning the country's constitutional future.^{xix} 'Drawing on the experience of its own *modus operandi* at the time, it advocated ...collective decision making and a high degree of consultation with the community.'^{xx} The notion was so 'highly democratic' it was almost Grecian, but it evolved, naturally enough, from the political culture of the townships.^{xxi}

Consultation does feature in the 1996 constitution, for example in its dictates on participation. Section 1(d) elevates popular participation in (accountable) government to one of the basic values on which the new South Africa is founded, argues Du Plessis.^{xxii} In a sense, though, wide consultation – of the sort created in the townships-under-siege of the 1980s – is now a common feature of contemporary political culture. Arguably, it is at the very essence of our national identity. For what is *rainbowism* other than a passionate, almost obsessive, determination to hear and acknowledge all viewpoints? It is *audi alteram partem* in its truest and most vital form. But to what degree should it be built into an electoral system? Perhaps the answer lies in accountability, to which we will refer later.

While values, rights, foundational norms and principles are ubiquitous in the 1996 Constitution, and – as we have seen – vary in their weight, several provisions of the Constitution provide a very specific framework for South African elections. These, naturally, must impact profoundly on the criteria for choosing a new electoral system. As Glenda Fick has set it out, the Constitution's founding provisions are key: 'In the first place against a background of constitutional supremacy (provided for in s1(c) and s2 of the Constitution), s1(a) stipulates that the state is founded on ...the values of human dignity, the achievement of equality and the advancement of human rights and freedoms. Secondly s1(b) provides that South Africa is founded on non-racialism and non-sexism. Thirdly, without expressly referring to the electoral system, s1(d) recognises universal adult suffrage, a national common voters' roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness. 'Multipartyism, accountability, responsiveness and openness (in the sense of accessibility, participation and diversity) are all values that must be taken into account when designing the electoral system envisaged by the Constitution.'^{xxiii}

But along with the detailed requirements set out in the Constitution, there is arguably another imperative. As Nijzink and Murray have argued, the Constitution also has a transformative function unusual in comparative founding documents: 'The SA Constitution is very different from many other constitutions. Unlike most constitutions, it does not simply intend to stabilise the country, securing existing patterns and power relationships. Its project is to transform South Africa ... in other words, the Constitution demands change.'^{xxiv}

Judge O'Regan calls this challenge a 'call to action'.^{xxv} South Africa has a constitution 'that compels transformation', she argues: 'If each of us chooses to select the value system adopted in our constitution, we shall be making a brave and bold choice that will enable us to overcome our history and to attain the constitutional vision of a society based on equality, freedom and dignity.'^{xxvi} It is a call worth remembering when considering the criteria for selecting an electoral system. Ideally an electoral system should reflect this challenge. It should seek to transform, or at least allow for the possibility of transformation, in a direction that embraces the overarching constitutional vision and the values that underpin it.

A new electoral system must, of course, reflect these values as well as contribute to the attainment of the broader vision. It is with this in mind that the Electoral Task Team has focused on four values on which to base the selection of an electoral system. These are, in no particular order: fairness, inclusivity, ballot simplicity and accountability. Our experience, we believe, has been strong on the first three and weak on the last, inevitably so perhaps as a consequence of having a pure system of proportional representation.

2 Fairness: a founding value

"Keep up appearances; there lies the test;
The world will give thee credit for the rest."
- Charles Churchill

In electoral terms, the principle of fairness is taken to mean that every eligible voter should have the opportunity to vote and that each vote is of equal value.^{xxvii} It also implies that the result of an election should reflect the aggregated wishes of voters and that competing parties are treated fairly in the calculation of the results and in the consequent distribution of seats. Fairness confers legitimacy on an election and forms the basis of the electorate's acceptance of the outcome.

Fairness, it could be argued, also supposes a particular conceptualisation of humanity. According to O'Regan, the ontological starting point of the 1996 Constitution lies in humans being understood as individual, moral agents who are the bearers of both rights and responsibilities: 'Indeed, the concepts of democracy and human rights flow from a vision of human beings as moral agents.'^{xxviii} In this way, the Constitution asserts the possibility of human agency and, indeed, seeks to amplify its potential.^{xxix} The Constitution 'envisages members of our society as being responsible moral agents who are worthy of being treated with respect'. Being treated as such promotes individual and social well-being, encourages good behaviour and makes possible a shared sense of identity and personal character.^{xxx} The principle of fairness has a rich grounding in the 1996 Constitution and has a very clear lineage from the values of human dignity and

equality. The principle also derives, in turn, from the doctrine of natural justice (in particular, its antipathy to bias) as well as from common law.

