

Transforming South Africa's racial bureaucracy: New Public Management and public sector reform in contemporary South Africa

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The old school or 'traditional' model of public administration is under siege. For almost a century, it seemed to epitomize the summum of modern public management, bolstering the capacity and ability to impose order, grow and deliver services on a large scale for those states that came to adopt its precepts. Yet, with the waning of the twentieth century, traditional public management (OPM) has come under fire from both left and right, in advanced economies and in the developing contexts of the glibly stated 'global South'. Too cumbersome and inflexible to address the increasingly diverse and fast-changing needs of modern economic and social systems, prone to stagnation, inefficiency or, even worse, corruption – OPM has been branded in need of serious reform and subjected to various processes of restructuring and change.

This article provides an illustration of the complex and fraught work of public sector reform in practice. After briefly retracing some of the achievements of OPM and the range of criticisms it has been subject to since the early 1980s, we focus on the unexpected consequences of incorporating elements of New Public Management (NPM) thinking in the design of the Companies and Intellectual Property Registration Office (CIPRO) in South Africa. The case's interest lies not only in its sensationalist qualities², or as an illustration of the sorry state of the public sector in a transition economy, but in its stark illustration of the political and institutional factors that make public sector reform such a difficult policy agenda generally.

¹Our gratitude to Tania Ajam, Sarah Meny-Gibert and Ndaba Mzelemu for comments on various draft versions of this paper.

² Under CIPRO, public money was siphoned off on a massive scale while numerous companies were hijacked by insalubrious types (see later).

Old style bureaucracy under siege

Effective bureaucracies have been widely perceived as essential for ensuring order, delivering services on a large scale and, more broadly, in underpinning the workings of a modern state. For most of the twentieth century and starting in the mid-to-late nineteenth century, such an efficient bureaucracy was equated with top-down, hierarchical and rules-bound public administration, staffed by permanent, neutral professional officials, motivated by the public interest and directly accountable to the political leadership— in short, the kind of bureaucracy described and theorized by Max Weber in Germany and Woodrow Wilson in the United States (Hughes, 1998). Such bureaucratic practices underscored industrialisation in the UK, the US and later Prussia. And it was the highly effective bureaucracies à la Weber that were credited with the success of those most successful of modern states, the developmental states of Japan, South Korea and Taiwan (Evans, 1995) – as well as, in a less dramatic fashion, the positive developmental experiences of Costa Rica, Mauritius or the Indian state of Kerala (Sandbrook et al., 2007).

What we now term ‘old style’ bureaucracies represented, in their time, a significant break and innovation from the prevalent system of patronage-based administration. Carefully designed bureaucratic principles (such as hierarchy, impersonality), combined with the special status accorded to the bureaucrat, sought to underpin a novel way of administering – one that was rules-bound, far removed from the arbitrariness of the traditional system, and where the onus lay on the highest possible level of technical efficiency (Hughes, 1998; Brett, 2009). The de-politicisation of the bureaucracy itself, through internal hierarchical structures, anonymity and a clear line of accountability from the bureau to the political leadership, ensured that the bureaucracy, in principle, operated as a skilful and effective *instrument* of public policy. It is precisely the emergence of a professional cadre of state administrators (a mandarin class), whose ties to kin and tribe had been severed or severely weakened, that marks the emergence of the properly modern state form (see Fukuyama, 2010).

Yet, from the late 1970s, the very structure of the Weberian public administration came under increasing criticism for failing to live up to its promises. The top-down and rules-bound structure, based on official secrecy and permanent tenure had led, more often than not, to rigid, routinised and process-bound administrations, unable to meet the increasingly diverse

needs of fast-changing societies and economic processes. Even as OPM had enabled the expansion of the modern state's capacities, critics stressed OPM's weaknesses both in terms of efficiency – the traditional bureau was wasteful, indeed easily prone to rent-seeking; and in terms of its weak political accountability – OPM was unresponsive, alienating or, ironically, easily captured (see Niskanen, 1971, Tullock 1965).

From the left, criticism centred on the perceived limited accountability offered by rigid Weberian bureaucratic structures and their purported 'democratic' oversight. Lodged in a broader critique regarding the democratic deficit inherent in liberal democratic representative democracy, the argument was that periodic voting was a poor guarantor of popular will (especially in contexts marked by the radical restructuring effects of globalisation). The proposed solution lay in a radicalisation of the democratic ideal, democratising the state through increased participation, in order to reconfigure relationships and responsibilities across actors and institutions in the public domain in favour of 'communities'. However, this case study does not explicitly engage with this line of criticism.

Arguably more pervasive in its effects was the criticism that emerged from a number of disparate sources, later coalesced under the broad appellation of NPM. Central to NPM was, on the one hand, the emphasis on novel incentive structures to combat the perceived inefficient and wasteful propensities inherent in OPM. Derived from public choice theories and new institutional economics, these sought to introduce result-oriented and performance-related operating principles to keep bureaucracy lean and mean. On the other hand, NPM sought to palliate to OPMs accountability deficits through the introduction of market-based mechanisms, considered a 'shorter' and more reliable route than the 'long route' of democratic accountability. Better able to offer 'voice' and 'choice' to citizens turned consumers, NPM-styled bureaucracies were to become more user-responsive (Hood, 1991; Larbi, 1999; Brett, 2009). On the other hand, NPM promised a new way of controlling personnel, other than through internal rules and hierarchical authority. Proponents of NPM recognised that public managers and other civil servants had their own interests and sought to align these interests and those of the organisation in which they worked through a

system of rewards and sanctions, most notably through ‘performance management’ contracts³.

