

Capture of the Dutch Sustainability Transition:

Analyzing the Influence of Incumbents and Challengers

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Abstract

It is often argued that established organizations in the fossil fuel industry hinder the Dutch sustainability transition (Smink 2015). The powerful influence of these so-called ‘incumbents’ on the energy transition underlines regulatory capture theory: private interests are able to influence public policy to such an extent that it comes to serve private rather than public interests (Carpenter and Moss 2013). Even though regulatory capture has assumed the status of an “immutable law” (Carpenter and Moss 2013, front matter), it fails to explain why incumbents sometimes fail to influence public policy. The main hypothesis is that in these cases ‘challengers’ successfully counteracted the policy-impact of incumbents. ‘Challengers’ are actors such as environmental organizations that aim to prevent or redress governmental policies that inhibit the sustainability transition. Dutch case studies of the battles over carbon storage, shale gas and bottle deposit show that while incumbents influence policy through direct contact with decision-makers within the government (‘inside lobbying’), challengers influence policy by means of mobilizing citizens outside the policy making community (‘outside lobbying’) and by collaborating with activist local governments (‘governmental activism’).

Introduction

At the Paris climate conference last December, 195 countries adopted the legally binding global climate deal to cut greenhouse gas emissions (*The Guardian*, December 14 2015; *BBC*, December 13 2015). The European Union has also set targets for the share of renewable energy in gross final energy consumption, which for the Netherlands is 14% (Renewable energy directive 2009). The Netherlands, however, is far removed from reaching these targets and currently ranks second bottom in the EU sustainable energy ranking (Eurostat 2015; CBS 2016). Compared to other European countries, the Netherlands is thus one of the slowest to transition to sustainable energy (OECD 2015).

It is often argued that the slow transition is due to the powerful influence of Dutch fossil fuel companies. In her recently published dissertation, Magda Smink (2015) concludes that 'incumbent organizations' hinder the Dutch sustainability transition. According to Smink (2015, 12), 'incumbents' are established organizations that have traditionally been part of the system and that have extensive vested interest. In the energy domain, incumbents are fossil fuel companies that will lose profits when the energy consumption and production shifts to sustainable energy (Smink 2015). Therefore, incumbents will attempt to protect their interest by influencing the energy policy in favor of fossil fuels.

Incumbents are often formally included in governmental decision-making structures, which allows them to influence policy through 'inside lobbying'. 'Inside lobbying' refers to attempts of private interests to influence legislation or rule-making by personal access to public officials inside the policy-making community (Kollman 1998, 3). Due to their entrenched position in the governmental apparatus, incumbents are able to influence governmental decision-makers directly (*Nieuwsuur*, April 30 2016; *FTM*, November 26 2015; *Energieia* 2015, August 3; *WRR* 2013, 16).

The powerful influence of fossil fuel incumbents underlines the 'regulatory capture' thesis. Academics often speak of 'regulatory capture' to describe the phenomenon where private actors influence public policy to such an extent that the policy comes to serve private rather than public interests (Novak 2013; Mitnick 2011; Stigler 1971; Posner 1974; Peltzman 1976; Miller 2011; Unger 2013; Carpenter and Moss 2013). Several scholars show that fossil fuel incumbents have been able to (partially) capture the Dutch energy transition (Avelino 2009; Kern and Smith 2008; Scrase & Smith 2009; Voß et al 2009; Kemp and Loorbach 2005; Smink 2015). The ability of incumbents to hinder the energy transition underlines the consensus that exists in the academic world: regulatory capture is powerful and

unpreventable to the point it has received the “status of an immutable law” (Carpenter and Moss 2013) or a “ground norm” (Novak 2013, 25).

While critics maintain that regulatory capture is to blame for the slow sustainability transition, the theory fails to explain why fossil fuel incumbents are sometimes unable to impact public policy despite their incumbent position. Three recent examples from the Netherlands disprove the regulatory capture thesis: the decision of the government not to abolish the bottle deposit system as a reward for the packaging industry, the decision of the government to disallow Shell’s carbon storage project, and the decision of the government to disallow hydraulic fracturing for shale gas by the gas company Cuadrilla. Regulatory capture theory is unable to explain these anomalies, which leads to the main research question: why do incumbents fail to impact governmental policy? In other words, what determines the limits of regulatory capture by incumbents?

In order to explain the limits of regulatory capture, this paper complements regulatory capture theory with insights from transition studies, interest group theory, and literature on political opportunity structure. The main hypothesis is that incumbents sometimes fail to impact policy because in these cases ‘challengers’ are able to redress or prevent governmental policies favorable to incumbents by means of ‘outside lobbying’. ‘Challengers’ are actors that seek to challenge the advantaged position of incumbents (Smink 2015; Levy & Scully 2007; Greenwood & Suddaby 2006; McAdam and Scott 2005), such as environmental organizations that aim to accelerate the sustainability transition. ‘Outside lobbying’ refers to the attempt of interest groups to mobilize citizens outside the policy-making community to influence decision-makers inside the community (Kollman 1998). The expectation is that challengers are able to mobilize citizens and influence public opinion against incumbents through media coverage. Since elected officials enact policies consistent with public opinion, the ability to shape public opinion is a powerful instrument in the arsenal of challengers. Moreover, the ability of challengers to effectively use political opportunities is expected to maximize their policy-impact (Tarrow 1998; McAdam et al 2001; Mazzoni and Malen 1985; Gunning 2007).

The cases of the battles over bottle deposit, shale gas and carbon storage in the Netherlands largely confirm the outside lobbying hypothesis: challengers were able to reverse governmental decisions that were in favor of incumbents by mobilizing citizens and influencing public opinion. The analysis furthermore shows that environmental organizations collaborated with local governments, blurring the distinction between social movements and the state. The implications of the policy-impact of challengers for regulatory capture theory,

however, are unclear since such an assessment requires determining what the 'public interest' is. According to the definition, capture occurs when private interests influence policy to such an extent that it comes to serve private rather than public interests (Carpenter and Moss 2013). The 'public interest', however, cannot be objectively defined, which is a fundamental problem of regulatory capture theory (Carpenter 2013, 60).

Regulatory capture: incumbents versus challengers

“When markets or regulations fall short of our expectations, observers often point to regulatory capture as a culprit” (Carpenter and Moss 2013, 1). And so do analysts of the Dutch energy policy by attributing the slow pace of the sustainability transition to the influence of fossil fuel incumbents (Avelino 2009; Kern & Smith 2008; Scrase & Smith 2009; Voß et al 2009; Kemp and Loorbach 2005; Smink 2015). But what exactly is regulatory capture?

