

DERIVING A CONCEPTUAL FRAMEWORK FOR A FORMATIVE EVALUATION OF THE CITY OF JOHANNESBURG: 'SEPARATION OF POWERS' PILOT PROJECT

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ABSTRACT

Oversight and accountability of the executive to the legislature are cardinal to good governance and ultimately democracy and political development. Conflating legislative and executive functions limits oversight, effectiveness of governance arrangements, accountability, and public participation. The Department of Cooperative Governance and Traditional Affairs (COGTA) has stressed that governance and democracy at local level is 'in distress' because of inadequate accountability measures and a lack of a clear separation between the legislature and the executive. To counter the latter and improve governance, the City of Johannesburg provided for institutional arrangements that separate executive and legislative functions of Council in 2006. However, after implementing this governance model, we are not certain if separating legislative and executive functions of a municipal council improves governance at municipality level. This research intends to assess if this initiative can improve local level governance. Therefore, the focus of this article is on developing a conceptual framework for such a formative assessment. The article applies these frameworks to collect, process, and analyse data as well as interpret the empirical results.

Keywords: *Conceptual framework, Theoretical framework, Governance, Participatory*

1. INTRODUCTION

Oversight and accountability of the executive to the legislature are cardinal to good governance and ultimately democracy and political development. Conflating legislative and executive functions limits oversight, effectiveness of governance arrangements, accountability, and public participation. This is unfortunately the situation at local government level in South Africa. Visser (2005) has argued that there is a governance problem at local level in South Africa due to poor accountability resulting from weak oversight at municipality level. Further, the 2009 assessment of local governance in South Africa undertaken by the Department of Cooperative Governance and Traditional Affairs (COGTA) de-

scribes municipal governance as being 'in distress'—a position that we think has not changed seven years later. This assessment identifies two root causes of distress—(i.) non-separation of legislative and executive functions leading to (ii.) inadequate oversight, and hence accountability, measures (Department of Cooperative Governance and Traditional Affairs 2009). Similarly, Christmas (2009) points to an obscure division between executive and legislative roles in municipalities as the key cause of distress in municipal governance. Despite supposedly effective legislative provisions and implementing several interventions, McLennan (2009) thinks that governance arrangements in several South African municipalities is ineffective and remains a critical challenge. Governance challenges including a lack of accountability and responsiveness at municipality level may imply a flawed design of local government in South Africa (Fessha 2008). To improve governance, the City of Johannesburg provided for a clear separation of executive and legislative functions in 2006. However, after implementing this governance model, we need to ascertain that separating legislative and executive functions does improve governance at municipality level.

This 'theoretical' article proposes a conceptual framework for undertaking a formative evaluation the city of Johannesburg 'separation of powers' pilot project. After broadly interrogating governance, we propose democratic governance as the most relevant option for local government. Thereafter, we identify public accountability as a key ingredient of democratic governance. Further, we point out oversight, scru-

tiny, and public participation as key elements to attaining public accountability and, subsequently, democratic governance. We have also proposed preferred institutional arrangements and mechanisms for fostering public accountability at local government level. These include separation of powers principle and, therefore, oversight as well as scrutiny. It is these that form the basis of our proposed conceptual framework and local governance arrangements. We argue that, depending on the context, the 'separation of powers' principle and, therefore, oversight and scrutiny can provide a framework for assessing local municipal governance. In doing so, we are contributing to the debate on efficacy of local governance arrangements as well as sub-national initiatives.

2. THE APPROACH

Badenhorst (2007) has pointed out that we review literature to (i.) understand the context or setting and, thereafter, to appreciate the research problem, opportunity, or question, (ii.) justify the research, (iii.) identify the research and knowledge gap through reviewing past and current research studies on the subject of interest, (iv.) identify, understand, and develop frameworks, theories, models, and perspectives that we can use to interpret our research findings, and (v.) develop conceptual frameworks. Technically, the main outcome a literature review is a conceptual framework—defined implicitly by Kumar (2014) as an advanced outline of how a research should proceed after we have interrogated key literature on the research of interest. This implies that this outline or outcome results from a detailed understanding of (and

justifying) the research problem, identifying the knowledge gap, and then developing an explanatory or theoretical framework for interpreting the research findings. Inferring from this, Wotela (2016) has proposed that including the main outcome—which is the conceptual framework—a literature review should have the following seven key sub-components or areas of focus:

1. Evaluation setting or context analysis ... to understand the evaluation setting or context.
2. Evaluation intervention analysis ... to understand and justify the need to evaluate an intervention.
3. Review of similar past and current empirical research studies and evaluations ... to establish the knowledge gap.
4. Establish and discussing the academic field of study (and its important components) encompassing the research or evaluation ... to give the research or evaluation an academic home.
5. Identifying and discussing the key evaluation attributes or variables ... to understand what information or data we should be pursuing for our research or evaluation.
6. Develop an explanatory framework ... to apply when interpreting our empirical findings.

7. Summarise Steps 1 to 6 into a conceptual framework ... to outline how our research or evaluation will proceed based on discussions and decisions emanating from interrogating the literature.

In each area of the seven areas of focus, we apply a thematic summative content analysis when synthesising literatures and writing up. The approach is thematic because we have devised key questions against which we interrogate and synthesise literature theme by theme. It is summative because we have derived these themes before literature review but we allow and include those that arise during literature review. Lastly, it is 'content' because when reviewing literature we focus on explicit and implied subjective interpretation of the discussions. Hsieh and Shannan (2006) have provided a detailed description of summative content analysis amongst other types of qualitative content analysis.