NPMs bundle of (at times contradictory) precepts were to prove highly influential, affecting the practices of public management in most parts of the world. In developed economies, the appeal of NPM was bolstered by broader political, economic and technological shifts glibly rallied under the ‘post-fordist’ banner, that sustained a general redefinition of the role of the state in development (Amin, Piore and Sabel, Jessop, 2000. In developing contexts, the general context of economic and fiscal crisis in the 1980s proved an equally fortuitous ground for public sector reform – even if, arguably, the initial impetus was external in the form of World Bank and IMF-inspired structural adjustment packages and ‘good governance’ agendas that included a review of public management structures (Larbi, 1999).

Yet, in developing countries as in more established economies, NPM-inspired reforms have not come about problem-free and the neat theoretical inputs of public choice and rational theories have failed to translate seamlessly into practice. In particular, they underestimated the degree to which managing for outputs was dependent on putting in place many old-style bureaucratic processes – a blind spot that Schick warned against with his motto, ‘look before you leapfrog’⁴.

Before turning to an exploration of CIPRO, an attempt at public sector reform built around the incorporation of NPM principles, a few contextual words seem warranted. For indeed, in South Africa, concerted attempts to reinvent the post-apartheid state coincided with the profound global shifts in thinking about the modalities and workings of the public sector described above.

³The idea of the self-motivating public servant is reminiscent of the transformation that Michel Foucault designated with the metaphor of the disciplinary mode of domination. It is not necessarily a more moral, less authoritarian (in the pejorative sense of the word) form of organisation, than one based on a different anthropological sensibility.

⁴ Schick elaborated on these ideas in a well-known presentation in 1998, “Look Before you Leapfrog”. The idea of getting the basics right first is also laid out in Schick, Allen, *A Contemporary Approach to Public Expenditure Management*, World Bank Institute, 1999.

Public sector reform in post-apartheid South Africa

In South Africa, meanwhile, the field of public administration was tarnished by its association with the apartheid state. Public administration's very problematic, both as a vocation and as a discipline, was regarded as illegitimate by those associated with the anti-apartheid struggle. The problem was not how to improve the efficiencies of the government and the public sector, but how to 'smash' it Lenin-like or, at least transform it according to the ANC's Strategy and Tactics. The University of the Witwatersrand, for example, had no Department of Public Administration and even the Department of Politics did not teach in this area. The Conference of Academics for a Democratic Society (CADS) established by David Webster in 1981, insisted that academics "have to understand that education is that which enables people to take control of their own lives". "We are thus involved," Webster continued, "in a social practice which is potentially a major force in the struggle for a just and democratic society and we must face up to the consequences of that involvement"⁵. Instead, the centres of public administration teaching tended to be those universities, like the University of Pretoria or the University of Stellenbosch that had been places of apartheid ideological ferment and/or studios of apartheid policy fine-tuning⁶.

When the international winds of change in the field of public administration reached South Africa, they propelled unexpected debates. From the 1970s, the South African government had pursued a policy of ethnic balkanisation, breaking the territory into numerous tribal homelands or bantustans. By the end of the apartheid period, the territory of South Africa had been fragmented into a jigsaw of so-called 'independent' states and self-governing territories. Over and above the 'consociational' arrangements of the Tri-Cameral Parliament – three houses of parliament (one for whites, another for coloureds and a yet another for Indians), a President's Council and myriad white and black municipalities – the homelands (Lebowa, QwaQwa, Bophuthatswana, KwaZulu, KaNgwane, Transkei and Ciskei, Gazankulu, Venda and KwaNdebele), collectively consisted of 14 legislatures and 151 departments (Picard, 2005, p.293).

⁵CADS Statement of principle, cited in Webster, Eddie, 'A Tribute to David Webster' in *Transformation* 9, 1989.

⁶ These were strongly promoted by the Nationalist government, as was 'ethnology' by Dr Eiselen.

By the 1980s, however, the chronic corruption of homeland administrations and their massive wastefulness were evident even to those for whom the bantustan policy represented a “sincere” attempt to give expression to the “national feelings” of South Africa’s diverse groups (Breytenbach, 1974, Geldenhuys, 1981). Apartheid-era scholars tended to analyse this situation as failures arising from the *public administration* model – rather than as the result of apartheid *per se*. Some wondered, for example, if the “*bureaucratic insensitiveness* and *apathetic attitude* towards the community of some public institutions did not contribute to a large extent to the unrest and political turmoil in South Africa” (emphasis added) (Geldenhuys, p. 333). I will return to this later, but it is worth noting that in 1986/7 South Africa was ruled under a State of Emergency and there was generalised, mass revolt against apartheid.

Scholars, especially at the University of Stellenbosch, were muting a new term and a new paradigm. ‘Development management’ (or ‘development administration’ or ‘development studies’) was being held out as a solution to the political crisis. Already at the Rand Afrikaanse Universiteit (RAU) in Johannesburg, the Department of Public Administration had been renamed the Department of Development Studies (DS). Fanie Cloete, head of the department at RAU, reported at the time, that the universities of Bophuthatswana and Venda now had departments of Development Studies. At the University of Fort Hare, Development Studies was located in the Department of African Studies and the universities of Port Elizabeth and the Western Cape had institutes of Development Studies. The tide was turning against public administration. In 1987, as a sign of its growing confidence in this field, the University of Stellenbosch organised the Wineland’s Conference, an event to celebrate the departments’ “coming of age” (Geldenhuys: Foreword). The conference continues to be an annual event.

Wilhelm Jeppe, Professor of Development Administration and Indigenous Law at the University of Stellenbosch, for example, looked forward to the multi-disciplinary approach suggested by ‘development administration’. What warranted an alternative to public administration? Development in Third and Fourth world countries was proving to be especially difficult; suggesting that the traditional tools of public administration were insufficient (Jeppe, 1998, pp.245-246).