Regulatory capture occurs when agencies tasked with protecting the public interests come to protect the interest of the industry (Carpenter and Moss 2013, 1). The first and most-well known scholars to study capture include George Stigler (1971), Richard Posner (1974), and Sam Peltzman (1976). Stigler (1971, 3) famously states that “regulation is acquired by the industry and is designed and operated primarily for its benefit”. The view is often succinctly paraphrased as follows: “special interest groups and other political participants will use the regulatory and coercive powers of government to shape laws and regulations in a way that is beneficial to them” (Miller 2011, 6; Unger 2013, 22). In short, regulatory capture occurs when private interests are able to exert influence on public policy to such an extent that public policy comes to serve the private rather than public interests (Stigler 1971; Posner 1974; Peltzman 1976; Miller 2011; Mitnick 2011; Novak 2013; Unger 2013; Carpenter and Moss 2013).

Regulatory capture is incredibly influential in the assessment of failed innovation or policy reform (Novak 2013; Croley 2011; Mitnick 2011; Carpenter and Moss 2013). Some scholars even argue that the capture thesis has assumed the status of a “ground norm” (Novak 2013, 25) or “immutable law” (Carpenter and Moss 2013, front matter). The thesis explains why fossil fuel incumbents are able to hinder the energy transition, as many analysts argue (*Nieuwsuur*, April 30 2016; *FTM*, November 26 2015; *Energieia* 2015, August 3). Two characteristics of incumbents enable them to capture policy: the access to governmental decision-making structures and the possession of material resources.

The access of incumbents to governmental decision-making process facilitates ‘subgovernmental capture’. ‘Subgovernments’ refer to a closed system of policy-making in which certain actors are formally included in the process while others are not, which produces ‘iron triangles’¹ (Mitnick 2011, 39). Kollman (1998, 3) describes the efforts of private interests to influence legislation or rule-making by personal access to public officials inside the policy-

¹ These systems are also referred to as ‘issue networks’, ‘policy subgovernments’, ‘advocacy coalitions’, ‘institutional constellations’, ‘stakeholder partnerships’, and ‘iron triangles’ (Mitnick 2011, 39).

making community as 'inside lobbying'. Due to the direct contact with governmental decision-makers, incumbents rely on the government for the protection of their interests.

The Dutch 'polder model' can be seen as an example of subgovernmental decision-making. The polder model is a consensus-based decision-making method that originates from the tripartite negotiations between the government, employers' organizations and labor unions to achieve broad social support for socio-economic policy. The idea of including stakeholders from the private sector and civil society in policy-making is also extended to other policy areas. In the energy domain, fossil fuel incumbents are often included in decision-making structures about energy policy. While some describe the tripartite policy-making in the energy domain as a 'golden triangle' because it brings stakeholders together, others argue that this method favors vested interest such as fossil fuel companies (Energieia 2015, WRR 2013). According to some critics, the polder model prevents the government from radically making the choice for sustainable energy, slowing down the energy transition (*Nieuwsuur* April 30 2016; *FTM*, November 26 2015).

The access to and possession of resources by incumbents facilitates 'materialist capture' (Carpenter and Moss 2013; Engstrom 2013). Scholars that study the policy impact of interest groups argue that influence depends on the ability to mobilize resources (Burstein and Linton 2002; Gerber 1999; Hall and Deardorff 2006; Dür 2008). The resource mobilization perspective is accompanied by the concern that those having more money and political connections can exert more influence than others. 'Materialist capture' occurs when the decision-maker enacts policy based on material considerations, such as bribery or political donations (Carpenter and Moss 2013; Engstrom 2013).

The dependence of the Dutch government on fossil energy can be seen as facilitating materialist capture. The fossil fuel industry generates substantial revenues for the public purse, and therefore the government has an economic interest to protect the incumbent industry. In an interview of the Dutch news show *Nieuwsuur*, former Minister of Environment Jacqueline Cramer argues that the dependence of the Dutch government on its fossil fuel reserves for its energy supply has dampened the sense of urgency the Dutch government feels to transition to sustainable energy (*Nieuwsuur*, April 22 2016). Transition expert Jan Rotmans similarly argues that the dependence of the Dutch government on fossil fuel has made the fossil energy lobby extremely powerful (*Nieuwsuur* April 30 2016).

The decision-making process about gas extraction in the northern province of the Netherlands Groningen shows how the gas incumbent Shell influences governmental policy. Recently the public broadcaster *NOS* obtained secret documents from which it becomes clear

that Shell and Exxon have made a secret deal with a bureaucrat from the ministry of Economic Affairs about the long-term level of gas extraction in Groningen in 2005 (*NOS*, May 13 2016). The deal includes an agreement that the level of gas extraction in Groningen will be maintained until 2020, which goes against promises of the national government to reduce the extraction of natural gas as to prevent further earthquakes and damages to houses (*NRC*, January 15 2014; *NU*, December 15 2014). This example illustrates that the influence of Shell takes place behind the scenes and that Shell relies on the national government for the protection of its interests.

Despite the consensus that exists about the powerful influence of fossil fuel companies on the sustainability transition, sometimes incumbents fail to impact national policy. Examples are the battle over bottle deposit, shale gas and carbon storage. Regulatory capture theory is unable to explain these anomalies, which leads to the question: why do incumbents sometimes fail to impact public policy in their favor? The expectation is that in these cases 'challengers' successfully counteract the influence of incumbents. 'Challengers' are actors that aim to challenge the dominant position of incumbents (Smink 2015; Levy and Scully 2007; Greenwood and Suddaby 2006; McAdam and Scott 2005). Within the energy domain, challengers are for example environmental organizations that aim to promote the consumption and production of sustainable alternatives. The lobby strategies and policy impact of challengers, however, remains underanalyzed in the literature.

It is expected that challengers influence policy through 'outside lobbying' (Kollman 1998, 3). 'Outside lobbying' refers to the attempt by interest groups to mobilize citizens outside the policy-making community to influence decision-makers inside this community. Outside lobbying serves two distinct purposes. It communicates public support to policy makers ('signaling') and it increases public support among constituents ('conflict expansion') (Kollman 1998, xiii).

