

The Intractable Citizen and the Single-Minded Risk Expert – Mechanisms Causing the Risk Regulation Reflex Pointed Out in the Dutch Risk and Responsibility Programme

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Safety regulations are too often disproportional in the sense that their costs outweigh the benefits. Although this is well known, years of trying to reduce safety related regulatory pressure has not resulted in much success. Two important causes for this have not received much attention up to now. One of these is a faulty perception of how the general public regards risk. We argue that the intractable citizen's behaviour needs better understanding. The second cause is the single-mindedness of risk experts which calls for specific instruments to be harnessed.

I. Introduction

Western societies find themselves increasingly confronted with an expansion of risk and safety regulations, in the sense that the relative costs of safety rules tend to outweigh their benefits. Think, for example, of the compulsory Fire Exit signs in certain buildings. Studies have shown time and time again that these signs are fundamentally redundant: people unfamiliar with their surroundings will try and retrace the path they used to enter the building (regardless of the obstacles they encounter)¹. And even if people look out for these signs they wouldn't be able to find them, because they're made invisible by the smoke from the fire.² In terms of safety, the obligation to put up such signs is therefore pointless, but nonetheless it is still enforced in all European countries.

The escalation of regulatory pressure has been detailed extensively in the scientific literature³, but in practice governments and administrators are finding it difficult to repeal or rewrite existing legislation even if it is obviously superfluous. As Aaron Wildavsky already put it in his famous 1988 book:

"The decision for regulating any risk encountered by anticipatory measures is made consistently, although this is not beneficial to society as a whole."⁴

In this article we set out to determine why risk regulation is often introduced and why it appears to be so difficult for decision-makers to resist calls for more. Building on the work by the UK's Better Regulation Commission and Risk and Regulatory Advisory Commission (see the article by Adam Burgess and Donald McRae in this issue⁵) the Dutch Interior Ministry's Risk and Responsibility programme

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1 Margrethe Kobes, Ira Helsloot, Bauke de Vries and Jos. G. Post, "Building safety and human behaviour in fire: A literature review", 45 (1) *Fire Safety Journal* (2009), pp. 1 *et seq*; Margrethe Kobes, Ira Helsloot, Bauke de Vries et al. "Way finding during fire evacuation; an analysis of unannounced fire drills in a hotel at night", 45 (3) *Building and Environment* (2010), pp. 537 *et seq*.

2 Some countries have altered their regulation to have the exit signs at knee height. This does however not change, as experiments show, the non-use of these signs in emergency situations.

3 See for example Henry Rothstein, Michael Huber and George Gaskell, "A theory of risk colonization: The spiralling regulatory logics of societal and institutional risk", 35 (1) *Economy and Society* (2006), pp.91 *et seq*.

4 Aaron Wildavsky, *Searching for Safety*, (New Brunswick: Sage 1988).

5 Adam Burgess and Donald Macrae, "An Experimental Offensive against the Mishandling of Risk in Society": Reflecting on the Pioneering Work of the Risk Regulation Advisory Council in the UK", 3(3) *European Journal of Risk Regulation* (2012), this issue.

(R&R programme) took as starting point for its work the following pattern which can often be seen in the regulation of risks:

Step 1: Society becomes aware of a risk because of, for example, an accident and is perceived to want something done about it,

Step 2: risk experts advise certain measures aimed at mitigating that specific risk after which

Step 3: politicians feel a need to urgently decide to implement these without taking the time for thoughtful consideration of other factors which should be involved in the decision-making process (such as budgetary and proportionality concerns).⁶

In the Dutch R&R programme (see the article by Jan van Tol in this issue⁷) this mechanism is called the Risk Regulation Reflex.