Development of less developed areas and countries is one major domestic and international problem that the post Second World War world inherited. ... The multi-faceted nature of the development process thus regulates the multi-disciplinary approach that has to be followed in the study of development of countries and peoples.

Jeppe continued:

The public administrative aspects of development comprise an important sector of the study and practice of development, *but so do* the political, strategic, planning, social, cultural, historical, non-governmental (voluntary), economic, financial, international, comparative and other sectors and determinants of development (emphasis in original). (Ibid., 245).

On these terms, the conditions of development in Africa and other Third World areas consisted of more than establishing an effective administrative system. Put differently, an effective administration hinged on more than putting in place generic processes. It required a more 'contextualised approach', including attention to political, cultural and historical factors. This was the argument that Erwin Schwella made at the same conference (Schwella, 1988, pp. 232-241).

If the political crisis in South Africa was fundamentally a crisis of public service (*bureaucratic insensitiveness* and *apathy*) and not one of brutal racist domination, then the traditional field of public administration, rather than the very architecture of the political system, was the major culprit. Have some public institutions, Geldenhuys asked, "not been inclined to concentrate too much on *internal* effectiveness and, because of that, isolated themselves from the public at large and lost touch with real problems, needs and true values of their service target groups. Have they perhaps not ignored the specific individual and general values of the community or perhaps misinterpreted the wishes of the different groups in the community?" (Geldenhuys, Op Cit., p. 335).

"The solution to the crisis in South Africa," Geldenhuys continued, "does not lie in reorganising government institutions and creating new institutions The solution also does not lie in the teaching of *business* management theories to civil servants and other public administrators as so many exponents of Business Administration believe". The State of Emergency and the violent suppression of political dissent was only a "temporary solution", he suggested. Instead, "the solution of the crisis in the long term

lies in a *value oriented public management approach*” (emphasis added) (Geldenhuys, Op Cit., p. 333).

Terms like ‘community’ in this context were often code words for older words, like ‘cultural group’ or ‘tribe’. What was being suggested, in effect, was that the bantustan policy was failing because public administration in homelands (and other organisations that dealt with black people) did not adequately take into account the (tribal, cultural) norms and values of black people. A public service structured as a bureaucracy grafted a foreign (Western) growth onto ethnic or tribal (African) communities and ignored the values and norms that gave meaning and legitimacy to rules, processes and organisations in African societies. Public development administration or public development management promised to overcome these challenges.

There was something else that was attractive about ‘development administration’. It had an American providence, not entangled with European colonial-era disciplines like ‘native administration’. Moreover, emerging from the Comparative Administration Group in the 1960s, it styled itself as a body of knowledge and as a practice especially suited to the Third World (Jeppe, 1988, McLennan, 1997, Loveman, 2006). That is, development administration constituted itself as a self-consciously post-colonial discourse. This must have resonated strongly with South Africans at the time, for whom the bantustan policy represented an experiment in decolonisation.

We should recall that Afrikaner nationalism had a strong republican strain that critiqued the Union of South Africa as an imperial artefact and defended apartheid in terms of anti-imperialism⁷. In other words, there were many scholars working within the apartheid framework that simultaneously rejected colonialism and particularly the format of British colonial administration.

⁷For a contemporary version of this argument see Dan Roodt, ‘Longing for own State’ in *Business Day*, 20/09/2011. “Apart from the long-dead Boer republics, our state is a product of the British Empire and has retained its pretensions to a unifying and universal imperialism. Sooner or later, SA must go the way of all recent empires, such as the Soviet Union or Yugoslavia, and fall apart”.

The growth of the New Public Management

Ironically, this parochial dispute between apartheid-era public administration scholars came to occupy centre-stage in the debates about the form of the post-apartheid public service. At least since the 1960s, scholars and activists associated with the African National Congress (ANC) and the Communist Party conceived of apartheid in terms of the political-economy of capitalism. The state-government complex was an apparatus there to secure the conditions of capitalist accumulation and to manage the contradictions arising from the “articulation of modes of production” (Wolpe, 1972). The analysis said very little about the structure and organisation of the state as an administration. These questions did not seem important as long as the objectives of the struggle were still to overthrow the white minority regime; not take possession of and run the administration itself. A sign perhaps of how far off the transition from apartheid seemed, even in the late 1980s, there was very little discussion in these circles about what a post-apartheid administration would look like and how it would function.

The first major gathering to debate these questions happened as late as 1991. The Mount Grace Conference was held under the auspices of what was called the National Public Administration Initiative (NPIA). Scholar-activists like Anne McLennan looked forward to what they called ‘democratic administration’ (McLennan, 1997 p.120b), that included, *inter alia*, partnership arrangements between civil society bodies and state structures (to increase public control of and participation in administrative governance and service delivery), financial and democratic accountability and increased professionalism. “There was,” reported McLennan, “complete consensus that public administration as a discipline, a profession and a practice should be moved decisively away from the apartheid paradigm. A new approach imbued with a democratic spirit and valuing non-racialism, community accountability and effective and equitable delivery of services must be consolidated” (McLennan, 1991 p.22a). What was the new direction?

Public administration teaching and theory in South Africa is experiencing a paradigm shift. There is an attempt to move away from a descriptive, academic approach which emphasises processes and procedures to a *value-oriented public management approach* (emphasis added) (FitzGerald and McLennan, 1995, p.8)

This was the same expression as Geldenhuys, even if the values in question were different (see earlier). The University of Stellenbosch was represented by Erwin Schwella and he mounted a robust critique of public administration in favour of public management. “[T]he present process approach to study public administration is neither societally nor professionally relevant anymore,” he claimed. Moreover, it suffered from the errors of reductionism and reification. (Schwella, 1988, p.27). Public administration scholars reduced the administrative process to six generic functions – policy-making, organising, financing, personnel administration, work methods and procedures and the control and rendering of accounts – and then treated their conceptual model as if it was reality itself (Ibid., p.28). The merits of public management, he proposed, was that it treated public administration as a “complex societal phenomenon” (Ibid., 28).