While challengers often lack access to governmental decision-making structures and do not possess substantial material resources, it is expected that they are able to use non-material resources. Non-material resources include legitimacy, knowledge, expertise and information (Dür 2008; Greenwood 2003; Bandelow et al 2000; Wolf 2005). Because the government and parliament often do not possess the required expertise, they depend on the private sector for technical information. Incumbents and challengers can control and manipulate this information to influence the government and the legislature, which can result in regulatory capture based on asymmetric information (Mitnick 2011, 43-44; McCarthy 2013; Porter and Sagansky 1976; Gormley 1983).

Non-material resources also include popular support (Dür 2008) and public opinion (Klandermans and Roggeband 2010, 132; Giugni 2004, 26). Fossil fuel incumbents, however, often lack societal support because they are notorious for hindering the energy transition. According to an informant from the public affairs field, “Shell can’t do anything right in the eyes of the public” (May 4 2016). Challengers such as environmental organizations benefit from the lack of societal support for fossil fuel incumbents because they can mobilize societal opposition against incumbents. Moreover, through media coverage of the opposition, challengers can influence public opinion. Elected officials, in turn, enact policies consistent with public opinion due to electoral competition (Burnstein and Linton 2002, 384; Arnhold 1990; Dahl 1989; Mayhey 1974). The ability to shape public opinion is thus a powerful instrument in the arsenal of challengers.

The negative public opinion about the societal position of Shell becomes clear from a recent debate about Shell’s gas extraction in Groningen. In April 2016 Shell sent a letter to parliament as input for the election programs, arguing that when the gas extraction is further reduced, there will be less money for the reparation of houses (*NOS* April 23 2016a; *NOS*, April 23 2016b; Shell 2016; *FD*, April 22 2016; *Nieuwsuur*, April 23 2016). The Dutch social democratic party the PvdA made this letter available to the media, resulting in accusations of bribery, hypocrisy and immorality, which further reduced the societal support for Shell (*RTV Noord*, April 29 2016; GroenLinks April 26 2016). While Shell is thus able to rely on the government for the protection of its interests, it is at the same time unable to rely on societal support.

In addition to the distinction between inside lobbying by incumbents and outside lobbying by challengers, the ‘political opportunity approach’ also offers valuable insight in the contextual conditions for the success of interest groups’ influence. Political opportunity theory is an approach that originates from social movements studies (Eisinger 1973; Tarrow 1998; Meyer 2004; McAdam et al 2001; Gunning 2007; Tilly and Tarrow 2006; Gamson and Meyer 1996). The political opportunity structure “refers to those aspects of the political system that affect the possibilities that challenging groups have to mobilize effectively” (Giugni 2009, 361). Four dimensions of political opportunity often mentioned in the literature are the relative openness of a political system, the stability of elite alignments, the presence of elite allies and the state’s capacity for repression (McAdam 1996). An example of a structural factor unique to the Dutch political system is the polder model. This consensual mode of decision-making based on tripartite negotiations present a political opportunity for those actors included in the policy-making process.

Scholars of the political opportunity approach disagree about the emphasis on purely structural factors. Tilly's (1978) original model was strictly structural since "it focused on conditions that cannot be molded to actors' purposes" (Tarrow 1998, 18). The emphasis on structure received substantial criticism because it ignores the influence actors can have on their environment and the more volatile and dynamic aspects of political opportunities (McAdam 1982; Tarrow 1998; McAdam et al 2001). These scholars for example emphasize the importance of a change in the configuration of power as a window of opportunity for social movements to carry out protest activities (Tarrow 1989; Giugni 2009). In order to reduce the emphasis on resolutely structural factors, some authors use the term 'political opportunity' rather than 'political opportunity structure' (Giugni 2009, 362).

While the political opportunity approach originates from social movement studies, it can also be applied to study interest groups' influence (Mazzoni and Malen 1984; Dür 2008). For example, during upcoming elections politicians are more sensitive for public opinion because they are concerned about their prospects for re-election. Moreover, a change in the party balance in parliament, the political composition of the government and the political color of governmental decision-makers can present a window of opportunities for interest groups because it might change the political balance in regard to a policy issue. If actors use political opportunity structures effectively, they can increase their influence on policy outcomes (Dür 2008, 1218; Mazzoni and Malen 1985).

Based on the literature review, the main hypothesis is that incumbents sometimes fail to impact policy because in these cases 'challengers' are able to redress or prevent governmental policies favorable to incumbents by means of 'outside lobbying'. Moreover, the ability of challengers to effectively use political opportunities is expected to maximize their policy-impact. Dutch case studies on the battle between incumbents and challengers over carbon storage, shale gas and bottle deposit provide the basis for an analysis of this hypothesis.

Cases from the Dutch sustainability transition

The aim of this paper is to find an explanation for why incumbents sometimes fail to influence public policy in their favor. Three recent examples of Dutch decision-making regarding sustainability policy illustrate the failure of incumbents to impact governmental policy: the battle over carbon storage, shale gas and bottle deposit.

Although influence is hard to define, the common understanding of influence is that actor A causes actor B to do something that B otherwise would not have done (Baldwin 2013, 273). Influence is usually hard to measure, especially in the case of the influence of incumbents. The influence of incumbents often takes place behind closed doors and in secrecy and is therefore incredibly difficult to observe or measure. In the selected cases, it is clear that the government initially enacted a policy consistent with the interest of incumbents, namely to allow Shell's carbon storage project, to allow Cuadrilla to start fracking for shale gas, and to abolish the bottle deposit as a reward for the packaging industry. In the case of bottle deposit, the influence of the packaging industry on bottle deposit policy becomes clear from the decision-making process. In the case of carbon storage and shale gas, however, the influence of incumbents on the decision of the government is assumed but not demonstrated due to the lack of information about the decision-making process, which is a limitation of the research.

In the selected cases it is highly probable that actors other than the incumbents influenced decision-making. In all three cases, the government first decided to enact a policy clearly in favor of the incumbents, only to reverse these decisions a couple of years later. Since the incumbents and the government both supported the initial policy, it is highly likely that the government would not otherwise have reversed these decisions. This suggests the influence of other actors than incumbents, and it is expected that challengers successfully pressured the government to alter its policy. Because the role of challengers in public policy-making remains underanalyzed in the literature on regulatory capture, the analysis focuses on the influence of challengers on governmental decision-making.