As Collins Parker has pointed out: 'The requirement that an administrative body or an administrative official should act fairly primarily implies acting in compliance with the rules of natural justice i.e. giving an interested party an opportunity to be heard before a decision is made and the decision-maker being unbiased.'^{xxxii} Fairness can also be understood as a fundamental requirement for legitimacy. The perception and reality of an election being conducted on the basis of rules and procedures that are fair and just form the basis of the electorate's acceptance of an outcome.

Our Constitution defines the formal requirements of legitimate elections as including universal franchise and regular, free and fair elections^{xxxii}, but it goes further by asserting the importance of 'human dignity', advancing 'human rights and freedom', achieving 'equality' in a manner that is 'non-racial' and 'non-sexist' and deferring of the rule of law.^{xxxiii} A weak interpretation of this is non-discrimination in the conduct of an election, such that, for example, access to polling stations and the demarcation of electoral districts ought not to discriminate nor be seen to disadvantage any voter on the grounds of race, sex, religion, ethnicity, language and/or any other politically irrelevant marker of social difference. A strong interpretation would be to actively promote – to introduce as a practising norm – social integration in our manner of drawing electoral boundaries and conducting elections in the first place, a point of some significance given the high historical level of racial and ethnic segregation in our built and geographical environment. A choice can therefore be made between the weak and strong interpretation of the Constitution when it comes to the value of legitimacy.

Representation of elected public officials on grounds of race, ethnicity and/or sex is seen to fall outside the design of the electoral system. It is the responsibility of political parties in the compiling of their lists and, therefore, considerations of political culture and priorities, in honouring the constitutional values of 'non-sexism' and 'non-racism' in representation. Still, political parties would add to the legitimacy of our electoral system if they were to honour the values on which the Constitution rests, in the sense of providing the diversity of representation among those holding public office as a complement to the spread of electoral voices proportional representation creates.

It would be true to say that fairness, defined in these terms, has been upheld in the various national and local elections held in South Africa since 1994. It is crucial that this remains the case and that fairness constitutes a founding value for the choice of a new electoral system. Of course, the question of whether the 'crossing-of-the-floor' under a pure system of proportional representation violates or compromises 'fairness' is one requiring careful consideration for its possible longer-term impact on legitimacy and political stability. At face value, it appears as if legislation being considered for party changes of our elected representatives is motivated by ad hoc, momentary, even arbitrary considerations, without much concern for its longer-term influences on public perceptions of the fairness of voting conduct and electoral outcomes.

3 Inclusiveness: An historical imperative

"Hell, I never vote *for* anybody. I always vote *against*."
- WC Fields

It is widely held that South Africa has one of the most proportional electoral systems in the world.^{xxxiv} With an extremely low threshold for minority parties and a high degree of proportionality between seats and votes (in, for instance, the 1994 election), it is clear that inclusiveness is one of the strengths of the current system.

The requirement for inclusiveness holds special currency given the nature of South Africa's history of exclusion. Our constitutional framers affirmed the proposition made by those involved in the early 1990s negotiations, that, for its inclusive potential, proportional representation is better suited to a country divided as profoundly by race and ethnicity as South Africa is. Chapter 4, section 46 'Composition and Election' reads that (1) the National Assembly consists of no fewer than 350 and no more than 400 women and men elected as members in terms of an electoral system that ... results, in general, in proportional representation.^{xxxv} As opposed to the first-past-the-post single-member constituency system, proportional representation allows for even a minority of votes cast nationally to invite representation beyond a minimum threshold in parliament and, therefore, a voice for demographic minorities that otherwise would simply not be possible. For a country divided by the calculated fractiousness of apartheid, it was seen as necessary and appropriate for nation-building and social cohesion purposes to allow for the multitude of parties spawned by a system of proportional representation, and thank goodness for it.

The argument in favour of proportional representation was historically compelling in the period before 1994, where negotiations were first on, then off, then on again, where it is estimated that over 20,000 people died of politically motivated violence and where the place of the Inkatha Freedom Party and those, shall we say, of the white right in the founding election, were dangerously, precipitously uncertain. Things are much calmer now and the nation-building efforts of our first two governments had their effect in consolidating the ethos of united South Africa.

