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Playing It by the Rules

Local Bans on the Public Use of Soft Drugs and the Production of Shared Spaces of Everyday Life

In a nutshell, this book is about formalized social control in public space; it examines the different ways shared public spaces of everyday life are used and perceived, focusing on the manner in which the urge to control such space is operationalized, and how in turn formalized control effects the way space is produced and used. It does so triggered by the investigation of an archetypical Dutch phenomenon: local bans on the public use of soft drugs.



Danielle A.M. Chevalier

Danielle Chevalier (1973) studied Law and Cultural Anthropology at Utrecht University. After graduation, she gained a broad expertise in several positions at the national government. Danielle continued her career as a consultant specialized in social issues and then returned to university to pursue a PhD. She conducted her current research at the Bonger Institute for Criminology and the Amsterdam Institute for Social Science Research, both linked to the University of Amsterdam.

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Production of Shared Spaces of Everyday Life**

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Title in Dutch: Het volgens de regels spelen. Lokale verboden op het publiek gebruik van soft drugs en de productie van gedeelde ruimten voor alledaags gebruik.

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Playing It by the Rules

**Local Bans on the Public Use of Soft Drugs and the
Production of Shared Spaces of Everyday Life**

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1. Introduction

1.1 The Appearance of a Peculiar Phenomenon

1.2 Initial Empirical Research Questions

1.3 Theoretical Continuation

1.4 Plan of the Book

1. Introduction

'Police reports clearly indicate that for some years now the district has been experiencing nuisance from groups of youths smoking joints. Broadly speaking, the nuisance consists of loitering and urinating in doorways, obstructing the access to residences, plastering doors, spitting and scoffing at residents and passersby, littering, yelling, etc. The adolescents threaten residents who request them to leave, vandalize property, provoke fights, and also brawl amongst themselves. From the area concerned, due complaints have been received from residents and entrepreneurs, by telephone and written communication, and via a signed petition. Adding to the issues is that in De Baarsjes¹ several coffeeshops² are located in each other's vicinity, which draw in youths from the Westelijke Tuinsteden,³ where few coffeeshops can be found. Amongst these youths are many minors, who hang about the coffeeshops and buy soft drugs⁴ off others old enough to buy in the coffeeshops.'⁵

In 2006 a ban on using soft drugs was installed on Mercatorplein, a square in the De Baarsjes district in Amsterdam.⁶ The citation above was taken from the municipal document presenting the arguments to install this ban on that particular square. It was not the first ban of its kind, but it did receive extensive national and international media coverage. In part the media attention was enhanced by the evocative municipal sign that was designed to announce the ban. The sign is round with a large red banner and depicts a joint held between two fingertips. The joint is alight and in the smoke coming from the burning tip little hemp plants are pictured. This sign got stolen so often it was eventually made possible to buy it.⁷ The sign has become the dominant imagery used by the media whenever a ban on using soft drugs in public space is written about.

¹ De Baarsjes is the name of the district this document pertains to.

² A coffeeshop is a designated selling point for cannabis. The concept is further explained in chapter 2.

³ The *Westelijke Tuinsteden* refers to suburbs adjacent to the De Baarsjes district.

⁴ The term 'soft drugs' is expounded upon in chapter 2 (section 2.1).

⁵ Motivation of decision to install the ban on Mercatorplein. Decision Reference 06/WW019.

⁶ Concretely, it comprised a ban on smoking joints on the square. Soft drugs is the formal term connecting the municipal ban to the national Opium Act.

