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On the table in my office is a copy of the collected works of Franz Kafka. Its presence there provokes many interesting conversations about bureaucracy. The word Kafkaesque is used to describe a situation that is incomprehensible, nightmarish and menacing. It applies particularly to an advanced and dehumanised society in which the individual, lost in the toils of the state, is unable to control his life. On a visit to Prague, I came across a monument to Franz Kafka in which this incomprehensible force is depicted as a massive figure striding away with a little man on its shoulders. On closer inspection, the huge figure proves to be an empty suit. It has no head or hands and its shoes have disappeared into the plinth. To me, it looks like a giant with feet of clay, and it seems to represent an empty and inexorable bureaucracy that goes on mechanically implementing rules and procedures long after the original reason for them has passed into oblivion. Kafka has become a byword for such out-of-control bureaucracy. In the mid-eighties, there was a fierce debate in the United States between the now Justice of the Supreme Court Richard Posner and academic Robin West concerning the meaning of Kafka’s writings and the autonomy – or otherwise – of the citizen in the face of bureaucracy (West 1985; Posner 1986; West 1986). In my role as National Ombudsman of the Netherlands, I see many cases that seem Kafkaesque and centre on the loss of autonomy experienced by the citizen who finds himself in the toils of some vast and incomprehensible bureaucratic power (www.kafka.be, www.kafkabrigade.nl).
New Public Management is focused on introducing incentives – such as the effects of the market economy – into the public sector (Hood 1991). One could say that the New Public Management ideology sees human beings as mere cogs in the wheel of a particular market and assumes that their autonomy will be ensured by the perfect functioning of the market concerned. With Kafka in mind, this positive vision of the link between profit maximisation and human autonomy appears open to question. I believe that many of the problems I see between government and citizen can be traced back to the (sometimes perverse) effects of the New Public Management style of public administration, in which tenets of the Anglo-Saxon model replace those of the Rhineland model traditional in the Netherlands. One illustration of this is the setting of performance targets for the number of traffic fines issued by the police and the real-life effect of this on the credibility of the police in the eyes of the public. In cases brought to me by citizens, I have witnessed the escalation that can result from police officers’ acting over-automatically in relation to the public and seen the risk of police professionalism being eroded when officers are prevented from taking account of individual circumstances.

It is against this background that I wish to discuss the influence of New Public Management (NPM) on the operation of a system of public administration. As a National Ombudsman, my attitude to organisational issues is essentially neutral. For me, all that counts is the result. In light of public perceptions, however, it is perhaps worth stating that the Dutch discourse concerning the functioning of public bodies in the Netherlands all too often approaches the subject either exclusively from the NPM angle or exclusively from the legal point of view. In the first case, the emphasis is on efficiency and quantifiable results. In the second, it is on lawfulness, the rule of law and judicial control by the courts. People appear to see the system as driven either entirely by the market mechanism and the resulting efficiency gains or entirely by the idea of the rule of law. In terms of the monument to Kafka described above, the hollow giant is filled either by the rationale of the market or by that of the law.

To me, it seems more sensible to aim for a constructive reconciliation between the two: both efficiency and lawfulness. Moreover, I would like to suggest a third approach: the principle of fairness, as applied by ombudsmen. I believe that an approach based on the principle of proper conduct can mediate between NPM on the one hand and the legal approach on the other. Clearly, an NPM-based approach to governance must always be situated within the legal framework. In that sense, the two approaches coincide. When issues are raised concerning the rule of law, they tend to be in the area of general legal principles, which have the effect of setting additional standards within the framework of the concept of the rule of law. For instance, decisions should be not merely lawful, but also well-reasoned and – better still – comprehensible to the people they affect. Prompt and careful information provision and consideration of the case are at least as important to the citizen as the correctness of the final decision in terms of the law. Individuals, businesses and institutions often see such aspects of proper conduct as important features of their dealings with government bodies. Failures in these areas increase the probability of complaints and objection procedures and hence reduce efficiency. In the work of ombudsmen, this is exactly where the emphasis lies: on consistently proper conduct towards individual citizens. The European Ombudsman calls it “fairness beyond legality”
Of course, efficiency and other considerations dictate that many decisions on the rights and duties of individual citizens are processed en masse via computer systems. Such systems are widely used, for example, in the tax and social security fields. Occasionally the results are unsatisfactory, and then, there is a need for some sort of remedy. Moreover, in addition to these mass processes, there are certain areas of public administration that necessitate a case-by-case approach. Decisions on spatial-planning matters and building-permit applications are two examples.

