



City of Cape Town Solar Water Heater By-law: Barriers to Implementation

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Let's assume... 'research performed in ignorance of the understanding that implementation actors themselves have about their circumstances is likely to miss important parts of the explanation for what happened' (O'Toole 2000: 269).

INTRODUCTION – A THEORETICAL PREFACE

The study of implementation has had tremendous importance for the study of policy. It opened up the black box of 'after-a-formal-decision' politics and demonstrated, among other things, that the political process continues all the way through to the final output of the policy process (Bardach 1977). It addressed the complexity of achieving policy goals, offered new insights into the importance of lower-level actors in policy, and attended to the effects that clients and extra-government groups had on the policy result (Schofield 2001). It became one of the most important sources for the development of new perspectives that tried to capture how policy processes cross the public-private divide, as evidenced by the new focus on governance (Rhodes 1997) or networks (Marin and Mayntz 1991). Implementation research has been particularly valuable in two somewhat contradictory ways. On the one hand it has shown how difficult it is for new values, ideas or interests to be implemented within governmental structures that are shaped to maintain a status quo. On the other hand, it has pointed to the complexities of policy implementation even when conflicts are not apparent – to a range of 'policy paradoxes' where the outcome is obscure because of an initial and mutual adherence to a policy goal among all the actors involved (Pressman and Wildawsky 1973). The case study we present in this chapter is illustrative of both these insights.

For some reason, implementation research seemed to become unfashionable during most of the 1990s (Sætren 2005). This is unfortunate, as it does not seem to mirror a decreased demand for the practical insights offered by this research (Lester and Goggin 1998; O'Toole 2000). Recently, however, there have been signs of a revival of interest in implementation studies (Barrett 2004; DeLeon 1999; Hill and Hupe 2002; Lester and Goggin 1998; Peters and Pierre 2003; Sætren 2005; Schofield 2001; Winter 1999). This has led to an emerging debate on how to revitalize the implementation approach.

How to define and study policy implementation – some general ideas

This chapter builds on the rich literature on implementation that has developed since the topic started to attract scholarly attention in the early 1970s. The richness of this literature relies on its large repertoire of findings, perspectives and policy ideas. From this resource we have extracted four ideas, which have guided this study:

1. We adhere to the 'relaxed' definition of implementation suggested by Ferman (1990) as that which happens between policy expectations and policy result. In line with this

interpretation we define our study – of how a municipal government declared its expectation that a new city by-law would be adopted, which never happened – as a case of a failed policy implementation.

2. Policy implementation can be perceived as a ‘negotiated order’ (Bardach 1977), necessitating a focus on the political processes through which such orders are established, maintained and changed (O’Toole and Montjoy 1984).
3. Implementation usually implies the involvement of different organizational units, and requires an exploration of inter-organizational relations and inter-institutional linkages (O’Toole and Montjoy 1984) as well as a focus on the organizational cultures (Barrett 2004).
4. Policy implementation may be viewed as problem-solving, necessitating a focus on organizational learning processes. This requires exploring how learning takes place – or is inhibited – within and across organizational units (Schofield 2001, 2004).

THE RESEARCH QUESTION

This chapter reports on research initiated in response to a question: Why has it taken so long, and proven so difficult, to implement a Solar Water Heater By-law (SWHB) in the City of Cape Town (CCT)?

The decision by the CCT to implement a SWHB was, in several people’s words, a ‘no brainer’, because its implementation would enable a significant group of people to continue enjoying the same levels of heated water supply at a lower cost, while reducing carbon emissions within the city. It would be a win-win situation.

Yet, although there was much enthusiasm for the SWHB, and although work began in earnest on its development in 2006, by the end of 2010 there was still no by-law.

The context in which the by-law was meant to be implemented seemed generally supportive:

- The CCT has repeatedly declared its intention to pass a SWHB, first in its 2003 ‘Integrated Metropolitan Environmental Policy’ and later, in 2006, in its comprehensive ‘Energy and Climate Change Strategy’ (CCT 2003, 2006).
- There was, and continues to be, considerable political support, locally and provincially, for carbon reduction initiatives.
- The CCT has, according to a reliable legal opinion, a constitutional mandate to pass, and implement, a SWHB (De Visser 2008).
- There remains considerable support across a wide swathe of City officials for the City’s sustainability objectives.¹
- By-laws are an established and accepted mechanism for regulating the behaviour of

city residents and are an oft-used mechanism within the CCT.

