

EDITORIAL

Can Governments Still Get Things Done?

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1 Introduction: A Rhetorical Question?

In the reader's mind, the question underlying this special issue is likely to evoke associations with failing public policies and slow legislative processes and from political divisions to outright scandals in the public sector. In this sense, it is a rhetorical question. Governments indeed seem to be struggling in our high-tech and at the same time fragmenting society. Yet – of course – that is not the whole perspective. There is no doubt that governments still do get a lot done. Rubbish is collected, public green spaces managed, passports issued and public utilities like energy and water supply function almost flawlessly. So where is the pain? How can we explain the fact that governments are indeed failing in many other areas? In this issue, we try to answer these questions.

2 Government and Governance

This special issue focuses on *government* and *governance*. In this issue, *government* (public administration) refers to the entirety of organizations and activities that are primarily aimed at controlling, managing and steering society.¹ We take a broad interpretation of the term: it also refers to organizations that do not belong to the government but that do perform a public task or co-manage the government. Think of hospitals or refugee organizations. *Governance* is about the way in which a large number of government actors, civil society organizations and private parties are jointly involved in policy and public service delivery.²

But how should governments get things right: what, actually, is *good governance*? According to OHCHR's (Office of the High Commissioner for Human Rights of the United Nations) definition, good governance is

the process whereby public institutions conduct public affairs, manage public resources and guarantee the realisation of human rights in a manner essentially free of abuse and corruption, and with due regard for the rule of law. [...] it may span the following topics: full respect of human rights, the rule of law, effective participation, multi-actor partnerships, political pluralism, transparent and accountable processes and institutions, an efficient and effective public sector, legitimacy, access to knowledge, information and education, political

1 Van den Berg, van der Steen & Tummers 2021, p. 19.

2 Ibid., p. 305.

empowerment of people, equity, sustainability, and attitudes and values that foster responsibility, solidarity and tolerance.³

The ESCAP (United Nations Economic and Social Commission for Asia and the Pacific) distinguishes eight characteristics of good public governance. In this definition good governance is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law.⁴

Different paradigms can be distinguished around government and governance. For Max Weber, bureaucracy was central. A bureaucracy is an organizational structure based on rational-legal authority.⁵ Weber distinguished six defining elements of a bureaucracy: task specialization, hierarchical layers of authority, formal selection of servants, rules and requirements, impersonality and personal indifference and career orientation. In the 1980s, the paradigm of New Public Management emerged. The idea was to make government more business-like, accompanied by deregulation and privatization of government tasks.⁶ The last paradigm we touch on here is the paradigm of public value, introduced by Mark Moore.⁷ Public value is the value an organization or activity contributes to society. Or, as Colin Talbot describes it, public value is what the public values. [...] It is the combined preferences of the whole people that decide whether or not any public domain activity is creating or destroying value.⁸

Governing bodies need to think about how to add 'public value'. According to Moore, managers need to develop a strategy for a public sector organization based on the coherent alignment of three elements: the strategy must be substantively valuable, legitimate and politically sustainable and operationally and administratively feasible.⁹ Public value is increasingly central in government. In the Netherlands, for instance, we see this in the shift from a tough approach to fraudsters in the social domain to a system where the focus is more on customization and responsiveness.¹⁰

Administrative bodies provide guidance to society through policy. Policy processes consist of various sub-processes or phases: agenda setting, policy preparation, policy formulation, policy introduction and implementation, compliance and enforcement, and policy evaluation and feedback.¹¹ The contributions to this issue focus on different sub-processes.

3 <https://www.ohchr.org/en/good-governance>.

4 Different models can be distinguished. The United Nations Economic and Social Commission for Asia and the Pacific published a model with 8 standards: <https://www.unescap.org/resources/what-good-governance>.

