Eviction as a Tool for Crime Control

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Eviction As a Tool For Crime Control: Fighting Drug-Related Crime in the Netherlands and the United States

L.M. Bruijn & M. Vols

Introduction

Over the last decade, the body of research literature on evictions has grown steadily.[1] The topic attracts scholarly attention in various continents and from scholars of various academic disciplines such as medical sciences, political science and urban planning.[2] Moreover, a significant part of the literature on eviction resolves around legal issues.[3] Recently, eviction research received an impulse through the innovative and Pulitzer Prize winning work of the North-American scholar Matthew Desmond. In his book *Evicted: Poverty and Profit in the American City* he describes that in the United States (US) eviction is often a cause of poverty instead of a consequence and a frequent source of economic hardship and (mental) health problems. His other research shows, inter alia, that especially women and mothers are at high risk of eviction.[4]

In this chapter, we assess the use of eviction as a legal tool for crime control in the US and the Netherlands. Over the last decades, literature on crime control shows strong signs for an exponential growth in the use of eviction as a tool to fight crime. Due to a perceived enforcement deficit in criminal law, law and policy makers decided to decentralize crime control and involve a variety of actors other than criminal justice officials in the fight against crime.[5] This 'new crime control establishment' is known by a mixture of terms such as third-party policing, responsibilization and community-based law enforcement, and results in blurring lines between criminal law and other areas of law.[6] The aim of this chapter is to show

[1] In this chapter, the term eviction refers to the permanent or temporary removal of individuals, families or communities from their homes against their will (UN Committee on Economic, Social and Cultural Rights, 1997).

[2] *See, e.g.*, GEOGRAPHIES OF FORCED EVICTION BRICKELL (Katherine Brickell et al. eds., 2017); MICHEL VOLS & JULIAN SIDOLI DEL CENO, *Common Threads in Housing Law Research: A Systematic and Thematic Analysis of the Field*, *in* PEOPLE AND BUILDINGS: COMPARATIVE HOUSING LAW (2018).

[3] *See* ANDRIES JOHANNES VAN DER WALT, PROPERTY IN THE MARGINS (2009); PADRIAC KENN ET AL, PILOT PROJECT – PROMOTING PROTECTION OF THE RIGHT TO HOUSING – HOMELESSNESS PREVENTION IN THE CONTEXT OF EVICTIONS (2016); Sarah Fick & Michel Vols, *Best protection against eviction? A Comparative Analysis of Protection against Evictions in the European Convention on Human Rights and the South African Constitution*, 3 EUR. J. COMP. L. & GOVERNANCE 40 (2016); TENANCY LAW AND HOUSING POLICY IN EUROPE: TOWARDS REGULATORY EQUILIBRIUM (Christoph Schmid ed., 2018).

[4] *See* Matthew Desmond & Nichol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 AM. SOC. REV. 117 (2013); Matthew Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, 94 SOC. FORCES 295 (2015); Matthew Desmond, *Unaffordable America: Poverty, Housing, and Eviction*, 22 FAST FOCUS: INST. RES. POVERTY 1 (2015); MATTHEW DESMOND, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY (2016).

[5] *See* ROGER MATTHEWS, REALIST CRIMINOLOGY (2014).

[6] *See* DAVID GARLAND, THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY 124 (2001); LORRAINE MAZEROLLE & JANET RANSLEY, THIRD PARTY POLICING (2006); Wim Huisman & Monique Koemans, Administrative Measures in Crime Control, 1 ERASMUS L. REV. 121 (2011); ELLEN DEVROE, A SWELLING CULTURE OF CONTROL (2012); Desmond & Valdez, *supra* note 4; L. Michelle Bruijn et al., *Home Closure as a Weapon in the Dutch War on Drugs: Does Judicial Review Function as a Safety Net?*, 51 INT'L J. DRUG POL'Y 137 (2018).

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that eviction is one of the most widespread and powerful instruments used at the disposal of local authorities and private parties such as property owners and landlords to control and prevent crime.

Although some researchers – including Desmond – have studied the role of eviction in crime control,[7] this research area is far less developed compared to other eviction research. Most literature on eviction and crime is relatively old, does not include comparative research or focuses on relatively minor offences such as neighbor nuisance and other incivilities. This chapter corrects this oversight by focusing on a type of crime often combatted by eviction – drug-related crime – and providing a comparative and detailed overview of the use of evictions. More specifically, we 1) analyze to what extent eviction is used to combat drug-related crime in the US and the Netherlands; 2) show the extent to which the law provides protection against drug-related evictions; and 3) provide an explanation for the use of eviction to fight drug-related crime.

Accordingly, the chapter presents new insights on the use of eviction as a tool to control drug crime on three different levels: an exploratory level, a legal level and a theoretical level. The exploratory level analyzes the landscape of drug evictions in the Netherlands and the US, including the key characteristics of the housing context, the relevant policy documents and the extent to which eviction is used to fight drug-related crime. The legal level conducts a doctrinal and comparative analysis of the relevant legal frameworks and legal safeguards that protect evictees in the Netherlands and the US. Finally, the theoretical level analyzes the collected empirical and legal data through the lens of the third-party policing theory.[8] This meso-level or middle range theory functions as an explanatory framework to understand and explain certain aspects and legal issues with regard to the use of evictions in the fight against drug-related crime.[9] Besides using the theory to make sense of the collected data we contribute to theory building by discussing examples of third-party policing in the Netherlands and the US.

Throughout the chapter, we apply different research methods. First, we use doctrinal legal research methods to establish and analyze the relevant legal frameworks. This means that we read and analyze literature, legislation, case law, and policy documents to establish the nature and parameters of the law and legal issues involved.[10] Second, we conduct a comparative legal analysis between the US and the Netherlands,[11] specifically focusing on the role of private landlords and the role of public authorities. The comparison is initially focused on the US as a whole, since drug evictions are for a great part organised by federal governments such as the

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[7] *See* Caroline Hunter et al., *Neighbours Behaving Badly: Anti-social Behaviour, Property Rights and Exclusion in England and Australia*, 5 MACQUARIE L. J. 149 (2005); HOUSING, URBAN GOVERNANCE AND ANTI-SOCIAL BEHAVIOUR: PERSPECTIVES, POLICY AND PRACTICE (John Flint ed., 2006); John Flint & Hal Pawson, *Social Landlords and the Regulation of Conduct in Urban Spaces in the United Kingdom*, 9 CRIMINOLOGY & CRIM. JUST. 415 (2009); Desmond & Valdez, *supra* note 4; Lahny Silva, *Criminal Histories in Public Housing*, 5 WIS. L. REV. 375 (2015); Michel Vols & Sarah Fick, *Using Eviction to Combat Housing-related Crime and Anti-social Behaviour in South Africa and the Netherlands*, 134 S. AFRICAN LAW JOURNAL 327 (2017).

[8] Mazerolle & Ransley, *supra* note 6.

[9] On the diffuse meaning of the term theory *see, e.g.*, JOHN W. CRESWELL, RESEARCH DESIGN: QUALITATIVE, QUANTITATIVE, AND MIXED METHODS APPROACHES (2d ed. 2014); LEE EPSTEIN & ANDREW MARTIN, AN INTRODUCTION TO EMPIRICAL LEGAL RESEARCH (2014).

[10] Terry Hutchinson & Nigel Duncan, *Defining and Describing What We Do: Doctrinal Legal Research*, 17 DEAKIN L. REV. 83 (2012).

[11] Ralf Michaels, *The Functional Method in Comparative Law, in* THE OXFORD HANDBOOK OF COMPARATIVE LAW (Mathias Reimann & Reinhard Zimmerman eds., 2006); MATHIAS SIEMS, COMPARATIVE LAW (2014).

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U.S. Department of Housing and Urban Development. Yet, we focus on New York City (NYC) in particular when discussing drug evictions from other types of housing, specifically private (non-subsidised) housing.[12] Although drug evictions from private housing play an important role throughout all states, analysing the existing legal frameworks in all states, counties and cities will inevitably result in a cursory overview, which has never been our intention. Focussing on one jurisdiction only enables us to provide a comprehensive analysis of how the law reads and works. The reason to focus on NYC is the Narcotics Eviction Program (NEP), which led the charge in employing "one strike" evictions in both public and private housing by creative use of nuisance abatement laws.

This chapter is divided into four sections. The first focusses on drug-related crime and eviction in the Netherlands. The second section discusses drug-related crime and eviction in the US. The third section conducts the comparative analysis and discusses our findings on an exploratory, a legal and theoretical level. The chapter concludes with some final remarks.

I. Drug Evictions in the Netherlands

In this section we analyze how authorities in the Netherlands use eviction to combat drug-related crime in residential areas. We first describe the Dutch policy on drugs (A) and then assess how local authorities (B) and private landlords (C) use eviction to tackle drug-related crime.

To truly understand the Dutch approach, some key characteristics of the Dutch housing market bear discussion. In 2017, the housing stock in the Netherlands included 7,686,178 premises.[13] In the last few decades, it has been government policy to promote home-ownership and this policy has been successfully implemented. Whereas in 1986, the minority of the housing units were owner-occupied (43%), in 2017 the majority of all units are occupied by the owners (56.2%). Nearly all other housing units are rental premises. Housing associations (semi-public landlords) own nearly 70% of the rental housing units. This is 29.5% of the total housing stock. According to the Housing Act 2015, housing associations are non-profit landlords that are legally obliged to rent the majority of their premises to people with a relatively low annual income. Private landlords own 13% of the housing stock, which is roughly 30% of the rental housing units. Research shows that most of the private rental housing units are owned by private investors (77%), and the other premises are owned by institutional landlords such as insurance companies. The vast majority of private investors own less than ten premises.[14]

A. Drug Policy and Drug-Related Crime in the Netherlands

In the Netherlands, the use of illegal narcotics became a serious public order and health issue in the late 1960s. Around that time, a public debate started on the rapid increase of drug

[12] The US housing stock contains owner-occupied housing units and rental housing units. Within the rental housing unit federal assitance programs exist such as public housing, but also privately owned subsidized housing.

[13] *Voorraad woningen; eigendom, type verhuurder, bewoning, regio*. STATLINE CENTRAAL BUREAU VOOR STATISTIEK (Nov. 3, 2017), http://statline.cbs.nl/Statweb/publication/?VW=T&DM=SLNL&PA=82900NED&D1=a&D2=a&D3=0,6-18&D4=a&HD=180223-1114&HDR=T&STB=G1,G2,G3.

[14] MARIEKE JONKER-VERKAART & FRANK WASSENBERG, KANSEN VOOR PARTICULIERE HUUR IN NEDERLAND 14 (2015).

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misuse, the criminal approach and the subsequent criminalization of large parts of the population.[15] As early as the 1970s, the Dutch started to create alternatives to the punitive prohibition approach. This caused in 1976 the distinction between cannabis (soft drugs) and drugs with unacceptable risks for public health (hard drugs), followed by the decision to officially tolerate the sale and possession of cannabis to prevent cannabis from becoming a gateway drug.[16] At the time, cannabis was the only "soft drug" under Dutch law. Today, the Opium Act includes more than 250 different soft drugs.

The Dutch drug policy is commonly known as the "tolerance policy": cannabis sale and possession are tolerated as a matter of government policy, but are officially still criminal offences.[17] In the early days of the tolerance policy, few rules regulating the upcoming drug market existed and the number of tolerated cannabis outlets – better known as "coffeeshops" – grew exponentially. In 1980, the first guidelines for small retail in cannabis came into force.[18] Over the years, the guidelines were adapted and formalized by the Public Prosecution Service. As long as coffeeshops comply with the following rules, coffeeshops avoid closure and the owners avoid criminal prosecution: coffeeshop owners may neither advertise; nor sell hard drugs; nor cause public disturbance; nor sell to minors nor allow them in; nor stock up more than 500 grams of cannabis; nor sell to anyone other than residents of the Netherlands nor allow them in.[19]

While a formal non-enforcement policy exists towards possessing five grams of cannabis and the sale from coffeeshops, coffeeshop owners may neither cultivate more than five plants nor purchase cannabis.[20] This situation is known as the "backdoor problem": transactions at the backdoor have always remained unregulated and hence illegal.[21] Due to this gap in the tolerance policy, organized crime is controlling the supply-side of coffeeshops.[22] As long as five cannabis plants remains the maximum tolerated amount and the backdoor stays unregulated, growers and coffeeshop owners and employees are forced into the underworld to supply coffeeshops.