The analysis of the discussion during seven departmental workshops on improving the proportionality of risk regulation, organized by the R&R programme in the second half of 2011, suggested that two mechanisms are responsible in particular for the increase in risk regulation:

- The misunderstanding of what Dutch citizens actually think of risk regulation (a surprising contrast between their risk acceptance and their risk perception)
- The single-mindedness of risk experts who value their 'own' risks more than the common good.⁸

In this article we attempt to shed new light on the roots of these causes and the necessity of addressing them. We will first expand on the relation between (de)regulation and safety, as well as the problems with limiting the seemingly unstoppable rise of safety regulation. Then we will address the two main contributing factors to new risk regulation: the intractable citizen and the single-minded risk professional.

II. The connection between safety and regulation

Analyses of risk and safety regulation should always consider the fact that we are now safer than ever before. There is no better measure for safety than life expectancy and in Western Europe we now live almost twice as long as we did two hundred years ago, and our average life expectancy is still increasing. The curve in increased life expectancy has of course

flattened out in recent decades, which is not entirely surprising. Every improvement curve flattens out at a certain point.⁹ Consequently, anyone who wants to achieve anything in the 'tail' of the curve needs to be very cautious about making substantial investments, as they can easily be disproportionate.

To a certain extent this statistic is deceptive. To consider the average growth in life expectancy is to ignore the significant differences that exist between higher and lower income groups. In a classic study published in 1997, Mackenbach was the first to examine in detail the health effects of social stratification.¹⁰ Recent figures from the Dutch Bureau of Statistics ('CBS') confirm Mackenbach's findings: life expectancy is strongly related to a person's income (which in turn is strongly correlated to the level of education). Life expectancy actually increases up to seven years for people with a higher income compared to people which are poor, and the difference in the number of years the two groups experience a good health is as much as 16 to 19 years.¹¹

A safer society, at least if we define safety in terms of average life expectancy, can consequently be reached by boosting prosperity in lower income groups. In contrast, as for example Graham argues in his classic testimony for the US congress, a higher degree of regulatory pressure reduces prosperity, especially in the lower income groups.¹² This means that Western societies that want to achieve a higher average level of safety, need to pay attention to possibilities to limit and decrease whenever possible the burden of regulation.

6 The UK Better Regulation Commission in its report 'Risk, Responsibility and Regulation, whose risk is it anyway?' distinguished 10 steps in the regulation of risk.

7 Jan van Tol, "The Dutch Risk and Responsibility Programme", 3(3) *European Journal of Risk Regulation* (2012), this issue.

8 Reports from these workshops are available upon request. They have been published (in Dutch) as part of the R&R programme and have been reviewed by the participants.

9 Until now, it seems that Moore's law, which says that computers' performance doubles every other year, is an exception to this rule.

10 Johan P. Mackenbach, Anton E. Kunst, Adriëne E.J.M. Cavelaars, et al, "Socioeconomic inequalities in morbidity and mortality in western Europe", 349 (9066) *The Lancet* (1997), pp. 1655 et seqq.

11 Centraal Bureau voor de Statistiek, *Lage inkomens, kans op armoede en uitsluiting 2009* (Lower incomes, chances of poverty and exclusion), (Den Haag: Centraal Bureau voor de Statistiek 2009).

12 Testimony of John D. Graham, Hearing: Testimony on "Cost-Justifying Regulations: Protecting Jobs and the Economy by Presidential and Judicial Review of Costs and Benefits," Subcommittee on Courts, Commercial and Administrative Law, House Judiciary Committee, U.S. Congress, Washington, DC, May 4, 2011.

A study of the American petrochemical industry by Frederick Wolfe demonstrates a comparable clear relationship between the safety and prosperity, this time with regard to industrial safety.¹³ It shows that operational profit is a better indicator of safety in the petrochemical industry than the level of investment in safety imposed by the (U.S.) government. With a bit of common sense one can see an apparently logical reason for this mechanism: in a profitable business the pressure to maintain production at all costs would be less than in one that is on the point of collapse. Also, a healthy business wants to ensure a good reputation. Safety inspectors make the same connection, but then in reverse: a business that looks impoverished and dirty is worth inspecting thoroughly.