5 Weber 1968.

6 Osborne & Gaebler 1992; see for a critical analysis: Hood & Dixon 2015.

7 Moore 1995.

8 Talbot 2011, p. 28.

9 Moore 1995, p. 71.

10 De Winter 2019.

11 Hoogerwerf, Herweijer & Van Montfort 2021.

3 Characteristics of Our Present-Day Society

We live in a high-tech society in which sectors, governments and markets are intertwined and where the innovative application of digital technological means has created new implementation questions. The consequences of this are felt mainly at system level. It is therefore no coincidence that the major implementation problems have their roots precisely there. This is when the inadequate checks and balances come into view, when there is insufficient understanding of the risks involved in the application of new technologies and the safeguards that must be put in place in return. This is also where there is a lack of answers to the interconnectedness that increasingly characterizes the sectors within society and the fragmentation that increasingly exists between groups in society as well. When interdependencies increase, the need for data sharing and the use of large-scale data analysis increases; there is, at the same time, the impact of human rights such as the protection of privacy, which sets limits and demands guarantees. A certain paralysis of decision-making processes and delay in interventions can be observed. The combination of political divisions and inadequate measures and the effects of policy failures are fuelling growing distrust among citizens, creating the self-fulfilling prophesy of a powerless government. This is all the more galling as expectations of government performance and ambitions continue to rise.

4 Western Perspective?

Is all this a Dutch, a Western European or a Western perspective, or do the foregoing observations also apply to other parts of the world? In sociology, current developments are placed in the movement of 'modernization' (sometimes called globalization) of societies. The German sociologist Ulrich Beck, for instance, describes how society is changing, using the definition 'risk society'.¹² He distinguishes 'old risks' such as unemployment, disease, housing shortages and spring floods, to which the social welfare state is a response. He also distinguishes a second modernity with new risks: power cuts, cyberattacks, nuclear radiation, sea level rise. Added to the idea of modernity is the notion of multiple modernities, introduced by Shmuel Eisenstadt. It emphasizes that modernity can take different forms other than what is denoted by Western modernity.¹³ Eisenstadt describes the Western path of modernization as only one of the possible paths of modernization. There are many more possible answers to the challenges of new technology. In his book *How should a government be?* Jaideep Prabhu asks how a government should be in the twenty-first century.¹⁴ In the book he describes models of how government can do things, based on examples from around the world. Cases in his book include India's ID project, a Dutch programme in which nurses operate almost entirely without management, and China's Social Credit System. He argues that cross-country comparisons are important and that

12 Beck 1992.

13 Eisenstadt 2000.

14 Prabhu 2022.

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“something that one country does differently and well can inspire people from another to change.”¹⁵

5 Three Levels of Analysis

Answering the question “Can governments still get things done?” requires an analytical perspective. We borrow that perspective from Alasdair Roberts, who in his book *Strategies for Governing. Reinventing Public Administration for a Dangerous Century from 2020* distinguishes between a micro, meso and macro perspective.¹⁶ While obviously not new in itself, this distinction where the functioning of government in addressing public issues of our time is concerned does enable a more precise analysis.

The macro perspective focuses on the study of the arrangements that are the result of political processes intended to serve public interests and the design of government organization that results from them. Over the last century many types of states have been identified.¹⁷ At this macro level, the analysis focuses on the functioning of the rule of law, the role played by parliaments as co-legislators and controllers and the assessment of implementation by the administrative courts. This is where the role of trust in government comes into play.

The meso level focuses on setting up the government organization, developing legislation and establishing policy programmes. So here the level of analysis is concerned with the implementation power of government organizations, agencies, quango’s (quasi-autonomous non-governmental organizations) and privatized implementing organizations. That implementation power is decreasing, it is assumed, owing to shrinking budgets, problems in staffing, conflicts between principals and agents and the ever-present information asymmetry. Supervision and enforcement are hampered by politicized decision-making and lack of independence.

At the micro level, the main focus is then on studying the attitudes and behaviour of professionals within the state apparatus and of people subject to their authority. This is where street-level bureaucrats, screen-level bureaucrats and system-level bureaucrats enter the perspective.¹⁸ The tension between general rules and customization then arises. The question is whether government arrangements always give sufficient space to implementers to make a case-by-case assessment and procedurally fair decisions. And, apart from that, are the professionals in implementation sufficiently capable of customization?

15 Prabhu 2022, p. 11.

16 Roberts 2020.

17 See Roberts 2020, pp. 141-151 for an overview.

18 Bovens & Zouridis 2002.

6 Balanced Perspective

Asking and answering the question “Can governments still get things done?” at multiple levels creates a more balanced perspective and a more precise answer to the question. The insight emerges that at each of the levels, micro, meso and macro, much is going well, but shortcomings also occur at each of the levels. The problems seem to be greatest at the macro and meso levels. The examples are obvious: owing to inadequate attention by politicians and legislators to the consequences of natural gas extraction in the Netherlands (Groningen), victims were neglected for years. In several countries around the world in the field of social security, the political focus on combating fraud resulted in large groups of benefit recipients being stigmatized and facing financial difficulties. Key features of the design of legislation and implementation in those cases (Robodebt in Australia, NAV in Norway, MiDAS in Michigan and the Childcare Benefits scandal in the Netherlands) bear striking similarities.