⁷ It is still possible to order the sign for about €60, for example via (last viewed on 12-09-2014): <https://www.informatiebord.nl/p/2539/verkeersbord-op-maat/grappige-verkeersborden/informatiebord-blowverbod/>

The ban did not come about on the spur of the moment. In order to install the ban on Mercatorplein, the municipality's local byelaws had been altered in the previous year (22 December 2005). A clause was added that authorized the local administration to appoint areas for a ban on the public use or having present of soft drugs. The ban subsequently installed on Mercatorplein was successfully explained as a necessary measure to combat nuisance caused in the public space of the square by customers of the various coffeeshops. The decision to install the ban was motivated by the persistence of considerable nuisance on the square. The individuals causing the nuisance were indicated to be young males flocking to the square from the further outlying western suburbs of Amsterdam. In the media these young males were further specified as having a Moroccan background. All in all, the ban on Mercatorplein was firmly positioned as a resolute measure to combat problems of immigrant youths exhibiting drug-related misbehavior in shared urban public space.

Figure 1.1 The municipal sign used on Mercatorplein, depicting the ban on using soft drugs.



1.1 The Appearance of a Peculiar Phenomenon

Two years after the instalment of the ban on Mercatorplein, in the course of the year 2008, multiple reports appeared in the media of analogous local byelaws being promulgated in various Dutch municipalities, banning the use of soft drugs in their public spaces. The reports were noteworthy for their content, but also particularly intriguing because of the quantity in which they appeared. It seemed as if such bans were being installed everywhere. In June 2008 a national newspaper states that local bans on the public use of soft drugs were firmly on the rise, with fourteen such bans

in place and another seventeen under deliberation nationwide.⁸ Curiously, the media reports that turned up in 2008 of bans on the public use of soft drugs being installed referred to localities such as Weststellingwerf, Barneveld, and Grave. To the Dutch reader these place names have a familiar sound, even though not everyone will be able to accurately locate them on a map. Generally, these names conjure up an image of small provincial towns accommodating the mental heartland of the Dutch; they do not initially evoke big city profligacy, coffeeshops galore, or immigrant issues. Be that as it may, the individual bans were all presented as a logical response to problems of nuisance experienced in public spaces because of soft drug use. The nuisance inducing the individual bans was extensively noted, though at times it was also challenged or at least put into perspective. Remarkably, the overall process of the widespread and rapid implementation of local, municipal byelaws regulating the use of soft drugs in public space was chronicled, but not questioned or problematized.

The proliferation of local bans on the use of soft drugs in public space however most certainly did give ample cause for deliberation: why, all of a sudden, did so many municipalities decide to implement this measure? At first sight, there seems to be no easy conclusive explanation. Was there an actual and apparent increase in nuisance caused by the use of soft drugs in public space? If so, this cannot be easily derived from circumstantial factors. First of all, the rapid increase in bans could not be explained by an augmentation of coffeeshops. In the first decade of the twenty-first century, coffeeshops were not shooting out of the ground, creating new dynamics in localities. Quite the contrary, the government policy aimed at lessening the number of coffeeshops was sorting effect and accordingly their numbers were decreasing.⁹ Undoubtedly a few new enterprises opened their doors, but not to such a degree as to explain the rapid increase in bans. Secondly, the prevalence figures do not offer an easy answer either. The number of cannabis users in the Netherlands has been fairly stable since the 1997, and stable also in characteristics such as age and ethnicity. There certainly wasn't any sudden or major increase of users of soft drugs in the run-up to 2008, either in general or specifically among immigrant youths (National Drug Monitor, 2012: 59–61, 66).

Other structural explanations did not offer themselves either. Granted, in July 2008 a ban on smoking tobacco was implemented in all public buildings, including cof-

⁸ Newspaper *Algemeen Dagblad/Groene Hart*, 18 June 2008, p.6. No mention is made on how these numbers were attained.

⁹ From 846 in 1999 to 651 in 2011 (Bieleman et al., 2013: 18).

feeshops.¹⁰ It could be argued that this induced an upsurge of people smoking their joints in the public spaces in the vicinity of coffeeshops and thus explains the upsurge in bans on such behavior. Many of the bans on the use of soft drugs in public space however had been initiated before that benchmark date. Also, the minimum age of coffeeshop customers had been raised from sixteen to eighteen years. It is plausible that this enticed people under the age of eighteen to use their soft drugs in public space, as the coffeeshop was no longer accessible for them. This age limit however had been implemented in 1996, a good five years before the first ban on public use of soft drugs saw the light of day¹¹ and twelve years prior to the upsurge of bans in 2008. Overall, the regime on drugs in the Netherlands has arguably become more restrictive, certainly in tone, in the past two decades, but regulation has predominantly hit the market side and not the individual consumer.