The school that emerged from this initiative was situated at the University of the Witwatersrand. Its rather ungainly name was a sure sign of the provenance of its foundational concepts: the Graduate School of Public *and Development Management* (emphasis added).

The contradiction of the Mount Grace manifesto was to mute the abandonment of public administration as an apartheid discipline and practice in favour of another discipline and practice, also implicated in the apartheid project. The critique of public administration did not come from a critique of apartheid *per se*. It arose, in part, from debates about how best to govern bantustans within the framework of the broader apartheid structures (Geldenhuys, *Op Cit.*, p.333).

How did a model of public sector reform born of debates about appropriate models of homeland administration come to resonate with people allied to the democratic movement? The reason lies in the word ‘bureaucracy’. The public management model resonated with the critique of ‘bureaucracy’ coming out of British and American academic and policy circles.

The ANC and the Mass Democratic Movement in general were slow to begin thinking about the details of the post-apartheid public service. Yet there were some prescient individuals amongst the broad liberation movement; Patrick FitzGerald was one of them. He had been in exile in the UK where he had studied at Liverpool University with Barry Munslow and others. He was strongly influenced by the Conservative critique of bureaucracy and subsequent Left or Labour appropriations of this critique to a socialist or social

democratic agenda. Osborne and Gaebler's book, *Reinventing Government* became a reference point in the South African context. It suggested that the state could continue to play a meaningful role in the economy and in society provided it moved away from the 'bureaucratic model' to apply a range of 'techniques', including management practices, developed in the business world. The NPA, that is, could be rescued from its association with neo-liberal economics to serve a democratic, developmental agenda. The appeal to a 'value-driven public management' approach coincided with these concerns.

Within ANC circles the argument resonated very strongly. Deeply suspicious of the capitalist sector (for its complicity in producing and reproducing racial domination) and yet worried about the effects of state-driven development after the collapse of the Soviet Union and the fortunes of other African states, the critique of bureaucracy associated with the NPA movement was received as a 'third-way'. It suggested a way of retaining a leading role for the state while avoiding waste, inefficiency and corruption.

Yet the central claim of the of NPA proponents in South Africa was basically untested. In addition to the racism of the system, they claimed that apartheid was authoritarian, wasteful and corrupt because the state was organised on bureaucratic lines (FitzGerald, 1995, p.514). There is no doubt that waste, corruption and inefficiency were hallmarks of the apartheid state, yet there are more compelling explanations for these outcomes than 'bureaucracy'.

That the apartheid state was "highly bureaucratised, with strict controls through standardised procedure codes and line responsibility" (McLennan, 1997, p. 107 b) was not necessarily evidence of its colonial character – no matter how many times one juxtaposed the terms 'colonial' and 'bureaucratic' in a sentence. Other states, including many democratic ones, were organised as bureaucracies, including the social democracies of New Zealand and Scandinavia. What seems to matter more is the ideological purpose that bureaucracies are meant to serve, as also the success of so-called 'developmental states' in generating inclusive economic growth, often in post-colonial situations, is sometimes attributed to the aid government, especially after the introduction of the National Security Management bureaucratic organisation of their administrations (Evans, 1995). If anything, the apartheid System in the 1980s, subverted

bureaucratic hierarchies by deploying intelligence agents into the senior echelons of the administration. It is the interpenetration of the intelligence service with the administration that remains a lasting feature of South African politics and governance. In other words, the crisis of the administrative system at the end of the apartheid period owes as much to the corruption of the bureaucratic model as it does to bureaucracy *per se*.

It is difficult not to conclude that in these circles the notion of ‘bureaucracy’ functioned as some kind of totem, rather than as an object of analysis. Louis Picard and Michele Garrity perform, for example, a symptomatic displacement. Drawing on the work of Crawford Young, amongst others, to warn of the dangers of reproducing colonial-era practices in the post-colonial state, they write: “The state in Africa continues to be influenced by *colonial bureaucratic control structures*” (emphasis added) (Picard and Garrity, 1997, p. 66). Yet Crawford Young *et al* never claimed that the key feature of the colonial state was that it was bureaucratic. Almost the opposite is true. The concentration of political, legal and administrative authority in the figure of the Prefect or the Chief, produced not a bureaucratic mode of government but one that Achille Mbembe designated by the term ‘commandement’, that is, a mode of personal rule where the colonial official was exempt from constraints of law, process, regulation or truth.

The apartheid state was authoritarian, wasteful and corrupt because it needed a violent and coercive infrastructure to deny blacks citizenship in their own country, because it reduced them to the status of Subjects (Mamdani, 1996) in order to force them into the relations of production as cheap labour (SACP, 1963, Wolpe, 1971). It may be that bureaucratic modes of administration were unsuited to the situation in post-apartheid South Africa, yet the advocates of public and development management did not provide sound reasons why.

What this means is that the models of public sector reform that have been especially influential in post-apartheid South Africa have not been developed in relation to a critical reading of apartheid as a system of government *per se*. Instead, they have made their own preoccupations – overcoming bureaucracy/public administration – the agenda of public sector reform without demonstrating how this agenda helps overcome the legacy of apartheid. It is highly unlikely that such an argument could be made in

any case. As a result, South Africa today lacks a model of public sector reform based on an analysis of apartheid modes of governance and how to overcome or democratise them – a mode of government characterised by extreme bifurcation across administrations, the dominance of neo-patrimonial relations in former bantustans, politicised bureaucracies, especially at senior levels in the white South Africa administration, becoming in the 1980s, fused with military and intelligence operations. This was overlain from the 1990s with a rigid, highly unionised labour regime, characterising both public and private sectors⁸.