According to the definition of regulatory capture, the influence of challengers and incumbents on public policy qualifies for regulatory capture if the influence is to the detriment of the public interest. Yet what defines the public interest is a political rather than empirical question. As Carpenter (2013) puts it: "it should be clear that a major problem confronting any theoretical or empirical analysis of capture is that we do not know, and we should not presume to know, what [the public interest] is" (Carpenter 2013, 60). The major weakness of

regulatory capture theory is thus the impossibility to objectively measure what the 'public interest' is. This measurement problem inhibits the researcher to empirically assess the policy-impact of interest groups in the light of regulatory capture theory, which is a second limitation of the theory and the research. The analysis is thus limited to studying influence on rather than capture of public policy.

In order to study the influence of challengers on the decision-making process regarding carbon storage, shale gas and bottle deposit, a qualitative research using the method of process tracing is employed. The chronology of the process and insights in the strategies are drawn from primary sources such as governmental websites, shorthands of parliamentary debates, interviews in news items, books (de Boer 2015; Brandsma 2016) and articles (Metze 2014) that rely on interviews, and personal interviews with key players. In total four lobbyist and two parliamentarians active on these issues are interviewed²³. Finally, because the researcher is working as a lobbyist simultaneously, insights in strategies are also obtained from participant observation. This provides a unique setting for investigating the strategies of interest groups.

² More informants, including parliamentarians, journalists and government representatives, were approached, but were unable to participate due to time constraints.

³ In order to protect the confidentiality of the informants, their names are not revealed. Researchers interested in interviewing the informants can contact the author, who can request permission from the informants to reveal their personal information.

Carbon storage

In 2007, the Dutch government embraces carbon capture and storage (CCS) as an innovative method to reduce carbon dioxide emission. Carbon capture and storage is the process of capturing waste carbon dioxide (CO₂) and storing it underground where it will not enter the atmosphere (Global CCS Institute 2015). Reducing the amount of carbon dioxide that enters the atmosphere is seen as a method to reduce global warming and climate change. The incumbent gas company Shell is one of the parties interested in CCS projects in the Netherlands, and proposes to storage carbon dioxide from the nearby oil refinery of Pernis under the Dutch city of Barendrecht (*Trouw*, December 1 2009). In 2008 the minister for Environment Jacqueline Cramer supports Shell's project and subsidizes it with 30 million euros (*Trouw*, November 4 2010).

Challengers to Shell's project arise quickly: local residents and environmental organizations contest the carbon storage plan (*Trouw*, November 4 2010). The residents of Barendrecht are concerned that the value of their houses will plummet as a result of the carbon storage (*Telegraaf*, November 18 2009). To prevent the carbon storage project under their houses, they start mobilizing opposition to the project by activist methods, for example by establishing the foundation CO₂isNEE (Stichting CO₂isNEE 2009). Environmental organizations such as GreenPeace doubt the safety of the project, despite the conclusion of the Commission for Environmental Assessment (NCEA)⁴ that the project meets the legal safety standards (Commissie MER, April 23 2009). The challengers thus aim to prevent the carbon storage project by mobilizing citizens outside the policy-making community, which is in line with the outside lobbying thesis.

The municipality of Barendrecht also turns against the project (*Trouw*, November 4 2010) and collaborates with citizens and NGOs to prevent the carbon storage project. After the persistent local resistance against the carbon storage project, the national and provincial government of Zuid-Holland conduct three additional researchers (Rijksoverheid, October 29 2009). First, TNO investigates alternative locations for the project, and concludes that only Barendrecht and a gas field in the North Sea are appropriate (TNO 2009). While the province Zuid-Holland expresses its preference for the North Sea location, the national government argues that the alternative of carbon storage at sea requires substantially more investigation and would slow down the project (*Parool*, November 18 2009). Second, the environmental protection agency of the Rijnmond region, *DCMR Milieudienst Rijnmond*, conducts an

⁴ In Dutch, the NCEA is known as the Commissie m.e.r.

additional integral safety assessment and concludes that the project conforms to the relevant legal safety norms assessment (*DCMR Milieudienst Rijnmond* 2009). Finally, the National Institute for Public Health and the Environment (RIVM) looks at the effects the project can have on the health conditions of residents and argues that the risks for health can be minimized (RIVM 2009; *Rijnmond*, October 29 2009).

Based on the results of the additional studies, PvdA-minister for Environment Cramer and CDA-minister of Economic Affairs Van der Hoeven decide to continue with the carbon storage project (*Parool* November 18 2009; *Telegraaf*, November 18 2009; *NU.nl* November 18 2009). According to the ministers, the carbon storage project is safe and a necessary step in the sustainability transition. Moreover, the ministers propose additional guarantees by starting with a small experiment first. At this point, the outside lobbying strategy of challengers is not successful since the government decides to continue with the carbon storage project despite societal resistance.

While the government decides to continue with the project, the societal opposition receives the attention of the national parliament. Several parties doubt the reliability of the information provided by the government and express concerns about the lack of societal support for the project (*Tweede Kamer*, November 19 2009). Not only the opposition parties contest the government's carbon storage plans, but also the coalition parties the social democratic party PvdA and the Christian party ChristenUnie. The liberal opposition party VVD opposes the project, not because of concerns about the lack of societal support or environmental concerns, but because it prioritizes nuclear energy and believes that a CCS-obligation would be a burden to the industry. The opposition parties introduce a motion that requests the government to stop the carbon storage project (*Tweede Kamer*, January 13 2010), which does not enjoy the support of a parliamentary majority with a narrow margin (*Tweede Kamer*, January 26 2010; *Rijnmond*, January 26 2010). Challengers thus remain unsuccessful as the parliament approves the carbon storage project despite societal resistance.

The fall of the government near the end of January 2010 presents a unique political opportunity for the challengers (*Algemene Energieraad*, February 23 2010). When a government is resigning, the caretaker government is not allowed to make decisions if an issue is declared controversial and must be postponed until a new government is formed (*Energieia*, March 3 2010; *Trouw*, November 4 2010). Therefore, the local Christian democratic party CDA in Barendrecht asks the presidium of the Parliament to declare the issue of carbon storage as controversial (CDA Barendrecht, March 6 2010). As the parliamentary majority for the carbon

storage project is narrow, the prospects that elections may change the party balance are substantial.