Hence, the sudden rise of local bans on the use of soft drugs in public space cannot be easily accounted for through an increase of coffeeshops or users, nor can it unequivocally be related to changes in policy regarding coffeeshops. The consecutive question then is whether the bans actually reflect a veritable increase in drug-related nuisance in public spaces. Again, an unequivocal affirmation does not follow. Though these local bans were grounded in public order jurisdiction, on closer inspection their immediate causes seemed to vary significantly. It appeared as if similar regulations were being applied in substantively dissimilar situations.

To sum it up, the sudden rise in bans on soft drug use in public space was intriguing. What were they about? Did these bans address a new problem? And if so, what then was that problem? From a sociological perspective there is an easy connotation to what Stanley Cohen denominated a 'moral panic'. A moral panic is when '(a) condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests'. In addition, Cohen continues, mass media fulfills its destiny to stereotype and incite, 'moral barricades are manned' by the righteous, and disciplinary responses to the issue causing the moral panic are formulated and undertaken (Cohen, 2002: 1). Cohen postulates that moral panics habitually revolve around 'folk devils', who are 'visible reminders of what we should not be' (Cohen, 2002: 2), and moreover stipulates that 'the object of the panic' need not be novel, it can have been around for quite some time and simply suddenly come into the spotlight (Cohen, 2002: 1). Besides the media spotlight and

¹⁰ Notably, the ban on smoking tobacco did apply to coffeeshops, but did not pertain to hemp derivatives such as cannabis. As a consequence, it became possible only to smoke a pure joint in coffeeshops. The difference between a pure joint and a tobacco joint however cannot be discerned once a joint has been lighted, the smell of the cannabis is too prevalent. The difference can only be detected whilst a joint is fabricated, and this complicates the enforcement somewhat. Moreover, many coffeeshops have set up a separate smoking room within their premises.

¹¹ To my knowledge the first local ban on the public use of soft drugs was installed in the municipality of Venlo in 2001.

public attention, a successful moral panic harbors three requisite elements: a suitable enemy, a suitable victim, and the idea that the issue at hand could corrupt integral parts of society (Cohen, 2002: xi). All in all, with the ban on Mercatorplein in mind, a good case can be made to regard the bans as indicators of a moral panic: rowdy and insolent youths, often with an immigrant background to boot, flagrantly use drugs in the open and persuasively fulfill the role of folk devil; the victim is the ordinary man on the street, going about his business and wishing no hassle; and the issue is not an unlikely event, it could happen anywhere without much ado. Hence the proliferation of bans on the public use of soft drugs can feasibly be framed as a moral panic. It should be noted that a moral panic does not equate an unfounded or hysterical reaction to a trivial or parochial concern. Naming a certain dynamic a moral panic is not intended to ascribe a derisory normative value to that dynamic. Rather, the term moral panic refers to the perception that exists on the relative seriousness of the issue at hand. Studying a moral panic subsequently offers opportunities to understand why certain issues are taken so seriously, and to 'identify and conceptualize the lines of power' in a society (Cohen, 2002: xxxv).

Framing the bans as part of a moral panic on the use of soft drugs in public space requires an understanding of how the bans came about, and why they came about as they did. The focus thereby shifts from the issues the bans address to the bans themselves. Where did these bans originate? How did they come about? Howard Becker has expounded that 'rules are the products of someone's initiative', and he denominates the initiators 'moral entrepreneurs' (1991 [1963]: 147). In the current case the question is who initiated the bans; who are the moral entrepreneurs and what were their motivations? In addition, Becker states that once a rule has been successfully crusaded by 'rule creators', 'rule enforcers' enter the picture (1991 [1963]: 147, 155). If this applies and the bans were indeed not only implemented but also enforced, it leads to the question of what these bans brought about once they had been instituted.