Growing cannabis for the purpose of coffeeshops is not only excluded from the tolerance policy, the government started a forceful fight against cannabis cultivation, especially in housing units. Previous research found that cannabis is predominantly cultivated indoors instead of out in the open air.[23] In 2007, it was found that 78-90% of the discovered growing facilities were found inside housing units, and the vast majority were rental units.[24] Similar results were presented in another study.[25]

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[15] Henk Jan van Vliet, *The Uneasy Decriminalization: A Perspective on Dutch Drug Policy*, 18 HOFSTRA L. REV. 717, 721 (1990).
[16] *See* Van Vliet, *supra* note 15; MARGRIET VAN LAAR & MARIANNE VAN OOYEN-HOUBEN, EVALUATIE VAN HET NEDERLANDSE DRUGSBELEID (2009).
[17] Opium Act (1976), art. 3.
[18] Richtlijnen voor Het Opsporings- en Strafvorderingsbeleid Inzake Strafbare Feiten van de Opiumwet 137, *Staatscourant* (1980).
[19] Aanwijzing Opiumwet 5391, *Staatscourant* (2015).
[20] Opium Act, art. 3.
[21] Marianne Van Ooyen-Houben, *Hoe Werkt Het Nederlandse Drugsbeleid? Een Evaluatieve Verkenning van Een Decennium Drugsbeleid*, 32 JUSTITIËLE VERKENNINGEN 24 (2006).
[22] Wim Huisman & Hans Nelen, *The Lost Art of Regulated Tolerance? Fifteen Years of Regulating Vices in Amsterdam*, 41 J. L. & SOC'Y 604 (2014).
[23] MARIJE WOUTERS ET AL., HARDE AANPAK, HETE ZOMER 8 (2007).
[24] A.C.M. SPAPENS ET AL., DE WERELD ACHTER WIETTEELT 111 (2007).
[25] WOUTERS ET AL., *supra* note 23, at 102-103.

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The governmental fight against cannabis cultivation received a boost in 2003 and has been intensified ever since. In that year, an influential criminological study was published that called for a more forceful fight against cannabis growing.[26] Accordingly, the Dutch government published plans in 2004 (the *Cannabisbrief* 2004) with a 'comprehensive approach' as the key element. This means that all public and private stakeholders should be involved to address the problem of cannabis cultivation. Especially the housing associations were named as key stakeholders. The government encouraged local authorities[27] to make detailed agreements with these semi-public landlords and to document these in so-called cannabis covenants. In 2006, the government even created a Cannabis Covenant template. This template cited, for example, that a housing association should cancel the lease and evict the tenant if a growing facility is discovered in a rental premises.[28] As such, landlords became important players in the fight against drug-related crime.[29]

In 2009, five years after the *Cannabisbrief* was published, 205 municipalities had developed cannabis covenants.[30] Yet, research shows regional differences, especially among housing associations. In Eindhoven, for example, housing associations opposed the idea that housing providers should focus on 'catching criminals'.[31] At the same time, police officers from that area complained about the indifference of housing associations towards controlling drug-related crime.[32]

Several scholars declare the success of the comprehensive approach: eviction or the threat of eviction seems an effective measure to curb cannabis cultivation.[33] Spapens and others[34] use interviews and news articles to show the success of the comprehensive approach. They hold that homegrowers fear the risk to be removed from their social environment, their neighborhood, their community and 'extended families.' With the threat of eviction, the fear to use the own (rental) home as a growing facility increases.[35] Spapens and others refer to news articles in which people beg for a second chance after being evicted due to cannabis cultivation. Yet, the researchers acknowledge the lack of reliable data to truly measure the effectiveness of the 'comprehensive approach'.[36]

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[26] *See* FRANK BOVENKERK & W. HOGEWIND, HENNEPTEELT IN NEDERLAND. HET PROBLEEM VAN DE CRIMINALITEIT EN HAAR BESTRIJDING (2003). *See also* Spapens et al.*, supra* note 24, at 23.

[27] Throughout the chapter, the term "local authority" will be used to describe the authority entitled with this power while it is officially the (in Dutch:) *burgemeester*. In the Netherlands, a *burgemeester* is a non-elected administrative authority appointed by the national government. The burgemeester chairs both the executive board and legislative council of a municipality, and is responsible for safety and public order. The title for burgemeester is sometimes translated as "mayor" or as "burgomaster" to emphasize the significant difference between the Dutch mayor and the British mayor. However, unfamiliarity of the Dutch concept burgemeester in international context and the – in our view – lack of proper translation induced us to use the term local authority.

[28] *See* SPAPENS ET AL., *supra* note 24, at 23-25, 106-107; Marc Schuilenburg & Wytske van der Wagen, *Samenwerking in de Criminaliteitsbestrijding: Kwalitatief Onderzoek Naar de Integrale Aanpak van Illegale Hennepteelt*, 10 TIJDSCHRIFT VOOR VEILIGHEID, 10 (2011).

[29] SPAPENS ET AL., *supra* note 24, at 25.

[30] VAN LAAR & VAN OOYEN-HOUBEN, *supra* note 16; Schuilenburg & Van der Wagen, *supra* note 28, at 13.

[31] SCHUILENBURG & VAN DER WAGEN, supra note 28, at 15.

[32] *Id.*

[33] WOUTERS ET AL., *supra* note 23, at 114, 118.

[34] SPAPENS ET AL., *supra* note 24, at 113.

[35] *Id.*

[36] *Id.* at 126, 138.

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Although data are scarce, we were able to collect data on the number of discovered and dismantled growing facilities between 2003 and 2017. Between 1999 and 2003, about 1,000 and 2,000 growing facilities were dismantled each year.[37] This increased significantly after 2003, the starting point of the 'comprehensive approach', with about 5,000 to 6,000 dismantled growing facilities per year.[38] Although, the researchers acknowledge that the data in the early 2000s might be incomplete, the numbers clearly indicate a strengthened approach towards growing facilities over the years.

In 2007, two studies suggest that the increased fight against growing facilities in rental housing units triggered cannabis growers to use other premises such as owner-occupied homes, empty buildings or commercial buildings. One of the main reasons for the shift to owner-occupied housing units was the lack of a legal instrument to evict an owner-occupier.[39] This changed at the end of 2007 when the legislature decided to extent the scope of the already existing administrative closure power with homes and other non-public premises (Article 13b Opium Act).[40] Before the extension, local authorities were already entitled to close down public premises used for illegal drug trades, including coffeeshops if they fail to comply with the rules under which they are tolerated.[41] As of November 2007, local authorities are entitled to close down public premises, such as restaurants and companies, and non-public premises, including owner-occupied housing units, if illicit drugs are sold, delivered, provided, or present for one of these purposes at or near a property.[42] The latter use of the closure power evidently results in eviction.

The start of the comprehensive approach in 2003 and the extended scope of the administrative closure power in 2007 represent the mounting concentration on eviction to control drug-related crime in the Netherlands. Without bringing criminal law into play, drug activities can be fought by local authorities and private landlords who both have the instrument of eviction at their disposal. The following two sections concentrate on administrative drug evictions by local authorities and drug evictions by private landlords, respectively. Both sections present the available data on the number of drug evictions, examine the applicable legal frameworks and discuss key issues in case law.

B. Administrative Law Evictions by Local Authorities

Drug evictions by local authorities in the Netherlands are subject to administrative law. Unlike evictions initiated by landlords, drug evictions initiated by local authorities are not based on a breach of the lease but on a violation of the law. Local authorities are entitled to issue a closure order if drugs are sold, delivered, provided, or present for one of these purposes at or near a property.[43] Although the closure power goes beyond just eviction, closing a housing unit evidently results in eviction of the household. As such, closing a housing unit falls under our definition of eviction.[44]

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[37] MAGRIET VAN LAAR ET AL., NATIONALE DRUGSMONITOR JAARBERICHT 171 (2004).
[38] *Id.* at 354.
[39] SPAPENS ET AL., *supra* note 24; WOUTERS ET AL., *supra* note 23.
[40] Kamerstukken II. *Staatscourant*, 30515(3) (2005/2006).
[41] Richtlijnen voor het opsporings- en strafvorderingsbeleid inzake strafbare feiten van de Opiumwet 187, *Staatscourant* (1996); Aanwijzing Opiumwet, *Staatscourant* (2000).
[42] Opium Act, art. 13b.
[43] *Id.*
[44] *Id.*

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Under Dutch law, the owner, owner-occupier, business owner or tenant may file a notice of objection with the local authority who issued the closure order (Article 7:1 General Administrative Law Act, hereafter: GALA). The local authority reviews the objection notice and reconsiders the order. If the local authority considers the objection unfounded, the party may appeal to the district court (i.e., the court of first instance).[45] The district court can dismiss the appeal or rule that the closure order is unlawful. In the latter case, the court will annul the order and instruct the local authority to issue a new order.[46] Rulings of district courts are open to higher appeal at the Administrative Jurisdiction Division of the Council of State (the Council of State).

To provide insights into the number of drug-related evictions conducted by local authorities, we surveyed fifty municipalities – the forty largest and ten other municipalities – in 2015 and 2016 about the total number of premises they closed because of drug activities.[47] In 2015, 46 municipalities responded to the survey (92%). The respondents issued a total of 593 drug-related closure orders. In 2016, the number of drug-related closures significantly increased: the respondents closed 793 buildings involved in drug-related crime (88% response rate). In 2016, the news site *The Post Online* conducted a similar survey among all municipalities in the Netherlands (N=388). With a response rate of 68.8%, this study reveals that the respondents closed 988 buildings due to drug-related crime in 2016.[48] These findings show that local authorities use their closure power on a regular basis and that administrative closure and subsequent eviction most often occur in larger municipalities.

We analyzed case law to uncover the main legal issues in applying the drug-related closure power.[49] The first legal issue is proving that drugs are being sold, delivered, provided, or present for one of these purposes at or near a property. Initially, the closure power was primarily introduced to close premises involved in illegal drug trade and to tackle coffeeshops that violate the tolerance conditions.[50] For a number of years, courts and local authorities were uncertain whether the mere presence of a large quantity of drugs in the property is sufficient evidence to prove drug dealing.[51] Eventually, the Council of State decided that possessing drugs for "commercial purposes" is sufficient to prove that drugs are being sold at the premises.[52]

To determine if someone possess drugs for "commercial purposes", local authorities use the guidelines from the Public Prosecution Service. These guidelines presume that any amount up till 0.5 grams of hard drugs, five grams of soft drugs or five cannabis plants are for

[45] General Administrative Law Act (1992), art. 8:1.
[46] *Id.* at art. 8:51(a).
[47] MICHEL VOLS ET AL., DE AANPAK VAN MALAFIDE PANDEIGENAREN & DE HANDHAVING VAN DE WONINGWET 55-58 (6th ed. 2017).
[48] Tom Kiel, *Gemeenten Sloten in 2016 Met Wet Damocles Duizend Panden*, POST ONLINE (Oct. 05, 2017), http://politiek.tpo.nl/2017/10/05/tpo-onderzoekt-gemeenten-sloten-2016-wet-damocles-duizend-panden/.
[49] We used the online database of the Dutch judiciary, www.rechtspraak.nl, to gather relevant published Dutch case law, using the following search terms: "Article 13b Opium Act", "eviction" and "drug-related closure". Throughout this chapter, all Dutch case law is referred to using the European Case Law Identifier (ECLI). ECLI is an identifier for case law in Europe and consists of five components. The first part is the acronym "ECLI", the second part is the country code, followed by the code of the court, year of the decision, and unique identifying number.
[50] Kamerstukken II, *Staatscourant*, 25324(3) (1996/1997); Kamerstukken, *supra* note 40.
[51] Rechtbank Noord-Nederland 12 juni 2014 (Neth.) (ECLI:NL:RBNNE:2014:2850); Rechtbank Haarlem 4 december 2012 (Neth.) (ECLI:NL:RBHAA:2012:BY5942).
[52] ABRvS 21 januari 2015 (Neth.) (ECLI:NL:RVS:2015:130).

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personal use.[53] Any amount that exceeds these limits is presumably used for sale. In other words, a quantity of drugs larger than the tolerated amount for personal use is conclusive evidence of sale and therefore sufficient ground for eviction. It is up to the tenant or owner-occupier to prove otherwise.

Similar to drug possession, case law reveals the scope of the closure power is extended to cannabis cultivation. While the parliamentary history of the Opium Act unambiguously shows that the closure power should not be used to close growing facilities,[54] courts find a "large" quantity of cannabis plants (i.e., more than five plants) conclusive proof of drugs sale and hence justifies eviction.[55]

The second legal issue represents indistinctness about the possibility to immediately close a housing unit after someone committed a drug crime for the first time. With the introduction of the closure power, the legislature clarified that the closure power should be used as a last resort. Less intrusive measures, such as a warning or a penalty payment, should always precede eviction. Only "extreme situations" could be exemptions to this rule (Kamerstukken, 2006/2007b; Kamerstukken, 2006/2007c).