Recently nation-building has worn a little thin, to which the response has been a call for a 'new patriotism' and a 'moral regeneration' of our social fabric. There is the perception that the Truth and Reconciliation Commission did not do that much reconciliation; that our dominant classes are resisting mobilisation of their resources and assets for national purposes; and that the moral space for affirmative action has narrowed and the national commitment to reconstruction and development has waned.

Still, South Africa in this time does not face imminent collapse into racial or ethnic blocs or a breakdown in social order. But neither do we cohere or have patterns of associational life of depth and durability that cut across racial and ethnic divisions. Beyond the constitutional requirement for 'in general, proportional representation', the social question therefore remains whether the value of 'inclusiveness' and therefore maximum minority representation of voices is still sufficiently compelling to retain it. As a first approximation, it appears premature in our national development to abandon proportional representation and its importance, therefore, remains central to the design of our electoral system.

4 implicity: Communicating means and results

"O Holy simplicity!"
- John Huss

A distinction should be drawn between voting as an act of completing a ballot form and the collective meaning, complexity of enumeration and global outcome of the sum total of all such acts. Though it is not a constitutional requirement, our electoral system, administered by the Independent Electoral Commission (IEC) by the specifications of an Act of Parliament, is based on simplicity of voter requirements in the polling booth – a cross made against a party (name and logo/emblem) and a photograph of a publicly recognisable associated personality, made twice, one for the National Assembly and another for the appropriate provincial legislature. It is always desirable to have a simple balloting procedure, but particularly so when educational levels such as ours are poor and the voting population relatively inexperienced.

Of course, one should never underestimate the political sophistication of even a formally illiterate (or formally miseducated voting) population nor the effects of formal and informal voter education. Our population is a politically engaged and electorally interested one, and thus has high motivational levels; though how long these last as our political life matures remains to be seen. Still, simplicity in the mechanics of casting a ballot minimises on face value the number of spoiled ballot papers and, in turn, minimises questions about the credibility of elections. It is also true that the educational profile of our population is improving, that efforts in the area of civic education are becoming more intense, and therefore that the degree of balloting complexity a younger generation of voters can manage is itself shifting.

Still, it is entirely possible to have a simple balloting procedure in a complex electoral system. The ordinary voter does not have to understand or take an interest in the arithmetic complications and mathematical sophistication of aggregating vote counts and translating these into seats. But the voter must be able to make a fair connection between electoral results and seat allocation, between the aggregate vote and aggregate outcome; otherwise the legitimacy of an election might be compromised. It is therefore not enough to insist on simplicity of voting; it is also necessary to communicate the meaning of the results in a manner that promotes a public understanding of calculations in crude form, however complicated they might be in their detail, to provide legitimacy to an election.

5 ccountability: Playing with fire

"Democratic Society demands that those who seek public office accept its consequences, one of which is to have to abide by higher standards of scrutiny than citizens who elect a strictly private life"

- Irving Louis Horowitz

The absence of direct accountability in South Africa's current political system has been the source of much soul-searching and gnashing of teeth not least by the Electoral Task Team. As ETT chairman Van Zyl Slabbert admitted in a recent paper, 'no other principle has exercised the minds of the members of the task team more than the principle of accountability'.^{xxxvi} Given the rich depth and often conflicting body of literature on the subject, this is of no great surprise.

Accountability has been described variously as the management of expectations, the reduction of agency costs and as an objective property.^{xxxvii} It has been summarised simply as 'answerability'.^{xxxviii} and spelled out with a great deal more complexity. Ian Thynne and John Goldring define it thus: accountability exists 'in the context of a relationship with an institution or person which or who is in a position to enforce their

responsibility by calling them to account for what they (and/or their subordinates) have or have not done subject to an institution's or a person's oversight, direction or request that they provide information on their action or justify it before a review authority.^{xviii} South African commentator Etienne Mureinik has argued convincingly that the aspiration to accountability translates 'pre-eminently' into a call for rationality review, because it demands the reasons for a decision.^{xi} 'The literature on democratic accountability offers little conceptual consistency,' bemoans Downs.^{xii}

The vexed nature of accountability lies in its paradoxical contrariness. Described by one author as 'an ambiguous and ill-defined concept'^{xiii}, it is both central and peripheral to the democratic process. In essence it conjures the very spirit of democracy ('Instinctively, I feel democracy is about accountability' writes Slabbert.^{xiiii} At the same time, and at a mechanical level, accountability takes many forms, some unconnected to the formal political process.