1.2 Initial Empirical Research Questions

The questions formulated above inspired an investigation into the sudden rise of municipal bans on the public use of soft drugs, and combined, led to the key question that jumpstarted the research:

What has been the development in recent years in the coming about of local bans on the use of soft drugs in public space, by whom and why were these bans solicited, and what were their effects in the situations in which they figured?

This key question breaks down into several sub-questions. The first exploratory step was to find out how many municipalities had a ban on soft drugs in public space in place, and moreover who those municipalities were. Such an overview was hitherto lacking. Though certain numbers did circulate in the media, these were not substantiated. An overview of municipalities with such a ban in place would then offer the opportunity for a more targeted analysis, looking for possible instigators for the bans. The first sub-question hence reads as follows:

Which municipalities in the Netherlands have a local ban on the public use of soft drugs, or have such a ban under consideration?

To answer this question a brief questionnaire was sent out to all the municipalities of the Netherlands. The results surpassed the expectations with which the survey had been embarked upon. It turned out that in the first term of 2009, over eighty municipalities in the Netherlands had a ban in place. The majority of these municipalities had no coffeeshop present on their territory. Many of them were small towns or conglomerations of villages, whilst several of the larger cities in the Netherlands explicitly did not carry such a ban in their municipal toolkit. An interesting and puzzling observation was that the local bans varied, and conflicted, in their juridical layout. Moreover, two municipalities responded that they had local ban in place specifically aimed at the use and trade of *qat*.¹²

The comprehensive outcome of the inventory is expounded upon later, in the second section of chapter two. For now it suffices to note that the inventory competently answered the question on the prevalence of such bans, but offered scant clues as to how they came about and what they brought about. For a more substantive understanding of why these bans had so quickly become so popular, a more in-depth investigation was required. The empirical inquiry was therefore continued with a selection of case studies, which were each addressed with the following three sub-questions:

a. *How, why, and by whom was the ban instigated?*

This sub-question pertains both to the formal and the informal process through which a ban comes to pass. Who first initiated the ban, and what trajectory did the

¹² *Qat* is a psycho-active substance used in the Netherlands predominantly by Somali immigrants. In the next chapter the substance is further expounded.

ban subsequently follow? How did the formal and the informal relate in this process? How was the need for the ban posited? Who was mobilized, how, and to what effect? And in relation to this last inquiry, in which way did the media play a role? Hence, the question traces the coming about of a ban not merely on its juridical trajectory, but also—and especially—the social processes surrounding its materialization.

b. How is the ban juridically shaped?

The subsequent sub-question pertains both to the juridical embedding of the ban and the legal technicalities in the wording of the ban. It comprises the following questions: How is the ban positioned in the municipal authority? What exactly does it regulate? Who is granted authority, and to what end? From a broader perspective, how does the municipal regulation relate to the national drug law, the Opium Act? Last, but certainly not least, how does the juridical make-up of the ban effect its applicability? To summarize, this question zooms in on the juridical issues and discrepancies surrounding the local ban.

c. How does the ban function?

The third sub-question pertains to how the ban actually operates in the space to which it applies, inquiring into both the functioning of the ban and its effects on the space itself. It translates into the following questions: Has the ban been implemented? Is its existence announced in the space, and if so, how? Are people in the space aware of its existence? Is the ban enforced, formally and/or informally? What is the public opinion on the ban? How does the ban function in the perception people have of the space? And finally, how does the ban influence interactions taking place in that space?

To answer these questions three individual case studies were extensively and qualitatively investigated: a playground in Amsterdam, a shopping square in Tilburg, and the village green of Spakenburg. These three cases are introduced fully in chapter four. Though from the outset the three case studies are very different in characteristics and dynamics, various overarching themes arose from the separate case studies and connected them at a more abstract level. As a consequence, the initial empirically motivated investigation evolved into a second stage of research. In this stage theoretical issues arising from the fieldwork data were gathered and grouped into a second set of research questions.