- There are international precedents for using SWHBs as a way of achieving sustainability objectives – for instance, the City of Barcelona passed a SWHB in 1999, producing excellent sustainability outcomes (City of Barcelona 1999).

OUR APPROACH

First, a word about our research and its limitations. In order to explore our research question we conducted a ‘surgical’ enquiry in which we focused our attention on those departments within the City that had been engaged most directly with the SWHB – the Environmental Resource and Management Department (ERMD) and the Planning and Building Development and Management Department (PBDMD). Both departments are units of the Strategy and Planning Directorate (SPD). Within the SPD, the ERMD is responsible for promoting sustainability within the City and took the lead in the SWHB process. The PBDMD, as the department responsible for planning and building regulations, was consulted at various stages in the process and was identified by the ERMD as the appropriate implementing agency for the by-law. There were, of course, other departments within the City that had an influence on the by-law process, such as the Finance Department. However, given the limited nature of our enquiry we excluded these departments from our investigation.

Our research was premised on the assumption that, collectively, officials within these two departments (hereafter ‘our departments’) already knew much about the solution to our puzzle and that our task was to tease out this knowledge and test our conclusions with them. To clarify the political context, we met with a member of the City Council who has been heavily engaged in the by-law process.

On the basis of both our initial enquiries and conclusions drawn by research reported within implementation and governance literatures, we focused our attention on the institutional cultures of the ERMD and the PBDMD, particularly on the ways in which these cultures encouraged officials to understand, and respond to, the ‘worlds’ within which they operate.

Before proceeding further, a word of caution is in order. While we will speak about institutional cultures that apply to each of these departments collectively, this is inevitably a simplification, as how an institutional culture manifests itself varies across any organization. Accordingly, our description of both departments will inevitably be a caricature. Nonetheless, identifying an institutional culture does throw considerable light on the systemic differences between our departments.

INSTITUTIONAL CULTURES

Kenneth Burke, the American literary theorist, argued that the way people understand their worlds inevitably excludes other ways of seeing. He expressed this in the phrase ‘every way of seeing is also a way of not seeing’ (1935: 70) or, as he phrased it some fifty years later, ‘every insight contains its own special kind of blindness’ (1984: 41). Different institutional cultures provide for different sets of insights, as well as different ‘blindnesses’.

What turned out to be crucial in differentiating our departments was not a difference with respect to ends – they both were committed to promoting a ‘greener city’ – but rather their understanding of the most appropriate means for achieving this. This confirms a common finding within the organizational literature, where researchers have repeatedly found that a consensus over ends often breaks down when it comes to decisions about the best means to realize these ends (see, for example, Pressman and Wildawsky 1973).

These differences over means often make it difficult for units within organizations to work cooperatively to design and implement initiatives. In order to clarify these differences we explored the institutional culture of each department in terms of several dimensions:

- a preferred normative orientation or rationality;
- a preferred implementation pathway – that is, a preferred set of means for realizing policy objectives;
- a preferred learning context – that is, where officials preferred to look for advice and learning; and finally
- a preferred temporal horizon – that is, a preferred, and expected, time frame for implementation.

Together these dimensions defined the main features of our departments’ institutional cultures. As we have already suggested, there is variation along these dimensions between the departmental officials and, while we recognize this, what we have sought to capture in our analysis are the means around which this variation takes place.

THE ERMD -- THE ‘DRIVERS’

Preferred normative orientation

The ERMD sees itself, and is seen by others, as the department responsible for protecting the environment and realizing sustained environmental value within the SPD.

In the contest for ‘service delivery’ priorities and associated fiscal resources, the ERMD

is of the view that, across the CCT, municipal policies and practices tend to discount environmental value, resulting in an unsustainable development pathway. Given this context, the department sees itself as overseeing a necessary process of change so as to bring environmental value into the mainstream of city decision-making. In the ERMD's understanding, it is necessary that a green constituency be established in its sister departments, especially those within its own directorate.

The ERMD, like environmental departments in many of the world's cities, is sometimes without the political clout to oversee the changes that it sees as being important. Further, the department is aware that constitutional framings constrain what environmental interventions can be initiated at local municipal levels. It also recognizes that, within the City, top-down policy implementation tends to take priority over bottom-up initiatives. For these reasons the department expects to have to work to overcome these barriers and is committed to the values central to its mandate.