When things go wrong, whether in mass decision-making systems or in case-by-case processes, a possible remedy is the use of legal procedures, like those prescribed in the Dutch General Administrative Law Act (AWB). However, such procedures tend to increase legal complications, lead to undesirable juridification across the board and produce unpredictable outcomes (Laemers 2007). Furthermore, they are expensive and time-consuming. The result – from the NPM point of view – may actually be a conflict between lawfulness and efficiency.

3 PROPER CONDUCT

The day-to-day work of the National Ombudsman shows that the consistent application of the general principles of proper conduct in the practice of public administration can help to reduce this conflict. There are several ways to achieve this. In concrete cases, the Ombudsman can adopt a problem-solving approach that avoids the need for legal procedures. More generally, he can suggest to administrative authorities how they can avoid legal procedures by translating the principles of proper conduct into their routine administrative practices. The Ombudsman can also issue practical written guidance on specific topics like enforcement, participation or the proper treatment of compensation claims from individuals, businesses and institutions, and this can help authorities to reconcile NPM goals with the requirements of the law.

In the Netherlands, a project run by the Interior Ministry to encourage the use of mediation methods has had remarkable results (Conflicts between Citizens and Government Organisations, 2009). The project was implemented in close collaboration with the National Ombudsman because it corresponded closely to his preferred approach. It centred on avoiding or resolving problems through the early use of effective communication in relation to complaints, objections and sensitive decision procedures. Such communication frequently consists of prompt telephone contact with the citizen concerned and the use of the communication techniques employed in mediation (in particular, active listening and the use of dialogue to identify the interests of the various parties involved). Actual mediation may also take place. The aim of the project was to train officials in this Alternative Dispute Resolution (ADR) approach and to ensure its routine use.

The informal conflict-resolution approach proved effective in eliminating the need for further legal procedures in 70% of primary decision-making cases. In the enforcement field, for example, experience showed that a telephone call to the offender was frequently sufficient in itself to end a breach of environmental regulations. Formal measures such as serving legal notice or imposing a monetary penalty were often unnecessary.
Likewise, in 60% of objection procedures, the dispute could be resolved via an informal approach and no legal procedures were subsequently required. The informal approach produced an average citizen satisfaction rating of 7.2 (on a scale of 1–10) – 40% higher than normal legal procedures. Satisfaction among the officials concerned was also high: 7.8 (on a scale of 1–10). Moreover, decision-making time was reduced by 37% in comparison with the statutory periods and by 21% in comparison with the usual actual periods. Efficiency was increased, in the sense that case resolution time was reduced by 26% and costs by 20% (Conflicts between Citizens and Government Organisations, 2009).

This research project shows that an emphasis on the principles of proper conduct can reconcile the goals of lawfulness and NPM efficiency – a result that fully justifies a more detailed discussion of the National Ombudsman’s proper-conduct-based approach.

4 THE PERSON AND THE SYSTEM

Examining the thousands of cases brought to me each year, I am constantly struck by the gulf that divides the citizen as a person and government as a system (or set of sub-systems). What Kafka described in his fiction is the divorce between the world of the individual human being and the world of “the system”: in his novel The Trial, Joseph K. struggles to defend himself against an anonymous legal power operating in accordance with unknowable rules and becomes more and more lost in the toils of the legal maze. This divorce between the individual and the system was later described by the sociologist Jürgen Habermas as that between the “lifeworld” and the “system world”. In the lifeworld, communication is central, whereas in the system world, mechanisms like the economy (market) and government (bureaucracy) operate according to their own logic.

System behaviour by government is apparent, for example, when the law is implemented via computer applications. Examples abound. The Dutch Employee Insurance Schemes Implementing Body (UWV) issues a computerised repayment decision, and nobody can explain the exact basis for it. Database linkage between the Government Road Transport Agency (RDW) and the Central Judicial Collection Agency (CJIB) leads to the automatic imposition of fines for a lack of vehicle insurance or for failing to submit a vehicle for compulsory roadworthiness testing, even though the recipients do not actually own the vehicles concerned. The use of client-contact centres and other telephone services like the Tax Department’s dedicated help-line leads to rules that citizens feel are unnecessarily bureaucratic, dictating that they cannot just be put through to an official dealing with their case or simply e-mail the Tax Department.