That same month a documentary “CO2-bomb under Barendrecht” is broadcasted on national television (*Zembla*, March 28 2010). In the documentary, several experts question the safety of the carbon storage project in Barendrecht. The negative image of the carbon storage project that the documentary portrays, influences the public opinion and the party balance in favor of challengers. At the request of GroenLinks, the documentary is debated in Parliament (Tweede Kamer, April 20 2010). The negative publicity about the topic causes parties, most notably the social liberal party D66 and the ChristenUnie, to shift on the issue in favor of the challengers in order to accommodate the public opinion, especially in the light of the upcoming elections in June (*Energiea*, April 21 2010).

In October 2010, the VVD and CDA form a minority government, which turns out to be the deciding political opportunity for challengers since the new VVD minister responsible for carbon storage, minister of Economic Affairs Maxime Verhagen, is against the project. The new coalition agreement states that “storage of CO2 can occur underground taking into account strict safety norms and local societal support” (Rijksoverheid, September 30 2010). Minister Verhagen subsequently decides to cancel the carbon storage project in Barendrecht due to the delay in the project and the lack of societal support (Rijksoverheid, November 4 2010).

The process of decision-making regarding carbon storage shows that challengers successfully mobilized citizens outside the policy-making community to influence decision-makers inside the community, in line with the outside lobbying thesis. Throughout the process, challengers collaborated with the municipality of Barendrecht to prevent carbon storage. Initially, the outside lobbying strategy was not successful since the decision-makers decided to continue the project despite societal opposition. The governmental change, however, turned out to be the deciding political opportunity for challengers because the new responsible minister was against the project and cancelled it due to a lack of societal support. Throughout the process, Shell remained on the background while the government defended the project, in line with the inside lobbying thesis.

Shale gas

In 2008, the Dutch government considers hydraulic fracturing (or 'fracking') for shale gas as a welcome new approach to gas production (Metze 2014; De Boer 2015). The British gas company Cuadrilla is one of the interested parties to start fracking for shale gas. Although Cuadrilla is new to the Dutch market, Cuadrilla can be seen as incumbent since it's part of the incumbent fossil fuel sector. After the advice of the several expert bodies (TNO, the Mining Council, the NCEA, the EBN and the State Supervision of Mining), the Dutch national government and the local government of Boxtel approve the project (Metze 2014, 2; De Boer 2015). Cuadrilla plans to start the exploration near the end of 2011.

Initially, the first person to challenge the fracking plans is a single local resident: Willem Jan Atsma. In an article in the local newspaper *Brabants Dagblad* Atsma reads that the tower will be build close to his backyard (De Boer 2015, 80-77). Unpleasantly surprised by this news, Atsma starts mobilizing societal resistance against this plan by activist methods, in line with the outside lobbying thesis. For example he raises safety and environmental concerns in the media, organizes local gatherings, establishes the foundation 'Shale gas free Netherlands', organizes several demonstrations (*Telegraaf*, September 22 2012) and calls upon municipalities and provinces to declare themselves 'shale gas free', which over two hundred municipalities and ten provinces do over the course of three years (*Brabants Dagblad*, September 21 2012; Milieudefensie 2014). Residents, environmental organization and the municipality thus collaborate to mobilize citizens against the shale gas plans.

The outside lobbying strategy marks its first success when the issue receives attention from the national parliament due to persistent societal opposition to the project. During a parliamentary hearing on the topic, Atsma, scientists and local politicians participate as guest speakers (Tweede Kamer, September 14 2011). Before the hearing, the documentary *Gasland* that emphasizes the negative effects of shale gas extraction in the United States, is broadcasted on national television, which the challengers effectively use in their favor during the hearing (*Tegenlicht*, August 31 2011). Indeed, the safety and environmental concerns dominate the parliamentary debate (Metze 2014; De Boer 2015). While the coalition parties the Christian democratic party CDA and the liberal party VVD support the shale gas project, the left-wing opposition parties are against, such as the social democratic party PvdA, the green party GroenLinks and the socialist party SP.

The opposition to the project pressures minister Verhagen to commission an independent review to map the environmental risks of shale gas production (Rijksoverheid,

October 27 2011). The national government conducts seven consultation rounds with provinces, municipalities, residents and the private sector (Rijksoverheid 2012, June 19). Moreover, Verhagen awaits the conclusions of an European research into shale gas (*Brabants Dagblad*, September 5 2012). In the meantime, a moratorium is in power. The shale gas project is thus significantly postponed, marking a success for the challengers.

While the various studies into shale gas are being conducted, Cuadrilla gets into a dispute with Rabobank about the location of the shale gas exploration (De Boer 2015). The involvement of Rabobank is beneficial for challengers, since the dispute forces the municipality to rescind the shale gas permit. Cuadrilla plans to conduct the exploration at the industrial site Vorst, the same site where Rabobank has built a new datacenter. Rabobank opposes the fracking plans of Cuadrilla, arguing that the smallest vibration disturbs the functioning of the datacenter. The dispute results in a lawsuit and the court rules in favor of Rabobank, rescinding Cuadrilla's local shale gas permit (De Boer 2015).

In April 2012, the government falls because of failed negotiations over the 2013 budget. The governmental change presents a political opportunity for both incumbents and challengers because the new coalition parties are split over shale gas. The new government is formed between the liberal party VVD and the social democratic party PvdA. The new responsible minister of Economic Affairs Henk Kamp from the VVD supports shale gas. The new coalition party PvdA is split between supporting the course of the government in favor of shale gas and listening to its constituency that is against shale gas. The PvdA decides to support shale gas as a transition fuel, under the condition that the independent review concludes it can be done safe and clean (*Brabants Dagblad*, April 24 2013a). The PvdA is heavily criticized for this 'turn' (*Brabants Dagblad*, April 24 2013b; *AD*, April 24 2013; *RTL Nieuws*, April 24 2013) and leads to divisions within the PvdA (*Energieoverheid*, April 25 2013).

In August 2013, minister Kamp presents the results of the independent review of the environmental risks, which challengers successfully utilize to change the party balance changes in their favor. The research, conducted by consulting agency Witteveen+Bos, concludes that the risks associated to shale gas explorations are minimal and can be avoided (Metze 2014; Rijksoverheid, August 26 2013). The report, however, receives a lot of criticism from environmental organizations and water companies (*Brabants Dagblad*, August 26 2013). The negative response to the report pressures the PvdA to adjust its position on shale gas (*Brabants Dagblad*, August 26 2013). According to the PvdA, the assessment did not show that shale gas exploration can be done safe and clean, and therefore the PvdA turns against shale

gas (*Brabants Dagblad*, September 12 2013). At this point, a parliamentary majority is against shale gas, benefiting the challengers.