Courts quickly characterized any activity involving hard drugs as such exemption, including possession.[56] In cases involving soft drugs, ambiguity exists about the quantity of discovered soft drugs that should indicate an "extreme situation." In one case, the court ruled in one case that possessing 191 cannabis plants without any other indication of drug dealing did not justify the closure.[57] Yet, in another case, 467 grams of cannabis together with a large sum of money was sufficient to close the home.[58] Yet, in the latter case, the Council of State mentioned the geographical location of the municipality near the German border as an important factor for its decision. According to the Council of State, the closure power should be enforced more stringently in municipalities close to the international borders and/or with high coffeeshop density as these municipalities suffer from more drug-related crimes than others.[59] However, in another case, the Council of State approved the policy of the municipality of Groningen, which was neither coffeeshop dense nor located near the international border. Groningen has a written policy that defines drug possession for commercial purposes as an extreme situation. According to this policy, the quantity of discovered drugs is sufficient to prove commercial activities when the quantity exceeds 0.5 grams of hard drugs or thirty grams of soft drugs. The Council of State approved this policy, as long as the local authority reviews each case on its own and includes the circumstances of every case, and investigates whether a less intrusive measure is more appropriate.[60] In other words, the relevance of the rule that eviction is only justifiable in extreme situations has almost relaxed to the point of no importance.

The third legal issue deals with the review of circumstances. The power to close premises used for drug-related crime is a discretionary power. Under Dutch law, discretionary

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[53] Aanwijzing, *supra* note 19.
[54] Kamerstukken, 2005/2006 *supra* note 40; Kamerstukken II, *Staatscourant*, 30 515(6) (2006/2007); Kamerstukken II, *Staatscourant*, 30515(14) (2006/2007a).
[55] ECLI:NL:RVS:2015:130, *supra* note 52.
[56] ABRvS van 28 november 2012 (ECLI:NL:RVS:2012:BY4412); ABRvS 29 juli 2015 (ECLI:NL:RVS:2015:2388); ABRvS 4 mei 2016 (ECLI:NL:RVS:2016:1174); ABRvS 15 juni 2016 (ECLI:NL:RVS:2016:1676); ABRvS 10 maart 2017 (ECLI:NL:RVS:2017:634).
[57] ABRvS 30 juli 2014 (ECLI:NL:RVS:2014:2859).
[58] ABRvS 30 maart 2016 (ECLI:NL:RVS:2016:950).
[59] ECLI:NL:RVS:2014:2859, *supra* note 61.
[60] ABRvS 8 februari 2017 (ECLI:NL:RVS:2017:294).

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powers are subject to a limited judicial review that mainly focuses on the procedural standards.[61] In many cases, local authorities did not apply a contextual approach, but just referred to their policy rules to substantiate their decision to dismiss the objection of the residents.[62] According to local authorities, all possible circumstances surrounding a drug-related activity and all possible consequences of eviction are already considered while drafting the policy rules. As such, they held they are not required to apply a contextual approach to each case as long as their policy rules are in line with the law.[63] Prior quantitative research supports these findings and shows that legal defenses focusing on the disproportionate consequences of the closure for the residents are barely accepted in court.[64]

Yet, in 2016, the Council of State held – in contrast to its earlier interpretation – that all circumstances of a case should be taken into account, irrespective of whether the possible circumstances were considered while writing the policy rules. According to the Council of State, local authorities cannot foresee if certain circumstances will lead to disproportionate consequences in a particular case. As such, instead of focusing just on the procedural standards, the Council of State ruled that courts should also review whether local authorities sufficiently considered all circumstances of a case before they issued the closure order.[65]

An analysis of case law shows that since this Council of State ruling, local authorities indeed consider the circumstances of each case in more detail.[66] Nevertheless, case law shows no signs that courts annul the closure order more often because of the disproportionate consequences for the household. If a court decides to annul the closure procedural reasons are still most influential. In fact, courts still rule that certain consequences of a closure, such as a cancellation of the lease, are irrelevant for the lawfulness of the eviction or they acknowledge the effect of the eviction on children or future housing, but simply rule that the consequences are not disproportionate.[67]

C. Landlord-Tenant Law Evictions by Landlords

As discussed above, landlords are heavily involved in the fight against drugs related crime. Since the introduction of the comprehensive approach in 2003, eviction seems to be their main instrument to tackle drug crime. This section first assesses the applicable legal framework, then presents data on the number of drug-related evictions under landlord-tenant law, and lastly, discusses case law concerning such drug-related evictions.

Under Dutch law, the legal framework of landlord-tenant law evictions is relatively simple. The overwhelming majority of leases are open-ended contracts, even if parties

[61] A.T. MARSEILLE ET AL., BESTUURSRECHT DEEL 2: RECHTSBESCHERMING TEGEN DE OVERHEID (2016).
[62] L. Michelle Bruijn & Michel Vols, *Case note: ECLI:NL:RVS2016:2840: JG 2017/18, No. ECLI:NL:RVS:2016:2840, Oct 26, 2016*, JURISPRUDENTIE VOOR GEMEENTEN 2 (2017).
[63] *Id.*
[64] Bruijn et al., *supra* note 6.
[65] ABRvS 26 oktober 2016 (ECLI:NL:RVS:2016:2840).
[66] Brouwer & Bruijn, *supra* note 57.
[67] *See, e.g.*, Rechtbank Zeeland-West-Brabant van 23 januari 2017 (ECLI:NL:RBZWB:2017:418); Rechtbank Amsterdam van 3 april 2017 (ECLI:NL:RBAMS:2017:2086); Rechtbank Limburg van 29 maart 2017 (ECLI:NL:RBLIM:2017:2853); ABRvS 19 april 2017 (Neth.) (ECLI:NL:RVS:2017:978); ABRvS 22 mei 2017 (ECLI:NL:RVS:2017:1329); Rechtbank Midden-Nederland 13 december 2016 (ECLI:NL:RBMNE:2016:7439); ABRvS 30 november 2016 (Neth.) (ECLI:NL:RVS:2016:3167); Rechtbank Oost-Brabant 14 november 2016 (Neth.) (ECLI:NL:RBOBR:2016:6267); Rechtbank Rotterdam 6 april 2017 (Neth.) (ECLI:NL:RBROT:2017:3323).

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concluded a temporary contract. If a landlord wants to terminate the lease unilaterally and evict the tenant, he or she should go to court.[68] The court uses a strict basic rule to assess the landlord's claim: every breach of the lease allows the court to terminate the lease and, consequently, issue an eviction order.[69] Drug-related activities in a rental premises, such as selling drugs or using the property as location to grow cannabis or create a drug lab, will usually be a breach of the lease.[70] Consequently, the court should first assess if the landlord provided sufficient proof of the accused drug-related activity. If this evidence is persuasive, the court will usually conclude that the lease is breached, that the lease should be terminated and that the tenant should vacate the apartment.[71] This standard procedure is more complicated if a tenant puts forward a proportionality defence. According to the Dutch Civil Code, the court does not have to terminate the tenancy if the breach of the lease does not justify the termination given the nature or minor importance of the drug-related activity.[72] A court may also conclude that the termination and eviction have disproportional consequences for the tenant and other residents.

There are no exact data on the number of landlord-tenant law eviction proceedings.[73] For the private rental sector there are no data available at all, yet, for the social rental sector we found data on the number of eviction judgements. An eviction judgement is a court verdict that requires a tenant to vacate the building. In other words, we do know the number of court cases in which a housing association won the case. Figure 1 shows the number of eviction judgments over the last thirteen years.

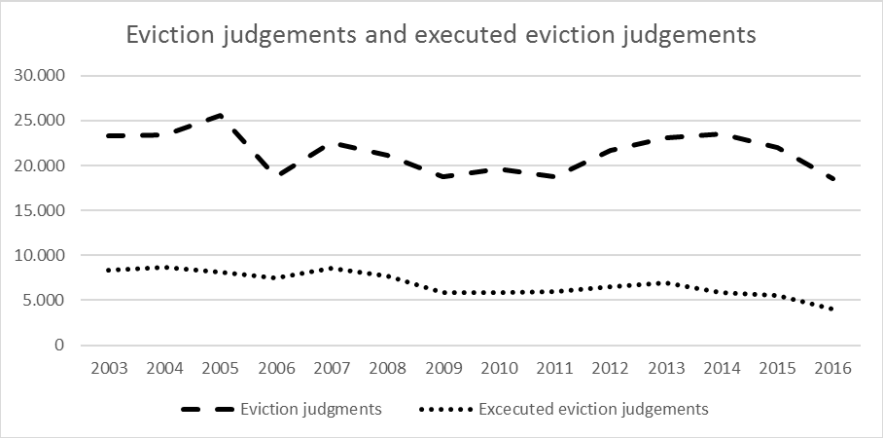

Figure 1 (Sources: Aedes, 2017; Vols, 2018)

[68] Still, the relatively new Act on Movement in the Housing Market 2016 allows that private landlords' temporary contracts can be terminated unilaterally if the contract's period has expired. As a result, private landlords do not need to go to court to terminate the lease. Yet, this option is not available for housing associations, which rent out the vast majority of rental premises in the Netherlands. See arts. 7:231, 7:274 BW.

[69] Art. 6:265 BW. Michel Vols, *Artikel 8 EVRM en de Gedwongen Ontruiming van de Huurwoning Vanwege Overlast*, 2 WR TIJDSCHRIFT VOOR HUURRECHT 55 (2015).

[70] *See* Michel Vols et al., *Courts and Housing Related Anti-Social Behaviour. A First Statistical Analysis of Legal Protection Against Eviction*, INT'L J. L. BUILT ENV'T 148 (2015).

[71] *See* Michel Vols et al., *Human Rights and Protection against Eviction in Anti-Social Behaviour Cases in the Netherlands and Germany*, 2 EUR. J. COMP. L. & GOVERNANCE 156; Michel Vols & Marvin Kiehl, *Balancing Tenants' Rights While Addressing Neighbour Nuisance in Switzerland, Germany and the Netherlands*, 4 EUR. PROP. L. J. 1 (2015).

[72] *See* Supreme Court 22 October 1999, *Nederlandse Jurisprudentie* 1999, 179. Art. 6:265 BW.

[73] Michel Vols, *Evictions in the Netherlands in* EVICTIONS IN EUROPE (P. Kenna ed., 2018).

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The figure shows that the total number of eviction judgments declined over the last years. In 2014 the courts delivered 23,500 eviction judgements, in 2015 there were 22,000 eviction judgements and in 2016 the number declined to 18,500.[74] Unfortunately, the data available on the eviction judgements do not reveal the reason for the proceeding. In other words, the number of cases that involved drug-related crime remains unknown.

Yet, the data do show how many eviction judgments are executed. When a judgement is executed, the tenant did not leave the home after the eviction period and a bailiff had to execute the court order. Figure 1 shows that over the last few years roughly 25% of all eviction judgements were executed. In 2016, 4,800 eviction judgements were executed. We know that over the last few years roughly 4-5% of the eviction judgements were related to drug crime (this was only 3.6% in 2016). In approximately 270 cases in 2015 and 173 cases in 2016 the drug-related eviction judgements were executed by a bailiff.[75]

An analysis of recent published case law concerning drug-related evictions under landlord-tenant law reveals two main legal issues.[76] The first issue concerns the amount of drugs (usually cannabis) that will lead to a breach of the lease.

A quantitative analysis of eviction case law found that courts generally consider drug-related activities a convincing reason for the court to award the landlord's claim and issue an eviction order.[77] Vols and others show that courts issue eviction orders significantly more often in cases concerning drug-related activities than in cases concerning other types of anti-social behavior or crime, such as noise nuisance or violence. These findings confirm the growing importance of landlord-tenant law in the fight against drug-related crime in the Netherlands.