We, therefore, apply this proposed outcomes-based literature review to develop an explanatory framework and more importantly a conceptual framework to prepare for a formative evaluation of the City of Johannesburg 'separation of powers' pilot project in the next sections. First, we begin with an understanding of the context (the City of Johannesburg metropolitan) and then the intervention (the City of Johannesburg metropolitan 'separation of powers' pilot project). Second, to establish the knowledge gap, we interrogate research approaches, designs, procedures and methods applied as well as findings and conclusions realised by past and

current studies on and evaluation of governance arrangements in general and specifically separation of powers. Other than establishing the knowledge gap we also use this interrogation to consider methodological options that we can employ for our assessment. Third, we propose and detail a theoretical or rather an explanatory framework that will facilitate interpretation of empirical research findings on the workability of the City of Johannesburg 'separation of powers' pilot project. Worth mentioning is the linkage between these explanatory frameworks and our attributes of interest that we will collect research information on. Lastly, for now, we derive a conceptual framework that will guide the proceeding paper(s) when collecting, processing, and analysing data and information to assess this intervention with a view to recommend governance arrangements that can foster accountability and oversight at local government level.

3. THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY: THE RESEARCH CONTEXT

With about 4.7 million inhabitants, the City of Johannesburg is classified as a 'Category A' metropolitan municipality (Department of Cooperative Governance and Traditional Affairs 2009). It delivers its public services—ranging from water, waste management, power supply, and public transportation—through twelve Municipal Entities (MEs) that are in turn managed through boards accountable to the City Council. The City Council has 260 councillors. Of these 130 are elected Ward Councillors and the other 130 are appointed by the political parties proportional to the elected coun-

cillors. Thereafter, ten are appointed to constitute a ten-member Mayoral Committee. The elected Executive Mayor chairs the eleven-member Mayoral Committee—which constitutes the political executive wing of the City. On the other hand, the Speaker of Council is the legislative head and chairperson of Council. The Speaker presides over Council meetings in accordance with Council's Standing Rules. The Speaker is also responsible for Section 79 oversight committees that assist Council in the executing its oversight duties.

4. GOVERNANCE ARRANGEMENTS AT LOCAL GOVERNMENT LEVEL IN SOUTH AFRICA—THE RESEARCH PROBLEM AND PURPOSE

Other than the judiciary, the South African legislative framework provides for the legislature, the executive, and the government departments in all three spheres of government. The legislature (elected members) represents the public and their mandate includes approving policies and laws as well as monitoring the executive and the government departments. At national sphere, the legislature is represented by the national parliament and the National Council of Provinces (NCOP). At provincial sphere, the legislature is represented by the provincial parliament and at local sphere by the council of elected and seconded councillors. The executive (cabinet or executive committee) co-ordinates the formulation of policies and laws, oversees implementation of policies and laws as well as government departments. Similarly, at national sphere, the president and cabinet make-up the executive while at provincial sphere it is made up of the pre-

mier and executive council. At local government, it comprises the mayor and mayoral committee. The mandate of the government departments (public servants) is implementing government interventions (policies and laws) as directed by the executive. The national administrative functions are executed by respective director generals and the specialised departments within national government. At provincial sphere, it is heads of departments and specialised staff while at local sphere it is the municipal manager, heads of departments, and specialised staff. Section 133(2) of the Constitution of South Africa (1996) provides for national and provincial governments to separate the legislative and executive functions with the latter accountable to the former. Therefore, the legislature oversees the executive. Further, the constitution provides for the national government to establish national parliament and the National Council of Provinces (NCOP) to perform the legislative functions which include law-making, overseeing and scrutinising the work of the executive. At provincial government level, Section 114(2) of the constitution provides for the provincial legislature that oversees and scrutinises the provincial executive authority (Constitution of South Africa, 1996).

While the legislative arrangements for a democratic, responsive, and accountable government are certain and well defined at national and provincial government, they are not so at local spheres. For example, the Constitution of South Africa (1996) has placed executive and legislative roles in a single body of council at local government sphere. Therefore, in a municipal council plenary

sitting conflates both legislative and executive powers. We argue here that conflating legislative and executive functions underlies the oversight and accountability problems that South African local governments are facing. This sphere of government cannot provide effective, transparent, and accountable local governments (Constitution of South Africa, 1996). This results in ineffective democratic, responsive, and unaccountable local governments.

In response to unclear separation of roles between the legislature and the executive leading to inadequate oversight and accountability measures, the City of Johannesburg reviewed its governance arrangements. This was with a view to improve on internal processes, oversight, accountability, transparency, and public participation as well as promoting democratic practices within the municipality (City of Johannesburg 2005). The Gauteng Provincial Department of Local Government mandated the City of Johannesburg Metropolitan Municipality to pilot the separation of executive roles from legislative roles of councillors in the municipality. The project, also referred to as the 'Separation of Powers' governance model was piloted during the 2006 to 2011 political term and, thereafter, implemented in the 2011 to 2016 political term. Obviously, over the years the City of Johannesburg has refined this model which is similar to the national and provincial parliament. It emphasises separating legislative and executive functions to promote oversight, accountability, and public participation through delegating legislative and executive functions of Council to the legislative and executive arms,

respectively. The model also accentuates the role of non-executive councillors. However, despite implementing this governance model, we are not yet certain whether separating the legislative and executive functions of a municipal Council improves municipality governance. Therefore, we wish to assess if this initiative can improve local level governance. This article focuses on developing a theoretical and conceptual framework for such an assessment largely because South Africa, the challenge of local governments is not the absence of reforms but rather evaluating the instituted reforms.