Writing about the British system, William S Livingston argues that 'the real accountability of the Prime Minister and Cabinet is exercised through a variety of institutions, arrangements and understandings'.^{xlv} These include the rules and practices of the political party, the pattern of debate, relationships with senior civil servants, the work of the press and even the quaintly British notion of 'what's proper'. Few of these fall into the ambit of electoral law, either in Britain or in South Africa.

Historically, the key moment in the development of accountability occurred in the middle of the eighteenth century.^{xlv} Livingston argues that this was the moment when the principle of accountability was transformed 'from one that perceived opposition as criminal into one that accepted it as legitimate but denounced it as politically inept.' Locally, it has been shown how citizens rely on a panoply of traditional, organisational, governmental and community structures to seek redress or achieve responses to problems in a way which facilitate accountability without reference to formal political structures or elected officials.

Certainly there is a considerable degree of accountability already built into the South African polity and to its electoral system. Regular elections every five years or so, as demanded by the Constitution, provide the ultimate sanction. Cabinet ministers are individually and collectively accountable to the President, as well as to their party, while the executive as a whole is intended to be accountable to Parliament.^{xlvi} The effectiveness of the latter arrangement remains moot.

But for many, this is simply not enough. As Tom Lodge has pointed out, 'South Africa's simple list system of proportional representation is chiefly criticised because it reduces the personal accountability of parliamentary representatives as well as encouraging the executive to adopt an authoritarian predisposition in its relations with the legislature.'^{xlvii} Adds Ben Reilly: 'A lack of accountability of elected members to voters ... [can] undermine the legitimacy of the electoral system.'^{xlviii} This lack of accountability is almost certain to be emphasised with the likely passage of 'crossing the floor' legislation. By allowing elected representatives to switch parties, even after they have been placed in a legislative from a closed national list, is to condone an even weaker link between constituencies and their representatives. This argues even more strongly for a tighter link to be introduced through the electoral system itself.

While the ANC, along with a few other parties, has assigned constituencies on a voluntary basis, this has been functioning 'unevenly' at best.^{xlix} There is a widely held view

too that party managers hold too much power under the closed list system. Ordinary MPs, even those belonging to a party holding an overwhelming majority in the National Assembly, simply have 'little incentive to rebel' according to some.ⁱ 'Many of us feel,' suggests Jorgen Elklit, 'that it should be possible to hold individual political personalities accountable for their actions. One should at least aim at a closer connection than is now the case between geographical localities and representatives'.ⁱⁱ

There are, as always, pitfalls. Introducing personalities into the electoral system, rather than parties, may usher in vengality.ⁱⁱⁱ It could also lead to the subversion of national priorities and interests as representatives seek to woo voters and direct resources into their local constituencies. Writers have also pointed to the possible negative impact of directly elected representatives in terms of what this may do to the internal stability of the African National Congressⁱⁱⁱⁱ as well as to the position of women in national and provincial legislatures.^{iv} Over-large constituencies will also nullify the benefits of constituency-based representatives and can render apparent accountability either unworkable or simply false. Surface accountability is like skin-deep transparency: it is essentially dishonest and misleading. Neither of these consequences contributes much to the crowning glory of the South African constitution: the cherishing of human dignity. Whether or not a system without adequate direct accountability measures up to the base values of full public participation, fairness or inclusiveness remains moot, particularly in South Africa.

What we do know is that we put up with minimal direct accountability at great risk. We have to ask whether such risk is worth it. Yasmin Sooka argues that a lack of accountability creates the potential for a repetition of conflict.^{lv} Alienating the population by removing its directly elected representatives poses the possibility of marginalising groups or communities, perhaps into extra-parliamentary or possibly into illegal or even violent activity. There are few greater causes of social upheaval, after all, than unmet expectations. A lack of accountability has the potential to damage national stability, particularly in the face of the incredibly tough challenges currently being served up to national policy planners as a consequence of globalisation or due to increasing inequity, deepening poverty or joblessness.

It's not so much whether we can afford to introduce direct accountability into our electoral system, it's a matter of whether we can afford not to.