Implementation pathways

Based on its understanding that a replication of business as usual is not possible given the local environmental constraints, the ERMD sees the need for changes in lifestyles and their associated 'rituals of comfort' (Braithwaite 2008: 155). It recognizes that people will often be reluctant to make these changes voluntarily. Within this context, municipal by-laws are regarded as a useful regulatory mechanism for achieving behavioural changes. As one ERMD official noted:

...we as humans, and as institutions, don't like change... it is a little bit uncomfortable and it requires a bit of effort... But if you get that law through, people will adjust to it. They will shift and change, and over a period of time it will not be an issue anymore.

Learning context

An important feature of the ERMD's approach to strategy development has been to monitor environmental interventions globally, and to use this learning as a source of insight in developing its own policy stances. This learning explains the department's identification of the SWHB as an attractive and innovative policy option to initiate change in the City. This option's usefulness had been demonstrated internationally, particularly in Spain. While the by-law they envisaged would only apply to new residential dwellings and renovations, it would, nonetheless, have a significant (albeit limited) impact on energy conservation and thus be a neat means to achieve an environmental gain.

Temporal horizon

The ERMD is staffed by committed civil servants who are dedicated to operating a proactive department that makes a significant difference in promoting environmental values within the CCT. Given the ERMD's conception of the magnitude and urgency of environmental challenges, their view is that interventions ought to achieve significant and immediate impacts. Thus, an important orientation of the department is to identify 'low-hanging fruit' – strategic interventions – that will achieve quick environmental victories. In its view, the SWHB met this criterion.

Putting it all together: changes to business as usual

The ERMD sees itself as operating within a system that is not only unsustainable but also difficult to change. Officials in the department have identified three primary sets of barriers that disrupt their capacity to promote a greener city: institutional obstacles, problematic incentives, and a conflict of private and public interests.

Although it does recognize the importance of establishing mechanisms to monitor compliance with the City's established priorities and goals, the department perceives institutional structures as often interfering with and frustrating environmental initiatives. These constraints are, for instance, embedded in the CCT's financial systems and its often 'green-unfriendly' audit requirements. One example would be the manner in which financial accounting arrangements ignore environmental costs in ways that tend not to favour longer-term projects. A related example is the established value hierarchy within the City; in processes that attempt to balance objectives, green agendas are currently trumped by other agendas.

Similarly, the ERMD perceives the current internal incentive systems within the CCT as unsupportive of its mandate, as many environmental considerations do not appear prominently in internal mechanisms such as 'scorecards' used to measure the performance of officials.

I think the incentive to do things in a new way does not exist. You find that scorecards do not measure innovativeness. So long as you spend so much of your money.

Central to these concerns is the perception that key objectives of the CCT's Integrated Development Plan (IDP), such as the goals of energy saving and energy efficiency, have not yet been integrated into the internal performance scorecard mechanism. As a result, projects like the SWHB are not promoted.

To remove these and similar barriers requires the restructuring of institutions within the

City, for example the restructuring of scorecards so that they better reflect the IDP's objectives.

One concern expressed was that, within the SPD itself, the predominant attitude tends to emphasize established routines and standard operating procedures rather than the innovation that promoting a green objective would require. One consequence of this attitude, it was argued, is that officials de-prioritize anything that is not within their formal mandate or job description – their preference is to stick to what they are comfortable with (Braithwaite's 'rituals of comfort') and to avoid introducing any new routes, especially ones that might create problems. This attitude, as the ERMD sees it, is incompatible with the need for urgent change:

... nobody is prepared to say, 'well, yes, let's make a difference, let's make a change, let's improve the lot of the city' ... 'I do my job, I sign off on those plans, don't give me anything extra to do' ... So, they will feel annoyed at me if they feel I'm treading on their territory or telling them what to do with their business, if that makes sense...

Despite having to operate on a challenging institutional terrain, the ERMD feels that it has succeeded in putting environmental issues firmly on the agenda of the SPD. However, the work has been time-consuming, often exhausting, and its impact has varied considerably. Sometimes, as with the greening of municipal buildings, there have been significant successes. At other times, as in the case of the SWHB, gains have not been made despite much effort and dedication on the part of the ERMD. In short, although feeling beleaguered, the department has managed nonetheless to achieve considerable gains within what is often perceived to be an unsupportive institutional environment within the City.

THE PBDMD

Normative orientation

The PBDMD sees itself as a highly professional planning and regulatory agency skilled at using a repertoire of regulatory tools. It has come to believe that careful planning is at the heart of successful policy implementation. The PBDMD is proud of the fact that, as a service delivery department, it pays attention to established procedures, as this is what successful and sustained delivery requires (i.e. proper systems that are properly executed).