Increasing regulatory pressure on behalf of safety is therefore not just a symptom of an ill-considered response to risks but also, because of its reducing prosperity, a risk in itself.

There should be no misunderstanding about the fact that the causal relationship presented here only applies to the tail of the safety curve, i.e. above a certain basic level of regulation and investments in safety. Circumstances of two hundred years ago are obviously well below this basic level. The major industrial accidents of the 1970s indicate that then at least the basic level for the petrochemical industry had not yet been reached, but we have come a long way since then.

III. The reality of ever more safety regulation

The idea that a decrease in regulatory pressure has a positive economic effect has been the driving

force behind Dutch governmental policies of the last decades. The problem is that repealing safety legislation or decreasing inspections proves very difficult in practice. A recent report by the Dutch governmental Scientific Research and Documentation Centre ('WODC') clearly states, "Since the nineteen eighties the Dutch Government has pursued a policy directed at reducing the degree of regulation. Attention was initially focused mainly on consolidating the supply side of the economy; later, greater emphasis was placed on the quality of legislation. Despite these efforts the body of regulations in the Netherlands has increased by about 2 % annually over the last 30 years. In recent years this growth appeared to have come to an end, but in 2008 the production of legislation reverted to its previous level."¹⁴

One of the committees in the Netherlands which addressed this issue is exemplary of the calls to put a halt to ever more regulation. The Stevens commission, in its final report, wrote: "It is an illusion that rules can prevent all problems and risks. *More* rules in response to incidents lead in practice to an increase in rule rigidity, which has a counterproductive effect".¹⁵

This example is such an illustrating one because the committee itself, somewhat despairing it seems, gives as its twelfth and last recommendation: "Put the Stevens committee recommendations into practice." Explaining that "in its reports preceding the final report, the commission has made many recommendations to reduce regulatory pressure. These have not all been implemented".

Concerns about the growing number of rules and the private sector's problems with administrative costs are of course not exclusive to the Netherlands: most Western countries have been struggling with this issue for some time. None appear to be able to end it.

In for example the UK where there is a history of looking into the costs and benefits of regulation (see article by Burgess and McRae in this issue¹⁶) the National Accounting Office concluded last year on the achievements of the Better Regulation Executive's since its creation in 2005, 'they are not yet in a position to achieve value for money in their management of regulation as gaps remain in two important areas: understanding the impact on businesses. [...] and estimating the costs and benefits of individual regulations reviewing impacts once regulation is implemented.'¹⁷

13 Frederick Wolf, "Resource Availability, Commitment and Environmental Reliability & Safety: A Study of Petroleum Refineries", 13(1) *Journal of Contingencies and Crisis Management* (2005), pp.2 et seq.

14 P.O. de Jong and Sjoerd E. Zijlstra, *Wikken, wegen en (toch) wetgeven: Een onderzoek naar de hiërarchie en omvang van wetgeving* (A study on the hierarchy and size of legislation), (Den Haag: WODC 2009).

15 Ondernemersklankbord Regeldruk, *Regels op maat, eindrapport van de commissie Stevens* (Fitting regulations, final report by the Stevens committee) (Den Haag: Ministerie van Economische Zaken 2007).

16 Burgess and Macrae, "Reflecting on the Pioneering Work of the Risk Regulation Advisory Council in the UK", *supra* note 5.

17 National Audit Office, *Delivering regulatory reform: Department for Business, Innovation and Skills*, (London: The Stationary Office 2011), at p.9.

If the conclusion should be that policy efforts of thirty years have not had enough effect, the question should be what are the deeper causes of this?¹⁸ We will now turn to what we believe are two important contributing underlying causes of these problems.

IV. The Intractable Citizen

Frequently, regulation is initiated by what is perceived as a public outcry after people discover the size and shape of a new risk. This public outcry is thought to be reflected in increased media attention and opinion polls. Unfortunately upon careful consideration, these channels provide us with little information on what citizens actually expect from government.