For the purposes of this discussion, however, the main point to note is that from the late 1990s restructuring the public sector has been associated with initiatives to undo or ‘transform’ its bureaucratic form.

In the next section we will see how this politics of ‘undoing bureaucracy’ informed efforts to restructure the Department of Trade and Industry (DTI) in the democratic period. In particular, we will see how it created design contradictions in the newly established Companies and Intellectual Property Office (CIPRO).

Design Flaws in CIPRO: undoing bureaucracy in South Africa

The ANC came to power in 1994 with a mission to transform the South African economy. By the end of the 1990s the conditions for an ‘open, dynamic, competitive economy’ were understood to be in the expanding, industrial sector.

“When we took office,” reports Thsediso Matona, Director General of the Department of Trade and Industry, “we found a department seriously under-developed. It was pyramidal in its structure, bottom heavy with low-calibre officials – ‘functionaries, not thinkers’. The department quickly came to a sharp point, with only a small, senior-management team. The organisational culture, moreover, was hostile to innovation and creativity. Everyone was waiting to be told what to do”.

Alec Irwin, the Minister at the time, convened a small team to reorganise the department, including the former Director General, Alistair Ruiters, and

⁸It is in the public sector where the terrain of contestation seems greatest – as measured by working days lost and because of the influence of alliance politics.

other consultants. They concluded that what ailed the department was that it housed too many diverse functions. The solution was to differentiate between these functions and to decide which were core to the department's mandate and which were secondary. Units in the department were classified in terms of a tri-partite division: policy-making, regulation and implementation/operations.

Policy-making, especially in relation to South Africa's trade and industrial policy, were deemed the priority functions. Operational units, those that offered a service to the public and that involved a client-face were to be 'delinked' from the department. So were regulatory bodies. The benefits were supposed to be considerable. By shifting these functions out of the department and into autonomous agencies, the DTI was, in effect, placing the new bodies outside the public service. The idea was to free them from departmental 'red tape' so that they could approach their functions in a business-like manner.

CIPRO was a product of these strategic changes. Established on 1 March 2002, the new entity brought together two former directorates of the DTI – the South African Companies Registration Office (SACRO) and the South African Patents and Trade Marks Office (SAPTO). The Cooperatives Registration Unit was incorporated from the Department of Agriculture into CIPRO on 1 April 2005. Most importantly, the new body was not constituted as another department or unit of a department. In line with the move away from 'bureaucracy' it was set-up as an autonomous agency. As explained in the Annual Report the intent "was to establish a self-sustaining business agency, which would increase efficiency in the registration of companies, close corporations, cooperatives and intellectual property rights' (CIPRO, 2004/2006).

What was CIPRO's business? In 2005 the CIPRO executive and 45 managers went away to develop the organisation's strategic document, including its purpose, vision and aims. The influence of marketing and branding concerns is not difficult to discern. The organisation starts soberly with its Purpose, which is to "register businesses and intellectual property rights, maintain related registries and develop information for disclosure to stakeholders"⁹. The overall Vision for CIPRO, the document continues, is "Global leadership in the efficient registration of businesses and intellectual

⁹ CIPRO, *Strategic Plan 2007/08-2009/10*, 16 February 2007.

property right”, with the aim of “deliver[ing] the ultimate registration experience”¹⁰.

What should we make of this evocation of fast cars and high-tech machinery¹¹. It reflected a basic confusion in the organisation’s strategy.

In the planning document for 2008, for example, there is a discussion of the environmental factors to which the organisation had to respond. The section in question starts matter-of-factly that “as a trading entity within the DTI , CIPRO is required to align its strategies and programmes with DTI objectives, and assist the DTI and government with issues of compliance, policy monitoring and assistance to the expedited growth initiative”¹². This sounds like the mandate of a government department, not a business. This impression is further strengthened when the document discusses the ‘political environment’:

A detailed plan for a national shared growth initiative with the aim of expedited long-term sustainability has been worked out [by the DTI] and is being driven at the highest level [of government]. This clearly indicates the following sectors as priority biofuels, agriculture and agrarian reform, agricultural processing, chemicals, creative industries, downstream and value adding, textiles, furniture, tourism. It also identified support to this initiative with specific focus on cooperation, integration, information sharing, value adding and reduction of administrative burden to help create an environment conducive for long term growth and support to small business¹³.

At the same time CIPRO should respond to ‘investor and client demands’:

The needs of our client base play a major role in determining the approach to service delivery by the organisation. This in turn is very closely linked to the place the organisation occupies within the life cycle of an organisation and also with the role within the ever-changing global economy and especially in the African context. From our interaction with local clients at various forums as well as feedback received from clients through various avenues and formalised interaction with stakeholders there is a fair understanding of the needs of the client base. This will be further augmented by specific targeted initiatives¹⁴.

¹⁰ CIPRO, *Strategic Plan 2007/08-2009/10*, 16 February 2007.

¹¹ BMW, the German luxury car manufacturer markets its cars in South Africa with the by-line, “the ultimate driving experience”

¹² CIPRO, *Strategic Plan 2008/09 – 2010/11*, March 2008.

¹³ CIPRO, *Strategic Plan 2008/09 – 2010/11*, March 2008.

¹⁴ CIPRO, *Strategic Plan 2008/09 – 2010/11*, March 2008.