At the same time, we know that government service delivery is more or less flawless in many areas. A Dutch study (using interviews, survey and focus groups) from 2022 shows that almost 75% of citizens and entrepreneurs are positive about the substantive quality and process of government services; just under 15% are negative; appreciation has increased since the previous measurements from 2019 and 2020: there is a positive trend.¹⁹ There are, however, differences between groups: entrepreneurs, for instance, are more often (very) negative. Education level, age and gender show only minor differences in appreciation. Statistics on public service appreciation are positive not in the Netherlands alone. A 2022 benchmark on public services, social security, education and housing in 35 countries shows high figures for satisfaction and trust.²⁰ However, there are big differences between countries and regions, and the figures also vary over time.

Such surveys on satisfaction and trust with high satisfaction scores do not take away from the fact that, at the same time, attention is also needed for things that are not going well. The central question in this issue focuses on this: how can there be such major problems in parts despite the fairly general decent satisfaction with government performance? Or, turning it around, how can there be generally decent satisfaction with government performance despite the major problems?

These perspectives lead to several questions addressed in this issue, such as: what is the significance of declining trust in government for the quality of implementation? Does the change in regulatory techniques (from detailed legislation to principles-based regulation) cause problems for implementation, or does implementation actually improve by that transition? Can digitalization and algorithmic decision-making play a role in solving implementation problems, or do they actually increase them? Is independence of implementing and supervisory organizations important, or does that, in fact, create tension with the rule of law

19 <https://staatvandeuitvoering.nl/onderzoek/oordeel-burgers-en-ondernemers-over-overheidsdienstverlening3/>.

20 <https://staatvandeuitvoering.nl/onderzoek/internationaal-benchmark-onderzoek-naar-prestaties-publieke-sector/>.

and effective parliamentary control? What is the position of judicial review? What do these developments mean for the position of the courts, and do citizens ultimately get what they are entitled to?

7 Contributions

We arrange the contributions to this special issue on the basis of the distinction made before between macro, meso and micro level of analysis, while also reflecting on the focus in the article on a specific part of the policy process. From the six contributions, four are written by Dutch authors. It is striking that three of these have the Childcare Benefits Affair as a case study. Parents with children in childcare in the Netherlands can receive a contribution from the government for the costs of the childcare under certain conditions. The scheme is implemented by the Tax and Customs Administration, which pursued a strict supervision and enforcement policy, using algorithmic decision-making. Over time, numerous problems came to light. It is certain that some 30,000 families have ended up in serious financial problems owing to the strict enforcement practice. The first three articles analyse this Dutch case of the Childcare Benefits Affair (or scandal). They do so from a different starting point and at a different level of analysis. Maarten Bouwmeester looks at this affair from a systemic level. In answering the question of why things could go so wrong, he uses two perspectives: that of parliamentary scrutiny and that of judicial control. These are crucial mechanisms of the social welfare state that have obviously failed here, or at least have not functioned for a long time. In terms of the policy cycle, this contribution concerns an analysis of the policy-making phase, where the functioning of the legislative procedure is at stake, and an analysis of the evaluation and feedback phase, where monitoring implementation should be central. The Dutch parliament has failed both in the legislative process and in monitoring implementation. This is also the case with the supervision of the implementation by the judiciary. Despite many signals that the application of the legislation had numerous shortcomings, the case law did not recognize this for a long time, which has put large groups in Dutch society in a pinch. A lack of transparency on the part of the implementing organization, excessive attention to the importance of combating fraud, excessive belief in the blessings of digitization and citizens' self-reliance are elements of the explanation of this policy fiasco. Bouwmeester speaks of system failure, which was reinforced by the combined failure of judicial control and policy failure.

In the second contribution, Sandra van Thiel and Koen Michgelbrink approach the same Childcare Benefits Affair from a different perspective, but also at a macro level. Their article analyses the way in which politicians and administrators have dealt with the question of guilt. A parliamentary committee of inquiry was set to work, and eventually the government resigned and the executive organization was reorganized in response to the conclusions of the committee of inquiry. Much is being done to compensate the victims, and while the judiciary started with an intensive process of reflection, the role of parliament has not really been seriously considered. The result of the 'blame game' is that parliament seems to escape the

dance. This contribution thus focuses on the last phase of the policy cycle: processing the findings of the evaluation in feedback and ‘learning’.