Research on risk perception has provided us with important insights into the factors shaping risk perception¹⁹, but so far tells us little about how decision-makers should interpret and utilize this information. We argue that we should not focus on risk perception but rather turn our attention to risk acceptance: i.e. the level of risk people are willing to tolerate²⁰.

When citizens are asked, either in opinion polls or scientific studies, how they value a specific risk and what they feel should (or shouldn't) be done about it, the common response is a request for higher safety standards, tighter regulation, hefty fines for wrongdoers and an absence of the willingness to contribute to that themselves. They will in fact applaud any measure which promises to increase safety, since, of course, no one prefers danger to safety.

This however only shows one side of the citizens' beliefs about the regulation of safety. The other side is usually hidden by the fact that politicians, journalists and researchers don't ask any follow-up questions, so that the impression remains that citizens only want more safety.

Some research results actually paint a different picture.

In a 2009²¹ study of the Amsterdam metro we for example provided 629 passengers with information on tunnel safety in face-to-face interviews. We explained to them that the chances of surviving a fire are almost nil in the metro tunnel. 80% of the respondents believed they should have been informed about this risk by the Amsterdam Transport Authority (GVB), because they felt they received 'inadequate information'. We then offered them information which suggested that the metro is actually one of the safest forms of transport, but still 75% felt that

additional investments were necessary to improve safety. Only a few people, however, were prepared to pay an extra contribution for their own safety in the form of an increase in the ticket price. In conclusion we asked the respondents to put themselves in the shoes of administrators and consider the cost of safety measures to remedy this sure chance of dying (about half a billion euros). Almost 50% of all respondents now stated they would as administrators not spend that much money on safety measures in the metro which means that 35% of all respondents who originally wanted the government to invest in metro safety changed their opinion once they were asked to decide as administrator.

		As mayor would you spend half a billion for the necessary safety measures?		
		yes	no	total
As user of the metro: do you find it necessary that safety measures be taken?	yes	318	161	479
	no	13	123	136
	total	332	285	617

Table 1 – Cross referencing opinion as user of metro versus opinion as administrator (12 neutral responses left out)

In several studies since then we have seen this, what could be called intractable behaviour, been repeated. Intractable means here: not easily governed, managed or directed. We typically first asked questions similar to traditional opinion polls, for instance whether safety standards should be adhered to more strictly (the answers were mostly that increased measures were necessary). Subsequently we asked re-

18 Here one may ask the systematic question whether, without this reduction policy, there would not be many more regulations. There might very well be, but even so, the actual increase in the number of regulations can hardly be considered a success.

19 Chauncey Starr, "Social Benefit versus Technological Risk. What is our Society Willing To Pay for Safety?", 165 *Science* (1969), pp. 1232 et sqq; Baruch Fischhoff, "Risk Perception and Communication Unplugged: Twenty Years of Process", 15 (2) *Risk Analysis* (1995), pp. 137 et sqq; Paul Slovic, *The perception of risk*, (London: Earthscan Publications 2000).

20 Paul Slovic, Baruch Fischhoff and Sarah Lichtenstein, "Why Study Risk Perception?", 2(2) *Risk Analysis* (1982), pp. 83 et sqq.

21 Ira Helsloot, "Een introductie tot het gebruik van symboliek in de voorzorgsmaatschappij" (An introduction to the use of symbolism in the precautionary society), in: Mireille Hildebrandt and Roel Pieterman, *Zorg om voorzorg* (Den Haag: Boom Juridische Uitgevers 2010).

spondents whether they were willing to pay for these extra requirements (for example by a tax increase). Most people weren't. We then asked the respondents to put themselves in the shoes of decision-makers and consider extra safety investments. 'Suddenly' they became aware of the diverging and competing values one had to consider and realized that money was better spent elsewhere: they ignored their previous answers and advised not to invest in what they originally asked for (See, for a discussion on risk regulation and values, the contribution of Michel van Eeten and Frederic Boudier in this issue²²). The bottom line being that people seem to be able to make a difference between their own risk perception and what risks should be accepted reasoning from an administrator's point of view.

