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Rule-making, rule-breaking? Law breaking by government in the Netherlands and the United Kingdom

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Abstract This article concerns a relatively novel issue: rule breaking and unlawful conduct by government bodies; to which degree does it occur, what is the nature of this misconduct, what are the underlying motives, and what are the consequences and possible solutions? Rule and law breaking is harmful for the credibility and integrity of a state and its law enforcement system. However, very little empirical research has been carried out into this issue, in comparison to research into state crime. There is little clarity about how public actors deal with criminal and administrative laws and rules in areas like environmental protection, safety regulations and working conditions. Do government bodies set a good example? Is their behaviour better or worse than the public and businesses? An analytical framework for research will be presented and also the results of an extensive research project in the Netherlands; the main themes of which have been benchmarked against data from the United Kingdom. The article will conclude with a summary of the main findings and a number of suggestions for further research and policy development.

Introduction

Governmental bodies are expected to act in the interest of the public, to make rules and laws to enhance the public interest and to ensure that society observes these rules. We therefore expect that government bodies set a good example and abide by ‘their own’ laws and regulations.

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However, this is surely not always the case, as is evident from the fact that there are astonishing examples of government bodies and officials who break rules and laws. Crimes which fall under the category 'state crimes,' i.e. extraordinary cases of deliberate governmental misconduct or negligence, are high profile cases and receive significant attention. On the other hand, the less extraordinary routine rule breaking conduct that occurs on a regular basis and has consequences for many citizens is seldom highlighted. Governmental bodies draw up, implement and enforce laws and rules on a daily basis and across a broad spectrum of functions and public services. Breaking these regulations or the failure to implement them has more or less serious implications for a lot of citizens, which sometimes results in a disastrous event.

In the past years several huge fire disasters have occurred in the Netherlands. The Dutch government bodies were held accountable to a great extent, due to their reluctance to implement and enforce rules and laws. In May 2000, a fireworks factory, which was located centrally in the city of Enschede, exploded resulting in twenty deaths and approximately one hundred casualties [71]. Slightly more than 6 months later, on New Year's Eve 2001, a bar went up in flames in the Dutch town of Volendam. Fourteen youngsters lost their lives in the fire and approximately 200 more were injured [58]. The most recent case, in October 2005, was a fire at a prison complex at Amsterdam's Schiphol airport, in which 11 asylum seekers, awaiting deportation, were killed. The definitive report from The Dutch Safety Board stated that if all safety regulations had been met, there would have certainly been fewer deaths maybe even no deaths at all. A group of governmental bodies has been held liable because of their negligence [66].

In the United Kingdom, Barrow-in-Furness council was charged in August 2002 with seven counts of corporate manslaughter following the death of one man and hospitalisation of 15 others as a result of an outbreak of Legionnaires' disease in a leisure centre run by the council. Barrow-in-Furness council was the first public body to be charged with the offence in Britain [7]. In September 2005, Network Rail Ltd., the government-backed owner of Britain's railways, was convicted of violating the UK's Health and Safety at Work Act. More than 100 people were injured and four died when an express train from London to Leeds derailed after hitting a cracked rail while travelling 115 miles (185 km)/h in October 2000 [74].

These kinds of incidents stimulate the discussions within society about the phenomenon of rule and law breaking by government bodies and its sometimes serious consequences. The subject is also discussed, albeit on a modest scale, by academic researchers. Law scholars debate whether government bodies should be subject to the penal code in the same way as private organisations or whether certain categories of governmental actions should not be prosecutable. Matters concerning the criminal liability of public bodies in relation to rule breaking conduct are dealt with differently in the various Western countries. This ranges from no liability at all to a liability for certain categories of decisions, the actions in specific types of policy sectors or the actions of non-central government bodies [59].

Within political science, public administration, sociology and even criminology [45, 47, 49], very few scholars are actively involved in researching rule and law breaking by governmental bodies. The majority of the work carried out by these researchers is into 'state crime' [28, 41, 42, 61, 62, 63], 'administrative evil' [1], specific types of crime by politicians and civil servants for example corruption [6, 32], or 'dirty hands' in politics [30, 64]. Rule and law breaking by governments in a wider sense is a very low profile topic. This is, however, different for parts of the white collar and organisational crime literature. Friedrichs [25] for example, focuses on governmental crime and the subject also recurs in the margins of investigations into organisational crime (i.e. crimes committed by respected lawful organisations [36]).

The void in literature relates to less major or ‘day-to-day,’ or even routine violations of rules and general standards by public bodies. Most researchers are more interested in the cases that attract a lot of attention such as large-scale corruption, political murder, illegal arms trading, torture in prisons, etc, which is understandable, given the gravity of these cases. However, this also hinders the accumulation of knowledge relating to the frequency and nature of rule and law breaking by government bodies. There is little or no contemporary empirical research available relating to rule breaking in a more general sense. For example, there is no data concerning the frequency of rule breaking by governmental organisations in safety and environmental law areas. We are also in the dark about the level of compliance within government bodies with respect to laws and regulations in comparison to members of the public and businesses. Research on these topics is exceptional (Exceptions are for example: [43, 65]). We simply do not know how often (western democratic) states break the laws and rules they make.

This knowledge void is troublesome in relation to theories about political and administrative rule breaking, and it is also troublesome for the body of knowledge on political and administrative ethics and integrity. Integrity has been defined as being consistent and coherent in principles, values and action [48], as following regime values and rules [60] and as acting in accordance with relevant moral values, norms and rules [21]. All definitions and interpretations of the integrity of government include following the rules and the laws government makes for others. This also illustrates the practical importance of the phenomenon. Rule and law breaking is potentially very damaging for the integrity and credibility of the state in general and the quality of the law and rule enforcement by the state in particular.

In order to make a substantial contribution to the development of knowledge concerning rule breaking by government bodies, a large-scale investigation into governmental rule breaking was executed in the Netherlands [35]. In addition, in order to achieve a limited comparative validity of the research findings, the theoretical framework and the main research findings about the Dutch situation were benchmarked against the United Kingdom context [17]. In both contexts government bodies are functioning within a developed liberal democracy. Government bodies are expected to work in the public interest, are governed by the rule of law, are subject to various legal and normative requirements to work in an impartial and effective manner, and carry out activities that are scrutinised by regulatory and other agencies.

The central research question was: *To what extent and in which manner do government bodies break rules, what are the underlying reasons for doing so, which circumstances are conducive or unfavourable for rule breaking conduct and which measures are implemented by government bodies in order to prevent rule breaking?*

In this article we will present the most important research findings (For a more comprehensive publication of the research findings see [34]). An outline will be given of the analytical framework of the research project (“**Analytical framework**”). The research methods and their application in a number of subprojects will subsequently be outlined (“**Research data sets and research methods**”). This paper will then cover the *scope* and *character* of the phenomenon of law breaking government bodies (“**Scope and nature of the phenomenon**”), the conditions for rule breaking (“**Conditions for rule breaking**”) and the preventative measures that government bodies have developed so far (“**Preventative measures by government bodies**”). Our aim is to validate the relevance of the themes and issues identified from The Netherlands context by benchmarking them against the experiences in the United Kingdom (“**Benchmarking against the UK**”). The article will

be concluded with conclusions concerning our central research question and a number of formulated recommendations for tackling the problem of rule breaking government authorities (“[Conclusions and recommendations](#)”).