Lucas Michael Haitsma’s contribution deals with algorithmic decision-making, focusing on the implementation phase and on the meso level of analysis. He bases his article on the theoretical model of the algorithmic life cycle that distinguishes different phases in the development, decision-making, application and control of algorithms in implementation processes in government organizations. Haitsma also uses the Childcare Benefits Affair to support his analysis, in which he focuses on the use of algorithms by the Tax and Customs Administration for the supervision and enforcement of the Childcare Benefits System. He shows that discriminatory effects in this case are the result of risks that occurred in different phases of the algorithmic life cycle and makes recommendations on how implementing organizations can manage those risks.

The special issue then has two contributions that use the theory of legal consciousness as the starting point of analysis. David Barrett’s article addresses the implementation gap he identifies in England and Wales between the potential of regulators, inspectorates and ombudspersons (RIOs) to realize equality and human rights within their sectors and their poor performance in practice. This article also uses the meso level of analysis. In doing so, he uses the legal consciousness of the individuals responsible for equality and human rights implementation within RIOs and how this subsequently influences implementation. Barrett finds two variants of legal consciousness based on interviews with professionals in the RIO organizations. In one variant, the law is sacred and the interviewee sees equality and human rights as inviolable and absolute, and safeguarding them is considered to be the responsibility of experts. The other variant is based on flexibility: equality and human rights can have different meanings in different contexts. These ways of looking at human rights appear to be related to the way in which these values are implemented in practice. The interviewees who make human rights absolute tend to lay them down in procedures and see implementation as a one-off action, while the interviewees who favour a more flexible approach to human rights strive for customization, prefer to delegate the application and see implementation as a continuous process.

Fanni Gyurkó’s article goes to the micro level by zooming in on how patients and doctors in the Hungarian healthcare system behave against the backdrop of freely available medical care. A well-known phenomenon is that Hungary has an informal system of payments for certain medical treatments. The government is trying to eradicate this informal practice but has not been very successful. Gyurkó explains these failures and the existence of the informal payment system on the basis of the theory of legal consciousness. Thus, this case study has a significance that goes beyond the mere medical care system because it addresses the more general question of how government policies can counter socially embedded undesirable informal practices. The answer is that customization is in any case required, that government policy must be consistent and that adequate supervision and enforcement instruments are required.

The last contribution in this special issue is by Jin Ho Verdonschot, Carla van Rooijen, Susanne Peters and Corry van Zeeland. For specific legal issues, Dutch law

assumes that people have a sufficient level of self-efficacy to deal with these specific cases without legal assistance. In 2021, the Dutch Legal Aid Board responded to an initiative of the Dutch Association of Legal Aid Lawyers, who presented a collection of cases that showed how people with a legal issue got stuck owing to the laws and regulations that assume a sufficient level of self-efficacy. As a result, a temporary arrangement was introduced to facilitate legal aid for people who, under the Legal Aid Law, are not eligible for legal aid because a sufficient level of self-efficacy is assumed. This arrangement has been monitored and evaluated, and the authors in this contribution delve deeper into the question of how a feedback loop can enhance a learning Dutch legal aid system. In terms of the policy cycle, this contribution takes a closer look at the evaluation and feedback phase at the micro and meso levels. Verdonschot and colleagues conclude that it is a challenge to find ways to loop feedback data back into the legal aid system such that they effectively yield appropriate action. “Because ultimately, it is a matter of institutional or political urgency, capacity and willpower to actually get things done with a feedback loop.”

8 Conclusions

The articles in this special issue illustrate that the present-day welfare state is accompanied by various complex requirements imposed on implementing organizations. At the same time, expectations of automated decision-making are high, and there is a huge reliance on generic arrangements and the quality of the system. In Western welfare states and undoubtedly elsewhere in the world, algorithms took the place of human interaction, leaving little focus on customization.