Neither can public representatives be allowed to forget or lose sight of whom they are representing. In the words of National Assembly Speaker Frene Ginwala:

'In South Africa, the gap between those with the resources to influence government and those whose influence, for historical reasons, is limited by poverty and disadvantage, is deep and wide. Thus there is a very real danger that while the voices of the powerful may be heard, the majority remains imprisoned in the silence to which their history and circumstances have condemned them'.^{lvi}

6 Conclusions and challenges

The current South African electoral system has much to recommend it. Its proportionality is at the forefront of global electoral methods and it in many ways reflects the values entrenched within the constitution and which are held so dear. In terms of simplicity and fairness, these too feature prominently in the current system and it is essential that they continue to hold such currency.

But while there is a degree of accountability for elected politicians, this level remains inadequate. Elected representatives are unaccountable to the South African people, save for those many, but not enough, moved by personal values and drive to be so. This is a critical weakness. MPs on a national level and MPLs on the provincial elected one do not have to appeal to or satisfy voters to be re-elected as individuals subject to typical performance appraisals in the marketplace of politics. What they have to do by force of institutional circumstance is satisfy leaders of political parties, in order to stay on all-important lists, but of course in turn the aggregate performance of elected representatives matters greatly. The problem is that individual performance becomes camouflaged in the 'aggregate' to the lowest common denominator.

The challenge is to create greater opportunities for individual accountability, one avenue for which resides in the design of the electoral system, without sacrificing the inherited assets of nation building. We say opportunity, for the design of an electoral system simply makes possible greater accountability; to unleash a dynamically democratic system requires also the ethos of good governance and insistent, transparent, measures on the part of party leadership. It was certainly the opinion of the ETT that party structures have a greater role to play in accountability in any case, whatever the final system chosen.

As Elklit has argued: 'Parties can usually be held accountable and voters reflect their attitudes through their voting behaviour. But many of us feel that it should be possible also to hold individual political personalities accountable for their actions. One should at least aim at a closer connection than is now the case between geographical localities and representatives'.^{lvii} Similarly, the authors of this paper feel that the constitutionally sound principle of accountability must be used in evaluating a future electoral system for South Africa.

Of course, there is always the question of the practical implications of a redesigned electoral system, how far it goes, whether there is enough time to take care of the detail, to train and re-train staff, to educate and re-educate the voting population, and matters of budget. For parties, there is the question of list management and campaign strategy. These are all critical considerations, for any and all changes must be feasibly and practically managed, they must work, and they must not undermine electoral and overall political stability before and after elections. Still, the practical considerations ought not to determine or compromise our value choices, that which we see as desirable, for our citizens now and all future generations of citizens who would either curse or praise us for our perspicacity.

References cited in notes

1. Asmal, K & James, W (eds): *Spirit of the Nation*, Reflections on South Africa's Educational Ethos, New Africa Books, 2002
2. Buchanan, R: Human Dignity and Human Rights: Thoughts on the Principles of Human-Centred Design, in *Design Issues*, Summer 2001, Vol 17(3), 35-39.
3. Downs, William M: Accountability in Federal Systems? Competing logics and evidence from Europe's newest Federation, in *Publius*, Winter 1999 v 29, il, p87
4. Du Plessis, Lourens M: Just legal institutions in an optimally just South Africa under the 1996 Constitution, in *Stellenbosch Law Review*, Vol 9(3), 1998, 239-255.