Analytical framework

The limited extent of specific theories and hypotheses is in fact self-evident, given the restricted existing knowledge concerning the scale and nature of ‘everyday’ or ‘ordinary’ rule breaking by government bodies. The objective of this explorative research was to ‘fill up’ the knowledge voids and in doing so, constructing building blocks for the development of a theory on routine rule breaking. Literature in the fields of political science, public administration, organisational sociology, criminology, state crime and public integrity provide a number of concepts that might be constructive for a study into rule breaking by government bodies. At the very beginning of our investigation a number of these key concepts were explicitly stated, which together form the conceptual and theoretical framework upon which the research project is based.

What is rule breaking?

The focus is on the failure to implement, apply fairly or monitor those laws and rules that govern, or affect the lives and activities of ordinary members of the public. The scope of this study therefore ranges from environmental issues, to the responsibility of the state to safeguard the young and the initiatives of government bodies to promote safety and health. This does not solely relate to those government bodies whose duties relate to the implementation of the law and the rules but it also relates to those mandated with monitoring and inspecting the former. Rule breaking may be deliberate or it may be by default. It may be an individual activity or be something the body decides to either do or not.

Who breaks the rules?

The focus during this research was on governmental bodies, their members and/or employees. The concept of government bodies pertains to all decision-making institutions in public life, from the national government to local bodies, whose members or staff are elected or appointed as public officer-holders, whose budgets are funded largely by public revenue and audited by public bodies, and whose activities have to be accounted for to the legislature or other public bodies.

Scale and nature of the issue

There is little information available about the scale of governmental rule breaking. What is the *frequency* of rule violations? The aim of this research project was to obtain more clarification with respect to this matter.

Several aspects were taken into account with regard to the nature of the issue. The focus in this project was on the *gravity of the rule violation* (although designating a level of gravity is easier said than done). We expected that the majority of violations would relate to minor violations. In this context, criminologist Van den Heuvel [68] refers to these as ordinary mistakes, and in his opinion, the majority of these are non-culpable, not serious

and can be rectified. However, in order to obtain an accurate impression of the scale of the problem of rule breaking government bodies, it was important that these ‘commonplace’ violations were included in the investigation.

Another important aspect of the nature of the violation pertains to the *pervasiveness* of rule breaking, which relates to the extent to which violations constitute a common phenomenon within the public sector. It is conceivable that rule breaking conduct is established within specific policy fields in particular. However, rule breaking conduct throughout the entire public sector is also possible.

Furthermore, a distinction can be made regarding the rule breaker’s responsibility, intent and intention. Firstly, there is a difference between *acts of omission* and *acts of commission*. This dimension was developed by state crime scholars. This concerns whether the state has failed to act in situations where intervention was required, or has carried out illegal actions [42]. Supposedly, the distinction does not solely apply to state crimes; it is also applicable to more ‘ordinary’ violations, e.g. environmental law or security regulation violations.

Secondly, an additional distinction can be made between *conscious* and *unconscious* rule breaking. In cases of *unconscious rule breaking* the consequences of the rule breaking are not deliberated due to ignorance or inaccuracy.

A further distinction can be made with respect to conscious rule breaking, which relates to the *rationality* of the violation. With regard to decision making conduct, there is an implicit assumption that this takes place rationally. Rational rule breaking entails that the consequences of adherence or non-adherence have been weighed up. Consider for example of rule breaking which creates a practical solution in situations where optimal legal solutions seem non-viable [22]. The interests and objectives concerned may be personal or organisational. *Organisational crimes* and *collusion* constitute two categories of violations in which organisational interests are at stake. A rule violation can be denoted as organisational crime if a corporate body commits the conduct in the interest of the organisation [22, 67]. This conduct is referred to as collusion when government officials cooperate with external criminal actors or facilitate their operations [68].

We expected that the lion’s share of conscious rule breaking behaviour would be of a rational nature. In other cases a violation might be put down, for example, ‘custom and practice,’ i.e. organisations doing what they do because of tradition, or the inclination of employees to obey their executives and administrators without question.

This leads us to the last dimension of rule breaking behaviour. This concerns the *awareness and involvement of superiors* with respect to violations committed by one or more subordinates (and vice versa). What is the level of awareness of competent administrators and senior managers regarding rule violations committed by civil servants? What do they actually do with the prospective information about rule breaking by subordinates? What is the level of their involvement in the violations?

Conditions for rule breaking

The important conditions (circumstances) for rule breaking are elaborated on using investigations concerning governmental integrity (See e.g., [24, 29, 37, 69]), administrative decision making (See e.g., [38, 39, 46, 70]) and rule breaking in organisations (See e.g., [22, 36, 56]). Literature of this type provides examples of many influential conditions, at micro-level (individual characteristics), meso-level (organisation features) and macro-level (context and environment). A framework for the research was developed using the literature. The framework comprises the following components.

Individual characteristics Some people are more inclined to break rules than others. This relates to personal morals and personal character. Punch also makes a distinction between ‘risk takers and gamblers’ and ‘trick and treaters;’ types of personalities that are relatively readily inclined to exhibit rule breaking conduct [57]. According to Jones the personality of a public servant and the organisational culture determinate to a large degree the motivation of the person in question to commit rule violations [37].

On the other hand, opportunity is often the key to the activation of rule breaking in such personalities. In a survey of those who have committed fraud in both public and private sectors in the US the following was noted: ‘Situation plays a central role in explaining participation in crime for most offenders in the sample. The lives of those we have termed opportunity takers and crisis responders do not seem to be characterized by instability and deviance, and there was little in their records that indicated a predisposition to criminality. A specific crisis or special opportunity appears to have drawn otherwise conventional people across the line to crime. Even for those described as opportunity seekers, situational opportunities play an important role in defining why offenders commit crimes at specific junctures’ ([72], pp. 145–146).

Work situation Just as with individuals, there are also certain work situations that are more sensitive to rule breaking than others. The assumption is made that the probability of breaking rules increases with the work pressure [46]. It is also assumed that there is a clear link between the extent of policy discretion and the extent of rule breaking [46]. Other factors that possibly play a role in this context are the type of decision to be made ([70], pp. 262–264) and the decision-making time [46]. The level of computerisation in the work is also a relevant aspect. On occasion it is argued that employees are not given much elbow room to break rules in a highly computerised system ([70], p. 265). However, the contrary has also been presented [37]. One last relevant factor appears to be the extent to which the working situation of employees provides opportunities for self-development. Research has shown that organisations in which the employees are unsatisfied with or alienated from their work are more predisposed to exhibit rule breaking conduct [22].

Type of tasks There are tasks which seem impossible without cutting corners or bending the rules ([56], p. 208). Moreover, financially related tasks seem more susceptible to rule breaking conduct. In this context, reference can be made to the large sums of money involved in a number of tender procedures and the resulting contracts with private companies [11], p. 97; [37]. Another relevant dimension concerns the combination of public and private services. The risk of rule breaking is increased through such hybridisation of governmental body tasks. Administrators and public servants are expected to adhere to the rules; however they must also act accordingly using business principles. This may create a dilemma ([24, 29]; [37], pp. 32–35). Finally, one specific point of attention is the fact that government bodies may simultaneously assume different roles. Some government authorities draw up the rules, execute them and supervise the execution. In such a situation, where a government body is responsible for the supervision of tasks carried out by the body itself, there is an increased chance of ‘turning a blind eye’ to possible violations ([19], p. 5).