5. METHODS, DATA, FINDINGS, AND CONCLUSIONS OF STUDIES ON AND EVALUATIONS OF GOVERNANCE ARRANGEMENTS

There are a number of studies on and evaluations of governance, oversight, and public accountability arrangements in different contexts. For example, Leach and Wingfield (1999) as well as Snape (2000) point out that scrutiny is a problematic function for local government. The former argue that it is important that political parties are protected from undue government restrictions but it is equally important that elected representatives enjoy the right to participate freely and independently in the business of their political assembly. Legislative scrutiny and oversight is often best performed by elected members who bring in a degree of independence whilst balancing party sentiments and community preference. This independence and structuring of political activities around political parties makes oversight, scrutiny, and public accountability problematic for local councils. There-

fore, internal political dynamics in councils determines the success of scrutiny. As a result, as Leach and Wingfield (1999: 87) point out "scrutiny ... [can] only work effectively in a cabinet/assembly system dominated by one party if its members are prepared to criticise their colleagues or the executive openly—something which is extremely difficult under present party discipline in the current system". They also raise a red flag that such an arrangement may not always succeed. The chairing of scrutiny committees by the majority party makes councillors reluctant to challenge their colleagues making oversight and scrutiny ineffective.

Similarly, Snape (2000) has concluded that scrutiny is a problematic function for local government councillors because they feel it unsettles internal political dynamics. An open and accountable legislative process tests the rights of elected members to take an independent stand on matters of oversight and scrutiny. However, as a matter of convenience, democratic communities structure their political activities around organised political parties (Uhr, 2001). Similarly, Snape and others (2002:42) argue that holding the executive to account is extremely difficult because it:

"... directly challenges the power, influence, and culture of the party group system. It also directly challenges often, the most powerful elements within the decision-making system. Although leaders, cabinet members, and senior officers declare their support for robust scrutiny, in reality some will not complain if the role emphasis lies with policy development and review rather than holding the ex-

ecutive to account”.

Leach and colleagues (2003) as well as Ashworth and Snape (2004) have discussed local municipal council scrutiny committees established in 2000 to improve the effectiveness of local governance in the United Kingdom. They were meant to provide a clear cut delegation of executive and scrutiny functions between the executive and the non-executive councillors, respectively. The task of the former was making and implementing key decisions while the latter hold the executive to account. Obviously, the aim of these reforms was to make the executive accountable through scrutinising executive decisions and actions before they were made, before they were implemented, and after they were implemented. Leach and colleagues (2003) have noted a general reluctance to apply approved oversight mechanisms, such as the call-in mechanism, to improve accountability. They argue that scrutiny is problematic for councils based on evidence generated in during the early stages of these scrutiny committees. In the early stages, scrutiny committees gave low priority to scrutinising executive decisions and actions of council employees (Cole 2001; Ashworth 2003). Instead the executive exerted more influence on scrutiny than the scrutiny committee. Ashworth and Snape (2004) also audited these scrutiny committees from 2000 (when the reforms were introduced) to 2005. Their audit shows that oversight and scrutiny contributed positively to policy review but failed to hold the executive to account effectively. They conclude that oversight and scrutiny failed to become an effective part of local governance and was

not yet an effective arrangement to 'check and balance' the executive.

The findings by Snape (2000) as well as Leach and colleagues (2003) emphasise how the majority party views scrutiny and how this perception determines the success or failure of local government oversight and scrutiny arrangements. For this reason, Snape (2000) has emphasised that before legislating local municipality scrutiny practices, this challenge should be considered. Therefore, local political and organisational factors are important ingredients of effective oversight and scrutiny (Hankla and Downs 2010). This makes the choice of municipality governance structures and the authority devolved to its internal organs critical to the success of any governance initiative. Uhr (2001) has described Chapter 9 Institutions in South Africa which enforce oversight and accountability in all the three spheres of government. These institutions provide specialised government accountability in addition to that performed by elected members or dedicated public agency established by the assembly to act as an independent entity. Chapter 9 institutions institute oversight by reviewing performance against prescribed standards. Effectiveness of their oversight and scrutiny depends on the government institutions abiding to the established standards and should be acknowledged by those being reviewed. There are various options for structuring local municipal institutions and devolving authority. One option is councils establishing strong executives (Blair, 1991). According to Hankla and Downs (2010), local executive dominance may lead to a successful oversight and other gov-

ernance arrangements because it provides for sufficient financial resources as well as access to information and expertise to oversee the executive. The downside is that it weakens local democracy and eliminates responsive local government. It is unlikely that local citizens would prefer a strong executive compared with a council driven system.

The other option, as Hankla and Downs (2010) have argued, is influential legislatures that are critical for good governance and democratic oversight. Their role is verifying whether executives carry out their responsibilities honestly and effectively and ensuring citizen participation. To provide for local municipal authority and enhance public accountability requires a parliamentary form of institution where the elected council makes up the legislature with powers to appoint and dis-appoint the local executive. Such an arrangement will allow the local council to hold the local executive to account. One weakness with this arrangement is that local authorities would not remove executives without provincial consent (Hankla and Downs, 2010). Another function of legislatures is promoting public participation in government processes with a view to improve oversight, scrutiny, and public accountability. As Geurtz and Wijdeven (2010) has argued public participation in local government emerged to discourage one-sided decisions. They encourage shared power and decision-making. There is also a view public participation in local government contributes to authoritative resource allocation (Heller, 2001). Further, Orr and McAteer (2004) have identified three generic benefits of public participation.