Still, an analysis of recent case law reveals disparity among courts regarding the amount of drugs that qualifies as a breach of the lease. On the one hand there are very strict courts. For example, the District Court Noord Nederland issued an eviction order after eight cannabis plants were found.[78] In another case, the District Court Rotterdam ordered a tenant to vacate the housing unit after growing five cannabis plants.[79] Other courts are less strict. The District Court Midden Nederland, for example, ruled that the presence of eight cannabis plants in a premise does not necessarily constitute a breach of the lease.[80] The Court of Appeal's-Hertogenbosch and the District Court Amsterdam decided that possessing five cannabis plants does not breach the lease and hence does not justify eviction.[81]

The second issue is the question of proportionality.[82] If the tenant breached the lease because of drug-related activities in the housing unit, does this breach justify the eviction of the tenant? A quantitative analysis of case law shows that a proportionality defense is raised in

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[74] *See* Corporatiemonitor, AEDES (July 1, 2016), https://www.aedes.nl/artikelen/aedes/vereniging/kennisproducten-aedes/corporatiemonitor/corporatiemonitor.html; Vols, *supra* note 77.
[75] *Id.*
[76] H.J. TER MEULEN, HENNEPKWEEK WR TIJDSCHRIFT VOOR HUURRECHT 288 (2004); H.J. TER MEULEN, HENNEPKWEEK, DE STAND VAN ZAKEN. WR TIJDSCHRIFT VOOR HUURRECHT (2007); Vols *supra* note 73.
[77] Vols et al., *supra* note 74.
[78] Rechtbank Noord-Nederland 19 september 2017 (ECLI:NL:RBNNE:2017:4158).
[79] Rechtbank Rotterdam 2 september 2016 (Neth.) (ECLI:NL:RBROT:2016:6752).
[80] Rechtbank Midden-Nederland 16 november 2016 (ECLI:NL:RBMNE:2016:6099).
[81] Gerechtshof s-hertogenbosch 11 juli 2017 (ECLI:NL:GHSHE:2017:3143); Rechtbank Amsterdam 6 maart 2017 (ECLI:NL:RBAMS:2017:1331).
[82] *See* Fick & Vols, *supra* note 3; Vols & Fick, *supra* note 7.

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nearly three-quarters of the cases concerning drug-related activities. Nevertheless, the court dismisses the proportionality defense in the vast majority of cases.[83]

Yet, in a small number of cases we noticed that courts are more lenient and allow a proportionality defense and dismisses the landlord's eviction claim. For example, the Court of Appeals-Hertogenbosch held that the presence of one cannabis plant could breach the lease, but ruled that termination of the tenancy and subsequent eviction are disproportional.[84] Similarly, the District Court Noord Nederland ruled that small amounts of cocaine and heroin in the housing unit did breach the lease, but did not justify the termination of the lease and the subsequent eviction.[85] The same conclusion was reached in a case in which roughly 8 grams of cocaine were found. According to the court, the breach of the lease was not serious enough to justify eviction.[86]

These previous sections on drug evictions in the Netherlands not only reveal how immersed local authorities and landlords are in the War on Drugs, but also that the legal issues encountered in case law are fairly identical. The next sections conduct a similar analysis for drug evictions in the US.

II. Drug Evictions in the United States

In this section we analyze how public and private landlords and governmental agencies in the US use eviction to fight drug-related crime. In the first part of this section, we describe the drug-related crime problems in the US and the development of eviction as a tool to rid housing units from drug activities. In the next section, we discuss how Public Housing Authorities (PHA) use eviction to curb drug-related crime from public housing. In the third part, we examine the Narcotics Eviction Program in NYC as an example of how landlords in private housing use eviction to fight drug-related crime. To provide the necessary urban context we first discuss the key characteristics of the US housing market, and NYC in particular.

In the third quarter of 2017, the US housing market included over 136,684,000 housing units.[87] Figure 1 shows that owner-occupied housing units make up the largest part of the total housing stock in the US.

Table 1
Housing Characteristics US national and NYC

Subject	US				NYC		
	2000	2010	2016	2017	2000	2010	2016

[83] *See* Vols et al., *supra* note 74.
[84] Gerechtshof 's-Hertogenbosch 8 augustus 2017 (ECLI:NL:GHSHE:2017:3557).
[85] Rechtbank Noord-Nederland 8 maart 2017 (ECLI:NL:RBNNE:2017:807).
[86] Rechtbank Noord-Nederland 29 augustus 2017 (ECLI:NL:RBNNE:2017:3288).
[87] HUD PD&R. *National Housing Market Summary*. (2017) https://www.huduser.gov/portal/sites/default/files/pdf/NationalSummary_3Q17.pdf.

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All housing units	115,904,641	130,038,080	134,054,899	136,684,000	3,200,912	3,371,062	3,436,084
Owner-occupied	69,815,753 (66.2%)	76,089,650 (66.6%)	74,881,068 (63.6%)	76,146,000 (63.9%)	912,296 (30.2%)	962,892 (31.0%)	1,000,242 (32.0%)
Renter-occupied	35,664,348 (33.8%)	38,146,346 (33.4%)	42,835,169 (36.4%)	42,939,000 (36.1%)	2,109,292 (69.8%)	2,146,892 (69.0%)	2,128,004 (68.0%)
Public housing units	1,282,099 (3.6% of renter-occupied units)	1,168,503 (3.1% of renter-occupied units)	1,074,437 (2.5% of renter-occupied units)	1,040,888 (2.4% of rental housing stock)	180,247 (8.5% of renter-occupied units)	185,000 (8.6% of renter-occupied units)	172,765 (8.1% of renter-occupied units)

Note: Percentage owner-occupied and renter-occupied units represent the percentage of all *occupied* housing units. (Sources: HUD User, 2000; Daniels & Schill, 2001; NYU Furman Center, 2010, p. 34; HUD PD&R, 2017; HUD User, 2018).

Rental premises accounted for 36.1% of the housing stock in the USA in 2017. The vast majority (74%) of the rental housing units are owned by individual investors (Fernald, 2017, p. 14).[88] The federal government provides housing assistance to low-income renters through programs administered by the U.S. Department of Housing and Urban Development (HUD). In 2017, 5,018,939 rental housing units fell under such HUD program. This is 11.7% of the rental housing stock. Within the rental housing sector, federal rental assistance programs provided under HUD programs subsist. For the US as a whole and NYC in particular, public housing, one such federal rental assistance program, constitutes only a small portion of the rental housing stock. Table 1 shows the number of public housing units in the United States declined over the years. In 2000, the national housing stock accounted for 1,282,099 public housing units. This number declined to 1,168,503 public housing units in 2010 and to 1,040,888 in 2017. This is a decline of 18.8% over 17 years. Yet, the overall percentage of public housing units as part of the renter-occupied housing shows a small decrease.

Table 1 also shows the housing market in NYC. While most Americans own their home, the table shows that most New Yorkers live in rental housing. In NYC, the public housing stock dropped severely between 2010 and 2016. The most recent data show that in NYC 172,765 public housing units account for 8.1% of the occupied rental housing in 2016. Similar to the housing stock in the US as a whole, in NCY the overall percentage of public housing units among renter-occupied units shows a small decline.

[88] MARCIA FERNALD. AMERICA'S RENTAL HOUSING 2017. (2017)

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A. Drug-Related Crime in the United States

In the 1970s and 1980s, crime and in particular drug-related crime was plaguing the US. Traditional law enforcement tools such as criminal prosecution were inadequate to tackle drug dealers.[89] Citizens' fear of testifying, along with long procedures and the high standard of proof made criminal law slow and cumbersome in quickly dealing with drug crime.[90] As such, the War on Drugs established a 'shadow system' outside the traditional criminal law procedures.[91] Without bringing criminal law into play, officials target people involved in drug activities using civil penalties that affect public benefits and housing in particular. Especially eviction seems to provide a relatively quick fix to rid premises of drug dealers.[92] One scholar even argued that 'evictions are being used to compensate for the ineffectiveness of the criminal justice system'.[93]

Due to the (drug-related) crime plague, most apartment complexes in inner-city neighborhoods were undesirable to live in, poorly managed and maintained and had inadequate security which resulted in problems with drug-related and violent crime.[94] According to Congress, drug-related criminal activities and violence led to deterioration of the physical environment of public housing developments.[95] In response to the problem, Congress passed the Anti-Drug Abuse Act of 1988. Congress was of the opinion that the Federal Government should provide public housing 'that is decent, safe, and free from illegal drugs' and the Anti-Drug Abuse Act was the solution. The Act supposed to address the increasingly 'reign of terror' inflicted on public housing residents.[96]

Part of the Act was the "one strike"-eviction policy, which requires each PHA to include a provision in the lease allowing the termination of the tenancy if a tenant, a member of the tenant's household, guest, or other person under the tenant's control engaged in drug-related criminal activity on or near the premises.[97] Drug-related activity is defined as 'the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute, or use a controlled substance (as defined in section 802 of Title 21)'.[98]

With the introduction of this one strike eviction policy, the focus of the federal War on Drugs turned towards public housing communities.[99] The Anti-Drug Abuse Act of 1988, the Cranston-Gonzalez National Affordable Housing Act of 1990, the Housing Opportunity Program Extension Act of 1996, and the Quality Housing and Work Responsibility Act of 1998,

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[89] *See* Peter Finn, *The Manhattan District Attorney's Narcotics Eviction Program*, U.S.D.O.J., NAT'L INST. JUST. 2 (1995).
[90] *See* Lisa Weil, *Drug Related Evictions in Public Housing: Congress' Addiction to a Quick Fix*, 9 YALE L. & POL'Y REV. 161 (1991); Finn, *supra* note 93, at 2.
[91] Silva, *supra* note 7.
[92] Weil, *supra* note 94; Finn, *supra* note 93, at 2.
[93] Regina Austin, *Step on a Crack, Break Your Mother's Back: Poor Moms, Myths of Authority, and Drug-Related Evictions from Public Housing*, 14 YALE J. L. & FEMINISM 273, 288-89 (2002).
[94] Sarah Kelly, *Separating the Criminals from the Community Procedural Remedies for Innocent Owners in Public Housing Authorities*, 51 N.Y.L.SCH. L. REV. 379, 384-85 (2006).
[95] 42 U.S.C. § 11901 (1988).
[96] *Id.*
[97] 42 U.S.C. § 1437d(1)(5) (1990). The current version is found at 42 U.S.C. § 1437d(l)(6) (2018).
[98] 42 U.S.C. § 1437d(1)(9) (2018).
[99] Paul Stinson, *Restoring Justice: How Congress Can Amend the One-Strike Laws in Federally-Subsidized Public Housing to Ensure Due Process, Avoid Inequity, and Combat Crime*, 11 GEO. J. ON POVERTY L. & POL'Y, 11, 435, 440-43 (2004); Silva, supra note 7, at 789.

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form the basis of the US drug policy in public housing. These four pieces of federal legislation together create the authority and discretion for PHAs to evict public housing residents.[100]

To increase community safety, similar one strike policies have been adopted in the private housing sector through creative use of nuisance abatement laws.[101] Nuisance abatement is a civil process to sanction property owners for public nuisance occurring on their property to compel the end of these activities.[102] By labelling drug-related activities as public nuisance, nuisance statutes and ordinances can be used to combat drug crimes occurring in the private housing sector. Individuals, attorneys and officials may bring a civil suit seeking abatement of the nuisance and landlords risk fines, revocation of licenses, closure or forfeiture of the property and even imprisonment if they fail to abate the nuisance.[103] This way, landlords become responsible for the drug activities occurring at their premises. Often, the threat of civil remedies is for most landlords enough incentive to evict the problem tenant. In many jurisdictions across the US, landlords may avoid penalties, or curb the suit by evicting the problem tenant household.[104] Some nuisance abatement laws recommend or even require eviction of the tenant's household if the nuisance constitutes (drug-related) criminal activities.[105] As such, landlords have often the feeling that they have no other choice but to evict the problem tenants.[106]

NYC was one of the first jurisdictions to use one strike eviction strategies in private housing. In 1988, the Manhattan District Attorney created the Narcotics Eviction Program (NEP) that uses nuisance abatement laws to evict tenants and occupants who deal drugs and who knew or should have known that illegal-drug dealing was conducted from the premises. Many states followed suit and NEP is frequently heralded as a model for community-based prosecution of drug crimes and third-party policing.[107]

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[100] Silva, *supra* note 7, at 789-91.

[101] *See* John Eck & Julie Wartell, *Improving the Management of Rental Properties with Drug Problems, in* CIVIL REMEDIES AND CRIME PREVENTION: CRIME PREVENTION STUDIES (Lorraine Mazerolle & Jan Roehl eds., 1998); Arthur Lurigio et al., *More Effective Place Management: An Evaluation of Cook County's Narcotics Nuisance Abatement Unit*, *in* CIVIL REMEDIES AND CRIME PREVENTION: CRIME PREVENTION STUDIES (Lorraine Mazerolle & Jan Roehl eds., 1998); Lorraine Mazerolle et al., *Controlling Social Disorder Using Civil Remedies: Results from a Randomized Field Experiment in Oakland, California*, *in in* CIVIL REMEDIES AND CRIME PREVENTION: CRIME PREVENTION STUDIES (Lorraine Mazerolle & Jan Roehl eds., 1998).

[102] *See* Desmond & Valdez, *supra* note 4; Theresa Langley, *Living without Protection: Nuisance Property Law Unduly Burden Innocent Tenants and Entrench Divisions between Impoverished Communities and Law Enforcement*, 52 HOUS. L. REV. 1255 (2015).