This kind of not very well understood intractable behaviour can be also witnessed in other settings. For example, the Blackett Review of High Impact Low Probability Risks²³ claims that 'the public has a much stronger reaction to a group of deaths resulting from a single event than for a similar number of people dying in a number of unrelated events'. To support this claim the Blackett Review provides an example of the UK M40 Minibus Crash in 1993 in which 13 died (12 children), since the incident 'eventually lead to calls for compulsory seatbelts in minibuses and coaches', whereas the 'much larger annual number of road deaths' didn't. Once again the 'public' is blamed for irrational risk regulation after an incident with only circumstantial evidence to support

that. We believe, however, that the public reaction is not correctly understood. Specific for the UK and for transport accidents Evans found for example that the general public, when asked directly after the Ladbroke Grove train crash which took 31 lives, would not decide to spend more money on saving a life lost in a train crash as compared to a 'regular' road fatality²⁴. Research conducted by TNS NIPO as part of the Dutch R&R programme shows that people feel in general that victims of small accidents and those of large disasters should be treated equally. Only if the government is explicitly to blame, in the case of, for example, a dike breach, the government should compensate victims above the level of the regular social security²⁵.

Furthermore, events in the village of Son and Breugel²⁶ illustrate the fact that risk policy based upon the reasonable side of the intractable citizens can be successful even when dealing with risks having a high fear factor. Son and Breugel had Europe's largest pesticides storage facility since the 1970s. Originating from the wish of the national government to centralize the storage of such toxic substances, Son en Breugel was designated as the ideal location. Citizens and the local council often expressed concerns about it, but the local, provincial and national administrators only gave as a standard answer that there was no significant risk and people should consequently not be concerned. Eventually the municipality realised this strategy wasn't working so it changed its position in 2002. The mayor at that time started an information campaign in which it was explained that indeed the smoke from the facility, should it catch on fire, would be deadly. The clear advice given to the citizens was to flee the area if there ever was a fire and choose a direction themselves which would keep them out of the smoke.²⁷ Citizens were also asked to alert and help evacuate other citizens in this case because of an inevitable lack of capacity with the emergency services. Subsequently, the citizens came to terms with the risk and their concerns subsided. Even after a large fire in January 2011 in a chemical storage facility in Moerdijk which was caused a heated debate in the media and Parliament no public reaction was heard of in Son en Breugel.

We therefore postulate that the modern intractable citizen has two faces. The first pictures a citizen with NIMBY (not-in-my-backyard) syndrome²⁸, i.e. a citizen who, when asked what he wants, always chooses what is best for himself. The second face,

22 Michel van Eeten and Frederic Boudier, "The Diva and Destiny: Can the Voter be Appeased with Fatalism?", 3(3) *European Journal of Risk Regulation* (2012), this issue.

23 John Beddington, *Blackett review of high impact low probability risks*, (London: Government Office for Science 2011), at p. 25.

24 Andrew Evans, "Railway risks, safety values and safety costs", 158 *Transport, part of the Proceedings of the Institution of Civil Engineers* (2005).

25 This research was conducted by having three online communities with twenty participants of a week each in which principles for good governing of risk were discussed. Elmarie Bemer, Diane Fase and Sibolt Mulder, *Fase 3: oplossingsrichtingen en principes: bevindingen derde RiVerRaad burgercommunity* (TNS NIPO: Amsterdam 2012).

26 The story of Son en Breugel is based on the involvement of one of the authors with implementing this communication policy since 2002.

27 This advice is contrary to the official national governmental advice that states that people should go inside, close windows and seek for instructions to be given via the radio.