Because administrative authorities tend to apply standard solutions within their own particular jurisdictions, they have great difficulty in dealing with non-standard cases. The situation is particularly difficult and distressing when a citizen is at the mercy of a number of different authorities and has to try to negotiate a maze of service chains.
5 EFFICIENT GOVERNMENT

The system behaviour of the government machine has advantages. It is usually efficient, it ensures the correct implementation of legislation, and, by doing so, it guarantees equal treatment and legal certainty. For that reason, it would be wrong to think that the system can simply be changed to make life easier for citizens. To achieve that, government would have to renounce its specific functions. In fact, in the Netherlands, government is currently boosting its efficiency by functioning more and more as a system. Indeed, in the interests of efficiency, it is reducing the individual citizen to a “citizen service number” (personal identification code). Inevitably, in this era of intensive computerisation, citizen service numbers are being linked to ever more personal data, including the biometric data in passports and in the national database based on them. This, of course, exacerbates the risk of Kafkaesque situations occurring. How safe are such citizen service numbers? Is DigID (cross-agency digital authentication of personal identity) watertight? What protection is available to the citizen whose identity is stolen and used for nefarious purposes?

For reasons of efficiency, government is reducing individual people to numbers. They can hardly be expected to enjoy the experience. At best, citizens perceive such results of government system behaviour as neutral and at worst (errors in databases, mistaken linkages, misplaced letters, etc.) as Kafkaesque. Individual satisfaction with government depends to some extent on the identity of the citizen concerned: more highly educated people tend to understand the need for government to behave as a system and resign themselves to it. Less highly educated people have less understanding of the background to such behaviour and are therefore more distrustful of government.

Whatever the differences between citizens, however, all parts of government today expect them to display extensive skills in dealing with bureaucracy. Indeed, there is an increasing risk of the system expecting too much of people. Citizens have to organise a vast array of government bodies and services around themselves, especially in complex or multi-problem situations (involving, for example, chronic ill health and physical or mental disability). In cases like these, the system is usually completely insensitive to the difficulties experienced by the citizen. No wonder that it can seem like a brazen Moloch devoid of humanity.

However, citizens just have to put up with government as it is; unlike the market, it offers them no other choice. For that very reason, it is important to consider how to establish the best possible connection between citizen and government, starting from the characteristics of the one as a human being and the other as a system. Using a concept familiar to us all from the computer world, I call this connection an “interface” (Annual Report 2008). Computers are also systems, and that makes it difficult for the average person to relate to them. The reason why they are nevertheless in such common use is that user interfaces have been developed – keyboard, mouse, icons, etc. – to provide easy ways for users to interact with complex computer programmes. The most successful ICT applications on the consumer market conceal “the computer” almost entirely behind such user interfaces. The companies developing them make conscious use of human psychology. A good illustration of their success is the fact that so many motorists talk to their cars, even though they know perfectly well that they are only inanimate objects. Apparently, the need for human communication is deeply rooted in us, even when we are well aware that we are dealing with the system world.
6.1 Personal contact

Experience shows that personal contact promotes good government-citizen relations. It can take many forms. Here are some real-life examples. A person who phones the Tax Department’s help-line and receives friendly and effective assistance will thereafter think more highly of “the Tax Office” in general. (Indeed, the Dutch Tax Department recognises this point: its slogan is “We can’t make it nicer, but we can make it easier”.) Likewise, in complex situations – for example, when a suspect in a case of child murder gets off scot-free because of mistakes by the justice system – a face-to-face meeting with a member of the Public Prosecutions Service may help the victim understand the situation and at least start to come to terms with it. Or take the case of a small municipality that receives no more than a couple of formal complaints a year, because it has installed a telephone help line manned by staff with good communications skills, who listen to people’s problems and direct them to the right part of the system. And then there is a pioneering project run by the Interior Ministry, where personal communication is being used in response to complaints, objections and applications for review in the administrative courts; as a result, formal procedures prove to be unnecessary in 40 to 60% of cases, and both citizens and officials experience greater satisfaction. In all these examples, it is the sense that government is listening and paying appropriate attention that creates an effective interface between the person and the system.

6 INTERFACES

The question is what interfaces between the government system and citizens as human beings are likely to be effective. In my work as an ombudsman, I have identified three necessary properties for such interfaces: they need to be personal, proper and participative. In other words, I take the attitude that – as with computer interfaces – the system should accommodate to human psychology.