[103] *See, e.g.*, WIS. STAT. § 113.823; TEX. CIV. PRAC. & REM. CODE art. 6.125 §§ 2 & 15 (1963); ARK. CODE § 16-105-403 (2016). Cari Fais, *Denying Access to Justice: The Cost of Applying Chronic Nuisance Laws to Domestic Violence*, 108 COLUM. L. REV. 1181 (2008); Desmond & Valdez, *supra* note 4; AMERICAN CIVIL LIBERTIES UNION, SILENCED: HOW NUISANCE ORDINANCES PUNISH CRIME VICTIMS IN NEW YORK (2015), https://www.aclu.org/sites/default/files/field_document/equ15-report-nuisanceord-rel3.pdf (last visited, Apr. 10, 2018).

[104] Emily Werth, *The Cost of Being Crime Free: Legal and Free Rental Housing and Nuisance Property Ordinances*, SARGENT SHRIVER NAT'L CTR. ON POVERTY L. 2-4, 18-19, App. A (2013); HOUS. APARTMENT ASS'N, *Ordinance Guide - Forfeiture Abatement Support Team*, https://www.haaonline.org/Display.aspx?ID=257 (last visited Apr. 3, 2018).

[105] Werth, *supra* note 108.

[106] Desmond & Valdez, supra note 4, at 131.

[107] *See, e.g.*, Scott Levy, *The Collateral Consequences of Seeking Order Through Disorder: New York's Narcotics Eviction Program*, 43 HARV. CIV. RTS.-CIV. LIBERTIES L. REV. 539, 547 (2008). *See also*, L.A.

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With the introduction of the one strike you are out policy in public housing and the use of nuisance abatement laws in the private housing sector, a 'shadow system' of the War on Drugs is created in which drug-related crime is fought using eviction instead of the traditional criminal law measures. In the following two sections, we concentrate on drug evictions in public housing and private housing, respectively. Both sections examine the applicable legal frameworks, present the available data on drug evictions and discuss key issues in case law. In the latter section on drug evictions in private housing, we primarily focus on NYC's Narcotics Eviction Program as an example of using nuisance abatement laws to fight drug-related crime.

B. One-Strike Evictions From Public Housing

Following the passing of the Anti-Drug Abuse Act of 1988, PHAs had still significant discretion in deciding whether or not to evict a tenant because of drug-related criminal activity. It was not mandatory to evict a tenant that was connected to drug crime. The Federal Department of Housing and Urban Development (HUD) even published guidelines that encouraged PHAs to include the context of the individual case in the decision whether to evict or not.[108]

In 1996, this contextual approach to eviction was replaced by a far stricter approach. In that year, in his State of the Union Address, President Clinton challenged local housing authorities and tenant associations. He argued that criminal gang members and drug dealers were destroying the lives of decent tenants and that 'from now on, the rule for residents who commit crime and peddle drugs should be one strike and you're out'.[109] Later that year, a special One Strike Policy symposium was organized. At that symposium, Clinton held that PHAs are legally entitled to evict tenants involved in drug-related crime, yet 'in most places in this country, one strike has not been carried out'.[110] President Clinton argued that PHAs should adopt a strict One Strike Policy:

> 'this policy today is a clear signal to drug dealers and to gangs: If you break the law, you no longer have a home in public housing. One strike and you're out. That should be the law everywhere in America'.[111]

After President Clinton's speeches, HUD published new guidelines that embraced the new One Strike Policy. The guidelines hold that by refusing to evict 'problem tenants, we are unjustly denying responsible and deserving low-income families access to housing and are jeopardizing

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CAL. MUN. CODE § 47.50 (2017); LA Citywide Nuisance Abatement Program (CNAP), http://www.lacp.org/2003-Articles-Main/CNAPprogram.html (last visited Nov. 12, 2017); Shelby County District Attorney, Drug dealer Eviction Program, https://www.scdag.com/preventingcrime/eviction (last visited Nov. 12, 2017); Albany County District Attorney, Narcotics Eviction Program, http://albanycountyda.com/Bureaus/StreetCrimesUnit/Initiatives/SafeHomesSafeStreets/NarcoticsEvictionProgram.aspx (last visited Nov. 12, 2017); Jackson County Prosecutor Drug Abatement Response Team (DART), http://www.jacksoncountyprosecutor.com/161/Drug-Abatement-Response-Team-DART (last visited Nov. 12, 2017); Anti-Crime Covenant, MINN. STAT. §§ 609.5317 & 504B.171, https://jux.law/landlord-tenant-rights-the-anti-crime-covenant/ (last visited Nov. 12, 2017).

[108] Kelly, supra note 94, at 386-387.

[109] President Bill Clinton, State of the Union Address (Jan. 23, 1996).

[110] President Bill Clinton, Remarks by the President at One Strike Symposium (Mar. 28, 1996).

[111] *Id.*

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the community and safety of existing residents who abide by the terms of their lease'.[112] In that same year, the geographic scope of the eviction policy broadened. Instead of 'on or near the premises', PHAs' power to evict applies to any drug-related activity 'on or off the premises'.[113]

Although the One Strike Policy was supposed to introduce a law and order approach to drug-related crime in public housing communities, the HUD guidelines still provide some discretion for PHAs to apply a more contextual approach towards drug-related evictions.[114] Nonetheless, most PHAs decided to impose a 'strict-liability eviction policy', which resulted in the eviction of tenants who were not the offending party, had no knowledge of the drug-related activity nor foresaw that activity.[115]

Federal funding policy clearly gave an incentive to PHAs to adopt this strict approach. It was decided to tie federal funding of PHAs to increased crime-related evictions, which encouraged PHAs not to assess the context of each individual case but to evict tenants connected to drug-related criminal activity regardless the circumstances.[116] In the six months after the One Strike Policy was adopted, the number of evictions increased significantly: from 9.835 to 19.405.[117]

An analysis of case law on the one-strike eviction reveals that this strict-liability eviction policy is controversial. Various courts across the US allowed an "innocent tenant defense". This defense states that eviction is a violation of the tenants' 'due process rights by holding them accountable even if they did not know of or have control over the person engaging in the drug-related criminal activity'.[118] The tenants hold that PHAs do not have the right to evict owners that have no involvement or knowledge of the commission of the drug-related crime.[119] The U.S. Supreme Court, however, eliminated the innocent tenant defense in the case of *The Department of Housing and Urban Development v. Rucker*.[120]

In this *Rucker* case, the Oakland Housing Authority (OHA) initiated eviction proceedings against a number of public housing tenants based on a violation of the lease that obliges the tenants to assure that guests or another person under his/her control shall not engage in any drug-related activity on or near the premise. First, the OHA held that the grandsons of the tenants Lee and Hill were caught in their grandparents' apartment complex parking lot smoking marijuana.[121] Second, OHA alleged that the daughter of tenant Rucker was found with cocaine and a crack cocaine pipe three blocks from the apartment.[122] Third, the OHA held that tenant Walker's caregiver and two others were found with cocaine in Walker's

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[112] "One Strike and You're Out" Screening and Eviction Guidelines for Public Housing Authorities (HAs), 1996.
[113] Housing Opportunity Program Extension Act of 1996, Pub. L. No. 104–120. *See also* the current 42 U.S.C. § 1437d(1)(9) (2018).
[114] *See* Gerald Dickinson, *Towards a New Eviction Jurisprudence*, 23 GEORGETOWN J. ON POVERTY L. & POL'Y 1 (2015).
[115] *Id.*
[116] *See* Kelly, supra note 94. *See* John Harris, *Clinton Links Housing Aid to Eviction of Crime Suspects*, WASH. POST (Mar. 29, 1996), https://www.washingtonpost.com/archive/politics/1996/03/29/clinton-links-housing-aid-to-eviction-of-crime-suspects/fd81a5bb-a407-4f85-b427-5a6d2754da5f/.
[117] Kelly, supra note 94, at 387). See also, AMERICAN CIVIL LIBERTIES UNION, COLLATERAL CONSEQUENCES OF THE WAR ON DRUGS (2003), https://www.aclu.org/sites/default/files/field_document/final%20brochure.pdf at 2.
[118] Dickinson, *supra* note 118, at 21.
[119] Kelly, supra note 94, at 387-88.
[120] *Id.* at 382.
[121] Dep't of Hous. v. Rucker, 535 U.S. 125, 128 (2002).
[122] *Id.*

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apartment on three instances.[123] All these tenants objected to the eviction and advanced the innocent tenant defense.

The Supreme Court dismissed their defenses and held that 'any drug-related activity engaged in by the specified persons is grounds for termination, not just drug-related activity that the tenant knew, or should have known, about.'[124] The Supreme Court found that it is 'not "absurd" that a local housing authority may sometimes evict a tenant who had no knowledge of the drug-related activity'.[125] It held that a strict-liability eviction policy 'maximizes deterrence and eases enforcement difficulties.'[126]

In the same *Rucker* case, however, the Supreme Court emphasized that PHAs are not obliged to evict every tenant that fails to assure that guests or another person under his/her control shall not engage in any drug-related activity on or near the premise.[127] The Anti-Drug Abuse Act of 1988 'entrusts that decision to the local public housing authorities, who are in the best position to take account of, among other things, the degree to which the housing project suffers from "rampant drug-related or violent crime,' ..., 'the seriousness of the offending action,' ... and 'the extent to which the leaseholder has ... taken all reasonable steps to prevent or mitigate the offending action'.[128]

Although the *Rucker* case can be characterized as a clear victory for the strict One Strike policy and no fault evictions, it does not prohibit PHAs to exercise their discretion and adopt a more contextual approach to evictions.[129] HUD's response to the Supreme Court's judgement was not very clear.[130] At the one hand, the Assistant Secretary of HUD urged PHAs in June 2002 to 'consider a wide range of factors in deciding whether, and whom, to evict as a consequence of such a lease violation' and 'balance them against the competing policy interest that supports the eviction of the entire household.'[131] These factors include 'among many other things, the seriousness of the violation, the effect that eviction of the entire household would have on household members not involved in the criminal activity, and the willingness of the head of household to remove the wrongdoing household member from the lease as a condition for continued occupancy'.[132] On the other hand, HUD's Associate General Counsel for Litigation confirmed in August 2002 'that as a matter of law, a PHA may evict all members of a household any time the relevant lease provision is violated.'[133] The Associate General Counsel holds that there is 'no legal authority for the proposition that a PHA cannot adopt a policy of maximum deterrence pursuant to which every violation of the lease provision required by Section 6(l)(6) results in lease termination and household-wide eviction.'[134] However, under

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[123] *Id.*
[124] *Id.* at 131.
[125] *Id.* at 134.
[126] *Id.*
[127] *Id.* at 133-34.
[128] *Id.* at 134.
[129] Kelly, supra note 94, at 391.
[130] Anne Fleming, *Protecting the Innocent: The Future of Mentally Disabled Tenants in Federally Subsidized Housing After HUD v. Rucker*, 40 HARV. CIV. RTS.-CIV. LIBERTIES L. REV. 197, 206-07 (2005); Kelly, supra note 94, at 391.
[131] Letter from Michael Liu, Asst. Secretary, HUD to Public Housing Directors (June 6, 2002) https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_10888.pdf.
[132] *Id.*
[133] *See* Letter from Carole Wilson, Associate Gen. Council for Litigation, HUD to Charles Macellaro P.C. (Aug. 15, 2002), https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11426.pdf.
[134] *Id.*

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the Obama administration, HUD issued a notice encouraging PHAs to exercise their discretion and not to strictly enforce the one strike eviction policy.[135]

Research has shown that the strict-liability eviction policies can be limited by state landlord-tenant law.[136] For example, the Pennsylvania Legislature adopted the Expedited Eviction of Drug Traffickers Act 1995. This Act allows courts to take into account the context of the individual case when deciding to issue an eviction order: 'If the grounds for a complete eviction have been established, the court shall order the eviction of the tenant unless, having regard to the circumstances of the criminal activity and the condition of the tenant, the court is clearly convinced that immediate eviction or removal would effect a serious injustice the prevention of which overrides the need to protect the rights, safety and health of the other tenants and residents of the leased residential premises.'[137] Dickinson holds that this Act and landlord-tenant law from other states can be the foundation of new eviction jurisprudence. This new doctrine 'would not bar One-Strike evictions; it would effectively restrict them when involuntary removal would clearly be unjust as determined by the trial court'.[138] It entitles courts to consider a 'carefully calibrated matrix of factors' such as circumstances surrounding the incident of criminal activity and the condition of the tenant when deciding to permit the tenants' eviction.[139]

C. Narcotics Eviction Program in New York City

Private housing encountered similar drug problems as public housing.[140] For long, landlords in NYC encountered difficulties in ridding their housing units from drug-related crime. They had no legal access to police reports, and tenants were often too afraid to testify against drug dealers. As such, they were unable to prove that illegal businesses were conducted in their premises.[141] This situation changed with the case *Kellner v. Cappellini* in 1986. For the first time the Real Property Actions and Proceedings Law (RPAPL) was used in a case concerning the eviction of tenants who sold drugs from a housing unit.[142] The RPAPL permits the District Attorney (DA) to share police reports with landlords to ensure that landlords will have enough evidence to present their eviction case.