First, increasing public participation in decision making improves the quality of services delivered to communities because the local government can proactively consult with local communities. Second, other than service delivery, local government provides a platform for political activity—that is, engaging the public better to capture the poorly organised, the poorly resourced, and the dissents. Third, greater levels of participation ensure the future of local government because if they do not consult they risk becoming irrelevant.

Orr and McAteer (2004) have also argued that absent or ineffective and disempowering public participation strategies weaken local government's oversight, scrutiny, and public accountability. Sometimes councils' perception of public participation as a survival strategy, and not as a genuine consultation tool, disempowers public participation. With this perception, councils configure public participation to resemble legitimate consultation when it is meaningless. The International Association of Public Participation (2004) state that meaningful public participation involves a process that informs, consults, involves, collaborates, and empowers local communities. When public participation is this effective the impact of the public on governance processes is certain.

Piper and Deacon's (2009) study has established the functionality of local government public participation in South Africa based on performance of ward committees in Msunduzi municipality. The South African governance system has provides for ward committees to facilitate deliberative democratic

decision making. Therefore, ward committees should foster public representation, consultation, and recommendations on matters affecting communities to or through the ward councillor to the local or metropolitan council, the executive committee, and consequently to the executive mayor. In accordance with Section 72 of the Municipal Structures Act, the local or metropolitan council may also delegate duties and powers to a ward committee. Piper and Deacon (2009) conclude that despite ward committees operating for seven years, they were not fully functional because committee members depend on ward councillors, political parties, and the municipality. This dependence syndrome undermines democratic benefits, therefore, compromising effectiveness of ward committees. Further, Smith (2006) and Christmas (2009) argue that structures (ward councillors and ward committees) provided for by the Municipal Structures Act of 1998 to facilitate public participation in municipalities are ineffective. This contributes to the perception that municipalities are not responsive to the needs of communities.

Michels and De Graaf (2010) have also assessed the relationship between citizens and government in two Netherlands municipalities to ascertain if public or citizen participation can improve the quality of democracy. The aim of this study was to establish the role of the public vis-à-vis government in local participatory democracy and account for the true contribution of citizens involved in policymaking. They focus on the relations between citizens and government from a citizens' perspective. Their findings show that the role of citizens is limited primarily to provid-

ing information which government uses to make decisions. They conclude that for a local level healthy democracy to emerge, there is a need for democratic citizenship—that is, collective responsibility in public matters, increased public engagement, and improved legitimacy of decisions are more importantly than having a voice in decision-making. Further, Geurtz and van de Wijdeven's (2010) study has described direct participatory democracy experiences of a medium sized municipality in the Netherlands. In doing so, they have identified two main reasons a government involves the public in its programmes. First, citizen participation leads to people-informed outputs. Second, citizen participation makes decision-making process democratic. Geurtz and van de Wijdeven (2010) conclude that strong citizen participation at local government connects the citizens to its government. Besides, public participation tests a system's ability to accommodate scrutiny. Legislative scrutiny is enhanced if, and only if, it can disallow or veto executive regulations if they do not conform to specific standards or legal form. In relation to bills and regulations, political assemblies are tested for their willingness to promote greater public participation in scrutinising the core activities of government.

Compliance driven public consultation processes which are usually void of meaningful public participation, oversight, and accountability in municipalities is another challenge inhibiting effective public participation. In South Africa, Mogale (2003) has suggested that meaningful public participation is not always attained because its conceptualisation at local government level

is fuzzy and ideological. This leads to a mismatch between public participation conceptualisation and operationalisation. This disconnection between theory and practice, degenerates public participation into just a strategy that convinces local audiences that local government recognises their development needs. As a result, positive effects of participation are minimal and municipalities are seen as unresponsive and not accountable to the public. Only a more collegial approach increases policy legitimacy especially if the initiative is supported by a representative structure.

The foregoing review shows that oversight, scrutiny, and public participation are key aspects to public accountability as well as advancing democratic governance. The United Kingdom experience shows that oversight, scrutiny, and public participation need overhauling to improve public accountability. However, evidence shows that local governance reforms have experienced challenges emanating from internal political dynamics that limit oversight, scrutiny, public consultation, and consequently public accountability. Accountability agencies and legislatures have a tendency to conserve their style of operations to 'play it by the book' (Uhr 2001).

6. SITUATING THE 'SEPARATION OF POWERS' ARRANGEMENT WITHIN THE DEMOCRATIC ACCOUNTABILITY AND ITS CRITICAL COMPONENTS

Democratic accountability and its critical components of oversight and scrutiny as well as public participation are normally exercised within the broad framework of 'separation of powers'.