The PBDMD sees itself as operating within a multi-level governance environment in

which it is required to implement and apply nationally established standards. Within this context one of its primary responsibilities involves working within, and enforcing, national building standards.

Through its various operations, the PBDMD is infused with a normative orientation that might be thought of as practical rationality. Its way of acting and thinking favours a careful weighing of different, and often competing, goals. Process is all-important, as it is process that enables coordinated action within government: ‘The way our protocols work is that, before you can promulgate a by-law, you need to have a policy’. A central feature of this rationality is the importance of choosing goals and means so as to ensure that balance is maintained and the correct implementation routes are selected. One set of values should not simply trump others.

As the department sees it, its role as a truly professional line department – professionalism is a key value for the PBDMD – should always be to ask uncomfortable questions about whether matters have been carefully thought through, procedures followed, priorities considered and so forth.

Implementation pathway

The attitude of the PBDMD towards legislation is that law-making is a potentially powerful public intervention mechanism that has to be used cautiously, with parsimony, and seldom as a first resort. Thus in the view of officials in this department, introducing by-laws that attempt to force people to engage in some desired set of actions is, almost by definition, something to be viewed with caution. One reason for this view is that enforcement processes are cumbersome and require considerable resources, and frequently involve substantial transaction costs. Thus, the PBDMD was wary of adopting a by-law route as a carbon-reduction strategy, especially as officials in the department believed that alternatives had not been considered adequately, and that the implementation costs which the SWHB would, in their view, impose on them had not been carefully examined. In expanding on these concerns an officer of the PBDMD offered a recent experience as an illustration:

It’s only when you have grappled with bringing someone to court that you really understand the problems. I was just by-the-by involved in a building dispute with [a major South African public agency] in [a suburb of Cape Town]. We took probably 10 years to get them to fix [the problem]. And they eventually fixed it, but we ended up taking them to the High Court. It takes a lot of effort and money... The uninitiated would say ‘well just serve a notice and that’s the end of the problem’. It’s in fact not. It’s only the

start of another process.

Generally the PBDMD prefers policy interventions that, while not exclusive, often rely on incentives rather than coercion through legislation. For this department, incentive-based schemes have the considerable advantage of providing the persons whose behaviour one wishes to shape with choice. Incentives, as the department sees it, typically have the not inconsiderable advantage of lower transaction costs, as they accommodate choice at the level of the individual. An advantage of this is that it enables governments to implement policies that tap into the local knowledge of citizens in a way that coercion through law-making, in the department's view, seldom does. Incentive-based schemes may seem to take longer, but in the end will prove to be the most cost- and time-effective approach.

Accordingly, for the department, the first and most crucial question to ask is: What is the appropriate policy approach, given the variety of means available? If a coercive legal means is adopted, considerable attention needs to be paid to the way the instrument is designed and drafted, as poor legislative means typically present a host of problems down the line.

Learning context

A significant feature of how the PBDMD conceives its objectives, opportunities and challenges is that it has developed a consistent spatial-temporal approach to policy development. This includes a sceptical attitude to what the department sees as a tendency to be too attracted by international 'groundbreaking' projects and 'best practices' as solutions to South African, and more specifically Capetonian, problems. Again, this expresses itself as a concern about moving too quickly to adopt a solution – as a 'best practice' – without due concern being accorded to the idiosyncrasies of the local context. This concern was expressed by one official in a comment he shared with us about an enthusiastic response to an initiative elsewhere:

[A colleague] was now for three weeks with [a politician] in China. I got an email saying 'listen when the [politician gets] back he wants to see a number of sites identified where they can put up high-rise residential developments'. You talk about context! Do you think that a 50-storey-high block of flats would be the best solution to the housing problem in Khayelitsha?

For officials in this department local context was almost always crucial, and accordingly their preference tended to be to look locally for what works, rather than internationally.

Temporal horizon

As mentioned, officials in this department expressed concerns about what they thought of as the all too prevalent tendency to select policy approaches without a careful consideration of alternatives, and of the problems that might be encountered down the line. This stance might be expressed as a ‘go slow to go fast’ approach. The concern was that a desire for ‘quick fixes’ often was equated with mitigating the necessity of following proper processes.

In their view most policy processes, especially legislative ones, take time, as one needs to incorporate participatory and deliberative elements. From this point of view, pushing too hard for ‘quick wins’ may result in undesired outcomes. What is most often required is not rushing in, but rather patient analysis and careful, thought-through policy steps.