The *Kellner* case marked the beginning of the Narcotics Eviction Program (NEP). In 1988, the Manhattan District Attorney established the NEP to remove drug dealers from residential and commercial premises, using the RPAPL as a legal basis along with New York's Real Property Law (RPL). The three relevant provisions (§715, §711 RPAL and §231 RPL) are generally known as the nuisance abatement laws and were originally used to abate "bawdy house" activities (i.e., prostitution).[143] Yet, similar to other nuisance abatement laws, these statutes can be used against many other activities, such as gambling, weapon trafficking, or

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[135] U.S. Dep't of Hous. and Urban Dev., HUD Notice PIH 2015-9 (Nov. 2, 2015), https://www.hud.gov/sites/documents/PIH2015-19.PDF.
[136] Dickinson, *supra* note 118.
[137] 35 PA. CONS. STAT. § 780-157(b).
[138] Dickinson, *supra* note 118, at 50.
[139] Dickinson, *supra* note 118, at 7, 53.
[140] *See* Finn, *supra* note 93.
[141] *Id.*
[142] Kellner v. Cappellini, 135 Misc. 2d 759 (N.Y. Civ. Ct. 1986).
[143] *See* Jan Roehl, *Civil Remedies for Controlling Crime: The Role of Community Organizations*, 9 CIV. REMEDIES & CRIME PREVENTION 241 (1998); Levy, *supra* 111, at 539-543.

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any other illegal operation. As the name suggests, the primary focus of the NEP is evicting for drug crimes.

We divide the eviction proceeding under the NEP in three main steps. The first step is serving the landlord a written notice stating that the housing unit is used to conduct illegal drug business. The DA and any other duly authorized enforcement agency as well as residents living within two hundred feet of the property can serve such notice (RPAPL §715). Generally, the DA will notify the landlord and will ask to initiate eviction proceedings to remove the tenants and occupants conduct drug business from the building.[144] If the landlord fails to make an application of eviction within five days after receiving the notice, the DA's office has the authority to initiate eviction proceedings as though it were 'the owner or landlord of the premises' (RPAPL §715(1)).[145] Subsequently, not only the tenants and occupants, but also the landlord will be defendant in the eviction proceeding (RPAPL §715).[146]

The second step is commencing a drug eviction proceeding. Landlords are generally not required to serve the tenants with a notice of termination as the lease is deemed void (§231 RPL); instead of a violation of the lease, NEP cases are based on a violation of the law.[147] In fact, these statutory eviction proceedings can be brought even if the lease has no clause prohibiting illegal activities.[148] NEP cases are heard by the special Narcotics Eviction section in the NYC Civil Court. The judge conducts these cases as summary proceedings due to the immediate action needed. It can be seen as a fast-track program in which trials are rarely delayed or postponed.

The third step is proving that the housing unit is used for illegal purposes. The burden to prove that the building is being used for illegal business lies with the petitioner (i.e., landlord, property owner or DA).[149] Instead of the criminal burden of proof – beyond a reasonable doubt – the petitioner needs to establish evidence that the premises is used as illegal drug business by a preponderance of evidence.[150] What is more, the petitioner should prove that the use of the housing unit for such drug activities was conducted with the participation, knowledge or at least acquiescence of the tenant.[151] This standard of proof will be discussed in more detail below.

If the evidence is sufficient, the judge signs a judgment of possession, which returns the housing unit to the control of the landlord.[152] Next, the landlord should arrange for a city marshal to execute the eviction. If a landlord refuses to remove the tenant, the landlord risks a fine of up to $5,000 (RPAPL §715(4)) or forfeiture of the property.[153]

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[144] *See* Finn, *supra* note 93, at 5-6; D. J. Seidman & G. Lebovits, *Drug Holdover Proceedings: An Overview from 'Knew, 'to' Should Have Known, 'to' Strict Liability'*, 28 NYSBA 33 (2007); Levy, *supra* note 111, at 544.

[145] The written notice – which is also sent to the landlord's attorney – informs the landlord about the evidence found and requests the landlord to start eviction proceedings against the tenants.

[146] City of New York v. Rodriguez, 140 Misc. 2d 467, 468 (N.Y. Civ. Ct. 1988).

[147] *Id.* at 471; Jackson Terrace Assocs. v. Patterson, 159 Misc.2d 637, 611 N.Y.S.2d 430, 430 (N.Y. App. Term. 1994); Kings County Dist. Attorney's Office v. Underwood, 543 N.Y.S.2d 247, 249 (N.Y. Civ. Ct. 1989).

[148] NYC Housing Authority v. Grillasca, 18 Misc. 3d 524, 528 (N.Y. Civ. Ct. 2007).

[149] Normandy Realty v. Boyer, 773 N.Y.S.2d 186 (N.Y. Civ. Ct. 2003).

[150] Rodriguez, 140 Misc. 2d 467; Normandy Realty v. Boyer, 773 N.Y.S. 2d 186 (N.Y. Civ. Ct. 2003).

[151] Lloyd Realty Corp. v. Albino, 146 Misc. 2d 841, 843 (N.Y. Civ. Ct. 1990); Marwyte Realty Assoc., Ltd. v. Valcarcel, 150 Misc.2d 1044 (N.Y. App. Term 1991); Howard Ave. Assoc. v. Rojas, N.Y.L.J., Apr. 5, 2002, at 20, col 6; Normandy Realty Inc. v. Boyer, 2 Misc. 3d 407 (N.Y. Civ. Ct. 2003).

[152] Rodriguez, 140 Misc. 2d at 471.

[153] 21 U.S.C. § 881(a)(7).

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Unfortunately, we do not know the number of evictions under the NEP for each year. Yet, we do know that more than 6,000 drug evictions under the NEP have been made in Manhattan from the start of the program, 1988, to 2009.[154] Further quantitative research has been done for the first six years of the program: June 1988 – August 1994. This study shows that eviction proceedings have been initiated in 2,150 cases.[155] Of these 2,150 cases, only 2% of the eviction requests were dismissed by the court or withdrawn by the petitioner. This suggests that that few successful legal challenges have been made to these drug eviction proceedings in the first six years of the program. In 5% of all cases, the court and parties agreed to settle the case and allowed the tenant to remain. The court ordered eviction in 38% of the cases. However, in more than half of the cases (55%), the tenants left the property already before the court ordered eviction. As a result, most of the evictions under the NEP can be seen as informal evictions that happen 'beyond the purview of the court'.[156] Such informal evictions stay out of court records and do not result in any legal data that can be analyzed by legal scholars.

An analysis of case law involving formal evictions, reveal a number of legal issues. Here, we discuss two of them. The first main legal issue is the burden to prove the use of the housing unit for illegal drug businesses. To prove this, the petitioner should demonstrate 1) that the activity constitutes a commercial activity, 2) that the activity is ongoing and continuous, and 3) a nexus between the activity and the premises.

First, the petitioner needs to demonstrate that the drug-related activity is a commercial activity, such as selling or manufacturing drugs.[157] Judges find several factors relevant to distinguish between personal use and commercial use. Factors of a case that may prove commercial use of the premises are testimonies, a prior criminal conviction, a prior drug felony, quantity of drugs discovered, attempts to destroy the evidence, the presence of large amounts of cash, customer lists, weapons, packaging, and scales.[158] It is not required that drugs are discovered in the housing unit as long as there is other evidence connecting the premises to the alleged drug activity and revealing the operation of a drug business.[159] To prove that the tenant conducted commercial activities in the property, the mere possession or personal use – regardless of the discovered quantity – is usually insufficient evidence.[160] Yet, in one case, the court held that any reasonable person would believe that drugs were used for sale when 193 vials of crack and cocaine were found in the apartment, together with a 9 mm machine gun, a pistol with shells and other guns. This was a sufficient amount to prove that the apartment was

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[154] *See* Report of the District Attorney County of New York 2000 – 2009, at 130, https://www.manhattanda.org/sites/default/files/ANNUAL%20REPORT%202000-2009.pdf (last visited Dec. 5, 2017).

[155] Finn, *supra* note 93, at 5.

[156] Matthew Desmond, *Eviction and the reproduction of urban poverty*,118 AJS 1 (2012), at 95.

[157] 1165 Broadway Corp. v. Dayana, 166 Misc. 2d 939, 944 (N.Y. Civ. Ct. 1995); Normandy Realty Inc., 2 Misc. 3d 407, 410, 411; NYC Hous. Auth. ("Lexington Houses") v. Fashaw, 2016 NY Slip Op 51548 (U), 51557 (N.Y. Civ. Ct. 2016).

[158] *See, e.g*., Kings County Dist. Attorney's Office. v. Underwood, 143 Misc. 2d 956, 968 (N.Y. Civ. Ct. 1989); N.Y. County Dist. Attorney's Office v. Geigel, N.Y.L.J., Dec. 27, 1991, at 24, col 6; People v. Daley, 281 A.D. 2d 244 (N.Y. App. Div. 2001); People v. Freeman, 106 A.D. 3d 590 (N.Y. App. Div. 2013); Fashaw, 2016 NY Slip Op 51548 (U), 51557.

[159] Flores v. ERC, 686 N.Y.S. 2d at 281; Clifton Court, Inc. v. Williams, N.Y.L.J., May 27, 1998, p. 28, col. 6 (App. Term. 2d Dep't 2d & 11th Jud. Dists.); Howard Ave. Assocs. N.Y.L.J., Apr. 5 2002, p. 20, col. 6; Geigel, N.Y.L.J. Dec. 27, 1991, p. 24, col. 6; Finn, *supra* note 93, at 3.

[160] 1165 Broadway Corp. v. Dayana, 166 Misc. 2d 939, 944 (N.Y. Civ. Ct. 1995); Normandy Realty Inc. v. Boyer, 2 Misc. 3d 407, 410, 411 (N.Y. Civ. Ct. 2003); Fashaw, 2016 NY Slip Op 51548 (U), 51557.

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used for illegal business.[161] In another case, sixty crack vials, a razor, and empty ziplock bags did not prove that the apartment was used for illegal drug business.[162]

Second, the petitioner needs to prove that the drug-related activity is ongoing and continuous.[163] This implies that an isolated or single incident of illegal drug-sale is insufficient evidence.[164] Similarly, personal use, even if habitual and customary, does not constitute illegal use of the premises in terms of RPL§231or RPAPL 715(1).[165] The available case law shows that it may be difficult to establish such an ongoing, continuous activity. For example, in one case, six drug sales over several months were seen as an ongoing, continuous enterprise.[166] Yet, in another case, two buys in three to four weeks was insufficient to prove such a business.[167]

Lastly, the petitioner needs to demonstrate a nexus between the drug-related activity and the premises.[168] In most cases, the petitioner has to prove that the housing unit is the location of the drug business.[169] Yet, case law shows the term premises is pretty inclusive; its definition depends on the circumstances of a case.[170] For example, in one case, the front of the building was a sufficient nexus between the drug business and the apartment.[171] In another case, drug sales throughout the building justified nexus between the illegal conduct and all apartments on the three floors of the building.[172]

The second main issue revealed by case law is proving that the tenant 'knew or should have known' about the drug business.[173] The petitioner must demonstrate that the tenant participated in, knew, or at least acquiesced in the alleged drug activities.[174] For situations in which there is no proof of actual knowledge, case law developed various factors to determine whether a tenant should have known. These are the presence of drugs, whether the drugs and/or related items were in plain view, the size of the premises, the drug-arrest history of the person who committed the drug activity, heavy flow foot traffic in and out of the apartment, and the connection between the person who committed the drug activity and the subject premises.[175] Another factor that plays a role is the time that the drug sale was conducted. If the sale took place at a time most people are asleep, this is evidence that the activity took place outside of the presence and knowledge of the tenant.[176]