Type of rules Rule breaking becomes easier if the scope of the rules is too extensive and if the exact contents of the rules are ambiguous or unknown ([46]; [70], pp. 260–261). This can, on occasion, result in rules which are in place to prevent rule breaking actually being the cause of the act of rule breaking. Furthermore, specific adherence to legal regulations

may be troublesome or expensive in certain cases. The opinion of the employees concerning the rules is also an important aspect. If civil servants do not support the contents of a specific rule, then there is a substantial probability that they will not adhere to the rule or that they will alter the rule in accordance with their own preferences ([70], pp. 262–264).

Organisation culture The ‘accepted’ level of discretion for rule breaking conduct is strongly related to the culture present in an organisation [44]. The attitude of the managers can be a determining factor in these situations. Organizations can and do create a moral tone that powerfully influences the thinking, conduct, values and even the personalities of the people working for them. This tone is set by the men who run the organization, and their corruption can become the dominating influence throughout the organisation [22, 40]. If no strict measures are implemented against rule breaking conduct then a culture of illegal practices will be created and this in turn forms the legitimisation for undermining authority and misleading conduct [54, 56]. What is applicable to people is also applicable to organisations, namely, one rule violation increases the chance of another violation. This in turn will result in people becoming increasingly involved in an organisation where rule breaking becomes the norm; this not only affects the organisational culture of those already working in the organisation but also influences the behaviour of new employees.

Organisation structure There is a link between the set-up of the organisation, the type of management within the organisation and the susceptibility concerning rule breaking. Extensive de-centralisation or extensive concentrations of power are advantageous for rule breaking situations. If managers are unaware of their employees’ tasks and conduct then it is easier for employees to conceal their rule breaking conduct from their superiors. However, the reverse situation, with a high power concentration may also be advantageous for rule breaking. Whether rule breaking conduct actually occurs is mainly related to the internal (and external) control systems in place: are there enough internal control mechanisms present in order to prevent rule breaking conduct [14, 37, 54]?

Operating environment The prevailing environment within a public body is also an influential factor for rule breaking conduct. Consider for example the party political battle; the battle to win the favour of the voters is not always executed by legal means. The *interaction with customers* who require services is also an important factor relating to the environment. It is a known fact that the sectors of the organisation that have the most contact with the outside world are the most susceptible to rule breaking conduct. These sectors of the organisation are the most susceptible to collusion, but also corruption. Consider, for instance, the possible financial temptations for those responsible for the allocation of projects to private firms ([11, 27]; [53], pp. 24–26; [70], pp. 264–265).

External supervision structures The final category of influential factors for the extent to which government bodies comply with their own rules relates to the external supervision structures. This concerns, for example, the political-administrative and legal control mechanisms. Is the government body being monitored by independent organisations? Is there an effective public control in place? Close media supervision of the activities of a government body creates a strong stimulus for that body to apply the official rules during decision making processes. If the decisions of a government body are made public and citizens are in the position to instigate legal proceedings against displeasing decisions, there

is an additional incentive to focus on the official rules ([12], pp. 140–141; [13, 14, 26, 39]; [44], p. 463; [70]).

Preventative measures

Finally, a key question in this research project was: which methods, strategies or policies are in place in order to curb rule and law breaking and how successful are they (or are they considered to be)? It is possible that methods and instruments are already available within the governmental organisations included in the study. These preventative measures may function as good practices for other government bodies.

Summary

Table 1 contains a summary of the main concepts, which together form the structure of our research.

Research data sets and research methods

The elements of our analytical model have been investigated in a large-scale research project, which resulted in a number of data sets. The research included the collection and analysis of statistics from the Dutch Public Prosecutions Department, information about

Table 1 Elements of the analytical framework

Concept of rule breaking	Failure to implement, apply fairly or monitor laws and rules Laws and rules that govern, or affect, the lives and activities of ordinary citizens
Categories of rule breakers	Government bodies Administrators Civil servants
Scale and nature of the phenomenon	Frequency Gravity Pervasiveness Omission or commission Consciousness Rationality Involvement of superiors
Rule breaking circumstances	Individual characteristics Work situation Type of tasks Type of rules Organisation culture Organisation structure Operating environment External supervision structures
Preventative measures	Methods and strategies Good practices

investigations by three National Inspectorates into rule breaking by private and public actors, and case studies in two municipalities and one province into rule and law breaking. The main themes and findings were then benchmarked against information from the United Kingdom concerning rule breaking by government bodies.

Public Prosecutions Department

The first data set comprised all of the statistical material held by the Dutch Public Prosecutions Department. The search system enabled the research group to gain an understanding of the number of cases, the nature of the violated rule and how these cases were dealt with for all Public Prosecutor offices. Answers to the following questions had to be obtained: How many criminal acts does this concern? Which criminal acts occur? Who reports these? Which acts result in prosecution? What are the penalties imposed (settlements, convictions)? And is the conduct of the government bodies 'better' or 'worse' than private organisations operational in the same fields? Six interviews were held with public prosecutors, policy officials and police officers. The interviewees were asked to explain which deliberations play a role in the decision making process that may ultimately result in criminal proceedings or convictions.

National inspectorates

The second set of data relates to an investigation of three selected Dutch national inspectorates. Inspectorates have to ensure that private and public actors adhere to the rules. What are their findings with respect to rule breaking by government bodies? The following issues were covered in this subproject: How do the inspectorates operate and which investigations do they carry out into adherence to rules? Which rule violations occur in the field of policy-making and what is the extent of governmental involvement in these violations? And what are the conditions and circumstances that play a role in governmental rule breaking?

Information was obtained from the Inspectorate of Social Housing, Spatial Planning and the Environment, the Inspectorate of Public Order and Safety and the Inspectorate of Youth Aid and Youth Protection. A total of 16 interviews were held with employees from these three inspectorates, at all levels throughout the organisations. In addition to this, the annual reports from 2001 to 2002 were studied. Finally, within each inspectorate, two inspection reports were analysed in consultation with the inspectorate management. Finally, two inspection reports from each individual inspectorate were examined in consultation with inspectorate management. The reports were chosen based on the expected value of the report regarding collating additional information concerning the nature of the rule violations in the policy fields in question.

It goes without saying that the information from the inspectorates and the public prosecutions department is, to a certain extent, contingent to the willingness of these enforcement agencies to report crimes and the focus of enforcement practices. This type of information is usually distorted to a certain degree [5]. In this context, reference has to be made to the probable existence of 'dark numbers' – the levels of unreported violations. It is highly probable that the data provided by the enforcement agencies is an underestimation of the actual number of rule violations. Furthermore, this data may not be a true representation of the situation regarding the various types of violations committed by government bodies. The attitude of the Dutch inspectorates, with respect to assessing the level of rule

compliance in the public and private sector, is somewhat lethargic [8]. There are also not many incentives to commence investigations, and the Public Prosecutions Department is reluctant to prosecute in cases of governmental rule breaking, given the restricted criminal liability of government bodies. These limitations of the data have to be kept in mind with respect to making conclusions about the frequency of (various categories of) rule violations.

Municipalities and province

The statistical material held by the Public Prosecutions Department and the information from inspectorate investigations clearly illustrate *which* rule violations government bodies actually become aware of. The Public Prosecutions Department and inspectorates' data primarily relates to the scale and the nature of the phenomenon. An additional investigation was set-up in order to determine the context of the rule breaking; namely the conditions for rule breaking and the possible preventive measures that have been developed through experience. This was the main case study objective in the research into one small municipality (about 25,000 inhabitants), one large municipality (more than 100,000 inhabitants) and one province. Full anonymity in future publications was given in order to ensure co-operation from these Dutch local government bodies.