The Netherlands Committee for Environmental Assessment (NCEA) similarly argues that the assessments of shale gas lack sufficient local knowledge and excludes environmental safety. Therefore the NCEA recommends to launch a broad research into the environmental, societal and technical aspects of shale gas (Rijksoverheid, September 18 2013). Three additional assessments are being conducted: an assessment of the environmental effects shale gas extraction by the NCEA (Rijksoverheid, July 10 2015a), of the societal effects by CE Delft (Rijksoverheid July 10 2015b), and of the innovative techniques of shale gas extraction by TNO (Rijksoverheid, July 10 2015c).

The additional studies do not take away the uncertainty about the negative effects of shale gas, and therefore minister Kamp decides that there will be no shale gas extraction in the Netherlands until 2020 (Rijksoverheid, July 10 2015d).

The process of the decision-making about shale gas illustrates the success of the challengers' outside lobbying strategy. The challengers successfully mobilized citizens outside the policy-making community and turned the public opinion against shale gas, which was aided by the collaboration with the municipalities who declared themselves shale gas free. The societal opposition to shale gas pressured the national government and parliament to conduct additional researches that were unable to take away the concerns raised by challengers, pressuring the minister to cancel the project. Throughout the process, Cuadrilla remained on the background while the government defended the project.

Bottle deposit

The bottle deposit system has since its introduction been contested by the producers that market packaged products. The Dutch packaging policy requires vendors to charge a deposit of €0,25 on each PET-bottle of one liter or more, which is refunded to the consumer when the bottle is returned to the supermarket. The decision-making process to establish the packaging policy is based on tripartite negotiations between the government, the association of Dutch municipalities (VNG) and the industry that markets packaged products, also known as the 'packaging industry' (Smink 2015). The 'packaging industry'⁵ is incumbent in the sustainability domain because they are traditionally formally included in the decision-making process about waste management regulation (Smink 2015).

The packaging industry aims to abolish the obligation for bottle deposit. Due to the principle of 'extended producers' responsibility' (NVRD) the producers are responsible for the waste management of the products that they market and as a result the packaging industry carries the costs of the bottle deposit system. In the view of the packaging industry, the bottle deposit system is expensive, burdensome and inefficient. The industry proposes to replace the bottle deposit system by an alternative recycling system: the 'plastic heroes system', consisting of plastic garbage bins on the street. To convince the government to choose for the plastic heroes system, the packaging industry asks Wageningen University (WUR) to conduct a research into the costs of the two recycling systems. The report concludes that the plastic heroes system is much cheaper than the bottle deposit system (WUR 2012): while the bottle deposit system yields estimated costs of 5,9 eurocent per PET-bottle, the Plastic Heroes system only yields 1-1,5 eurocent per bottle.

Based on the cost calculation by the industry, CDA-Secretary of State for Environment Atsma considers the abolishment of the bottle deposit system if the Plastic Heroes system leads to sufficient recycling "as a reward for the packaging industry" (Rijksoverheid, September 6 2011; Echte Held 2011; Levensmiddelenkrant 2011). Since the decision of the government to abolish the bottle deposit is based on information provided by the packaging industry, this points to regulatory capture.

Immediately after Atsma's announcement, environmental organizations contest the plan to abolish bottle deposit because of supposed negative environmental effects (Echte

⁵ The packaging industry is represented by various branch organizations, amongst others the FNLI that represents companies that package their products (for example Coca Cola) and the CBL that represents retailers (for example supermarkets) and are united in the Afvalfonds and the executive branch Nedvang.

Held 2011; VNG 2011; NVRD 2011). In line with the outside lobbying thesis, the challengers use the public opinion as a resource to convince Atsma to maintain the system. According to a public opinion poll, the bottle deposit system enjoys broad support from the Dutch population (TNS-NIPO 2011). The environmental organizations furthermore mobilize opposition through activist measures such as establishing the Foundation 'Stichting Ons Statiegeld', launching a campaign with the slogan "a real hero chooses the bottle deposit system", developing a bottle deposit manifest, starting a petition (Echte Held 2011), and linking the abolishment of bottle deposit to the growing 'plastic soup' in the ocean (Plastic Soup Foundation 2014).

Local governments similarly oppose the abolishment of bottle deposit. The municipalities are united in the VNG, which is formally included in the tripartite negotiations about the packaging policy. The inclusion of the VNG in the decision-making process constitutes a political opportunity for the municipalities to influence the national government directly through inside lobbying. During the negotiations, the VNG expresses its concerns and blocks the decision to abolish the bottle deposit per 2013 (Ministerie van Infrastructuur en Milieu, March 5 2012; Rijksoverheid March 5 2012; VNG, June 29 2012).

Other challengers are the German supermarkets Aldi and Lidl. These supermarkets have an alternative bottle deposit system compared to the Dutch supermarkets and make a profit on the collection of PET-bottles. The German supermarkets thus financially benefit from the bottle deposit regulation and therefore aim to maintain the system. In a letter to Atsma, Aldi argues that the abolishment has negative consequences from an economic, commercial and ecological perspective (Aldi 2012; Echte Held, February 16 2012). The German supermarkets, however, remain on the background as their view opposes the interests of other supermarkets and the industry. The unity of the packaging industry strengthens their influence on decision-making.

The outside lobbying strategy is successful as the concerns raised by the challengers resonate among parliamentarians (Tweede Kamer, March 7 2012). The left wing parties such as the socialist party SP, the green party GroenLinks and the Christian party ChristenUnie wish to maintain the system because of its environmental benefits. The social liberal party D66, the labor party PvdA and the Christian democratic CDA take in a central position, arguing that the bottle deposit system is a means to an end that can be abolished if an alternative delivers better environmental results (Tweede Kamer, March 7 2012). The liberal party VVD ignores the negative public opinion towards bottle deposit and argues that it is a horrendous system that should be abolished.

The parliament reaches a compromise when CDA-parliamentarian Marieke van der Werf proposes performance guarantees regarding environmental targets as a condition for the abolishment of the bottle deposit system (Tweede Kamer, March 7 2012). The proposal stipulates a “go/no go moment” in 2013 when it is assessed whether the industry meets the targets and the system can be abolished. The parliament accepts the proposal (Tweede Kamer, May 1 2012) and is included in the packaging agreement (Rijksoverheid, June 29 2012). Due to the inclusion of performance guarantees, the VNG accepts the agreement as well (VNG, December 12 2012).