Therefore, if we have to derive a theoretical framework and later on a conceptual framework, we need to discuss the over-arching framework that nests 'separation of powers' within which we interrogate the concepts of oversight, scrutiny, and public accountability, in context. Ashworth and Snape (2004) describe oversight as the process of investigating the 'hows' of organisational conduct, particularly where there is a greater expectation of official compliance with authorised policy. Oversight is a critical governance arrangement in legislative environments. The Parliament of South Africa (2008) states that its oversight role adheres to the Commonwealth description based on the conventional Westminster perspective whose emphasis is on the role of legislatures in ensuring that government performs and complies with statutory procedures and rules. Obviously, oversight objectives are linked to the broad objectives of democracy and accountability. They are meant to detect and prevent abuse of power, arbitrary behaviour, and unconstitutional conduct by government and its agencies (Snape and Ashworth, 2004). At the core, oversight protects rights and liberties of citizens (Parliament of South Africa, 2008) by holding the executive to account for their dealings so that they improve government effectiveness, relevance, and efficiency. This makes oversight useful in the implementation of government interventions and allows for transparency of and public trust in government operations.

Leach (2003) has argued that all forms of oversight measure performance against certain standards to test for compliance. Many oversight activities investigate entities

where appropriate legal authority has been stretched or bypassed particularly in relation to defence and security operations. In such cases, oversight is unusually confidential or in-camera hearings held between the overseer—such as the parliamentary committee established to monitor the performance—and the supervised. Oversight can include oversight visits by a legislated committee to conduct physical verification of performance against a standard.

Further, Ashworth and Snape (2004) describe scrutiny as a general investigation of the 'whys' in the political and administrative conduct where there is notable discretion by government officials. Scrutiny allows for reviewing government performance by political assemblies (legislatures), by public agencies established by the political assembly or government, and by non-governmental bodies including the media. Leach (2003) has discussed scrutiny processes especially those undertaken by legislative assemblies such as question sessions and parliamentary debates between government and non-government officials commonly called 'the backbench' as well as those initiated by opposition parties. Legislative or parliamentary scrutiny refers to accountability tasks undertaken by members of the legislature when scrutinising the government. Examples include a parliamentary committee investigating government operations or when a parliamentary chamber reviews a government bill, or when a parliamentary delegation to another country to examine the impact of an intervention or its contribution to an international programme. March and Olsen (1995) as well as Ashworth and

Snape (2004) have identified two avenues for effecting public scrutiny of local government decision-making and accountability, that is, (i.) political and community bodies and (ii.) specialist oversight using competent public authorities.

Ashworth and Snape (2003) point out, comparatively, oversight seeks justifications on the 'how questions' from administrative officials implementing approved interventions while scrutiny seeks explanations from policy makers to the 'why questions'. Scrutiny points to public and political review of government operations while oversight is less public orientated and focuses on technical reviews of government. Public authorities established to ensure that government operations conform to approved standards undertake most scrutiny responsibilities. However, compared with scrutiny, oversight is a more specialised form of enhancing accountability. Further, government oversight activities focus on a narrower range of operations though they vary across policy areas. One common form involves a designated oversight agency responsible for 'whole of government' compliance with particular policies. This could be a commissioner empowered to act on citizens' complaints, oversight activities confined to one government agency, or even span across a limited range of government operations. In practice, oversight and scrutiny functions tend to merge and the terms are frequently interchanged because most public accountability arrangements reflect aspects of both. As a result, in the absence of oversight, scrutiny processes are applied to provide for accountability. However, accountability

can be ineffective when oversight mechanisms are employed in place of scrutiny. Therefore, one should distinguish the components of accountability. Further, as Uhr (2001) has argued, oversight and scrutiny are not reserved for legislative assemblies only. Agencies such as the Auditor-General and internal auditors do undertake public scrutiny activities.

The Parliament of South Africa (2008) points out that in South Africa scrutinising (formal and informal) as well as overseeing the executive are constitutionally mandated functions of the legislative organs of state. The latter entails overseeing the management of government departments by the executive in pursuit of effective service delivery. Uhr (2001) points out that legislatures or parliaments are key public accountability institutions in parliamentary democracies. Their systems differ in how they structure the freedom of the legislature to manage accountability. The most influential models of accountability among Commonwealth countries are based on the 'Westminster system' of responsible parliamentary government. One highlighted feature of this model is the evolution of accountability arrangements in parliamentary regimes. Snape and Taylor (2004) suggest that 'Westminster system' has evolved through three broad phases—that is, (i.) initially promoting the need for government accountability to parliament and the courts; (ii.) followed by extending it to public scrutiny; and (iii.) finally extending the range of oversight mechanisms designed to supplement parliamentary scrutiny.

As argued by Pillora and Mckinlay (2011), the basic norms of a

responsible parliamentary government should reinforce the principles of representative government. Therefore, legislatures should link the people and their government to reinforce the principles of democracy. Uhr (1998) points out that while awaiting universal suffrage, responsible government systems invested heavily in parliament to foster public accountability. One important mechanism to achieve this is providing parliament the sole responsibility of approving government budgets, that is, accountability through financial control. Further, Uhr (1998) argues that excluding legal accountability (the judiciary and the courts); earlier components of parliamentary accountability focused on financial control, that is, government taxation and expenditure. Establishment of an independent state auditor attached to parliamentary public accounts committee meant to foster financial accountability is an important parliamentary instrument for financial control. These arrangements placed parliament at the centre of national governance making it the institution responsible for determining who holds executive power and under what terms and conditions.