Various data collection methods were applied during the case study research into the municipalities and the province. The information was partially derived from *interviews*. Interviews were held with key figures around the onset of the research study in order to obtain an initial general impression. Within each municipality and the province additional interviews were held with managers, policy officials and executive staff members of one single department in order to carry out an in-depth study into concrete cases of rule breaking. A total of 31 people were interviewed during 14 interviews in the province. 17 interviews were held in the large municipality and a total of 23 people were interviewed. In the small municipality a total of 17 people were interviewed during 15 interviews. *Document analysis* was a second important research method. Reports concerning notices of objection and appeal cases were studied. In addition to this, reports from legal audits, integrity and management bills were also included in the investigation. Information was also obtained from external investigations (e.g. investigations by the inspectorate of Housing, Spatial Planning and the Environment). A third research method consisted of the *analysis of rule and law enforcement files* of the enforcing department. These files pertained to violations of the environmental legislation by other departments in the same municipality or province. An investigation of this nature was only possible in the large municipality. There were very few cases of this nature available in the smaller municipality and the province. However, this does not mean that there are no rule or law violations within these organisations. This was attributable to a low level of rule and law enforcement within the organisation or due to the fact that the enforcing department tries to find solutions for rule or law violations through communication with other sectors of the organisation.

Scope and nature of the phenomenon

The data obtained from the Public Prosecutions Department and several inspectorates demonstrates that Dutch government organisations regularly violate administrative-law regulations and – to a lesser extent – criminal law. All categories of government bodies are

included in the group of rule breaking government bodies: municipalities, provinces and also ministries. Violation of legislation occurs in obvious policy fields like 'environment,' but also in less obvious policy fields, for example 'juvenile care.' In short, this is a phenomenon that is of importance to all policy sectors.

In the period 1999–2002 a total of 552 *criminal* investigations were instigated against government bodies. The figures show a slow increase in the number of cases: 113 in 1999 and 163 in 2002. The vast majority of the violations relate to regulations in the field of nature and environment (59.4%), followed by traffic (20.3%) and labour conditions (11.8%).

The municipalities have the highest level of rule breaking within government bodies, with 65.2% of the investigations (which is not surprising because their criminal liability is more extensive than the liability of the national state bodies). Most cases are resolved through a transaction; 53 cases, 13 per year, were brought before the courts. Almost all of these resulted in a fine.

The data shows that if the total number of government bodies in the Netherlands is taken into account, then the actual number regarding discovery, tracing and prosecution of criminal rule breaking by government bodies is very low. It is thought that this is only the tip of a larger iceberg (high dark number, representing minimum tracking down and limited willingness to prosecute). This is plausible with respect to the *number* of cases. The cases of criminal law violations by government organisations that are actually noted (and prosecuted) suggest that the number of cases with significant immediate consequences is very low. With respect to administrative law, government bodies commit quantitatively more acts and these are of a more comprehensive nature. The attitude towards disregarding procedural requirements is quite often permissive.

Government bodies are only capable of partially fulfilling their responsibilities in the field of rule and law enforcement. There is still a rule and law enforcement deficiency within government bodies. The governmental organisations have a tendency to fail to meet the mark with respect to monitoring adherence to regulations by citizens and businesses and also with respect to enforcing rules. Rule and law enforcement is less stringent if this concerns their own organisation and/or other governmental organisation than if this concerns a third party. The importance of rule enforcement towards government bodies is sometimes disputed. Furthermore, there are additional obstacles for the rule enforcers, for example their immediate relationships with the persons and organisations involved in the compliance assessment.

Is a Dutch government body more or less likely to break rules than a private company? Caution is essential when answering this question; given that no systematic comparative research has been carried out. However, we do have some statistics and information about inspectors' investigations and experiences. Out of the 60.134 criminal procedures against legal entities in the period 1999–2002, 552 (0.9%) were against government organisations. The percentage relating to the Environmental Management Act, for example, was 1.4% and the Soil Protection Act 3.3%. The governmental segment is therefore small. However, these figures provide no information relating to the governmental and private inclination to break rules, also because of the differences in criminal liability.

Investigations by inspectorates showed that public bodies are no more rule abiding than private bodies. Municipalities scored just as well as private companies concerning hygiene and safety issues in swimming pools. With respect to the Act on Noise Nuisance, the government bodies had a low score, while industry was allocated a reasonable score. Also on the basis of the estimates and opinions of the inspectors, we concluded that the theory

that rule and law breaking conduct by government bodies occurs to a lesser extent, could not be upheld; public bodies are not setting a good example.

The main conclusion is that Dutch government bodies break rules across the board: at all geographical levels and in all policy sectors. However, it is not possible to indicate the frequency of the rule breaking. The lion's share of violations can be classified as *conscious* and *rational* rule breaking. On occasion rule breaking conduct can be attributed to unfamiliarity with the relevant law or rule. In the majority of cases the conduct is simply a conscious choice to ignore a set of rules by making a rational deliberation that results in non-adherence to the rule. In these cases it is possible that the mind is willing but the resources do not permit this. Due to their insufficient capacity to perform to an optimum, employees or administrators are then satisfied with a 'good enough' solution. However, other interests normally prevail. These other interests are very often the interests of the organisation. The violator is then sometimes convinced that his divergence from rule will not cause too much damage to the ultimate aims of the legislator.

A section of the rule breaking can be qualified as acts of commission, another section as acts of omission. The negligence of government organisations with respect to rule and law enforcement constitutes a common example of the second type of violation. Central and local government organisations are not properly equipped to control the observance of law by citizens, private organisations and public bodies and the willingness to do so is also lacking. The Dutch public sector and judicial literature refer to this low level of law and rule enforcement as 'rule enforcement deficiency' [8]. Administrators and managers of government organisations are fully aware of this situation. They have been attempting to improve the quality of rule and law enforcement for the last few years.

Conditions for rule breaking

Which factors increase or reduce the likelihood that government bodies will violate rules? A distinction has been made in our analytical framework between individual characteristics of the rule breaker, work situation, type of tasks, type of rules, organisation culture, organisation structure, operating environment and external supervision structures. The data obtained from the case studies in the two municipalities and the province prove the relevance of these categories of conditions to the occurrence of rule breaking in the Dutch situation.

Individual characteristics of the violator On occasion, civil servants or the government bodies deem the rules as pointless, or at any rate irrelevant for their tasks and responsibilities. Some rule breaking conduct is attributed to the opposition to the rule in question by the employees. This disapproval of the contents of a rule is only partially attributable to individual characteristics of an employee or administrator. The condemnation of a rule is to a large extent a matter of organisation culture and/or an immediate consequence of the type of rules.

The implication cannot be made that the fact that a civil servant or an administrator is dissatisfied with the contents of a rule will result in non-adherence of the rule; however there is no commitment or intent with respect to undertaking the implementation and enforcement of the rule. For example, certain working conditions rules are deemed excessive and the demands of multiple budgeting are considered unreasonable. The participating province in this study provided a fine example of rules that were deemed futile; this concerned the extension of the rules pertaining to waste matters. The province is

the competent authority in this field. If the legal definition of waste materials is literally interpreted then potato peelings that are used to feed pigs are also waste materials. The province would then be obliged to supervise and enforce the rules pertaining to the use of potato peelings by agrarian businesses.