1.3 Theoretical Continuation

The strategy pursued in the research accounted for here is expounded upon in chapter three. It will already be clear though that in this research the initial goal was to investigate a concrete issue, and this was driven by the data attained; theory subsequently figured in service to the empirical findings, but this is not to say it holds a subordinate position. Quite the contrary: the results of the empirical inquiry triggered a more in-depth search for answers to questions that turned out to encompass more than the specific bans on soft drug use in public space. It soon transpired that the bans on soft drugs use in public space were not merely about using soft drugs. They reflected processes taking place in public space: the meaning of public space, competing perspectives on the use of public space, and control over public space. Moreover, they illustrate the transition from informal tactics of social control to formalized modes of social control, and thereby embody the—much debated—increasing juridification of society. Comprehensively, the bans offer a good example of how law impacts the spatial dimension, and the social interactions of everyday life there, at a symbolic level. Accordingly, the key question pertaining to the second line of investigation is:

How does a legal regulation relate to the space in which it figures?

The theoretical key question in turn breaks down into three sub-questions, pertaining to three theoretical frames: the production of and contest in the spatial dimension, the formalization of social control, and law in action. The sub-questions are formulated as follows:

a. *How does space come to be?*

This question on space encompasses the inquiry into how space is produced, and divides into three lines of investigation. First, it explores what space actually is by reviewing different kinds of space and the different qualities they hold. Coupled to this review is the exploration of the consequences of those qualities for the users of the spaces, or otherwise put: why space is relevant. Second, the inquiry into space investigates the processes through which space happens and comes to be what it is. Third, it explores the dynamics of space. The focus here is specifically on how users of a space both influence and are influenced by it, and how contestation over space takes form and is played out.

b. *Why and how is a social norm codified?*

This question focuses on the process by which an informal social norm is codified into a legal regulation. Again, the inquiry takes three steps. First, it reviews the relationship between the informal and the formal, between the social and the legal. Second, it scrutinizes the concept representing the process by which a social norm is codified, namely juridification, and the possible outcomes of this process. Does the codification of a social norm contribute to 'good space' (whatever that may be)? Third, it investigates what triggers the codification to take place.

c. *What are the workings of a legal intervention?*

This question addresses the actual effects of a legal intervention. It does so by looking how the intervention plays out in the spatial dimension. First, it considers whether the legal intervention is acknowledged and adhered to in the spatial dimension, and how this effects the valuation of the legal in general. Second, it asks what the effects of a legal intervention on the actual experience of a space are. The third element of the question pertains to the symbolic effects a legal intervention brings about.

As can be discerned from the above set of questions, this study is an interdisciplinary approach to legal interventions in the spatial dimension. Theoretically, it builds on and addresses discourses within urban sociology, criminology, and the sociology of law. It seeks to connect these fields in the exploration of what the sudden proliferation of local bans on the public use of soft drugs can tell us about the part played by formalized social control in the production of shared public spaces of everyday life. A central ambition of this work is to combine insights attained by both a juridical and ethnographic investigation into these bans and the settings in which they figure into an aggregated understanding of the dialectical working between the spatial and the legal. At the same time, this work wishes to engage upon some of the discourses that exist in the respective disciplines.

Within the field of urban sociology this work connects with work on the public spaces of cities and towns, and the dynamics of these spaces. The focus is on the position of the legal within the spatial dynamics. Legal interventions in public spaces are a well-established topic of interest within urban sociology, and there is a strong body of social justice literature reviewing the displacement and exclusion of groups from public space (for example Harvey, 1973; Zukin, 1995; Duneier, 1999; Mitchell, 2003; Boutellier et al., 2009). The focus in these works is on the publicness of space, and the agenda is often political. The current work takes a slightly different approach. The focus here is on the mechanisms through which space is produced, and how the legal figures in that greater whole. It contributes to the field of

urban sociology by operationalizing the conceptual framework of Lefebvre on the production of space, and tracing the way in which legal interventions effect the way space comes to be what it is. Legal interventions are often regarded as deriving from an external force. In this work however the focus is firmly on how users of a space intervene and determine the quality of the space, and how they do so in contest with other users of that same shared space. As a consequence this work takes a further step, bridging to discussions on 'good public space'. One of my main concerns is that by taking a normative ideal as the starting point of investigations into public space, a wide spread of information is neglected from consideration.