According to Schedler, Diamond, and Plattner (1998), 'responsibility' in classic models of parliamentary government was conferred on elected members capable of commanding a stable parliamentary majority. The responsible government model rests on the norms of accountability that elevate the rights of those commanding the largest parliamentary parties. Accepting the responsibilities of executive office, leaders of the majority parties were inclined to emphasise the responsibility side

of governance and downplay the accountability side. Legislative support staff, referred to as scrutiny officers by Snape and Taylor (2001), promote public accountability in responsible parliamentary government. They provide for oversight, scrutiny, and therefore accountability processes by facilitating, publishing, and communicating findings of public hearings and investigations. Therefore, such staff should produce accurate and timely public record of legislative debates and committee engagements. The work (reports and transcripts) that scrutiny officers produce should be democratic worth, useful as official transcripts, and provide evidence of competence of government in managing public affairs. This provides the public and their representatives as well as the media an opportunity to view accountability records as significant illustrations of how government business is being conducted. However, as Snape and Taylor (2001) point out, research shows it is easier to secure public accountability in political theory than in concrete practice because the process involves extending parliamentary controls over the spheres of responsibility exercised by the political executive. This has potential to go against executive convenience. This is why public accountability is consistently reformulated by refinements in scrutiny and oversight. Uhr (1999) has suggested that "...left to itself, the attractive banner of 'parliamentary government' could be raised just as easily by unaccountable parliamentary oligarchs ... as by friends of parliamentary democracy".

7. A FORMATIVE EVALUATION OF THE CITY OF JOHANNESBURG 'SEPARATION OF POWERS' PILOT PROJECT, A CONCEPTUAL FRAMEWORK

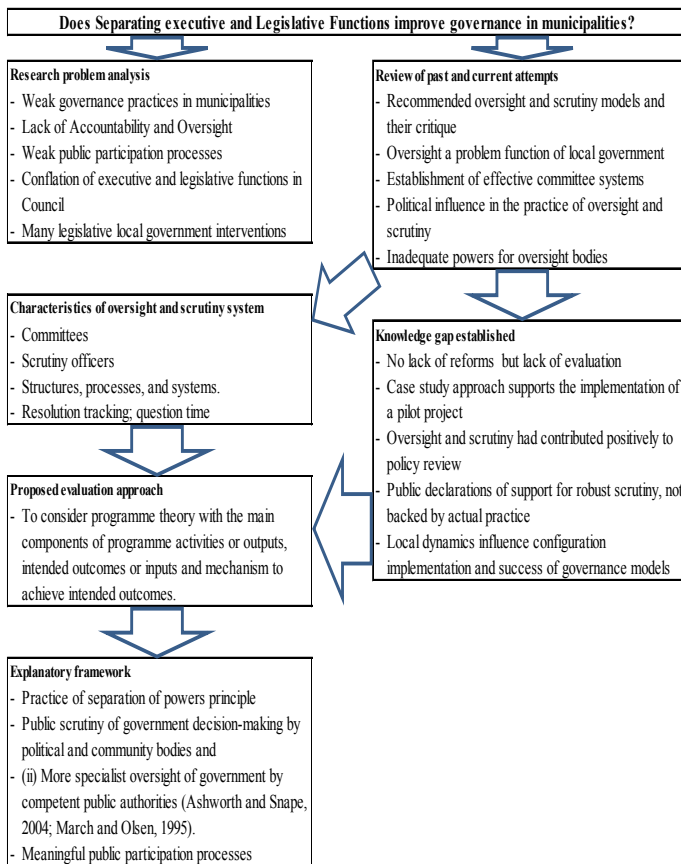
The governance arrangements in municipalities conceptual framework is based on the 'separation of powers' principle combined with oversight and scrutiny mechanisms. Specifically, it emphasises that the context within which a particular model is implemented is important as it can influence the effectiveness of any governance arrangement. Therefore, we do not recommend a completely new conceptual framework but rather how such existing concepts can be contextualised. Figure 1 presents a conceptual framework a formative evaluation of the city of Johannesburg 'separation of powers' pilot project. It arises from a reflective summary of the preceding sections in this article; namely, a research problem analysis as well as reviewing past and current studies on and evaluation of the 'separation of powers' concept in the context of governance. In doing so, we point out the knowledge gap including the lack of understanding the local dynamics that influence effectiveness of governance models. On the basis, of these we have proposed a more informed approach and established an accompanying plausible theoretical framework.

The principle of separation of powers is an important structural element to achieve accountability oversight and scrutiny in democratic governments through the separation of legislative, executive and judicial powers into different branches of government. A basic separation protects the independence of the judiciary from

the political executive holding office as the government of the day. It also protects the freedom of the legislature or parliament from domination by the serving executive government. Historically, modern constitutional government first separated out the judicial power from the combined weight of the other two powers: the accountability of government was strengthened by protecting

judicial office-holders from interference from the two political branches. Thus a basic element of accountability is the protections enjoyed by the judiciary through such institutional features as security of tenure, freedom of decision-making and the rights of citizens to approach the courts to seek review of government decision-making.

Figure 1: Showing a conceptual framework for a formative evaluation of the city of Johannesburg 'separation of powers' pilot project



Accountability is further enhanced through a separation of legislative from executive power, either by forming two distinct branches of government as in the case of presidential systems, or by devising institutional checks and balances to highlight the distinctive responsibilities of the

political executive and the legislature. Most parliamentary governance systems have the political executive drawn from the party or parties commanding a majority of members of Parliament. Without special effort to protect the independence of the law-making function, parliamentary systems can degenerate into the subservience of the legislature to a dominant political executive which expects little more of the political assembly than that it 'rubber stamp' government initiatives. Democracy should protect the independent value of representative assemblies; making democracy effective means promoting the independence of the legislature as the central forum for community deliberation over law and policy. Accountability is best served where governance systems are able to mobilise public scrutiny of the executive branch and to subject government operations to sustained oversight by parliamentary and other specialist authorities.