The problem was that CIPROs existing and emerging clients were not necessarily those intended by the government's shared growth initiative. To the extent that government's plans stressed an inclusive economy, DTI wanted to encourage the emergence of new, black-owned companies, especially in the biofuels sector, in agricultural processing, in chemicals and down-stream, value adding industries, in textiles, furniture, tourism resources and the creative industries. Yet black entrepreneurialism in these sectors was low.

“As a result of black economic empowerment (BEE) and labour market affirmative action policies,” writes Stephen Gelb, “potential black entrepreneurs are far more likely to opt for managerial or professional positions in the (formerly white) corporate sector with a reasonably secure and substantial salary, than for the high-risk, low-reward path (at least in the short to medium term) of starting a small business and hoping to grow it into a medium-size business”¹⁵.

In catering for its actual clients, therefore, CIPRO was not necessarily in accordance with the ‘political environment’. Inversely, in responding to the ‘political environment’ CIPRO did not give priority to its actual clients. The term ‘trading entity’ in CIPROs documents is a smokescreen precisely for this institutional confusion.

As early as the 2003 *Annual Report* there are signs that the ‘trading entity’ status of the organisation was creating difficulties. In the report of the Chief Executive Officer (CEO) we hear, for example, that “the independence from the DTI affected the functioning of ... CIPRO. Little operational support was provided and it was largely left to inexperienced staff. Realising this, and the limitations of our organisational structure, our focus strategically shifted to the transactional or administrative needs of the organisation”¹⁶.

Yet this was not simply a teething problem. The following year, the new CEO complained that CIPRO staff did not understand the mandate of the

¹⁵Gelb, S., 2010. Macroeconomic Policy and Development: from crisis to crisis. In: Freund, W.M. and Witt, H. (eds.) *Development Dilemmas in South Africa*. Pietermaritzburg: University of KwaZulu-Natal Press. See too OECD, *South Africa Economic Assessment*, 2008, p.52.

¹⁶ CIPRO *Annual Report 2003/2004*, p.34.

organisation, nor did they know what role it was expected to play¹⁷. The following year we hear that “the number of vacant posts and the skills shortage have continued to affect the organisation’s operations and have adversely affected the service delivery capacity of the entity. The organisation had to outsource services to consultants to assist with the roll-out of projects”¹⁸.

It did not end there. Somewhat candidly the 2008 strategy document admits that so far “CIPRO has not delivered adequately on its potential”¹⁹.

Though service levels have significantly improved, external perspectives are still that service levels are ‘pathetic’. The organisation is seen as ‘user-unfriendly’, which is evidenced by the fact that it is accessed largely through intermediaries, which adds to users’ costs. Fraud and corruption are known to exist, and there is poor data security and integrity. Queue jumping and fast-tracking of applications, coupled with totally inadequate and unreliable IT systems, slow the processes and result in lengthy delays. The staff is demoralized and frustrated²⁰.

We get a sense of levels of frustration in CIPRO by considering vacancy and turnover rates amongst several key staff complements.

¹⁷ CIPRO *Annual Report 2003/2004*, p.9.

¹⁸ CIPRO *Annual Report 2004/ 2005*, p.40.

¹⁹ CIPRO, *Strategic Plan 2009/09, Op Cit.*, p.5.

²⁰ CIPRO, *Strategic Plan 2009/09, Op Cit.*, p.5.