5. Du Plessis, Max: The legitimacy of judicial review in South Africa's new constitutional dispensation, in *Comparative and International Law Journal of Southern Africa*, Vol XXXIII (2) 2000, pp228-245.
6. Electoral Systems Roundtable (ESR), Electoral Institute of South Africa, Cape Town 14-15 August, 1998. Published papers.
7. Fick, Glenda: The Constitution and the Electoral System, paper prepared for the Electoral Task Team, June 2002.
8. Hoexter, Cora: Administrative Justice and Dishonesty, *SA Law Journal*, Vol III (4), November 1994.
9. Hopkins, K: The Common Law is indeed a living creature: A noteworthy decision is handed down in the Cape High Court, in *SA Law Journal*, Vol 118(Pt1), 2001, 149-155.
10. Livingston, William S: Britain and America: The Institutionalization of Accountability, in *Journal of Politics*, Nov 1976, Vol 38(4), p879-895.
11. Murray C & Nijzink, L: *Building Representative Democracy – South Africa's Legislatures and the Constitution*, Parliamentary Support Programme, Cape Town 2002.
12. Parker, Collins: The 'Administrative Justice' provision of the Constitution of the Republic of Namibia: a constitutional protection of judicial review and tribunal adjudication under administrative law, *Comparative and International Law Journal of Southern Africa*, Vol XXIV (1), 1991.
13. Rudolph, H: The 1993 Constitution – Some thoughts on its effect on certain aspects of our criminal procedure, in *SA Law Journal*, Vol III (3), August 1994, 497-513.
14. Sparks, Allister: *The Mind of South Africa – The story of the rise and fall of Apartheid*, Mandarin, London, 1990
15. Sooka, Yasmin: Peace with accountability and respect for human rights, *Track Two*, Vol II(1), March 2002
16. Van Zyl Slabbert, F: Electoral Task Team (ETT) paper, 15 July, 2002
17. Venter, Albert: Parliamentary control and ministerial responsibility under the new South African Constitution, *Strategy Review for Southern Africa*, Vol XVI (1) 1994.
18. Venter, Albert: The Sarafina 2 case: Evasion of ministerial responsibility to parliament?, *SAIPA*, Vol 33(2), 1998

ⁱ Downs 1999: 87

ⁱⁱ *ibid*: 87

ⁱⁱⁱ Reynolds in ESR: 8

^{iv} Albertyn, Hassim & Meintjes in ESR: 17-26

^v Du Plessis 2000: 242

^{vi} O'Regan K: 'Equality: Constitutional Imperatives', in *Spirit of the Nation* 2002: 166

^{vii} Du Plessis LM 1998: 255

^{viii} Du Plessis, M 2000: 242

^{ix} Buchanan 2001: 35

^x *ibid*, 36

^{xi} *ibid*, 36

^{xii} Rudolph 1994: 497

^{xiii} Du Plessis, LM 1998: 252

^{xiv} *ibid*, 252

^{xv} *ibid*, 252

^{xvi} *ibid*, 252

^{xvii} Hopkins 2001: 149

^{xviii} Du Plessis, LM 1998: 239

^{xix} Sparks 1990: 389

^{xx} *Ibid*, p389

^{xxi} *Ibid*, p389

^{xxii} Du Plessis LM 1998: 250

^{xxiii} Fick 2002: 2

^{xxiv} Murray & Nijzink 2002: 3

-
- xxxv O'Regan in Spirit of the Nation 2002: 167
- xxxvi *ibid*, 170
- xxxvii Slabbert, ETT paper, 15 July 2002: 3
- xxxviii O'Regan in Spirit of the Nation 2002: 167
- xxxix *ibid*, 167
- xxx *ibid*, 168
- xxxi Parker 1991: 96
- xxxii *Constitution of the Republic of South Africa*, Ch 1: Founding Provisions (d), 'Universal adult suffrage, national common voters roll, regular elections and a multi-party system of democratic governance, to ensure accountability, responsiveness and openness'.
- xxxiii *Constitution of the Republic of South Africa*, Ch 1 Founding Provisions, (a) through (d) and Ch 2 Bill of Rights, especially Section 19: 'Political Rights'.
- xxxiv Jorgen Elklit in ESR 1998: 28
- xxxv *Constitution of the Republic of South Africa*, Ch 4 Parliament, The National Assembly, Section 46 Composition and Election (1)(a) through (d (2)).
- xxxvi Slabbert, ETT paper, 15 July 2002: 5
- xxxvii Downs 1999: 4
- xxxviii Hoexter 1994: 716
- xxxix Downs 1999: 5
- xl Hoexter 1994: 716
- xli Downs 1999: 5
- xlii *ibid*, 3
- xliii Slabbert ETT paper, 15 July 2002: 7
- xliv Livingston 2001: 884
- xlv *Ibid*, 881
- xlvi Venter 1998: 88
- xlvii Lodge in ESR: 4
- xlviii Reilly in ESR: 37
- xliv Murray C & Nijzink, L 2002: Ch8
- i Venter 1994: 71
- ii Elklit in ESR: 28
- iii Lodge in ESR: 5
- iiii Elklit in ESR: 32
- liv Albertyn et al in ESR: 26
- lv Sooka 2002: 1
- lvi Murray C & Nijzink, L 2002: 113
- lvii Elklit in ESR: 28