28 Michael E. Kraft and Bruce B. Clary, "Citizen Participation and the Nimby Syndrome: Public Response to Radioactive Waste Disposal", 44 (2) *Political Research Quarterly* (1991), pp. 299 et seq.

however, is that of a citizen that gives up his or her single-mindedness when asked to decide as administrator and even requires the government to decide contrary to his or her own self-interest for sake of the public interest.

Daring to appeal to citizen's 'second face' requires what Paul Frissen²⁹ has called 'aristocratic politics', instead of a reliance on weekly opinion polls and surveys that only ask the usual one-sided questions on risk perception. Aristocratic politics is the opposite of short-sighted populism based on traditional polling and calls for public administrators who decide based upon considerations of what favours the public interest and dare to communicate that.

The Dutch R&R Programme confronted (national, provincial and local) politicians with the concept of the intractable citizen through workshops and discussion sessions. The idea was that by providing them with a better understanding of citizens' wants and needs it might give them the opportunity to counteract the Risk Regulation Reflex. In a series of 11 in depth interviews³⁰ held in March and April of this year with provincial and local administrators, the common theme was 'this is what we already felt, but in order for us to be able to really use it, the members of municipal and provincial councils and parliament have to be convinced too'.

V. The single-mindedness of risk experts

The growth in size and scope of modern risk regulation is not only influenced by misguided ideas about the public's wants and needs, but is also controlled by the environment in which policy initiatives are formulated and developed. Safety regulation is the sum of the activities of a large number of specialised policy fields. In governmental departments, universities and consulting firms there are usually only a limited number of people working on a single safety topic, e.g. food security, marine pollution or construction safety. These experts are genuinely involved with their 'safety postage stamp', i.e. the small part of the broad area of safety covered by their expertise. They usually value their safety domain above other risks and will likely use every opportunity to have their 'pet risk' better regulated. Experts and policy makers therefore generally find it hard to keep a broad, relative, and proportionate perspective on their own domain and can thus be considered as single-minded.

For the single-minded risk professional incidents give a golden opportunity to make politicians, afraid as they are of public unrest, decide upon tougher regulation which supposedly could have prevented the incident that has happened. Risk experts tend to really believe, and policy makers are made to believe, that an incident is proof that regulation should be tightened. In the Netherlands a famous example is the renowned industrial safety expert Ale who carries a picture of the disastrous results of a BLEVE³¹ on him, to show to media in case of an industrial incident he is asked to comment on. He has already done so twice.

We present two Dutch examples of the Risk Regulation Reflex 'in action' after major incidents.

A classic Dutch example of such a disproportional response to incidents is the update of the 'occupancy permits' for cafés following the Volendam Café Fire (2001). In the Café Fire an explosion of highly flammable ceiling decoration had horrific results: 14 people died and more than 180 youths were hospitalised, several becoming seriously scarred for life. After the fire a lot of governmental attention focused on the permit issue, although this, remarkably, had little to do with the actual cause of the fire. The primary cause was non-compliance with existing regulation that forbade the use of flammable decoration in public establishments. Secondary in this case was the lack of enforcement by the municipality which had known violation of the building code by the pub owner for years. The fire was, however, seen as a golden opportunity by the Dutch Fire Services to make the case for more attention for fire safety and for more manpower. As a result the national government decided to let all pubs obtain a so called 'occupancy permit', an action that would in no way have prevented the pub fire from happening. When the 'updating occupancy permits' operation was more or less complete after 5 years (at the cost of permit applicants), it was discovered that the government had no money to finance the required inspections of all these permits and enforcement actions. The occupancy permit was subsequently abolished. A 2006

29 Paul H.A. Frissen, *Gevaar verplicht: Over de noodzaak van aristocratische politiek* (Mandatory Danger: On the need of Aristocratic Politics) (Amsterdam: Van Gennep 2009).

30 The interviews of 1–2 hours each were held to discuss the RRR. All interviews have been transcribed and are available for review by contacting the authors.