Work situation The capacity and knowledge of the staff concerning rules, policy and rule enforcement is another relevant factor. Violations are often primarily attributable to a shortage of sufficiently qualified personnel and/or a lack of specific knowledge of these personnel. This type of violations fall under the header 'where people work, mistakes will be made,' and concern also the more serious violations such as faulty application of European rules. The two investigated municipalities and province are, just as all other government organisations, subjected to a high level of working pressure and a limited capacity. This is particularly applicable in the field of rule and law enforcement. Rule breaking conduct is promoted if (national) rules are not in-line with the actual decentralised execution. Assigning tasks to decentralised government organisations without prior checks that sufficient means are available is another factor that stimulates violations.

Type of tasks In the Dutch situation, rule breaking conduct is not associated with a specific category of tasks, with the sole exception being the frequent violations in the field of rule and law enforcement. There is a so-called deficiency of enforcement in the public sector; which is attributable to the aforementioned shortage of qualified staff.

Type of rules Some areas of rules are considered to be so complex or so general that they actually give rise to doubts concerning the intention of the legislator; this is particularly so for European Union rules. The European budget regulations were deemed complex in both the investigated municipalities. However, a number of references were also made in this context to the Administrative Law Act (the basic Dutch regulation in the field of administrative law). The complicated relationship between administrative law and criminal law is also conducive to rule breaking. Both sets of rules are in fact relatively interrelated and the actual intention of these sets of rules has become less obvious, which makes it difficult to decide which rule is suitable in a specific case.

Continually changing regulations is another factor that stimulates rule breaking conduct. The Social Security Act, for example, given the high level of detail, was deemed troublesome by municipal civil servants. This was exacerbated by the fact that social security provisions are subject to frequent changes.

The third aspect of rules concerns the phenomenon of *conflicting or contradictory rules*. Legislation of this nature is a cause of rule breaking conduct in the investigated municipalities and province. In such cases adherence to one rule often implies breaking another. However, in the case studies there were very few actual examples of rule breaking brought about through contradictory rules.

Organisation culture Managers' thoughts on rule breaking conduct vary significantly. The provincial board assumes an active role in the prevention of rule breaking conduct. Some provincial employees are of the opinion that the attitude of the province is excessive with respect to risk taking. In their opinion an excessive emphasis on legitimate operations will be detrimental to the province's firm actions in the future. In the case studies there were also numerous statements concerning the attitude of government bodies following the disasters in the cities of Enschede and Volendam, namely that government bodies have

become fearful and excessively cautious. Despite this more cautious and preventative culture with respect to rule breaking, administrators and employees still continue their intentional search for the boundaries of legislation on occasion.

Organisation structure Furthermore, the administrative organisation (procedures) is an important tool for adequate application of rules. Insufficient documentation of procedures is an important cause of rule breaking conduct in all three investigated organisations. This is more prominent in the smaller municipality. There is a lack of defined administrative procedures in this municipality, primarily with respect to numerous legal tasks such as granting subsidies, permits and enforcing rules.

The set-up of the government organisation is also relevant. The compartmentalisation of the civil service organisation is a contributory factor with respect to an insufficient level of adherence to rules, for the larger municipality in particular. The various municipal departments show insufficient levels of co-operation which in turn results in the failure to give all of the relevant frameworks the attention they require. For example, environmental aspects are not always fully taken into consideration when municipal buildings are being constructed.

Operating environment On occasion, civil servants are under the impression that administrators attempt to coerce them to act in a manner they deem improper. There have also been incidents of administrators directly influencing procedures such as granting permits and subsidies. In the larger municipality matters are quite easily labelled as 'political' and processed accordingly. Although political interest deliberations do not generally result in direct rule breaking, a number of the interviewees experienced this politisation as problematic. Consider, for example, speeding up permit processes for the benefit of a large company. Influencing decision-making politically is primarily thought to be problematic when this occurs in the field of rule and law enforcement.

The open system in the small municipality leads to closeness between the board and the civil service, which also means that the board can be more readily approached. In general this is thought to be positive, however, there is also a downside; certain interviewees are of the opinion that the relationship between the board and the management team should be of a more professional nature. These people consider the current situation too much of a throwback to the old boys network.

Thus the level of affiliation between the public body and its environment determines the probability of selective treatment and favouritism. The 'gap' between society and the government is also a relevant aspect: closeness creates danger. Governmental activities that involve high levels of contact with the outside world are vulnerable. The investigated municipalities and province are fully aware of this. There is the risk that those granting permits and those enforcing permits may all too readily identify themselves with the organisations or the persons they are involved with, which may result in the toleration of rule breaking. Furthermore, this situation creates situations in which people can use their own personal contacts on the board to achieve results others cannot. Finally, 'who you are' does make a difference, e.g. the application of a random member of the public or the neighbour of a board member. There are some incidents that can be considered as favouritism.

External supervision structures There is a limited chance of detection and being sanctioned for rule breaking conduct by a supervisor or a rule enforcer. This makes rule breaking relatively risk-free. The absence of effective external control systems increases violations.

Conclusion The research has shown that the nature of the individual and the work are less relevant (the opinions of the people concerned regarding the value or futility of the rule is however an important exception here). The nature of the rules and how they are executed, the quality of the organisation that must operate in accordance with the rules (knowledge, capacity), the characteristics of the supervision structures (sanctions), the political 'environment' and the affiliation and the forcefulness of the bond with society are important factors. All in all, it can be concluded that rule breaking by government bodies does not primarily relate to the individual that breaks the rule. This conduct is in fact an inherent part of the organisation and its environment. Government bodies should take this into consideration. Removing the individual violator, the rotten apple, does not resolve the structural issues.

Preventative measures by government bodies

The measures taken by government bodies to prevent rule breaking conduct is an important research question. Four categories of preventative measures were established in the Dutch situation: juridical monitoring, integrity policy, rule and law enforcement policy and the establishment of specialised watch dog-organisations.

Juridical monitoring Special provisions have been made in a large number of public sector organisations in the Netherlands, in order to improve the juridical quality of their activities and decisions. This often means that one or more employees have been allocated the specific task of monitoring the juridical quality of the organisations' operation. These employees are responsible for conducting legal audits and implementing the required measures in order to maintain and improve the juridical quality of various organisational aspects [55].

However, it is still early days with respect to the development of juridical monitoring systems within the investigated municipalities and province. For example, the large municipality has recently invested in juridical monitoring. Juridical monitors and juridical employees have been appointed throughout the entire organisation, i.e. in the centre of the organisation and also in the various divisions. Periodical discussions are held in a legal platform. A juridical controller evaluates the decision-making documents presented to the board. The private-law agreements relating to the municipality are screened. Furthermore, checks are carried out pertaining to regulations and by-laws and a legal audit is also carried out in each sector.

Integrity policy Although both municipalities and the province have drawn up integrity policies, there are clear differences concerning the intrinsic nature of these policies. The small municipality has the most active integrity policy out of the three. This municipality has held a number of integrity workshops and the matter is discussed on a more regular basis. Internal integrity regulations are also in place concerning standards for desirable conduct: disciplinary measures may be implemented for violations of these integrity standards.