Perceived barriers and regulatory opportunities

As a planning and regulatory agency, the PBDMD has a clear understanding of itself as operating within the constraints of, and often as a local enforcer of, national and provincial laws and policies. Important pieces of legislation that shape the work of the department are the National Building Regulations and Building Regulations Standards Act No. 103 of 1977, and the Land Use Planning Ordinance No. 15 of 1985. Other related pieces of legislation are the National Environmental Management Act No. 107 of 1998, the National Heritage Resources Act No. 25 of 1999 and the Environment Conservation Act No. 73 of 1989. Working within the confines of national and provincial legislation is conceived of as a constraining factor that sets limits on the kinds of policy initiatives the department may undertake. But it is also conceived of as an enabling and capacity-enhancing context.

The PBDMD has in-depth knowledge of the regulatory landscape within which it operates, and the limitations and opportunities this presents. Although the department is certainly hesitant about transcending what national and provincial legislation stipulate, it does not perceive itself simply as a passive, rule-oriented or retrospective agency. On the contrary, we were presented with a picture of a department seeking to be a part of cooperative legislative processes, attempting on the one hand to influence national legislation and, on the other, working to develop municipal policies and regulatory mechanisms within the confines of that legislation.

A key feature of this department’s understanding of its regulatory responsibilities was that, although environmental protection should be recognized as a national domain, there is significant space for municipalities to be active environmental regulators, provided that

they are careful not to usurp national functions.

SUMMING UP – DIFFERENT INSTITUTIONAL CULTURES

We are now in a position to draw a simplified diagram of the philosophical differences between our two departments with respect to how they are inclined to ‘think’ about policy values and interventions (Figure 1).

Figure 1: Dimensions of the institutional cultures of the ERMD and PBDMD

	Normative orientation	Implementation pathway	Learning context	Temporal horizon
ERMD	<ul style="list-style-type: none"> ▪ ‘Green’ value-driven. ▪ Value-rational approaches tend to collapse means-ends calculations. 	Prefers coercive regulation to change citizens’ behaviours.	Learns from international ‘best practices’.	Urgency of environmental protection drives the need for rapid, groundbreaking initiatives.
PBDMD	<ul style="list-style-type: none"> ▪ Practical rationality weighs different goals and means. ▪ Reflects on means-ends relations. 	Prefers incentives to change behaviours.	Sceptical of international examples applied to local/national conditions.	Sceptical of ‘quick wins’ which may have negative consequences in the long term.

Given these different ways of seeing, as illustrated in Figure 1, it is not surprising that these two departments were often at loggerheads over the SWHB and that each one often experienced the other department as seeking to frustrate rather than to assist its efforts.

While we believe that the caricature we have painted of each department is useful in drawing out differences between their operating cultures, as these were expressed in the SWHB processes, as with all caricatures the different orientations identified here should not be regarded as immutable but simply as revealing something about the pathways that

were adopted in this particular initiative.

INSTITUTIONAL TENSIONS IN THE SOLAR WATER HEATER BY-LAW PROCESS

The political processes by which policy is mediated, negotiated and modified during its formulation continue in the behaviour of those involved in its implementation acting to protect or pursue their own values and interests. (Barrett 2004: 253)

The SWHB process nicely elucidates a classical implementation paradox. In the implementation literature this paradox arises where there is a general agreement about the 'goodness' of a policy or a value and yet implementation is stalled and sometimes even completely halted. Yet while, in the words of an officer of the ERMD, '...you will struggle to find anyone who will say that the Solar Water Heater by-law is viewed as a bad idea', it was also stated that it 'is probably the most extreme example of dysfunctionality that I'm aware of...'.

So, how did each of the involved departments experience the SWHB process? What did the departments perceive as the major reasons for the collapse of the process?

The SWHB process, as experienced by the ERMD

As the ERMD perceived the by-law process, it had done most of the things that needed to be done correctly. Nonetheless, on reflection, officials in the department acknowledged that some things could, and should, have been done differently, in particular that there were formal routes to follow when introducing by-laws to which they ought to have paid more attention.

As the department experienced the process, the by-law proposal was, initially, favourably received by all people consulted. The ERMD did not recall anybody objecting to the idea of the by-law as a viable, and potentially very effective, environmental intervention. In reflecting back on our conversations, officials pointed to the fact that there were important staffing changes during the process, which may have led to new views being introduced that were not adequately canvassed or addressed, resulting in shifting institutional memories.