Chart 1: Vacancy rates by role type

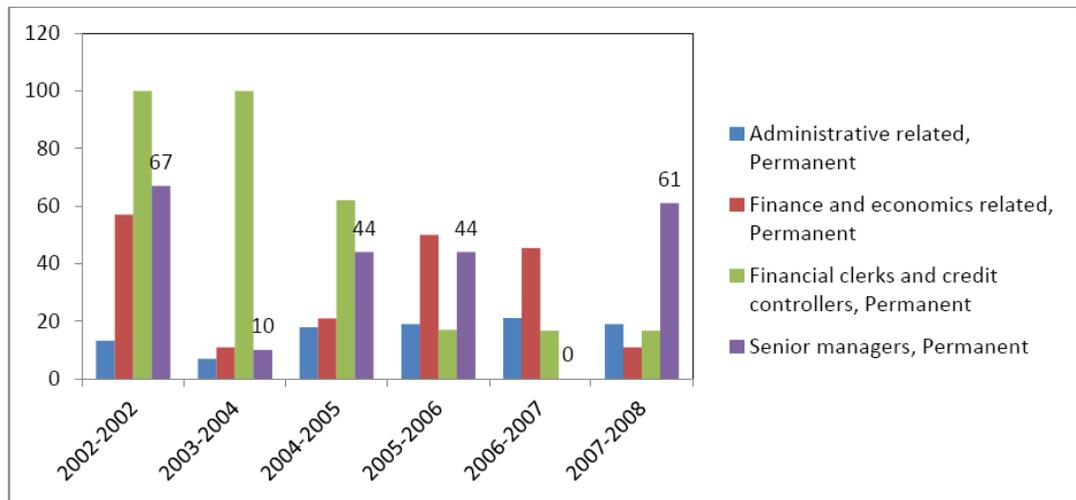


Chart 2: Turnover Rates amongst Senior Managers

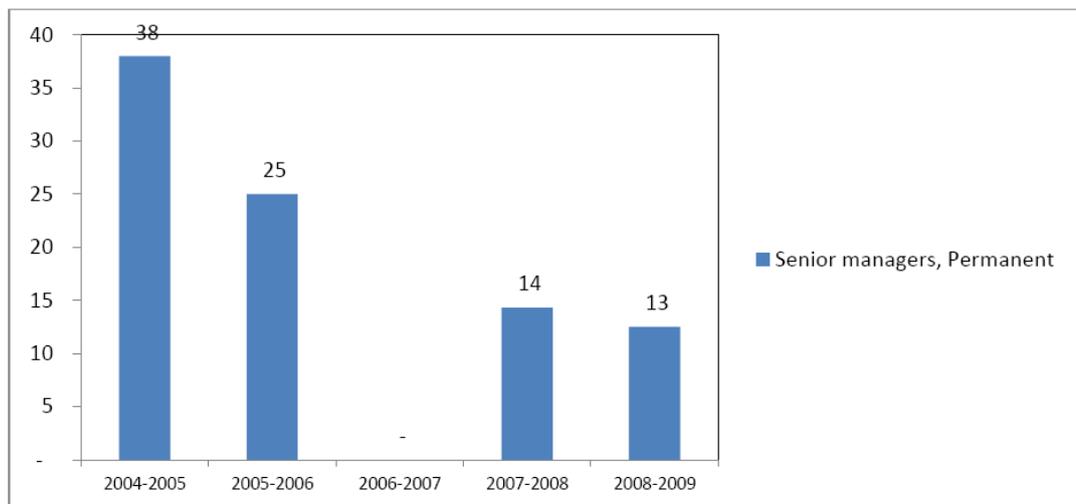


Chart 1 reflects erratic, though generally high, vacancy rates in senior management roles. When the organisation was established in 2002, 67% of management positions were empty, a level only outdone by vacancies amongst financial clerks and credit controllers. Given the very high vacancy rate at this level for the first three years, it is not surprising that the Auditor General was worried about the organisation’s internal financial controls. Yet

the true state of the organisation's instability is only apparent when this graph is considered in relation to another one.

In Chart 2, the turnover rate at senior management level can be seen. It goes from 38% per annum to zero in the first three years and then settles at a fairly low rate of about between 13% and 14% per annum. Is this evidence of an organisation beginning to settle down? The answer is no.

When the vacancy table shows that between 2005 and 2006 empty posts amongst senior positions dropped from 44% to zero, and that the turnover rate was a low 14%, it obscures the fact that the senior management team had been reduced from 10 to 8 and then from 8 to 4 positions. In other words, by the standards of the year before, the zero vacancy rate is actually one of 37.5 % and 50% respectively. When the vacancy rate suddenly spikes in 2008, moreover, the organisational structure has changed again. This time the senior management role has doubled in size, though the number of people employed has remained the same. In other words, CIPROs internal organisation was constantly changing.

Reconciling business and politics

CIPRO sought to overcome these tensions through an ambitious plan to transform its political mandate into its business plan. If the organisation could stimulate black entrepreneurship, especially in the preferred industries, it would expand its client base by creating new enterprises for registration and for financial reporting. That is, the future of CIPRO as a *business* lay in advancing the DTIs goal of developing an inclusive economy.

The strategy rested on two, ultimately conflicting, initiatives: decentralisation and the movement to a fully-integrated, web-based registration system.

CIPROs *Strategic Plan for Decentralisation* recalls the DTIs own vision of “growth, employment, equity and building on the full potential of persons, communities and geographical areas”. It continues: “In order to advance this vision for the transformation of the South African economy, the state will continue to focus on *microeconomic reform* strategies as the majority of the remedies to the factors limiting accelerated growth and development lie

within the micro-economy. CIPRO supports the viewpoint and intends to *improve accessibility for formal business creation*²¹ (emphasis added).

Moreover, decentralisation would assist the organisation resolve its current identity crisis by making it more like a business. The report notes, for example, that “it is understood that to achieve the objectives of a strategy of service decentralisation defined herein will require a significant departure from current structures, systems and practices. The organisational culture must change to incorporate a market orientation mindset. The decentralisation strategy has to address the current business shortcomings by presenting CIPRO with a regional and local footprint. This will raise the awareness and profile of the organisation”²².

For this purpose, CIPRO put into action an agreement it already had with the Post Office to “disperse” its services as close as possible to where potential “customers” lived. In other words, South Africans would be able to access CIPRO services from their local post office branch.

The model was informed by an analysis of the differentiated character of the South African economy. There are a fortunate few in the first economy, the report argued, that had access to the Internet and can transact with CIPRO electronically. “The focus of the decentralisation initiative,” it continued, “should be aimed at the relief of the second economy customer”.

This is why senior officials from CIPRO and from the DTI are largely sardonic about criticisms leveled at the organisation and its various CEOs. Success or failure is largely a matter of perspective, they imply. On CIPRO's own terms, the measure of the organisation's success lies in the degree to which its services are accessible in every village and in every town. On this score there have been real achievements. In particular, CIPRO officers point to the real increase in the number of cooperatives in South Africa as a sign that the organisation is having a transforming effect on the South African economy.

Yet decentralisation created unexpected problems for the business model. The focus on reaching people in every village and in every town made a virtue of simplicity in the registration process. This was not a problem in

²¹ CIPRO, *Strategic Plan for the Decentralisation Initiative*, 2008-2011, May 2008 .

²² CIPRO, *Strategic Plan for the Decentralisation Initiative*, 2008-2011, May 2008 , p6.

itself. Coupled with the move, however, to a fully IT-based customer interface, it resulted in web-based systems and processes that lacked proper checks and balances. In the words of the Director General of the DTI, “we went too far in the direction of simplicity at the expense of its integrity”. The result was that the CIPRO system was vulnerable to all sorts of attacks.