Rule and law enforcement policy With respect to this third category of preventative measures it can be established that the disasters in the cities of Enschede (May 2000) and Volendam (January 2001) were a wake-up call for government bodies in the Netherlands,

and consequently also for both municipalities and the province. This entails that the required measures were implemented in all three organisations in order to increase the level of rule and law enforcement. The flip side however is also cause for concern. Government bodies should not adopt an apprehensive and cautious approach, i.e. an approach which exhibits their lack of courage to function effectively due to the incidents. Some interviewees are of the opinion that this is applicable to the province. It is also considered problematic on occasion in both municipalities.

The policy of 'governmental tolerance to rule breaking' (i.e. the policy of deliberate non-enforcement of rules and laws in certain situations) forms an inherent part of rule and law enforcement policy. This was supported by all three investigated government bodies. One of the interviewees in the province stated: 'it is not possible to do everything that is required by law.' The province drew up policy rules (entitled 'Limits to Tolerance') in 2001 in order to ensure that the 'governmental tolerance to rule breaking' is operated effectively. There are also similar tolerance guidelines in place in the larger municipality.

Watch dog-organisations A patchwork of regulatory and supervising agencies has been set-up in the Netherlands, the purpose of which is to stimulate governmental bodies to approach members of the public and companies in a legitimate and proper fashion. Consider, for example, the very recent introduction of a system in which the citizens of each and every municipality have the opportunity to submit a grievance to the National ombudsman (or a local ombudsman) regarding the conduct of public bodies, public servants and administrators. We refer also to the very recent formation of a national integrity agency that can be approached by municipalities or other government organisations with the request to investigate the integrity of specific bodies or persons and/or to lend a helping hand with developing an integrity policy. The tasks and responsibilities of the national integrity agency are very similar to those of the local agency of the city of Amsterdam, which was established a few years earlier, in 2001.

Benchmarking against the UK

In order to validate our research, it was important that verification be obtained that the situation in the Netherlands was not unique in terms of the issues, themes and findings. Therefore, in order to determine to which extent the types and causes of rule breaking are specific to the Dutch context and the degree of similarity with the UK situation the main categories of motives and conditions were benchmarked against examples of rule breaking by governmental bodies in the United Kingdom. The UK research involved desk research into evidence of rule breaking at national and local levels, and also within a range of public sector bodies. It also involved a review of the main themes of change to the public sector, especially the impact of the New Public Management reforms.

Scale and nature As is the case with the Dutch research, there is little direct information on routine or 'ordinary' rule breaking. Some examples of more general information include the Audit Commission (the external auditor for local government and the health service) which has analysed its Public Interest Reports (PIRs). PIRs are issued by a District Auditor and relate to conduct that is considered potentially illegal or in breach of formal procedures. 16 were issued between June and September 2005, the first time the reports have been

published on the Commission's website. The rule breaking conduct ranged from achieving personal benefit to sub-rational and subconscious rule breaking, including a failure 'to follow the established rules and procedures for capital schemes and to ensure that they had budget approval for work before tenders were invited' and failure 'to meet specific statutory financial duties and targets.' A motive analysis has been carried out on these reports; these ranged from obsession with performance targets, over-dominant senior managers, negligence, absence of professional competence, etc [3].

At a lower level, the figures for the Local Ombudsman Service for England provides an indication of the areas in which the public are of the opinion that rules or procedures have not been upheld or they have complaints of injustice arising from maladministration by local authorities and certain other bodies. There are three Local Government Ombudsmen in England, each dealing with grievances from different parts of the country. They investigate complaints about the majority of council matters including housing, planning, education, social services, consumer protection, drainage and council tax. Only 120 out of the 20,000 or more grievances concerned maladministration causing 'injustice.' The UK also has a body with the statutory responsibility to enforce a Code of Conduct for local government councilors which is intended to separate their personal and financial interests from their public duties; this body received nearly 4,000 complaints in 2004–2005 and in 9% of cases established there was evidence to present to an adjudication tribunal. There is also data from the Health and Safety field. The Health and Safety Commission, and its operational arm, the Health and Safety Executive [HSE], have, since 1974, been responsible for providing guidance and policing all aspects of health and safety across public and private sectors. They have 4,000 employees and issue codes of practice. They have an Inspectorate with right of entry and the power to issue improvement and prohibition notices. They have the authority to prosecute in criminal courts and may act against individuals or organisations in both public and private sectors. 50 local councils have been taken to court and fined for breaches of health and safety requirements during the last 5 years; some of these involve rule breaking.

The information obtained from these inspectorates and other monitoring and inspecting bodies clearly showed that there is evidence of routine rule breaking on a regular basis; however, as was the case in The Netherlands, it was not possible to determine the frequency of this conduct. Nor is it currently possible to determine any positive or negative trends for this conduct.

New public management Many of the audit and inspection bodies publish case studies which suggest that the types of rule breaking, the causes for rule breaking and the conditions for rule breaking do parallel those in the Netherlands. In the UK context, however, New Public Management (NPM) has also had a huge impact through the introduction of a management culture together with its own motivating components such as performance incentives, judgement by results and customer service. NPM has generated a flood of private sector procedures and practices with the maximum possible delegation of authority, budgets and resources to deliver public services.

The focus on public management in the public sector through 'budget cuts, competition, performance measurement and the imposition of management systems on previously autonomous institutions and professions' ([23], p. 107) with 'received notions of high quality management derived from transferable good practice in the private sector' ([20], p. 14) has had a downside. The culture shift from caution and risk – avoidance to risk-taking, from the anonymous application of rules to individual, responsive and dynamic management

control has created cultures in which there was ‘misunderstanding among public servants about the quasi-private sector environment...(and)... inaccurate perceptions of private sector values and practices’ ([31], pp. 4–5). Not only was the public sector subject to the speed, purpose and complexity of the changes by organisations and within organisations, but the changes threw up a number of issues concerning the attitudes and practices of a private sector approach, and the sometimes conflicting objectives of delivery, cost-cutting and performance by results against those of due process, procedure and precedent. In short, the changes brought into sharp focus the potential for the conditions (and justifications) for rule breaking.

Individual characteristics The publications of the National Audit Office and those of the parliamentary body to which it reports (the Committee of Public Accounts) regularly describe the misuse of discretionary powers, bypassing restrictive public sector rules in semi-autonomous agencies with strong senior executives or Chairs of Boards, with a preference for private sector styles of management, including the following example of a local development agency handling millions of pounds for urban regeneration: “as Accounting Officer for the Corporation, the former Chief Executive had personal responsibility for the propriety and regularity of the public monies under his control, for ensuring that the Corporation met the requirements of Government Accounting, that resources provided by Parliament were used economically, efficiently and effectively, and were accounted for properly. The Corporation, however, did not always follow Government Accounting, and other Departmental and Treasury guidance. For example, the Chief Executive disposed of land through negotiated sale rather than through open competition, did not seek Departmental approval before committing to projects outside the Corporation’s delegated authority, or the Department’s advice on novel and contentious proposals. The Corporation relied on its own legal advice on whether the Corporation had the power to enter into ‘forward funding arrangements’ with developers without consulting fully with the Department. There was insufficient separation of responsibilities. For example, the Chief Executive often took the lead in disposal negotiations, and then recommended acceptance of the transactions to the Board. He also acted outside his delegated authority in the week prior to the wind-up of the Corporation, by granting a mortgage to the purchaser of a site, which Corporations were prohibited from doing” ([9], par. 14).