In spite of these factors, the officials with whom we discussed the by-law remained, at least to us, somewhat mystified by why the PBDMD had been so resistant to the by-law, although they acknowledged, and were sympathetic to, the resource concerns that had

been expressed by their sister department. As the ERMD sees it, however, these were and are primarily technical problems for which it is always possible to find reasonable solutions – ‘if there was a will there would have been a way’.

Finally, the officials we spoke to felt that, throughout the process, they had adopted a very conciliatory and accommodating stance in response to the concerns raised by the PBDMD, but met only with frustration:

I thought ‘who are these people to be so troublesome’... We had another meeting with them. They had not even read the law under which they work... They are the planning and building management department. They hadn’t accurately understood the regulations under which they operate...

The SWHB process, as experienced by the PBDMD

...failed implementation is often a sensible alternative to successful implementation. (Lin 1996: 4)

First, why did the PBDMD not support the by-law initiative? Why were the officials in this department such ‘troublesome people’?

Secondly, how did this department define its role in the process, and how did it experience the interactions triggered by the by-law initiative?

A feature of the PBDMD’s attitude to the by-law was that it perceived it as, potentially, usurping national jurisdiction. At present there are no requirements in the national building regulations obliging citizens to provide hot water on their premises, nor to heat their water in any specific way. The by-law, if it had been passed, would have prohibited people from occupying a new house, or a renovated home, unless the PBDMD had approved installation of a solar water heater. The department felt this to be a potential legislative conflict that would create challenging enforcement issues.

A bigger concern had to do with the department’s own transaction costs. The department would, through its building inspectors, be the primary enforcer of the by-law and foresaw that the law would significantly add to its transaction costs in two ways. First, it assumed that the law might lead to thorny enforcement problems. As the department saw it, the problem was not primarily with the process of certifying that buildings were in compliance with the law. Rather the problem lay, for them, with its workload that would likely increase, in particular where enforcement was required as a result of non-

compliance with the law. Based on its experience as an enforcer of building regulations, the department knew how demanding and time-consuming it can be to compel people to comply with legislation with which they are unhappy.

A third reason the by-law initiative met with limited enthusiasm from the PBDMD had more to do with how the department perceived it as an environmental intervention. The PBDMD undertook some calculations to estimate how many of the building plans that it annually approves would be affected by the by-law, and its conclusion was that this would amount to approximately four per cent. It realised that these were insecure estimates, as they were based on data that was almost ten years old. As the department perceived it, however, the by-law was unlikely to have a very significant green impact, but would certainly create significant regulatory problems. As the department perceived it, the by-law was just another example of an unfortunate tendency of ‘people writing policy in a vacuum’, as one of its officers expressed it.

A final objection to the by-law was the department’s philosophy of law-making, and particularly coercive law-making, as a means to be used cautiously. The department felt that, if the SWHB was enacted, the City would be determining in advance by what means energy was to be saved, rather than simply setting savings standards and leaving the choice of means to owners.

Adding to these substantial doubts about the suitability of the SWHB as a policy intervention, officials in the PBDMD did not experience their interaction with the ERMD as one in which their expertise was recognized. Moreover, they perceived their inputs as being generally negatively received by the ERMD. As seen from the perspective of these officials, they should have been engaged in the policy-shaping process much earlier, and more thoroughly, rather than simply being brought on board at the end as an implementing agency (a perception that the ERMD disputes). The PBDMD felt they were presented with the by-law as a *fait accompli*, and only then asked for their approval.

GOOD OR BAD POLICY, GOOD OR BAD IMPLEMENTATION?

Neither the ERMD nor the PBDMD saw their interaction over the by-law as positive. What developed instead was a process characterized by antagonism and frustration. This was clearly related to the different philosophical positions of the two departments as to how goals, means, context and degree of urgency should be perceived.

The essential constituents of any successful policy implementation process are goals, constraints and means. A model provided by Majone and Wildawsky (1978) is useful in understanding how differently the two departments experienced the SWHB. The model

distinguishes between the suitability of a policy, perceived as either good or bad, and how problematic the implementation process is perceived to be, also perceived as good or bad. Given the dynamic relations between goals and implementation, four outcomes are possible (Figure 2):

Figure 2: Majone and Wildawsky (1978) Model

BY-LAW	POLICY		
		GOOD	BAD
IMPLEMENTATION	GOOD	1	2
	BAD	3	4

Source: Majone and Wildawsky (1978)

If both the policy and the implementation are good (as in cell 1 of Figure 2) all will be well. From the view point of the ERMD, however, the policy process ended in cell 3. In their view the SWHB was basically a good policy that had been constrained by bad implementation; hence their efforts to move the policy outcome from cell 3 to cell 1.