It is striking that the proposal for additional performance guarantees comes from a CDA-parliamentarian, since the original agreement came from CDA-Secretary of State Atsma. Normally parliamentarians of coalition parties support government policy. In an interview, Marieke van der Werf argues that “the public opinion opened up political space within the CDA to introduce the performance guarantees, the Dutch love bottle deposit” (May 6 2016). The proposal for additional performance guarantees was thus a response to the negative public opinion about the plan to abolish the bottle deposit, which illustrates how challengers can use the public opinion to influence decision-makers inside the policy-making community as the outside lobbying thesis suggests.

While the inclusion of performance guarantees mitigates environmental concerns, it does not take away the concerns of the producer of the PET-bottle collection machines Tomra Systems, whose business disappears if the bottle deposit system is abolished. According to Tomra Systems, the packaging industry misled the government and parliament by presenting incorrect cost calculations as presented in the WUR-report (Tomra 2012). In terms of regulatory capture theory, Tomra Systems accuses the packaging industry of capturing the government based on biased information. Environmental organizations start cooperating with Tomra Systems to prevent the abolishment of the bottle deposit system (Echte Held, March 26 2012; Recycling Netwerk, April 11 2012).

While the CE-Delft is conducting its research into the costs of the recycling systems, the Dutch government falls due to a disagreement over the 2013-budget. The governmental change presents a political opportunity because the new responsible Secretary of State of Environment is Wilma Mansveld from the pro-deposit party the PvdA. However, the PvdA finds itself in a difficult position since the party suffered an electoral defeat and is pressured by her constituency to enact greener policies including the maintenance of the bottle deposit system. As a coalition partner, on the other hand, she is pressured to continue the abolishment of the system if the performance guarantees are met (*Trouw*, November 21 2012;

PvdA 2012; *Trouw*, January 30 2013; *NU.nl* January 29 2013). The party decides to prioritize continuity of administration. Even though the PvdA is heavily criticized for this 'turn' (*Trouw*, January 30 2013; *NU.nl*, January 29 2013), the challengers failed to effectively use the political opportunity of the governmental change in their favor.

Just before the go/no go moment of May 2014, Tomra Systems publishes the recalculation of the costs of the bottle deposit system, which shows that the costs are almost half of the estimation by WUR (CE Delft 2014). The conclusions cast doubts about the cost-efficiency argument on which the decision to abolish the system was based, which presents a political opportunity for challengers since the parliament, including coalition party PvdA, demands additional research in the costs of the systems (*Trouw*, April 17 2014).

Secretary of State Mansveld asks TNO (2014) to conduct an 'independent check' for the government. The main conclusion is that both the WUR and CE Delft calculations are unreliable and outdated (TNO 2014). Because the information at hand is incomplete and unreliable, the VNG pleads for the postponement of the abolishment of the system (*NRC*, June 7 2014; *VPRO* 2014).

In addition to doubts about the cost-efficiency, the parliament also starts to demand clarification about the environmental effects of the two systems (Tweede Kamer, June 18 2014). Secretary of State Mansveld asks the knowledge institute for packages KIDV to conduct this research (KIDV 2014), but the Parliament doubts the independence of the institute since it is funded by the industry (Tweede Kamer, June 18 2014). From a regulatory capture perspective, the parliamentarians are concerned that the lack of independence of the KIDV facilitates capture by the packaging industry. Despite these concerns, the KIDV research shows that the replacement of the bottle deposit system by the Plastic Heroes system for PET bottles leads to an environmental loss (KIDV 2015).

Moreover, the assessment of the performance guarantees by the governmental inspection service ILT shows that the industry does not meet the requirements since PVC is still used in packaging (ILT 2014). While the failure to comply with the performance guarantees is an opportunity for challengers to prevent the abolishment of the bottle deposit system, the industry is granted a second chance at the request of the industry and a second go/no go moment is agreed for May 2015. The challengers thus failed to effectively use this political opportunity as well.

Although the packaging industry is granted a second chance, its position is damaged when the German super markets start supporting the bottle deposit system. Lidl highlights the advantages of their alternative bottle deposit system in the media (*Trouw*, June 13 2014;

Levensmiddelenkrant, June 13 2014; Volkskrant, October 11 2014). The packaging industry offers to financially compensate Lidl and Aldi for the losses if the bottle deposit system is abolished in return for supporting the abolishment of the bottle deposit system (Afvalfonds 2014). Although the coalition is reunified, the industry is accused of bribery and corruption (*P+*, September 4 2014; *Sargasso*, September 8 2014; *Down to Earth*, October 2 2014; Tweede Kamer, October 16 2014). The packaging industry suffers from an extremely critical public opinion, which benefits the lobby of the challengers.

In order to restore the image of the packaging industry, the industry asks TNO-Nipo to conduct an opinion poll about the deposit system (TNO-Nipo, April 29 2015). The main conclusion of the research is that almost half of the respondents supports uniting the bottle deposit system and the Plastic Heroes system and that 70% of the respondents state that they are indifferent towards submitting the PET bottles through the Plastic Heroes system or at the super market (TNS-Nipo, April 29 2015). Based on these results, the industry argues that 7 out of 10 people support the abolishment of the bottle deposit system (*Trouw*, April 29 2015).

The media heavily criticize the packaging industry for skewing the results in favor of the abolishment of the bottle deposit system, making the public opinion even more critical of the packaging industry (*Trouw*, April 29 2015; *Trouw*, May 11 2015; *Trouw*, May 15 2015; *Verpakkingsprofs*, April 30 2015; *AVROTROS*, May 11 2015). The negative public opinion presents a political opportunity for the challengers, since it pressures political parties to adjust their stance toward the issue. The coalition party PvdA, for example, adjusts its position to supporting the maintenance of the bottle deposit system (*Trouw*, June 1 2015), which means a parliamentary majority is now in favor of maintaining the bottle deposit.