31 A BLEVE is an explosion of a tank containing liquefied fuel gas.

analysis shows this pattern more in general: out of the government accepted 24 recommendations after the Café fire only 10 were implemented, 8 seem have not lead to any action and 6 were only implemented marginally.³²

Another highly publicized Dutch case involves an outbreak of Legionnaires' disease in Boven-Karspel. The outbreak killed 32 and infected at least 206 others in 1999. After the outbreak the experts on infectious diseases came up with regulation that required municipalities, sports facilities and fitness centres to perform risk analyses of their hot water systems. If necessary, installations would have to be modified to fit the required newly formulated standards. Every facility also had to have a risk management plan. Estimates of the costs put on businesses and organisations vary from one billion to tens of billions of euros³³. The benefits of these very costly measures were however limited for a number of reasons. First of all, the number of (registered) cases of Legionnaires' disease in the Netherlands is small anyway, i.e. several hundred, of which a few dozen are fatal.³⁴ Moreover, over half of all infections are most likely

acquired abroad. Rough calculations estimate that the new requirements put a cost of about one million euro on saving one Quality Adjusted Life Year (QALY), which is obviously too expensive compared to, for example, the national norm of twenty thousand euro's per QALY for vaccination. It may come as no surprise that the Legionnaires' prevention policy was silently not 'fully' implemented.

Taking a more cynical bureau-political point of view, the world of safety regulation is one in which policy departments compete for portions of the national budget, relative influence vis-à-vis other agencies and an increase in manpower³⁵. It is not at all in a policy department's bureau-political interest to *a priori* limit the need for more regulation, or to think of the relativeness of this need, since that would result in fewer personnel and diminishing power. Ordering departments to reduce policy, and to a certain extent reduce their own reasons for being there, is a bit like expecting a turkey to organise its own Christmas Dinner.

The implicit acknowledgement of the inevitability of this process has led to deregulation programmes promoted by external (cabinet) pressure, for example by means of heavy-weight temporary programmes and committees that function outside the traditional departmental hierarchy. A Dutch example is the Interdepartmental Project Direction of Administrative Costs.³⁶ Right now the most tenacious temporary programme is the Advisory Board on Administrative Costs (Actal)³⁷. Other committees of recent years have been the Simplification of Permits Taskforce,³⁸ the Business Soundboard on Pressure of Regulation³⁹ and the Committee for the Pressure of Regulation on Businesses, chaired by the chairman of the Dutch employer's federation.

Where committees and various programmes push towards reducing the pressure of regulation and thus threaten the existence of policy departments, opposite forces arise. A major 'counter force' is what the Nobel laureate Herbert A. Simon called 'information asymmetry'⁴⁰: knowledge is required in order to determine what rules are disproportionate and can therefore be repealed. This knowledge is usually only available to the risk professionals of policy departments and their external advisors. It is precisely for this reason that external committees are not very successful in making clear what rules do and do not contribute to safety in a cost effective manner. The WODC concludes, for example, in a meta study, that a UK attempt for cancellation of rules by a special, per-

32 Ira Helsloot, "Handhaving brandveiligheid; wat is er bereikt vijf jaar na Volendam?" (Fire Safety Enforcement: What has been Accomplished five years after Volendam?), in Erwin Muller and Lex Michiels (eds), *Handhaving* (Den Haag: Kluwer 2006).

33 Health Council of the Netherlands, *Bestrijding van Legionella* (Fighting Legionnaires Disease), (Den Haag: Health Council of the Netherlands 2003), at p.36.

34 The Health Council adds that the actual number of unreported cases may be considerably higher, estimating it at 800.

35 Free adaptation of Mintzberg's conclusions about the machine bureaucracy: Henri Mintzberg, *The structuring of organisations*, (New Jersey: Prentice Hall 1979). See for a similar argument concerning crisis management policies: Uriel Rosenthal, Paul 't Hart and Alexander Kouunin, "The Bureau-politics of Crisis Management", 69(2) *Public Administration* (1991), pp.211–233.