The approach to accountability evident in the separation of powers has sometimes been called 'horizontal accountability', that is, accountability between equally autonomous if not quite equally powerful institutions. This is in contrast to most forms of accountability which illustrate 'vertical accountability', that is accountability between unequal institutions where one is acknowledged as the principal and the other as the subordinate agent. At times, both forms of accountability are combined. This applies in many parliamentary systems. Separation of powers is the practice of dividing the powers of a government among different branches of government (Carney 1993). At

the centre of separation of powers doctrine is a suggestion there are different kinds of public roles that ought to be separated from one another and ought to be exercised by different institutions or personnel. According to Vile (1967) and Carney (1993), in a pure form of separation of powers, each of these branches would be allocated a matching identifiable role that is Executive, Legislative and the Judiciary (Vile, 1967; Carney, 1993). The legislative branch is mandated with making laws, the executive branch with administering the law and the judicial branch has a mandate to try cases brought to court and to interpret the law. The separation intends to achieve a balance and to prevent an overconcentration of power in the hands of a single person or institution (Carney, 1993). Each government branch is confined to exercising its own function and not encroaches into functions of other branches. Ideally, people who make up these branches would be separate and distinct.

Development of the doctrine of separation of powers is attributed to ancient and modern writers (Alvey, 2005). The writing of ancient philosophers such as Plato (427 – 347BC), Aristotle (384 – 322BC) and Polybus (205 – 123BC) influenced modern writers (Alvey, 2005). Their writing formulated theories of government, political theory as well as defining the key functions of government. The ancient 'mixed constitution' designed to avoid competition between factions is considered the ancient version of separation of powers (Alvey, 2005). The 'mixed constitution' was a mix of and balance among three forms of constitution, monarchy (rule by one),

aristocracy (rule by the few) and democracy (rule by many) (Fitzgerald, 1980). Of the modern-day writers, Carney (1993) and Alvey (2005), credit Locke (1690), Baron de Montesquieu, the 'Spirit of Laws' (1748) and Madison (1788) with the modern idea of separation of powers. Locke (1690) was critical of absolute monarchy and advocated constitutional monarchy and limited government. Montesquieu (1748) improved the ideas of Locke and is credited with elaborating the modern conceptualisation of separation of powers doctrine. Collectively, they advocated perceiving separation of powers doctrine as purely a system of checks and balances (Alvey, 2005).

There are three key reasons for separating powers. First, drawn from historical times, separation of powers seeks to protect liberty and promote good government through dividing different powers of government among three branches of government. According to Carney (1993), Montesquieu suggested that, to avoid arbitrariness, and promote liberty, power of governance should be divided between three organs of the state. In promoting good governance and protecting liberty, the doctrine aims to use checks and balances to reduce abuse of power (Persson et al. 1997). The theory works by creating subtle conflict of interest between the three branches of government. It is assumed that this allows the bodies to discipline one another to the voters' advantage (Persson, et al. 1997). By applying a strict separation of powers, it is assumed, 'each branch will be a check to others and that no single group of people will be able to have total control of machin-

ery of the state' (Carney, 1993:2).

The spirit of the doctrine is that if a single person or body held all three functions or powers, it would result in dictatorship and arbitrary rule. The doctrine suggests that political stability and freedom would be secured if the three arms of government remained separate. According to Carney (1993), Montesquieu argued that if power is concentrated in a single person's hand or a group of people then it results in a tyrannical form of government. They saw separation of powers as a way to reduce arbitrary power of unchecked rulers. In its later application the idea stresses the role of citizenry and gives citizens the rights to criticize state action.

Persson and others, (1997) describe separation of powers as a basic constitutional principle of liberal democracy that promotes accountability. They argue that separation of powers improves accountability of elected officials and effectiveness of voters. However they caution that this can only happen under proper checks and balances. They noted that separation of powers allows for the design of a system that allows for conflict of interest between executive and legislature and needs for executive and legislature to agree in legislative decision making (Persson and others 1997). Scholars identified three general ways in which a legislature may control the executive in a separation of powers system; oversight, legislation and budget making.

They suggest for separation of powers between the legislature and the executive tools to work, there must cooperation between the two branches in policymaking.

The legislature should have ability to oversee the executive and executive must be willing to comply with legislative laws. They give budget formulation as an example of how separating powers can work and produce accountability by splitting the decision over budget formulation into two stages while requiring both policymaking bodies to agree at each stage. Closely analysed, one body (executive) has full control over the size of the budget, while the other body (legislature) has complete agenda setting over composition of the budget. They caution, however, the mere existence of conflict of interest alone is not enough to improve accountability; however, it is important that no policy is imposed unilaterally without agreement of the two bodies.