Several articles bear witness to the characteristics of system failure due to the weakened countervailing power of parliament and hesitant judicial control, leading to excessive enforcement and a disappearing view on implementation complexity. To what extent are feedback and learning guaranteed? The Childcare Benefits Affair in the Netherlands shows that in the end parliamentary control and the judicial review seemed to work. However, at the same time, despite extensive evaluations, parliament is unwilling to face up to its own failures in legislative procedure and parliamentary control. Against that background, the question should be raised as to how there can be any hope of improvement. All in all, a lack of self-reflection, an absolutization of general principles such as fraud detection, an overestimation of the possibilities of automated decision-making and a lack of consistency do not paint a very positive picture and lead to fears of future problems.

So, can governments still get things done? Indeed governments can. However, reflection is necessary. It is important not only that governments can get things done but also that they get things done well. The various contributions in this special issue provide guidelines for this. We list them here. First, it is important that cases of policy failure are analysed in terms of their causes. This calls for serious evaluations in which the role of each of the participants is reviewed. In the end, all actors involved should be prepared and willing to critically assess their own

role. If an analysis of a case of system failure (Bouwmeester) results in a blame game (Van Thiel & Michgelbrink), there is limited hope that a learning process can lead to improvement. Even then, the effective use of information from evaluation for appropriate actions by implementing agencies (or politicians) can be difficult to realize (Verdonschot, van Rooijen, Peters & van Zeeland).

Second, the articles in this special issue illustrate a remarkable and great confidence on general arrangements by the legislature as well as by implementing organizations. Yet the cases presented involve human interactions in healthcare, legal aid and social benefits and clearly show a need for tailor-made solutions. It seems that in the new public government era, government organizations indeed tried to operate on the basis of maximized efficiency, which apparently came with system thinking and general arrangements. It is not surprising, on the basis of the studied material, that the authors – sometimes directly, sometimes more indirectly – argue for customization in the implementation (Haitsma, Gyurko). This is also true for the use of automated decision-making. Clearly, the use of algorithms in implementation will not be turned back. However, this does not mean that organizations cannot act more carefully in implementing them. The model of the algorithmic life cycle (Haitsma) gives a stronger hold on the way to use automation in implementation. That can eventually lead to the screen bureaucracy acting more on a human scale. On the micro level, the articles that use the perspective of legal consciousness illustrate the importance of acknowledging differences in the perception of state law by either implementers or citizens (Gyurko and Barrett). Professionals in organizations too have different opinions and *modus operandi* on the way to implement state arrangements.

The articles in this special issue leave us with mixed feelings. They point to serious problems in the implementation of government interventions and, at the same time, also provide pointers for how implementation could be improved. Using these recommendations, indeed, will help governments to still get things done.

References

- Beck, U., *Risk Society. Towards a New Modernity*. London: Sage Publications 1992.
- Bovens, M. & S. Zouridis, 'From street-level to system-level bureaucracies: How information and communication technology is transforming administrative discretion and constitutional control', *Public Administration Review* 2002-62(2), pp. 174-184.
- De Winter, P., *Tussen de regels. Een rechtssociologische studie naar handhaving in de sociale zekerheid*. Den Haag: Boom juridisch 2019.
- Eisenstadt, S.N., 'Multiple modernities', *Daedalus* 2000-1, pp. 1-29.
- Hood, C. & R. Dixon, 'What we have to show for 30 years of new public management: Higher costs, more complaints', *Governance* 2015-28(3), pp. 265-267.
- Hoogerwerf, A., M. Herweijer & A.J.G.M. van Montfort (Eds.), *Overheidsbeleid. Een inleiding in de beleidswetenschap*. Deventer: Kluwer 2021.
- Moore, M.H., *Creating Public Value. Strategic Management in Government*. Cambridge: Harvard University Press 1995.
- Osborne, D. & T.A. Gaebler, *Reinventing Government: How the Entrepreneurial Spirit is Transforming The Public Sector*. New York: Addison-Wesley 1992.

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- Prabhu, J., *How Should a Government be? The New Levers of State Power*. London: Profile Books 2022.
- Roberts, A., *Strategies for Governing. Reinventing Public Administration for a Dangerous Century*. Ithaca: Cornell University Press 2020.
- Talbot, C., 'Paradoxes and prospects of "public value"', *Public Money & Management* 2011-31(1), pp. 27-34.
- Van den Berg, C.F., M.A. van der Steen & L.G. Tummers, *Openbaar Bestuur. Beleid, organisatie en politiek*. Deventer: Kluwer 2021.
- Weber, M., *Economy and Society: An Outline of Interpretive Sociology*. Germany: Bedminster Press 1968[1921].