Within the field of criminology, this work clearly fits in the tradition of 'law in action'. It is inspired by studies on the societal definition of and subsequent response to deviance, and specifically builds on the legacy of Howard Becker and Stanley Cohen. It uses these approaches on the sociology of deviance and moral panics to investigate the emergence of local bans on the use of soft drugs. By looking at how and why local formal regulations on the public use of soft drugs came about, this work adds to the body of knowledge on the evolving societal position of soft drugs in the Dutch setting and the accompanying political and policy developments on the use of soft drugs in a public context. Moreover, this work also theoretically connects to the more contemporary frame of cultural criminology. Cultural criminology 'emphasizes the centrality of meaning, representation and power in the contested construction of crime' (Ferrel et al., 2008: 2; see also Siegel et al., 2008). It argues for a focus that also investigates the symbolic and emotional meanings that transgressions of rules and social control carry, and the construction of popular and political opinion on thus-defined crime and its consequences. The investigation at hand employs these premises to understand what the local criminalization of the public use of soft drugs can reveal about the power constellations in a given public space.

Within the field of sociology of law, this work builds on the constitutive approach to law to review how law is produced by the social and in turn produces the social. As such, it addresses ideas on the relationship between formal control and informal control, and the relationship between the social and the legal at large. Within this larger whole, this work focuses on the theoretical discussion of whether the codification of social norms and relationships is a positive or negative development. It contributes to the existing body of literature on the subject by applying the different theoretical viewpoints to empirical data compiled via ethnographic fieldwork. Additionally, it adds to the understanding of the dynamics of juridification, by digging into the mechanisms that underlie the impetus to codify the social norms that figure in the shared spaces of everyday life of our society into legal regulations backed by formal sanctions.

1.4 Plan of the Book

To sum up, this book investigates four separate issues. First of all it deals with the empirical question of the prevalence of municipal bans on the use of soft drugs in public space and delves into the juridical issues surrounding these bans. Second, it regards public space in the quality of shared spaces of everyday life and traces how these spaces are used, produced, and controlled. Third, the book contemplates the process by which social norms are codified into legal regulations; it discusses different normative perspectives on this dynamic and seeks to explain why such codification takes place. Fourth, the effect of formalized social norms on the shared spaces of everyday life is discussed for the different dimensions at hand. Each of the four issues feeds into its own chapter. As this book builds on empirical data gathered to this end, an additional two chapters focus on the methodology used and the case studies that were investigated. Concretely, the plan of the book is as follows.

The next chapter, **chapter two**, deals with the bans in general. The first section of this chapter places these bans in the broader context of Dutch drug policy. The national Dutch drug policy is notoriously complex and often marvelously misunderstood, as the eventual juridical downfall of the bans neatly illustrates. The core of the chapter is the national survey executed in 2009, and section two relates how it transpired and which results it yielded. The final section presents the varying juridical forms of the bans and the problems this posed even before all the bans were nullified by a final judicial ruling in 2011. This ruling and its aftermath are discussed in closing.

The subsequent two chapters form the stepping-stone from the national inventory to the in-depth investigation of three specific case studies. **Chapter three** accounts for the methodology followed in this research. It expounds upon the research strategy in general and the selection of the specific case studies. The different methods of data collection are elaborated upon, as well as the analysis of the data. Moreover, the validity of the research is discussed. Subsequently, in **chapter four** the three separate case studies are introduced. For each case a description is given of the spatial specifics, social constellation, historical background, key players, and the life story of the ban on the use of soft drugs in public space in that locality. In a concluding section the three cases are briefly compared on their main characteristics.