On the 21st of March 2010 the *Sunday Times*, South Africa’s largest circulation Sunday newspaper, carried the headline ‘Boss Absent as CIPRO flounders’. The report claimed that CIPRO’s Chief Executive Officer had been away from the office for 45 weeks over the last three years and that during this time the agency was floundering in a crisis of chaos and corruption²³. Then on the 9th of May 2010, South Africans woke up to the headline: “Corruption at CIPRO funds ‘global terror’”. The report in question alleged that a team of Pakistani nationals had corrupted CIPRO systems to register bogus companies with near identical names to existing, large corporations. With a set of authentic-looking documents and with the assistance of conspirators in the South African Revenue Services (SARS), they changed the banking details of legitimate companies to those of the bogus enterprise. In this way, millions of Rands in tax rebates were paid into the hands of Pakistani nationals – some with links to international terrorist networks²⁴.

Events went quickly from the sublime to the ridiculous. On the 16th of September 2010 the *Sunday Times* reported that ‘pirates’ had ‘hijacked’ a company belonging to Daphne Mashile-Nkosi. Mashile-Nkosi and her brother had founded Kalahari Resources in 2002. Yet they been erased from the CIPRO records and a prominent South African businessman, Sandile Majali and some of his colleagues, had been registered as the company’s directors in their stead. “The persons currently reflected as directors in CIPRO’s database have, through unlawful activity, sought to seize control of Kalahari Resources,” said Mashile-Nkosi in her affidavit. “It has resulted in the respondents unlawfully attempting to appropriate for themselves control over a highly lucrative company. Acting Judge Fayeza Kathree-Setiloane “ordered that the Companies and Intellectual Property Registration Office

²³Ferreira, Anton and Steinacker, Jane, “Boss Absent as Cipro Flounders” in *Sunday Times*, 21 March 2010.

²⁴Ncana, Nkululeko and Ferreira, Anton, “Corruption at Cipro funds global terror in *Sunday Times*, May 9, 2010.

(CIPRO) restore Mashile-Nkosi and Mashile to the directors' list on its website,” the newspaper reported²⁵.

If there was something audacious in the cases above, prosaic allegations of tender-rigging were also emerging. When Keith Sendwe became CEO of the agency in 2007, the fourth person to hold this position in five years, he commissioned a new software system. Both the Auditor General's (AG) office and the forensic auditors pointed to serious irregularities with the awarding of the contract. Somewhat incredulously, the AG noted that “the financial position or sustainability of the service providers was not taken into account during the evaluation. The successful bidder had registered as a close corporation on 22 June 2005 and had therefore only been in existence for *three months* when it tendered for contract 398 to [CIPRO]” (emphasis added)²⁶. Keith Sendwe and the Chief Information Officer, Michael Twum-Darko, were suspended and the DTI subsequently cancelled the contract completely. At the end of September, the CEO subsequently died, without ever facing charges.

For the Democratic Alliance (DA) the problems in CIPRO were evidence of “the crippling effects of affirmative action and cronyism on government entities”²⁷. Andricus van der Westhuizen, a DA Member of Parliament, argued that “the enormous salaries, exceptional salary increases and prolonged protection from disciplinary action created an atmosphere in which some senior staff members believed that they were untouchable. This contributed to a climate in which fraud was rife. Criminals, having learned of the incompetence of CIPRO, have now gone into overdrive to defraud South African companies, such as Kalahari Resources, and SARS of millions of rands”²⁸.

Yet ‘bad leadership’ was a symptom of a more significant problem – design flaws in the very structure of the agency. It is not difficult to see that the CIPRO leadership was trying to be sincerely innovative in developing a ‘business case’ for the organisation. Yet we have to ask why CIPRO needed

²⁵Chelemu, Khethiweand and Prince, Chandre, “Tycoons coup fails”, in *Sunday Times*, September 16, 2010.

²⁶Auditor General of South Africa, *Report on an investigation into the procurement of the enterprise content management system at the Companies and Intellectual Property Registration Office in South Africa*, March 2010.

²⁷Van der Westhuizen, *Op Cit.*, September 27 2010.

²⁸Van der Westhuizen, *Op Cit.*, September 27 2010.

a 'business case' in the first place. Company registration is an administrative task, that is a basic condition of a market economy. If it is not performed successfully then economic life is placed in jeopardy. Yet under the auspices of NPM company registration was placed at the mercy of CIPROs performance as a business.

Conclusion

What we have contested in this paper is not that apartheid was authoritarian, wasteful and inefficient. Rather, we have sought to place a question mark over the causality between these phenomena and the bureaucratic model. We have to wonder if these outcomes were a result of bureaucracy *per se*.

We have seen that the winds of NPM in South Africa took their own peculiar course. In the 1990s there was an uncanny coming together of anti-apartheid activists and apartheid-era scholarship around a critique of public administration and around the notion that the apartheid state was intrinsically bureaucratic.

Yet the problem with the way that the debate about NPM has happened in South Africa and elsewhere is that it set up a false dichotomy; as if public management and public administration are mutually exclusive practices or 'paradigms'. The 'undoing of bureaucracy' here has been associated with a neglect of rigorous attention to administration, that is, to planning, organising, staffing, directing, co-ordinating, reporting and budgeting (the so-called POSDCORB elements). The case of SARS is instructive in this regard. It is anomalous in *two* ways. While ostensibly a victory of the NPM model, in that the agency sits outside the public service and that skilled personnel are paid market related salaries, many of its major achievements have come from very careful attention to the core functions and processes of revenue collection.

That bureaucracy has functioned as some kind of fetish, means that huge effort and resources have been expended in South Africa in solving what may have been the wrong problem. It leaves the question of the appropriate model of a post-apartheid public service still unanswered.

Finally, it seems reasonable to wonder if the problem with the apartheid state was that it was organised, in parts, as a *racial* bureaucracy. Would it

not have been better to deracialise and even consolidate the existing bureaucratic structure, rather than try to undo it; that is, to upgrade the structure and decontaminate the contents?

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