Equally deep-rooted is our human tendency to assume that behaviour is intentional and to seek to fathom the mind of the system. Kafka describes this beautifully in Joseph K.’s desperate attempts to understand what is happening to him and to discover some logic in the system confronting him. He tries to find out what the system wants of him, because he thinks that by displaying the right behaviour he can “control” it. This brings us to the fundamental question of whether humanity should accommodate to the system or the system to humanity. Interfaces are a way for the system world to accommodate to humanity.
6.2 Proper conduct

Proper government conduct means taking citizens seriously and respecting them as individual people. An eighty-year-old woman dashes to the hospital where her husband has just been rushed into intensive care. Finding the car park full, she abandons her vehicle temporarily in a space reserved for the disabled. Having received a parking ticket, she writes to the public prosecutor to explain why she committed this first traffic offence in her whole long life. The Public Prosecutions Service sends a standard letter saying that the reasons for the offence are irrelevant and the fine must be paid. The deeply law-abiding woman is devastated: she simply wanted to apologise for the offence, not to avoid paying the fine. The Public Prosecutions Service responds to her complaint by waiving the fine: all very well, but not actually what the woman wanted!

Over the last thirty years or so, successive National Ombudsmen of the Netherlands have developed a series of general standards of proper conduct based on the hundreds of thousands of real-life cases they have examined. They range from respect for the human right of physical integrity to adequate information provision, and from promptness to proportionality. Experience shows that complaints and objections tend to be provoked by conduct that is less than proper. The response of the authorities concerned is usually that citizens are disgruntled because a decision has gone against them. This is a tragic misunderstanding: citizens are generally perfectly capable of distinguishing the standard of conduct from the content of the decision. Indeed, citizens who receive very good personal treatment will often take a much more positive view of the final decision, even if it goes against them.

6.3 Participation

The citizen has a personal stake in everything that happens in his lifeworld. Government interferes in that world by virtue of its many powers and monopolies. It can do so unilaterally, or it can choose to use its role and powers to deal with the citizen in a participatory manner. The clearest example of this is in the spatial-planning field, where Dutch law provides for public participation. Even here, however, politicians and officials often have great difficulty in recognising the value of public participation. In practice, it is reduced to the perfunctory observance of statutory procedures, as described in a recent National Ombudsman report on the subject (Report 2009/180). But government can also choose to create an interface between statutory and administrative procedures on the one hand and individual citizens’ lifeworlds on the other by paying genuine attention to their circumstances. There are plenty of examples of how not to do it. A terminal cancer patient applied for a stair lift and shower seat; after a long silence, he was eventually notified that he had applied too late because his remaining life expectancy was only three months. This happened despite the fact that the Dutch Social Support Act (WMO) calls not only for good procedures (system), but also for support to be tailored to the recipient’s personal circumstances and for discussion of how personal wishes can be reconciled with what is feasible.

The interface between the person and the system is frequently also a person: an official who talks to the citizen or has to take a decision. Over time, officials are inevitably conditioned by the environment in which they operate and begin to display system
behaviour themselves. To prevent this, it should be compulsory for all officials to reflect regularly on how Kafka’s stories relate to their own day-to-day work. Kafka gives the reader an intense empathetic experience of the nightmare that can result when the system gets the upper hand and deprives human beings of their autonomy. Reading his stories can reinforce the professionalism of officials, valuably countering the tendency towards system behaviour. The reason for Joseph K.’s desperation is that the system is no longer open to reason. It performs rituals that have lost all rationale. In this connection, I am reminded of a UK report entitled Managing Public Money, which spells out how officials should behave when spending taxpayers’ money. It sets out the rules of the system in fairly minute detail. However, it says in the Foreword (with a fine British sense of understatement), “Nothing in this document is intended to … discourage the application of sheer common sense” (HM Treasury 2007).

7 CITIZENSHIP

The use of appropriate interfaces between the citizen as a person and government as a system can divest the relationship between the two of everything that is coldly bureaucratic or Kafkaesque. The citizen can – metaphorically speaking – jump down from the shoulders of the giant on legs of clay and stand on his own two feet, once again fully autonomous. Autonomy is the key. And it means more than the customer satisfaction of the consumer world. The citizen is not a consumer, and government is not a private enterprise. So what is so particularly valuable about good government-citizen relations? The answer lies, I believe, in the development of citizenship. Tjeenk Willink, Vice President of the Dutch Council of State, emphasises that citizenship is an “office” with its own duties as well as rights. The trick is to strike a healthy balance between the two. In my opinion, good government-citizen relations are extremely helpful in achieving just that.