The PBDMD, in contrast, thought that the by-law initiative was and ought to remain located in cell 4 – i.e. a bad policy with bad implementation. As they saw it, cell 4 was the appropriate cell, hence their stalling to keep the policy in cell 4. The worst result for them would have been if this policy had moved to cell 2, as that would mean that bad policy was being effective.

A POLITICAL ADDENDUM

To provide a political context to the processes we have outlined, we met with a member of City Council who has been intimately involved in the by-law process. This person confirmed many of our observations of the philosophical and practical differences between the two departments. In a comment on the ERMD, this politician stated:

The environmentalist[s], they are very passionate people and they will be forever, and I don't want them to change... Because, if they don't push, technocrats won't innovate, they follow rules. And if you don't innovate then you won't be able, or you won't think of writing new rules.

However, this politician also emphasized that it is often quite difficult to get ‘the environmentalists’ to acknowledge ‘some realities’:

I don’t think that the environmentalists understand the technocrats and they don’t care to find out... They just want to push their ideas... The environmentalists also don’t want to write business plans. They want to argue concepts. But concepts are really dreams.

What became increasingly clear through this discussion is that the challenges of implementing green politics in the CCT cannot simply be reduced to communication problems and their resolution. What is at stake clearly has as much to do with underlying regulatory obstacles as it has with communication. The problem, as conceived by this politician, is that each time one tries to implement a new green agenda, one immediately falls foul of established principles, laws and rules that maintain the established practices.

It’s just a mess. If you’re working within a sort of living legal framework that’s what happens. You have to update constantly. [Regulations don’t] speak to each other and [they] seldom speak to new innovative ideas.

This view nicely captures what happened with the SWHB. For example, as we have seen, planning officials argued that administrative law principles were in their view inconsistent with an approach, like that of the proposed by law, that left citizens with insufficient choice.

As the politician perceived it, there is no way of avoiding such regulatory conflicts.

The planners only want rules. So, what you want to do is set the rules and they obey the rules. But then again, the rule must be an implementable rule, it must be a rule that can really be justifiable and administratively fair.

Again, as this politician sees it, when all the pieces have been carefully put in place, including national technical standards and national direction, the SWHB will be able to follow its intended course. When this happens, by implication the PBDMD will have to find a way of dealing with the transaction costs that so concern them. In commenting on these transaction costs this politician had this to say:

Ja, that’s true. But you know, nothing gets easily done... No, it’s like traffic fines, somebody has to do it... We’ve started building a law enforcement team... So they will have plenty of help.

CONCLUSION – MUCH IS IN PLACE, BUT WITH LIMITED SYNERGIES

The outcome is determined by the expectation that each player forms of how the other will play.... They must together find ‘rules of the game’ or together suffer the consequences. (Schelling 1960: 106–107).

As we have seen, the two different institutional cultures of the departments inevitably led to tensions, and these tensions led, in turn, in the case of the SWHB, to the two departments finding themselves at loggerheads.

In the view of the PBDMD, the ERMD was made up largely of ‘activists’ (some of whom had learnt their trade outside of the City) with little understanding of the bureaucratic machinations of the CCT. Thus, from their perspective, the ERMD was inclined to barge into the policy fray in a heavy-handed manner where what was required was a careful and nuanced touch. On the other hand, the ERMD viewed the PBDMD as a ‘bunch of bureaucrats’ more concerned with process than with getting things done (they favoured means over ends), and with putting up barriers to protect these processes.

These mutually reinforcing perceptions led to what we might think of as a negative learning cycle. In this cycle each department looked for, and found, evidence in the actions of officials in the other department that confirmed their stereotypic view of the other unit. The more this happened, the more they saw evidence of these features. Accordingly, the more the departments interacted, the more they reinforced the caricatures they had created of each other.