Work situation The importance of the ‘negative’ work situation can be illustrated by the following case of a Labour council in the 1980s and 1990s. Lambeth council had been poorly managed for years. The external audit agency for local government published 45 reports (from 1979 to 1993) that drew attention to its deteriorating financial position (1980), its collapse in income from housing rents (1979), its lack of accounting systems and financial control (1980), and failure to know its financial position (1985). When the council were required by law to implement the rules and procedures for privatisation and the introduction of internal markets within the organisation they proved so complex for the council, which was also intent to obstruct the implementation of central government policy, that it resulted in chaos. The council departments were independent of and jealous of each other, council meetings were unruly and unproductive, staff was unqualified, inexperienced, and often totally non-suitable for the position they had been given. There were signs of nepotism; the majority of management is either incompetent or incapable, contributing to a disorganised and chaotic administration, an ‘appalling’ management and ‘the perfect atmosphere for abuse’ [16] in which rule breaking occurs across a range of activities from contract allocation to appointments.

Type of tasks There are a number of examples at local and national levels where using shortcuts and bending the rules was apparently needed in order to deliver projects and performance. Therefore, the Audit Commission published a report in 2005 [3] about a local government council, whose haste to implement a new senior management structure and relocate staff and a corporate call centre to a newly renovated building brought about a series of failures by senior officials:

- To comply with the constitutional requirement that all capital proposals undergo a formal project appraisal, even though members submitted a specific request to do so;
- To adhere to the established rules and procedures for capital schemes and to ensure that budget approval had been received before inviting for tenders;
- To comply with the Council's tendering procedures and European legislative requirements for the facilities management contract;
- To comply with the Council's arrangements for authorising expenditure and the payment of invoices; and
- To consult colleagues on draft reports, where appropriate, and to seek the advice of the Council's statutory officers when required.

In 2001, the National Audit Office, the state auditor responsible for national government departments, reported that a number of hospitals had 'inappropriately adjusted their waiting lists, three of them for some 3 years or more, affecting nearly 6,000 patient records. For the patients concerned this constituted a major breach of public trust and was inconsistent with the proper conduct of public business ... The adjustments varied significantly in their seriousness, ranging from those made by junior staff following established, but incorrect, procedures through to what appears to be deliberate manipulation or misstatement of the figures' ([52], p. 1) A possible delay for patients is not the sole outcome of amending waiting list figures, the hospital rankings in the performance tables were also affected, which in turn had implications for funding and the status of senior managers.

Organisation culture The NPM process led to the development of other private practices and expectations in a new public management context that may have led to a conflict between private sector values and the enterprise culture, and the roles, responsibilities and standards of the public sector [18]. For example, this attitude was apparently present in the NHS because managers perceived "a tension between following proper procedures and 'getting things done.' Indeed, the whole ethos of the NHS following the introduction of general management in the 1980s was one many interpreted as 'business-oriented,' 'risk-taking' and 'go-getting.' Such attitudes...were a deliberate move away from the image of the traditional, safe, risk-averse 'administrator' concerned with correct procedures and protocols" ([2], p. 52).

Critical reports by the NAO during the late 1980s and early 1990s into the activities of Regional Health Authorities reflected a belief that the 'new climate in the NHS at the time justified adopting an approach in which the highest priority was to ensure that problems were solved, even if the rules were bent or broken in the process' or that actions were 'within the entrepreneurial culture which appeared to be sanctioned by senior NHS management at the time.' This was also supported by a 1993 survey of NHS Trust boards (the boards responsible for individual hospitals) which suggested that attitudes to probity were not uniform and that 'a substantial minority' of members would condone otherwise unacceptable behaviour in certain circumstances (including those relating to contract information and following Standing Orders). In findings that the survey regarded as 'highly

statistically significant,' those with the most permissive attitudes were those who were executive directors, many of whom had 'gained the majority of their previous work experience within the NHS' ([73], p. 29).

Organisation structure In its analysis of what may predispose organisations to rule breaking the Audit Commission noted: poor working relationships; low levels of internal accountability; a 'closed' culture that does not accept external challenge and scrutiny; poor strategic risk management; lack of clarity about objectives, roles and responsibilities; poor information for decision makers; and poor leadership ([4], p. 6).

Thus between 1997 and 2004, Doncaster Metropolitan Borough Council was investigated over allegations of misusing councilor and officers' expenses, allowances and benefits; rigging tendering procedures (including the identification of instances where contracts had been awarded without the tendering process having taken place), and favouring private partnerships with local companies. The rule breaking was well-known inside the Council but ignored by councilors and senior officials. The external auditor continued to express his concern, with no response, until he issued a formal public report and sent it to the police (leading to the arrest of 40 councilors, 27 of whom were later charged with offences). Nationally, the early 1990s saw a number of cases [15] involving financial waste, misappropriation, covert attempts at privatisation, controversial management buy-outs, conflict-of-interest, fraud and corruption across the public sector organisations, from mainstream departments, through to public bodies and local councils to voluntary and private sector organisations spending public money.

Elsewhere there are examples of the failure of senior managers not being aware of the activities of their employees (for example a leading Inland Revenue senior special investigator took bribes in a culture where 'too much trust was placed on individuals and systems without proper audit checks or reviews' ([51], p. 23) to senior managers having too much influence over the activities of their body (for example, the NAO reported that the Sports Council's arrangements to strengthen 'their commercial activities have weakened accountability for and control over publicly funded assets and services' ([50], p. 5).

Operating environment An important condition for rule breaking concerns political pressure over-riding administrative procedures. This may manifest through administrative decisions taken with a political rather than a public service intention. In local government, where councils were encouraged during the 1980s and 1990s to sell off social housing to tenants, one council (Westminster Council in inner London) used its Conservative majority to control the sales to be targeted on areas of marginal Conservative support and based on an assumption that home-owners were likely to be more predisposed to the council and more conservative in their voting habits. As a policy, it was successful in that it secured a clear majority in the 1990 elections but adjudged by the external audit agency for local government to be partisan, that political motives over-rode financial stewardship and that the council had lost up to £27 million as a consequence.

The managerial and performance environment – where the emphasis is on 'results' – may also persuade officials to over-ride rules in pursuit of managerialism and cost savings. Therefore, a council was fined in 2000 for continued use of rear-steps on waste collection vehicles; the court took account of aggravating factors of flouting legislation when the council failed to heed warnings, were aware of the standards they were supposed to follow, and knew the risks involved but did not accept that safety had been compromised for commercial gain. In the case of Barrow in Furness council referred in the foregoing, both a

council architect and the council were found guilty of failing to take reasonable care under the Health and Safety at Work Act when several people died and a much greater number fell ill as a result of legionnaire's disease contracted from a faulty air-conditioning system in a public leisure centre. It is said that the council saved around £3,000 by not properly maintaining the air conditioning unit while the council employee allegedly decided to cancel a maintenance contract for the air conditioning system, but failed to include measures to clean the water in the rooftop cooling towers in the system. A charge of manslaughter was thrown out as the actions were not seen as deliberate but as a consequence of a mix of a practical solution (saving money) and carelessness (not being aware of the consequences).