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[161] Underwood, 143 Misc. 2d 965, 968 (N.Y. Civ. Ct. 1989).
[162] Clifton Court Inc. v. Williams, N.Y.L.J., May 27, 1998, p. 28, col. 6 (AT 2d Dept.).
[163] St . John Hous . Dev . Fund Corp . v. Hernandez , 154 Misc. 2d 141 , 145 (N.Y. Civ. Ct. 1992); Normandy Realty Inc. v. Boyer, 2 Misc. 3d 407, 412 (N.Y. Civ. Ct. 2003); Fashaw, 2016 NY Slip Op 51548 (U), 51551.
[164] Lituchy v. Lathers, 232 N.Y.S.2d 627, 627 (N.Y. Sup. Ct. 1962); People v. Ramos, 685 N.Y.S. 2d at 582-83; Boyer, 2 Misc. 3d at 41-2, 410.
[165] 1165 Broadway Corp. v. Dayana, 166 Misc. 2d 939, 944 (N.Y. Civ. Ct. 1995).
[166] People v. Freeman, 106 A.D. 3d 590 (1st Dept 2013).
[167] Fashaw, 2016 NY Slip Op 51548 (U), 51557.
[168] City of New York v. Omolukum, 177 Misc. 2d 796, 801-02 (N.Y. Civ. Ct. 1998); RRW Realty Corp. v. Flores, N.Y.L.J., Feb. 10, 1999, at 28, col. 3; City of NY v. Rodriguez, 140 Misc. 2d 467, 531; Marwyte Realty Assoc., 150 Misc. 2d 1044.
[169] Omolukum, 177 Misc. 2d 796. Lebovits & Seidman*, supra* note 147, at 37.
[170] *See* Lebovits & Seidman*, supra* note 147, at 37.
[171] Rodriguez, 140 Misc. 2d 467.
[172] Kellner, 135 Misc. 2d 759.
[173] Omolukum, 177 Misc. 2d 796, at 921; NYC Hous. Auth. v. Lipscomb-Arroyo, 2008 NY Slip Op 51085(U) [19 Misc 3d 1140(A)].
[174] Lloyd Realty Corp. v. Albino, 146 Misc. 2d 841, 843 (N.Y. Civ. Ct. 1990); *Marwyte Realty Assoc.* N.Y.L.J., Nov. 6, 1991; Howard Ave. Assoc., N.Y.L.J., Apr. 5, 2002, at 20, col 6; Normandy Realty Inc., 2 Misc. 3d 407.
[175] *See* Lebovits & Seidman*, supra* note 145, at 37-39); Lipscomb-Arroyo, 2008 NY Slip Op 51085(U).
[176] Lloyd Realty Corp., 146 Misc. 2d 841, 844.

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This New York's "knew or should have known" standard is a different standard than the federal "strict liability"-standard that is applicable in the one strike you're out-evictions as discussed in the *Rucker* case.[177] In the wake of *Rucker*, the court held in the *Perez* case that the strict liability-standard should also be the standard in NEP cases. [178] However, in *Grillasca* the court set the record straight: the standard of strict liability does not apply to NEP cases.[179]

The NYC Housing Authority (NYCHA), which runs all public housing across the City's five boroughs, can choose to initiate eviction proceedings based on a breach of the lease or based on a violation of the law under the NEP. [180] If NYCHA chooses for the latter course, the lease becomes void per statute (RPL §231(a)) and New York's standard of 'knew or should have known' applies.[181] If the NYCHA chooses for the former course, the *Rucker* standard of strict liability applies. NYC Housing Authority decides on a case-by-case basis whether to proceed under the New York's standard of knew or should have known, without having to terminate the lease, or under the federal standard of strict-liability.

III. Comparative Analysis

In this section, we conduct a comparative analysis to juxtapose and identify similarities and differences in the use of eviction to fight drug-related crime in the Netherlands and the US. The main aim of a comparative analysis is 'to explain differences and similarities as they arise from the description of legal systems under consideration'.[182] We hence do not summarize all findings presented throughout the chapter, but mainly focus on exploring and analyzing differences and similarities. These differences and similarities are explored and analyzed on three different levels, each reaching a more comprehensive level of analysis than the one before: an exploratory level (A), legal level (B), and theoretical level (C). The current section is structured accordingly.

The first step in our comparative analysis is at the exploratory level. In this part, we identify and analyze differences and similarities at an empirical and descriptive level. We compare and contrast the housing context, the characteristics of drug-related crime, the use of evictions to address this type of crime and the availability of data in both countries.

The next step is the comparison on a legal level, which assesses similarities and differences at a more comprehensive level than the exploratory level. In this part, we compare and contrast the applicable legal frameworks and the safeguards offered to evictees. This comparative analysis has two different layers. The first layer is an internal legal comparison within each country between drug eviction procedures in the different areas of law, such as administrative law and landlord-tenant law. The second layer concerns the external legal comparison, comparing the use of eviction to fight drug-related crime between the Netherlands and the US.

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[177] N.Y.C.H.A. v. Grillasca, 18 Misc. 3d 524 (N.Y. Civ. Ct. 2007); Lipscomb-Arroyo, 2008 NY Slip Op 51085(U).
[178] ARJS Realty Corp v. Perez, N.Y.L.J., August 27, 2003 at 19 col. 6, 2003 N.Y. Slip Op. 51220(U), 2003 WL 22015784.
[179] Grillasca, 18 Misc. 3d 524, 528. For other cases *see, e.g*., Fashaw, 2016 NY Slip Op 51548 (U), 51558; Lipscomb-Arroyo, 2008 NY Slip Op 51085(U).
[180] *See* Escalera v. New York Hous. Auth., 924 F.Supp. 1323 (S.D.N.Y. 1996); Howard Ave. Assoc., N.Y.L.J., Apr. 5, 2002, at 20, col 6; Grillasca, 18 Misc.3d 524, 528; Lipscomb-Arroyo, 2008 NY Slip Op 51085(U).
[181] Grillasca, 18 Misc. 3d 524, 528.
[182] *See* Gerhard Danneman, *Comparative Law: Study of Similarities or Differences, in* THE OXFORD HANDBOOK OF COMPARATIVE Law (Mathias Reimann & Reinhard Zimmerman ed., 2006).

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The third and last step is the comparative analysis on a theoretical level, which is the most abstract level. In this part, we provide an explanation for the use of eviction as a tool to fight drug-related crime. We use the third-party policing theory as an explanatory framework to understand and explain the current reliance on eviction in the War on Drugs.

A. Comparison on an Exploratory Level

In this section we describe and assess the most relevant similarities and differences between both countries on the most basic, factual level. We specifically focus on the first aim of this research: analyzing to what extent eviction is used to combat drug-related crime in the US and the Netherlands. We concentrate on three main issues. The first issue we want to touch upon are differences and similarities with regard to the composition of the housing market in the Netherlands and the US. To truly understand the use of eviction as a tool in the War on Drugs, it is essential to take into account the housing context in both jurisdictions. The findings discussed in the sections above show that the current housing market in the Netherlands and the US are both dominated by owner-occupied housing units. This is not surprising as both governments have promoted home ownership. In fact, promoting home ownership has been the cornerstone of the US and Dutch federal housing policy, leading to active interventions in the real estate sector and the financial sector in both countries.[183] Still, in both countries a substantial minority of the housing stock consists of rental housing units. Roughly 35-45% of all housing units in both countries are rental premises. A big difference, however, can be observed in the amount of public rental housing. Whereas housing associations (semi-public landlords) own the vast majority of the total rental housing stock in the Netherlands (about 70%), public housing in the US account for less than 3% of the rental housing stock. The largest share of the rental properties in the US is owned by individual investors (74%). This difference is important to take into account when analyzing and explaining the differences and similarities in the use of eviction in the fight against drug-related crime in both countries.

The second issue concerns the occurrence of drug-related crime problems in residential communities and the attention it receives in both countries. The findings presented above show that both the Netherlands and the US witnessed a rapid increase of drug-related crime problems in the second half of the 20th century. Several scholars and the government of both countries claimed that especially, rental housing estates were increasingly used as sites for illegal drug activities. In reaction, public authorities in both countries started to target (semi-)public and private landlords to engage them in the fight against drug-related crime. Looking at the composition of the rental housing stock in the Netherlands, it was the obvious choice for the government to concentrate its efforts on housing associations. Similarly, in the US, the federal government aimed directly at the PHAs to fight the War on Drugs in residential premises. This might not seem the most obvious choice looking at the relatively small percentage of public housing in the US. Yet, according to Congress, especially public housing developments were plagued by drug-related crime.

The findings also show a movement in semi-public and private housing towards eviction in the fight against drug-related crime. Seeking to rid all types of housing units of drug-related crime, local authorities in the Netherlands received the power under administrative law

[183] *See* Stephen Dane, *Eliminating the Labyrinth: A Proposal to Simplify Federal Mortgage Lending Discrimination Laws*, 26 U. MICH. J. L. REFORM 527 (1993); Vols, *supra* note 77.

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to close any type of housing unit if drug-related activities occurred at or near a housing unit. In the US, private landlords and property owners were dragged into the War on Drugs through the use of civil nuisance abatement laws. One such example is the NYC's Narcotics Eviction Program. Under the NEP, both public and private housing tenants are facing eviction if they engage in drug-related activities. As a result, we maintain that the War on Drugs has pushed authorities to create a shadow system outside the traditional criminal law procedures that relies on eviction and homelessness as sanctions. Using private law and administrative law to fight drug-related crime, local authorities, landlords and property owners received a prominent role in the current War on Drugs.

The third issue concerns the number of drug-related evictions. The findings presented above reveal that drug evictions are evident in both countries. Nevertheless, the size of this shadow system is unknown as the data on the number of drug evictions in the Netherlands and the US are either scarce, outdated or both. As a result, we have no clear overview of how many people are affected by these evictions nor any evidence of the effectiveness of eviction as a tool for crime control. Moreover, as previous studies as well as our own results already indicate, the majority of drug-evictions in both the Netherlands and the US are probably informal evictions, which means that they happen 'beyond the purview of the court' and hence do not appear in court records.[184] Nevertheless, for both countries we can draw two main conclusions from the data we presented above. First, we now know that drug evictions are not just provided by the law, but actually applied in practice. In other words, the data provide a small bridge over the gap between the "law in the books" and the "law in action." Second, the data availability and lack thereof shows that drug evictions are poorly documented.

This exploratory analysis provides some insight into the extent evictions are used to abate drug-related crime from housing units in the Netherlands and the US. The following legal analysis yields a more comprehensive examination of drug evictions by comparing the applicable legal frameworks, relevant case law, and role of actors on two levels: *within* both countries and *between* both countries.

B. Comparison on a Legal Level

In this section we focus on the second aim of the research: showing to what extent the law provides protection against drug-related evictions in both countries. Again, we do not want to repeat all findings presented in the sections above. Instead, we focus on four key issues.

The first issue concerns the creative use of all types of law in the fight against drug-related crime. Comparing the use of eviction to curb drug-related crime in the Netherlands and the US reveals that the solid barriers between the various areas of law have weakened and become blurry as the traditional field of drug control has been extended with other areas of law. The time that criminal law was the main legal discipline that deals with crime seems to be over. The finding presented in the sections above show that administrative law and private law are often mixed, which makes it difficult for most laymen as well as for lawyers to truly understand which legal framework is applicable and what level of legal protection should be offered. What is more, using eviction not only incorporates other areas of law into the business of crime control, but also adds a variety of actors such as landlords and local authorities.

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[184] *See* Desmond & Valdez, *supra* note 4; Matthew Desmond & Monica Bell, *Housing, Poverty, and the Law*, 11 ANNUAL REV. L. & SOC. SCI. 15 (2015); Vols, *supra* note 77.

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The second issue has to do with the "legal trigger" to use eviction. With legal trigger we refer to the legal reason or basis that enables a landlord or an administrative authority to apply their eviction powers. In both countries, two triggers can be distinguished: a breach of the lease or a violation of the law. In the Netherlands, drug evictions initiated by local authorities are based on violation of the law (the Opium Act). Anyone selling, delivering, providing or possessing drugs for these purposes, at or near a housing unit violates the law and may be evicted as a result of a closure order issued by a local authority. Similarly, in the US tenants face eviction if they violate nuisance laws. By labelling drug-related activities as public nuisance, nuisance statutes and ordinances can be used to combat drug crimes occurring in residential premises. We specifically focused on drug evictions under the NEP in NYC. Under that program, tenants risk eviction if they use their housing unit for illegal drug business.

Under Dutch law, landlords can carry out drug evictions based on a breach of the lease. Any drug-related activity will generally breach a lease and provide ground for termination of the tenancy. Similarly, PHAs in the US may evict tenants based on a breach of the lease if they or a member of the household, or guest or other person under the tenant's control engaged in a drug-related criminal activity on or off the premises. Every PHA in the US is required to include such a provision in the lease.

The third issue concerns the scope of drug-related activities subject to eviction. For local authorities in the Netherlands as well as landlords in NYC, personal drug use is an insufficient ground for eviction. In the Netherlands, local authorities may only evict after drugs are sold, delivered, provided or present for the purpose to sell, deliver or provide. Similarly, under the NEP, landlords in NYC must prove commercial activity (e.g., selling or manufacturing drugs). Besides that, an isolated or single incident is not sufficient; the commercial drug activity should be continuous and ongoing. To decide whether the found drugs are for personal use, the court in New York often decides that the mere possession is insufficient evidence and requires additional evidence that proves the commercial activity.