This ‘superstitious learning’ (White and Liu 1995), a psychological term for learning the wrong things, provided the basis for this ironic situation. Despite a shared commitment to reducing the carbon emissions of the CCT, the more they interacted the more they provoked behaviours that frustrated the realization of their shared objective. From the perspective of the ERMD, the SWHB was an internationally proven policy means that could, and should, have been implemented quickly to address an urgent policy objective shared across the CCT and supported by its politicians. For the ERMD, their job was to draft the by-law, fine-tune the drafting, and hand it over to an implementing department, in this case the PBDMD. This process was stymied by a multitude of largely unnecessary barriers blocking implementation. The solution, as they saw it, was to unblock the by-law’s passage so that the ERMD could put this process to bed and get on with the next policy initiative.

From the vantage point of the PBDMD the situation was seen very differently. For them the SWHB was, and remains, a poorly considered policy means. The fact that it has not been implemented is a good, rather than bad, outcome. Accordingly, if there were barriers in place, that was a good, rather than bad, feature of the situation. These barriers were good because, had the by-law been implemented, it would have generated a negative impact on sustainability and a host of other objectives.

The irony here is in fact deeper than it at first appears. As the literature makes clear, while collectively these two departments have some of the key ingredients that are required for successful implementation, they do not have them all.

Gunderson et al. (1995) have argued that four different sets of players are needed for successful implementation of a policy initiative:

- activists who declare a crisis and invoke conflict;
- catalysts who frame alternatives;
- formal decision makers who have the powers to enact new policies; and
- officials who understand and appreciate implementation.

According to Gunderson et al. (1995), if the mix of these elements is not properly aligned, or if some of the components are missing, one ends up with an all too familiar implementation paradox – shared objectives but an inability to put together a process that realizes them. This paradox is writ large in the case of the SWHB process. Most of the required elements of a successful process were in fact present, and yet the two departments ended up pulling in opposite directions. Not surprisingly, there was not much forward momentum regarding the SWHB or an alternative energy-reducing policy means.

The key missing ingredient in the SWHB pie was Gunderson et al.'s catalysts – people who could work to convert a destructive engagement into one that was positive and constructive. Herein, too, lies both the challenge and the opportunity for the directorate that oversees both of these departments.

Creating new synergies

Converting policy into action requires that those charged with execution cooperate toward the achievement of the policy.
(O'Toole and Montjoy 1984: 492)

Clearly, if the ‘green/low carbon emissions’ agendas within the CCT are to be successfully implemented it is important to establish, and nurture, a synergetic relationship between the ERMD and the PBDMD. As we have just suggested, there is much in place that can form the basis for this synergy – that is, for a shift from a negative cycle of progressive rounds of ‘superstitious learning’ to a positive cycle of productive learning. The ingredient missing from the mix, as set out by Gunderson, et al. (1995), was the absence of ‘catalysts who can frame alternatives’. It is to these catalysts that the directorate needs to look as it seeks to bring these two departments into closer alignment.

When situations such as this are identified, a solution that is often put forward is to enhance communication. This is certainly an important ingredient, and a lack of appropriate communication was certainly a factor in the problematic process we have outlined in this chapter. However, while communication is a necessary and ameliorative ingredient, on its own it is insufficient because, through ‘superstitious learning’, communication can make matters worse. The critical questions are what forms of communication should be encouraged, how should they be facilitated, and how can this best be done?

Before closing, it is necessary to return briefly to our theoretical framework – the study of implementation. Attempts to implement new environmentally friendly legislation confront established regulatory landscapes of legal principles and rules which protect practices that maintain a status quo economy. A key question arising from this research is how to identify green policy triggers or fulcra within the administrative system of the City that may facilitate a transition to a more environmentally friendly economy. At present the ‘action space’ for green policy initiatives in the City is not being optimally utilized. A key reason is the absence of synergies between the activist role and the institutionalist/regulatory role. And yet, the necessary ingredients for these synergies are available; the question is how to produce a productive mix.

In response to both these questions, fortunately, there have been a number of more constructive and positive experiences within the CCT involving these two departments with respect to the implementation of ‘green’ agendas. These experiences provide the opportunity to articulate a set of ‘design principles’ (Ostrom 1990) for redesigning communications in ways that will enable the directorate to promote productive synergies between its departments. This challenge, given what we have learnt, is crucial, but need not be difficult if the directorate takes care to identify and build on the learnings that already exist within the City.

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¹ As part of the research reported on in this chapter, a series of interviews was conducted in the period July 2010–March 2011 with nine officials of the City of Cape Town Environmental Resource Management Department, the Planning and Building Development Management Department and representatives of the City of Cape Town Mayoral Committee (names withheld in this chapter). Unless otherwise indicated, all quotations in the chapter are from these interviews.