8 MISAPPREHENSIONS

First of all, there are two structural misapprehensions that need to be cleared up concerning the relationship between government and citizen. The first of these – rife among politicians and officials – is the conviction that citizens are hard to please, frequently have contradictory expectations of government and are only satisfied when they get their own way. But research shows that citizens are not only satisfied when they get their own way. The vast majority of them are prepared to accept negative government decisions and evils like fines and taxation as necessary features of society (Lind and Tyler 1988). Serious discussion with members of the public usually reveals an understanding of the need to balance competing interests and the inevitability of occasional government refusals.
The second misapprehension concerns the reason why citizens comply with government. The Dutch political and media discourse is dominated by a negative image of citizens: hard to please, full of contradictory expectations and therefore rebellious and contrary, too lazy to turn out to vote or, as floating voters, “unpredictable”. Citizens are seen as coolly calculating law-breakers, and their crimes and abuses receive ample attention from politicians and the press. Crackdowns and repression seem necessary to keep them under control. As a result, however, the public is too often eyed with suspicion. Are citizens really so opposed to the law? At my request, the Justice Ministry’s Research and Documentation Centre (WODC) calculated the annual rate of lawbreaking among citizens aged between 18 and 80. It turned out that only 1.34% a year get into any serious trouble.

In short, the vast majority of citizens are law-abiding, and it is for government to encourage the general culture of “civil obedience” that reigns in our society, rather than rebuffing citizens by constant negative signals. The Tax Department is quite right to adopt the corporate philosophy that the vast majority of people are prepared to complete their tax returns and pay what they owe. The Department assumes compliance and promotes it by sending out positive messages encouraging people to declare “black” savings of their own accord (although sanctions are still possible) and emphasising that the vast majority of people complete their tax returns on time.

9 REASONABLE BALANCE

The primary aim of good government–citizen relations is not satisfaction (let alone “client satisfaction”). Citizens attach great importance to fairness and justice on the part of government. Such fairness can be distributive, interactional or procedural. Distributive fairness is based on democratic choices, whereas citizens’ sense of interactional and procedural fairness depends to some extent on the personal, proper and participative aspects of the government–citizen interface. The point is well illustrated by research conducted by the Rotterdam Rijnmond police force. It concerned public satisfaction with the actions of police officers issuing fines. Over 70% of the people fined were satisfied with police action, despite the fine. Where people were dissatisfied, it was usually because they felt the police officer had not taken them seriously or listened to their side of the story. Officers who issue tickets without communicating with the recipient automatically evoke resistance.

Unwelcome government measures are often accepted more easily if citizens are treated with respect during preparation and implementation phases (see also MacCoun 2005 and Bos 2011). For that reason, it is better for government to exhibit trust in citizens (or the vast majority of them) and reserve suspicion and repression for the relatively small proportion of the population who are genuinely hostile to the law and to authority. By exhibiting a generally negative attitude to the public, the authorities themselves contribute to citizens’ aversion to government. This is, in short, the way to strike a balance between the rights and duties of citizens in relation to government. Government can foster citizenship through careful design and use of the government–citizen interface.
At a lecture I gave on treating citizens fairly, a government accountant questioned the cost of all these personal contacts in terms of government time. It is true that personal contact, listening carefully and explaining matters well takes time. I admit it. However, millions of government-citizen interactions take place perfectly satisfactorily via automated systems. Personal communication is required in only a very small proportion of less standard cases and in sensitive areas like police action. The total time costs are therefore relatively insignificant. Moreover, research has shown that such personal communication ultimately saves time by reducing unnecessary juridification and complaints, objection and review procedures (a point confirmed by the experience of the Netherlands’ Interior and Justice Ministries; see Conflicts between Citizens and Government Organisations, 2009).
I I CONCLUSIONS

With the right investment, therefore, it is possible greatly to improve government-citizen relations, to strike a reasonable balance between the rights and duties of the citizen and to avoid the pointless bureaucracy and spineless officials that are the leitmotifs of Kafka’s fiction: The bureaucratic juggernaut that crushes individual citizens under its wheels, the loss of autonomy that results when people are prevented from exercising normal self-determination, when the system and system behaviour get the upper hand, when rules are rules – the kind of thing that has made Kafka a byword for state bureaucracy.

I would suggest that whenever there is an exclusive emphasis either on the rule of law and legal procedures or on efficient management, the autonomy of individual citizens is at risk. In either case, they are subjected to rules and procedures that make it difficult for them to live their lives without either simply kowtowing to government diktats or engaging in complicated, expensive and time-consuming legal procedures. The Ombudsman provides an informal approach to complaints and objections based on standards of proper conduct. Experience shows that this often eliminates the need for formal procedures, while still achieving the goals both of lawfulness and of managerial efficiency.
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