Persson and others (1997) highlight the importance of agenda setting power in the design of separation of powers. They argue that important decisions must be separated in part and assigned to the different bodies, that is, executive and legislature. Each body will have full agenda setting power over its part of the decision. Each body will prevent the other from abusing its power through creation of overt and covert conflict of interest. Proper sequence of decision making can introduce controls to deprive the executive and the legislature of most of the rents they use to hold power. Second, separation of powers is a basis for setting up a constitutional system useful for dividing legislative, executive and judicial roles in a new or developing state (Carney 1993). Montesquieu's 1748 publication, the 'Spirit of Laws', according to Carney (1993) influenced the constitution of the United States of America and evolving of the

French republic. Third, according to Barber (2001) the purpose of the doctrine of separation of powers is efficient government. He argues that separation of powers is a tool to achieve a constitutional objective, that is, the goal set for the state by political theory. If the constitutional objective of a country is to be a democratic state, separation of powers theory can help a state achieve this objective.

A major critique of the separation of powers doctrine is the existence of major differences between its theory and its practice which have resulted in a complete separation being possible only in theory and not in practice (Alvey, 2005). These difficulties emerge, from the three-part classification of government power and functions. This classification and the nature of government functions ensure that it is not always possible to impose a strict doctrine of separation of powers (Carney 1993). According to Lumb (1983; 24) an absolute separation of powers would lead to anarchy. The realities of government have resulted in separation of powers being applied to varying degrees as governments try to uphold controls. As a result only a partial separation of powers has been implementable, complimented by further controls.

Another weakness of the separation of powers doctrine is assuming that it is possible to define the separate functions of government and to decide to whom their performance should be assigned (Barendt 1995). It is not possible to clearly place government functions into these three branches of government because governments the world over, enjoy significant delegated authority.

Barendt (1995) argues the failure to conform to a strict separation of powers should not take away from the overall objective of separation of powers, which is to promote liberty and to prevent arbitrariness or tyranny in government which may arise from the concentration of power. The allocation of functions between three, four or five branches of government is not the most important, but that it is a process to achieve that end. Precise allocation may not be the most important factor; however, insensitive allocation may also produce incompetent inefficient government. He also cautions that, while it is possible to define in general terms the legislative, executive and judicial functions of government, what is crucial is that this distribution is enforceable by the courts. The absence of the enforceable distribution presents challenges for the doctrine.

Barber (2001) emphasises that, instead of allocating functions to an arm of government best suited to execute them, the competency of institutions to carry out these functions should be more important considerations. These may include composition and skills available, the knowledge and experience of actors in the institution, information gathering powers of the identified institution, decision making processes in the institution, and vulnerability of the institution to outside factors, among others. In essence Barber (2001) presents structural concerns that should not stop the allocation of functions but should be considered when engaging the doctrine of separation of powers, concerns that relate to deeper issues of legitimacy as well as the normative theories of rights and democracy. Separation of powers, therefore,

presents opportunities for efficient exercise of power when various types of power are allocated sensibly to the right kind of institution.

Reality is that not all government functions can be neatly slotted into just one of the categories identified in the doctrine (Carney 1993). Instead there are suggestions that within a separation of powers exists a combination of both a separation and fusion of powers. For example, in many countries there is common acceptance the judiciary is sacrosanct and functions and responsibilities of the judiciary are distinct. However, there are suggestions, in the Commonwealth, of partial fusion between executive—executive and the legislature (Assembly)—(Bagehot 1963). The doctrine assumes that it is possible to distinctly separate the personnel that are involved with the Legislature, the Executive and the Judiciary. However, practically this is not always possible. For example in the Westminster system, the personnel of the Executive (Ministers) must be chosen from members of the Legislative Assembly, Members of Parliament (MPs). This presents an overlap which Carney (1993) describes as necessary as it promotes responsible government by making the cabinet responsible to the Legislative Assembly. While in many cases the separation between the Judiciary and the other two branches is clearer, the powers of the three branches of government overlap sometimes. Another weakness of the separation of powers doctrine includes that it is not always contained in a country's constitution and therefore cannot be enforced by law.

The separation of powers principle is also criticised for being subject

to external factors such as whether the system of government is a presidential or parliamentary democracy as different constitutions can strengthen or weaken the components sharing power. The institutional arrangements implemented in the judiciary, the legislature and the executive also have an influence on the functionality of the separation of powers doctrine in practice. Sometimes the form of separation of powers adopted is subject to political practice or legal arrangements. In some instances where separation of powers is not a legal restriction, it is complimented with other controls such as committee systems of parliamentary review and action (Carney 1993). As a result of these implementation challenges and innovations, a complete and strict doctrine of separation of powers exists only as a theory. There are implementation challenges to the separation of powers doctrine. While the separation of powers doctrine emphasises the interaction among the judiciary, executive and legislature, this article is interested in the separation of powers and the interaction between the legislature and the executive. The conceptualisation and implementation of the separation of powers has evolved over time and one example of this evolution is the development of legislatures. Over the past three decades, legislatures have enhanced their capacity to play a more active role in the policy-making process which has been dominated by the executive. Legislatures have assumed greater responsibility in formulating policy, and more actively oversee the operations of the executive branch oversight). This oversight role has taken many forms.

One way is of legislative standing committees responsible for continuous review of the work of the state agencies. Legislatures also create special committees or staff agencies designed specifically to evaluate agency operation and performance. In addition, legislatures review (and sometimes, veto) the rules and regulations developed by executive agencies to implement law. According to Persson et al, (1997) the separation of powers can have many rationales such as prompt correction of mistakes or protection of minorities; key to this is separation of powers assist a government to promote principles of democratic governance through limited government. The theory of separation of powers, mechanisms and tools as outlined above can be used to assess and evaluate the practical institutional arrangements in South African local government in general and as practiced in the City of Johannesburg in particular.

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