The concept of public space is the central topic of **chapter five**. Its starting point is defining the public space under scrutiny here as shared spaces of everyday life. Subsequently the juridical and sociological classification of such space is considered,

and an alternative denomination is introduced: 'emotionally owned space'. The manner in which space comes to be is unraveled with the help of Lefebvre's framework on the production of space; space consists of different dimensions and these dimensions, together and in interaction with each other, produce a given space. Space moreover is produced to accommodate certain needs of users, and when different users have different needs in a single space, conflict and contestation are likely to ensue. That formal regulations figure in the production of and contestation over space is evident, but where exactly should the bans be positioned in the production of space and how do they affect the different dimensions of space?

Subsequently, **chapter six** centers on the codification of social norms, incorporated in the concept of juridification. To begin with the relationship between law and society is analyzed, and in continuation the relationship between formal and informal control: whether these forms of control are oppositional or complementary. Then the concept of juridification is investigated, and opposing normative positions on the effects of juridification are discussed in the light of the data collected from the case studies. Having denoted the process of juridification, an explanation is sought as to why juridification takes place.

The last thematic chapter, **chapter seven**, deals with the working of the bans in the legal, social, and symbolic domain. Roughly these three domains correspond to the three dimensions of space as defined by Lefebvre: respectively, the planned, the lived, and the perceived dimension. With regard to the legal domain, the focus is on the enforcement of and compliance with the bans. In particular the chapter poses the question of what a substantive lack of both enforcement and compliance does to the legitimacy of law. The working of the bans at the social level is explored through the lived dimension of space: how do the bans effect the everyday modus of public spaces, and how these spaces are lived? The symbolic working of the bans is examined in the perceived dimension of space: that is, how does a ban figure in the way in which a space is understood to be?

In conclusion, **chapter eight** brings together the various threads spun throughout the book. Naturally the different questions posed—pertaining to the how the municipal bans on the use of soft drugs in public space came about, and what they brought about—are answered in connection to each other. Moreover, an attempt is made to formulate an answer to the question of why they happened as they did. Subsequently, the second line of inquiry into the more abstract processes that underlie legal interventions in the spatial is concluded. Finally, some leeway is taken to deliberate on the possible wider implications of what this research narrates: citizens utilizing the law to shape shared space to meet their own needs and preferences in an exclusionary mode.

2. Local Bans on the Use of Soft Drugs in Public Space

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2. Local Bans on the Use of Soft Drugs in Public Space

Though by 2008 the proliferation of local bans on the public use of soft drugs had been picked up by the media, no clear idea existed of how many of these bans were actually in effect. Moreover, no overview existed of their format, exact content, or juridical make-up. The present chapter picks up on this. As bans on the public use of soft drugs are content-wise very specific to the Dutch context, at the outset is an outline of the Dutch national drug policy. The first section sketches the history and ideology behind contemporary Dutch policy on the issue of drugs, and explains the intricacies of a legal structure that is widely known but not always understood. A small separate paragraph is dedicated to *qat*, as it figures strongly in one of the case studies to come. The subsequent, second section forms the heart of this chapter, presenting the results of a national survey held on the prevalence of local bans on the use of soft drugs in public space. The third and last section zooms in on the legal issues surrounding these bans.

2.1 Dutch Drug Policy

History and Ideological Basis

As starting point of the history of formal Dutch policy on drugs I propose the institution of the Dutch Opium Act in 1919.¹³ Overviewing subsequently the timespan from 1919 to the present, three successive phases can be discerned. The first phase runs from 1919 to 1976, in which the Opium Act was first set up and subsequently expanded upon in consecutive steps; the second phase runs from the 1976 Amendment of the Opium Act, through which national policy veered substantially into a

¹³ This history could arguably also be traced back to the beginning of the seventeenth century, when the *Verenigd Oostindisch Compagnie*, the Dutch East India Company, started to trade in opium in the East Indies. The governmental lead over the opium trade in the East came to an end only in 1942, after the Japanese had conquered what is now Indonesia, hence well beyond the enactment of the Opium Act in the Netherlands (Van Luik & Van Ours, 1998: 3–4).

liberal flux; finally, the start of the third phase is marked by the Governmental Memorandum on drugs in 1995, which heralded a return to a more repressive approach.