External supervision structure Interestingly, when a 'soft touch' approach to accountability is used, the reactions of organisations to allegations of rule breaking are not only hostile, the organisation even deem it intrusive; in other words, such organisations often respond badly to criticism. The relevant rule breaking factor here is that the conduct, which would be criticised at a later time by public auditors, was proposed and officially promoted by the organisations concerned. The Ministry of Defence, criticised for a performance bonus scheme, argued that the interpretation of what, in relation to the efficiency scheme, constituted acceptable expenditure as well as what expenditure would require prior approval, differed because of 'the very different perceptions of life from MOD Headquarters and elsewhere.' The regional development agency considering privatisation believed that 'an increasing percentage of its activities are funded from self-generated funds...The management style of the Agency is, and needs to be, very much concerned with the use of private sector techniques and disciplines'.. Indeed, in a number of regional health agencies the majority of the senior managers' attitude towards criticism was based on a belief that the Conservative government had created an 'entrepreneurial culture which appeared to be sanctioned by senior NHS management at the time' and which, in turn, 'justified adopting an approach in which the highest priority was to ensure that problems were solved, even if the rules were bent or broken in the process' [15].

Preventative measures The growth in the numbers of auditors, inspectors and regulators is a consequence of the concerns about integrity, governance and discretionary responsibility. It has been argued that the UK "faces scrutiny by a growing army of waste-watchers, quality checkers, 'sleaze busters' and other regulators. Some of these oversight organisations are common to the public and private sectors (for instance data protection and safety at work regulators). But many are specific to public bodies, including systems of audit, grievance chasing, standard setting, inspection and evaluation..." ([33], p. 61). Ironically, and as noted in the Dutch context, too much regulation can itself become a source of routine rule breaking. The Committee on Standards in Public Life has decided to examine [10] the implementation and impact of their previous work: 'the implementation of recommendations in many of the Committee's reports has required the establishment of a number of procedures. If the burden of these procedures becomes disproportionate or ill-adapted to the outcomes desired, it is unlikely that standards of propriety will be maintained. In such circumstances, the work of those seeking to maintain public standards could be undermined not only by over-bureaucratic or over-zealous procedures, but also by a degree of public cynicism.' In other words, there is the worry that too many rules and procedures regarding rule breaking may have a similar impact as the reasons for rule breaking – such as presence of complex, rapidly changing; sometimes contradictory rules,

lack of support for the rules or the interpretation; insufficient supervision and sanctions – and bring them into disrepute if the public think they are not working or are being ignored.

Conclusion As with the evidence from the Netherlands, the above examples, and other cases analysed by the UK researchers supported the contention that the main motives for rule breaking involve a conscious choice to ignore rules that are too complex, irrelevant or ignored due to lack of resources or organisational capacity. This is due to political pressure in a small number of cases; however the impact of NPM was much more likely to be the cause of rule breaking. The conditions for rule breaking have been augmented through the impact of NPM reforms, by the discretion given to many bodies, and by the regulatory and other demands placed on organisations. Together, the UK examples confirm the contention that rule breaking by government bodies does not primarily relate to the individual that breaks the rule but is in fact an inherent part of the organisation and its operating environment. In 1995 a national Committee on Standards in Public Life was set up to promote standards in public service.

Conclusions and recommendations

Answers to our central research question were provided in the previous sections: To what extent and in which manner do government bodies break rules, what are the underlying reasons for doing so, which circumstances are conducive or unfavourable for rule breaking conduct and which measures are implemented by government bodies in order to prevent rule breaking? With respect to the *scope and character of the phenomenon* the main conclusion is that all categories of government bodies break rules, both in the Netherlands and the UK. Rule breaking is also not restricted to certain policy sectors. However, it is not possible to indicate the frequency of rule violations.

A number of *conditions* have turned out to be conducive to rule breaking by government bodies. One of them relates to the gaps that may exist between different governmental levels. In both the Netherlands and the UK it has been observed that, at local or regional level, government bodies are not always in agreement with national or international rules, or are faced with deciding between conflicting rules, or have to be selective when faced with too many rules, and therefore break these rules by omission or otherwise. Another condition concerns the level of supervision of rule compliance and the likelihood of being punished after rule violations. In both countries there is a limited chance of detection and being sanctioned for rule breaking conduct by a supervisor or a rule enforcer. This makes rule breaking a quite safe undertaking. A third relevant condition pertains to the political influence on the execution of tasks by civil servants. Civil servants sometimes feel pressed by administrators to act in a manner that they consider improper. This brings us to a fourth condition: the culture of government bodies.

The changing UK public sector environment has shown that an entrepreneurial culture, in which the application of private sector approaches is being encouraged in the public sector, can lead to rule breaking. An entrepreneurial culture may result in an approach in which problem solving or achieving performance targets is thought to be more important than compliance with rules.

One final condition that can be stated here regards the level of unification with society. Governmental activities that involve high levels of contact with the outside world are

susceptible to rule violations as a result of selective treatment and favouritism. Closeness creates danger.

All in all, it has become clear that rule breaking by government bodies does not primarily relate to the individual that breaks the rule. The motives and the conduct of rule breakers are interwoven in the environment within and outside the government body. This means it is not possible to remedy rule breaking conduct by removing the individual violator, the rotten apple. Structural solutions are necessary.

Some essential structural solutions have already been realised by Dutch and British government bodies. Four categories of *preventative measures* were dealt with in this study: juridical monitoring, integrity policy, rule and law enforcement policy and the introduction of a number of watch dog-organisations. These preventative measures, in combination with our analysis of the conditions and motives for rule breaking conduct, offer useful starting points for the formulation of a number of recommendations. The following series of recommendations are given, which may be of use for government bodies.

Our first recommendation pertains to the low level of awareness within governments and government bodies relating to the problematic nature of routine rule breaking government bodies. Increasing the level of understanding and awareness among civil servants and administrators is an issue that requires attention. This primarily concerns the awareness – incorporated in and activated by an integrity policy – that rule breaking actually occurs, that various rules are being broken and that employees and politicians have to be alert for such matters.

Secondly, we recommend that sufficient focus is given to the scope and the nature of the established rule violations. Conscious rule breaking as a result of improper or unilateral interests does occur. However, this type of severe rule breaking seems to be an exception. Rule breaking more often relates to legitimate deliberations of rules and/or costs by civil servants and administrators. A lack of knowledge or a lack of proper expertise also plays a significant role in this issue. Any measures to be implemented should focus on matters of this nature: providing more information and knowledge, working to improve awareness, improving the quality of the organisation and coupling these measures to initiatives and policies concerning rule and law enforcement.

In this respect, the fact that an increasing number of government organisations, in particular at the local level, are switching to a programmatic rule and law enforcement policy is relevant. Governmental rule breaking should be allocated a position within programmatic rule and law enforcement. Municipalities with a programmatic rule and law enforcement policy should in fact focus on the adherence to rules within their own departments and service providers and by other public actors in the municipal territory. These are prerequisites for an integral risk inventory and an integral rule and law enforcement strategy. Within the rule and law enforcement policy sufficient priority should be given to rule breaking government bodies.

Fourthly and finally, we recommend that administrative bodies proactively and systematically accept responsibility for addressing rule breaking. The problem of rule breaking government bodies should be taken seriously, with focus placed on improved registration, greater awareness, organisational improvements and the link with legislation policy and rule and law enforcement strategy. The rule and law enforcement strategy must stipulate that with respect to all legislation and rules, government bodies should also adhere to this. It must also be made clear which exceptions to this principle are acceptable. This does not primarily relate to technical deliberations and executive responsibilities. Just as is the case when drawing up legislation and rules, the adherence and enforcement thereof

relate to political-administrative choices. The politically responsible administrators should take the lead. In this article we have handed government bodies some theoretical and practical building blocks to take up this challenge.

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