The analysis of drug evictions in the Netherlands shows that the scope of local authorities' power to evict increased over the years. As a result, less strict requirements are applicable. Under Dutch administrative law, courts mainly look at the quantity of discovered drugs to decide whether the discovered drugs are for personal use or for sale. Drug possession for personal use in the Netherlands is acceptable up to five grams of soft drugs, five cannabis plants or half a gram of hard drugs. Any amount above this threshold is sufficient evidence to demonstrate that the drugs are used for sale (i.e., drug possession for commercial purposes). Hence, the scope of local authorities' power to evict no longer just covers drug sales, but also possession and cannabis cultivation.

Landlords in the Netherlands can initiate eviction proceedings after drug possession and cannabis cultivation since generally any drug-related activity breaches the lease. Yet, in many cases courts dismiss the landlord's eviction claim if the quantity of discovered drugs is small (e.g., one cannabis plant or eight grams cocaine). In the US, a more harsh eviction policy exists in public housing. The findings presented above show that PHAs may evict after tenants engaged in the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute, or use, a controlled substance, regardless of the quantity of discovered drugs.

The fourth issue concerns the burden of proof for landlords and local authorities and the legal protection against drug evictions. Our findings show that under Dutch law local authorities are allowed to evict a household based on the drug-related activity that occurred in the property. If the local authority can prove sale or possession of drugs or cultivation of

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cannabis, the household may be evicted, regardless of who engaged in the drug-related activity as long as the activity occurred at or near the housing unit. This bears similarities with the strict liability standard for drug evictions that is applicable in the US public housing sector. The *Rucker* case demonstrates that public housing tenants are responsible for their own activities and the activities of others despite their knowledge of or participation in the alleged activities; the mere drug-related activity is sufficient proof for eviction.

The sections above also reveal a difference in the level of protection of evictees. The right to respect for one's home laid down in both Dutch constitutional as European human right law requires that the violation of the law or breach of the lease (i.e., drug-related activity) should justify the eviction. This means that circumstances surrounding the drug-related activity should be taken into account to decide if a less intrusive measure should be applied. For drug evictions conducted by private landlords in the Netherlands this means that the court should examine the circumstances surrounding the drug-related activity and the possible consequences of eviction for the household if a tenant puts forward a proportionality defense. Yet, as discussed above, a quantitative analysis of case law shows that a proportionality defense mostly functions as a procedural hurdle.[185] Similarly, prior research on Dutch administrative drug evictions, including a quantitative case law analysis, revealed that a proportionality defense is hardly successful in court as well.[186] Courts generally agree that the drug-related activity is in itself a sufficient breach of the lease or violation of the law that justifies the eviction.

The standard of proof for private landlords in NYC is much higher than the standard of proof for drug evictions in the Netherlands and for PHAs under the one strike policy in the US. Under the NEP, the petitioner must prove that the tenant participated, knew, or at least acquiesced to the drug activity. In the wake of *Rucker*, the question was whether the strict liability standard should also be applied in NEP cases. Eventually, several courts ruled that the standard of strict liability does not apply to NEP cases. The statutory burden of proof "knew or should have known" applies to NEP cases. This means that private landlords in NYC are required to apply a much more contextual approach than PHAs.

Lastly, the findings presented in the sections above show that a claim for a more contextual approach arose in both countries. In the Netherlands, local authorities and lower district courts are called upon by the highest administrative court, while PHAs in the US are encouraged by academics and sometimes even by the federal HUD to apply a more contextual approach. Yet, the significant discretionary power of Dutch local authorities and PHAs in the US may intervene with this trend.

C. Comparison on a Theoretical Level

In this last section of the comparative analysis, we compare and contrast the practices in the Netherlands and the US on the third and most abstract level. In this theoretical analysis we focus on the last research aim by providing an explanation for the use of eviction to combat drug-related crime. The third-party policing theory is used as an explanatory framework through which we observe, analyze and eventually explain the current reliance on eviction in

[185] *See* Vols et al., *supra* note 74.
[186] *See* Bruijn et al., *supra* note 6.

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the War on Drugs. First, we describe the meaning of third-part policing. Next, we apply the framework of third-party policing to drug evictions in the Netherlands and the US.

The theory of third-party policing represents a shift in the field of crime control that started in the second half of the 20th century, but became known as third-party policing in the 1990s.[187] This theoretical framework has become influential in criminology and sociology, and has been heralded in legal oriented research as well. The main idea of third-party policing is that crime is no longer merely prevented and controlled by criminal law officials; third parties (i.e., non-criminal law officials), such as public housing agencies, property owners and local authorities, are frequently engaged in the business of crime control.[188] Central to third-party policing practices is the use of legal levers to "motivate" third parties into taking some responsibility for preventing or controlling crime.[189] Legal levers are legal instruments used to co-opt third parties to take on a role in crime control, such as civil forfeiture, orders to control behavior and mandatory reporting.[190]

By bringing a variety of actors into the field of crime control the arm of law becomes longer and reaches beyond the area of criminal law.[191] The once solid barriers between the various areas of law are weakened and become blurry as the traditional field of crime control is extended with other areas of law such as private law and administrative law. Private law for example is no longer just used for resolving private law disputes between individuals; private law procedures and remedies are also used to control and prevent criminal activities.[192]

We hold that third-party policing can be used as the theoretical lens through which the findings presented above can be analyzed to provide an explanation for the use of eviction in the War on Drugs.[193] Looking through this theoretical framework we can identify the different elements of third-party policing in the discussed drug eviction strategies. The third parties engaged in crime control are landlords, PHAs and local authorities. The legal levers, if there are any, may vary from fines to risking lock down of the property. The crime control activity that the third parties should undertake is evicting the tenants and their household who engage in drug-related activities.

Yet, not every third party in our analysis is coerced to use eviction; hence, not every type of drug eviction fits the definition of third-party policing we use. Therefore, we made a distinction between two types of eviction: 1) the third party evicts out of its own initiative, 2) the third party is coerced to use eviction by external forces.

The first category of drug evictions lacks the central element of third-party policing activities: the legal lever. These particular third parties are PHAs in the US and local authorities in the Netherlands. PHAs have long been encouraged to rid public housing from drug-related crime strictly enforcing the one strike eviction policy. They were even forced to include a specific provision in their lease that allows immediate eviction of tenants engaged in drug activities. Yet, changes in administration and developments under state landlord-tenant law, but even the *Rucker* case, show that PHAs can use discretion in deciding whether to evict a

[187] *See* Michael Buerger & Lorraine Mazerolle, *Third-party Policing: A Theoretical Analysis of an Emerging Trend*, 15 JUST. Q. 301 (1998); Mazerolle & Ransley, *supra* note 6; Desmond & Valdez, *supra* note 4.
[188] *See* Buerger & Mazerolle, *supra* note 191, at 301; Mazerolle & Ransley, *supra* note 6, at 2-3, 47.
[189] *See* Buerger & Mazerolle, *supra* note 191, at 301; Mazerolle & Ransley, *supra* note 6, at 3, 45, 51.
[190] *See* Mazerolle & Ransley, *supra* note 6, at 75.
[191] *See* GARLAND, *supra* note 6, at 170.
[192] *See* Mazerolle & Ransley, *supra* note 6, at 67.
[193] *See* CRESWELL, *supra* note 9, at 52, 62.

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tenant despite the governmental policy. There is no legal lever that coerces PHAs into evicting public housing tenants engaged in drug-related activities. Similarly, in the Netherlands, local authorities' power to close a housing unit and subsequently evict the residents if the housing unit is used for drug-related activities is an autonomous power. No legal lever is forcing them into controlling drug crime by using their closure power.

From a theoretical point of view, these drug evictions lack the central element of third-party policing: the legal lever; both Dutch local authorities and US PHAs are not legally forced to take on a crime control role. However, they may still encounter political pressure through governmental notices and policies.

The second category represents the drug-evictions that are the epitome of third-party policing. In both the NEP in NYC and drug evictions exercised by private landlords in the Netherlands, a government agency – respectively a DA or local authority – coerces crime control activities by drawing on legal levers: civil sanctions or closure of the premises. The onus for drug activities occurring at housing units are, directly or indirectly, placed on landlords and property owners, which gives them little to no choice but to initiate eviction proceedings.

Under the NEP, a landlord will be asked to begin eviction proceedings against tenants and their household who use the premises for illegal drug business. If the landlord refuses or fails, the DA will take over, 'acting as though it were the owner or landlord of the premises' and the landlord becomes the defendant (together with the tenant) instead of the petitioner in the eviction proceedings. Moreover, the landlord risks a fine up to $5,000 and even forfeiture of the property.

The NEP is an example of using nuisance abatement laws to place the responsibility to curb drug-related crime on landlords and property owners. Landlords risk fines, revocation of licenses, closure or forfeiture of the property and even imprisonment if they fail to abate the nuisance. The threat of these remedies is for most property owners and landlords enough incentive to evict the problem tenant.[194]

In the Netherlands, private landlords do not face direct consequences if they fail to curb the drug-related crime such as landlords in NYC, but they do risk severe consequences. Landlords might face closure of their premises if they fail to rid the premises of drug-related crime. If a local authority closes a rental housing unit not only the household will be removed, but the landlord loses the possibility to rent the place to someone else for the remaining time of the closure period.[195] In fact, even if the landlord is the one to report the drug activities to the police, the landlord might face closure of the rental premises and hence loss of income.[196] As such, landlords are (indirectly) forced to assume some responsibility for the drug-related activities of others and hence for correcting it.

Concluding Thoughts

This chapter has shown that the use of eviction as a tool for crime control has spread throughout the US and the Netherlands. Crime control is becoming more decentralized and a

[194] *See* Barbara Smith et al., *Ridding Neighborhoods of Drug Houses in the Private Sector*, WASHINGTON, DC: AMERICAN BAR ASSOCIATION (1992); Fais, *supra* note 107, at 1194; Desmond & Valdez, *supra* note 4; Werth, *supra* note 108; AMERICAN CIVIL LIBERTIES UNION, *supra* note 107.
[195] *See* Michel Vols & L. Michelle Bruijn, *Case note: ECLI:NL:RVS:2015:1447: JG, 15.0045, No. ECLI:NL:RVS:2015:1447, 3 p., May 06, 2015*, JURISPRUDENTIE VOOR GEMEENTEN 4, 2015.
[196] ABRvS 6 mei 2015 (ECLI:NL:RVS:2015:1447).

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variety of actors other than criminal justice officials have been allocated to curb misconduct. In many Western jurisdictions, such as the Netherlands and the US, local authorities and civil society are incorporated into the field of crime control, especially within the War on Drugs. Yet research on this topic stayed behind. Taking evictions to fight drug-related crime as an example of this form of crime control, we reached three main conclusions.

First, eviction has become a common strategy to curb drug-related crime from housing units in both countries. Second, the analyses of applicable legal frameworks and case law in both the Netherlands and the US reveal that the judiciary aligns with the "tough on drugs" approach. The third conclusion concerns an explanation for the first two: landlords and local authorities are pressured and coerced to evict entire households if a resident engaged in drug-related activities. This approach is identified by the term third-party policing. Landlords are held responsible for drug activities occurring at their premises and are coerced to abate these activities or else they risk severe consequences such as fines or closure of the housing unit. Financial and political pressure is used to encourage local authorities in the Netherlands and PHAs in the US to evict households engaged in drug-related crime.

However, a consequence of these third-party policing activities in the War on Drugs is that not only landlords and local authorities become responsible for the drug-related criminal activities of others, but also citizens. We hold that the onus is placed on the law-abiding members of the household and the legal lever to engage them in the fight against drug activities is eviction. A resident who takes no part in drug activities can be forced to remove from the housing unit if another member of the household (in some cases even a guest) engaged in drug activities. Future in-depth research is needed on the exact consequences of third-party policing in the War on Drugs.

Over the years, various scholars criticized these drug eviction practices.[197] Yet, our intention was never to conduct normative research. The aim of this chapter was to show that eviction is one of the most powerful instruments used at the disposal of third parties in the Netherlands and the US to control drug-related crime. As such, we provided an overview of how the drug eviction laws in the Netherlands and the US read and work and explained these findings to deepen our understanding of how drug-related crimes at or near residential properties are combatted. With this chapter, we contribute to the growing body of scholarly literature on eviction, the war on drugs and third-party policing.

[197] *See, e.g.*, Weil, *supra note 94*; Levy, *supra* note 111; Langley, *supra* note 106; Michelle Ewert, *One Strike and You're Out of Public Housing: How the Intersection of the War on Drugs and Federal Housing Policy Violates Due Process and Fair Housing Principles*, 32 HARV. J. ON RACIAL & ETHNIC JUST. 57 (2016).

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