36 See Interdepartementale Projectdirectie Administratieve Lasten, *Meten is weten. Handleiding voor het definiëren en meten van administratieve lasten voor het bedrijfsleven* ('To measure is to know. Guide to defining and measuring administrative costs for the private sector'), (Den Haag: Rijksoverheid 2003).

37 Actal, *Onderzoeksrapport naar de behoeften van gebruikers van integrale analyses voor beleid en wetgeving* ('Research report on the needs of users of integral analyses for policy and legislation'), (Den Haag: Actal 2010).

38 Taskforce Vereenvoudiging Vergunningen, *Eenvoudig Vergunnen. Advies van de Taskforce Vereenvoudiging Vergunningen* ('Permits made easy. Advice by the Simplification of Permits Taskforce') (Den Haag: Taskforce Vereenvoudiging Vergunningen 2005).

39 See Ondernemersklankbord Regeldruk, *Regels op maat, eindrapport van de commissie Stevens* (Fitting regulations, final report by the Stevens committee) (Den Haag: Ministerie van Economische Zaken 2007).

40 Herbert A. Simon, *Models of Bounded Rationality: Empirically grounded economic reason* (Boston: MIT Press, 1982).

manent 'Law Commission' is in 'quantitative terms not very effective'.⁴¹

The shift in focus from 'new public management' to 'legislation quality', can from this point of view, be called a 'policy takeover' by risk professionals of the original effort to create a more efficient government by implementing market-oriented processes. A focus on 'legislation quality' sounds good in theory, but in no way guarantees an actual decline in the number of rules and regulations.⁴²

The R&R programme now explores ways to get around the single-minded risk expert. As a case in point, one could consider the measure '*every new rule must replace an old one*'. In Austria, for example, there exists a statutory rule obliging ministries to reconsider old legislation when new legislation is introduced⁴³. In practice this statutory obligation does not have the intended effect, because the risk professionals in the ministries give it too little priority⁴⁴. In order for this measure to have an effect, a solid frame must be developed out of which no risk professional can escape. A path towards a solution for this in the Dutch context might be making it obligatory to refer to the rule to be removed in the last section of the Memorandum of Explanation of any new proposed law.

VI. Conclusion

In this article we have identified two less well understood and researched contributing factors to the Risk Regulation Reflex, i.e. factors that contribute to disproportional regulation.

The 'intractable citizen' refers to the fact that the opinion of the general public on investments in safety is generally mistaken: upon asking citizens the classical question what they want they will in far majority ask for more safety. This fact is often used as a both explanation and justification of disproportionate risk regulation. However, when citizens are asked to decide as administrators they will decide in a significant percentage upon considerations of the common good and thus refrain from disproportional regulation even after major incidents.

We would therefore advocate a shift in research form risk perception to risk acceptance.

The single minded risk professional is another contributing factor: only interested in the best possible defence against his own pet risk, his advice is difficult to ignore for administrators when they have no other means of mobilising expertise to balance that advice.

We would advocate more research on ways of organizing 'counter failing' power to the single minded risk expert.

41 P.O. de Jong and S.E. Zijlstra, *Wikken, wegen en (toch) wetgeven: Een onderzoek naar de hiërarchie en omvang van wetgeving* (A study on the hierarchy and size of legislation), (Den Haag: WODC 2009), at p. 15.

42 The title of a contribution of Sarah Veale of the UK Trades Union Congress in this journal is a case in point: Sarah Veale, "Better regulation yes – de-regulation no", 2(2) *European Journal of Risk Regulation* (2011), pp. 263–265.

43 Deregulierungsgesetz 2006

44 P.O. de Jong and Sjoerd E. Zijlstra, *Wikken, wegen en (toch) wetgeven: Een onderzoek naar de hiërarchie en omvang van wetgeving* (A study on the hierarchy and size of legislation), (Den Haag: WODC 2009), at p. 156.