The second go/no go moment takes place in June 2015. The ILT again concludes that there are still packages with PVC in the Dutch supermarkets (ILT 2015). An informant from the obliged industry and the liberal party VVD argue that the performance guarantee in the ILT-document is formulated in a way that the industry is practically unable to ever meet this guarantee (Tweede Kamer, June 25 2015). In the packaging agreement it is stated that 'PVC-packaging' are not allowed in supermarkets (Rijksoverheid, June 29 2012), while the document on which ILT bases its assessment also mentions 'PVC in packaging' (ILT 2013). Although the industry is able to remove PVC-packages, it is practically impossible to remove PVC in packages.

Based on the ILT-research, the additional researches and 'other conversations', Secretary of State Mansveld decides to maintain the bottle deposit system in June 2015 and to not grant the industry another chance (Ministerie van Infrastructuur en Milieu, 18 June

2015). According to an informant from the industry, Mansveld needed to regain the support of her constituency because of failures in other policy domains, which increased the pressure to maintain the bottle deposit system (April 23 2016).

The process of the decision-making about bottle deposit illustrates the success of the challengers' outside lobbying strategy. The challengers successfully mobilized citizens outside the policy-making community and turned the public opinion against bottle deposit, which led the CDA to introduce the performance guarantees. The municipalities played an important role through its ability of inside lobbying as the VNG was included in the decision-making process about bottle deposit. The lobby of the challengers was greatly aided by the collaboration with the company Tomra Systems, which questioned the research that formed the basis of the governmental decision to abolish the system. Throughout the process, the packaging industry did not remain on the background, which increased the societal opposition and negative public opinion against them.

Discussion & Conclusion

Regulatory capture theory argues that private interests are able to influence public policy to such an extent that it comes to serve private rather than public interests (Stigler 1971; Posner 1974; Miller 2011; Mitnick 2011; Novak 2013; Unger 2013; Carpenter and Moss 2013). Regulatory capture has assumed the status of immutable law in the academic world and scholars often point to regulatory capture as a culprit for failed policy reform and innovation (Novak 2013; Croley 2011; Mitnick 2011; Carpenter and Moss 2013). Observers of the Dutch energy transition similarly argue that incumbents hinder the Dutch sustainability transition due to their powerful influence on the government.

Despite the consensus about the powerful influence of incumbents on the energy transition, sometimes they fail to impact governmental policy. Regulatory capture is unable to explain this anomaly and the main question therefore is “why do incumbents sometimes fail to influence public policy”? The examples of the battle between incumbents and challengers over carbon storage, shale gas, and bottle deposit show that in these cases incumbents failed to influence public policy because challengers successfully prevented or redressed governmental decisions that were favorable for incumbents.

The analyses of the strategies of challengers to influence policy confirm the hypothesis that challengers influence decision-makers through outside lobbying. Outside lobbying refers to the process where interest groups mobilize citizens outside the policy-making community to influence decision-makers within the community (Kollman 1998). The three cases show that challengers such as environmental organizations were able to mobilize citizens outside the policy-making community and influence public opinion, which pressured decision-makers inside the policy making community to change their position.

An important aspect of challengers’ outside lobbying strategies is the role of public opinion as means for policy impact. Challengers directed their actions at the public to shape the public opinion as to maximize policy impact. In all three cases, the challengers drew negative media attention to carbon storage, shale gas and the abolishment of bottle deposit. The resulting negative public opinion pressured political parties and the responsible ministers to change their position in favor of challengers.

The analyses do not unequivocally support the expectation that public opinion influences policy solely through the channels of the parliament. The expectation was that parliamentarians enact policies consistent with public opinion due to electoral competition (Burnstein and Linton 2002; Arnhold 1990; Dahl 1989; Mayhey 1974). The analyses suggest that ministers are also sensitive to the public opinion. The ministers eventually decided to

reverse the policy of the national government rather than the parliament. A possible explanation is that ministers, as elected officials, are also sensitive for the public opinion because they are part of a political party that faces electoral pressures while bureaucrats are not. A venue for further research is to break down the government and analyze the behavioral motivations for ministers and bureaucrats separately, rather than treating the government as a monolithic actor.

The analyses of challengers' strategies furthermore highlight the important role of collaboration between non-governmental actors and local governments. In the case of bottle deposit, municipalities influenced policy by inside lobbying. Inside lobbying refers to efforts to influence policy by targeting public officials inside the policy-making community (Kollman 1998). The Association of Dutch Municipalities (VNG) was formally included in the tri-partite decision-making process with the government and the industry. As the VNG was an insider of the policy-making community, the influence of municipalities on decision-making about bottle deposit is in line with the inside lobbying thesis.

In the case of carbon storage and shale gas, on the other hand, the municipalities supported the activist activities of environmental organizations and residents. Political scientist Imrat Verhoeven calls the phenomenon that governmental players collaborate with citizens, NGOs and business in contentious claim making to alter or redress policies proposed by other governmental players as 'governmental activism' (NRC, May 28 2016)⁶. While social movement theorist Tilly (1978) distinguishes between the government and activists, governmental activism blurs this distinction. An avenue for further research is to analyze governmental activism and the role of municipalities in the energy transition.

One should be cautious with generalizing these results to cases where challengers aim to achieve rather than prevent change. In the analyzed cases the challengers aimed to resist change: preventing the abolishment of the bottle deposit system, preventing the shale gas project and preventing the carbon storage project. The expectation is that the dynamic of the battle between challengers and incumbents differs when the roles between incumbents and challengers are reversed, namely when challengers aim to achieve change such as introducing 'green' alternative methods and technologies. An avenue for further research is to study the influence of challengers and incumbents when challengers aim to achieve rather than resist change.

⁶ Imrat Verhoeven and Jan Willem Duyvendak are writing a scientific article on governmental activism. While the article is not published yet, a concept was consulted for the purposes of this paper.

While the analyses show that challengers managed to redress policy-decisions favorable to incumbents through outside lobbying and collaboration with local governments, it is difficult to assess this conclusion in the light of regulatory capture theory. According to the definition of regulatory capture, policy-impact of challengers and incumbents on public policy qualifies as regulatory capture if the influence is to the detriment of the public interest. Yet what defines the public interest is a political rather than empirical question. For example, some politicians and analysts argue that the sustainability transition serves the public interest and argue that carbon storage as a method to reduce carbon emissions benefits the environment (Tweede Kamer, November 19 2009; Global CCS Institute 2015), that shale gas is an important transition fuel in the energy transition (Metze 2014), and that waste management can be optimized by abolishing bottle deposit, while others contest these views. The impossibility to objectively measure the 'public interest' exposes the major weakness of regulatory capture theory.

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