The national Opium Act of 1919 was an unavoidable consequence of the signing of the Opium Treaty in 1912, to which the Netherlands was a reluctant party.¹⁴ Initially only the trade and production of drugs was regulated, with a focus on opium and its derivatives and with a geographical limit of the European part of the Kingdom of the Netherlands. The possession of narcotic substances was added only later in an amendment to the Opium Act in 1928, and in that same amendment hemp products¹⁵ were first marshaled under the Opium Act (Tellegen, 2008: 190–191). It was not until after the Second World War, however, that the use of drugs actually became a domestic social issue and drug policy in the Netherlands gained momentum (Nabben, 2010; Blom, 1998; De Kort, 1995). Most notably for the current context, in 1953 the use of cannabis was inserted into the Opium Act.¹⁶ On the same occasion the investigative powers of enforcers were enlarged and sanctions were intensified, leading to a notable increase in drug-related cases in the courts. The subsequent repressive approach came into heavy weather in the late 1960s, when it became clear that it did little to combat the increasing drug use in society and mostly served to overtax the judicial system (Tellegen, 2008: 191–192).

Eventually the Opium Act was substantially revised, and the 1976 Amendment of the Opium Act formulated the typical Dutch drug policy that continues to resound today. The amendment first of all introduced a distinction between drugs that entailed ‘unacceptable risks’ for society on the one hand, and hemp products on the other, i.e. hard drugs and soft drugs, respectively. Violations of the Opium Act with regard to soft drugs were given milder sentences, whilst violations of the Opium Act with regard to hard drugs were more severely punished. Second, the amendment introduced a distinction between trade, possession, and use. Trade remained completely illegal, whilst the use of both soft drugs and hard drugs was decriminalized. With regard to possession, separate Guidelines for Prosecution were set up in 1978, in which possession of soft drugs of an amount deemed for personal use was exempted from prosecution. In practice this meant that anyone carrying up to thirty grams of cannabis was in principle exempt from prosecution.¹⁷ These measures were aimed at normalizing the user of drugs, thereby separating the primary effects

¹⁴ The financial gains for the Kingdom of the Netherlands for its participation in the international drug trade were quite considerable, see for an extended expose Tellegen (2008: 54–63; 185–191).

¹⁵ From hemp both hash and marihuana are won: hash is the dried resin of the hemp plant, marihuana consists of the dried flower buds of the hemp plant.

¹⁶ For the fans: as Nabben (2010: 25) has noted, in that same year American sociologist Howard Becker published his influential article on ‘Becoming a marihuana user’.

¹⁷ Though there is an age limit and when caught the goods are confiscated by the police. To note, in the Governmental Memorandum of 1995 the amount of thirty grams was lowered to five grams.

of drug use from the secondary effects of a restrictive drug policy, ranging from individual problems such as social isolation, prostitution, and malnourishment, to collective issues such as organized crime, nuisance, and the burden on the legal system (Tellegen, 2008: 199–203). The main issue of concern forming the foundation of the Opium Act was articulated to be public health. This emphasis on public health explains why drug use was decriminalized: by criminalizing the user, he or she becomes harder to reach and treat as a patient.

In 1995 a Governmental Memorandum on drugs announced a new phase in Dutch drug policy. This third and current phase is marked by a more repressive turn. Most notably, the memorandum significantly sharpened the criteria for coffeeshops. Among other things the minimum legal age to enter a coffeeshop was set at eighteen and the maximum sale unit was lowered from thirty to five grams. Wouters (2012) has expanded on this policy shift: whereas traditionally the Dutch policy on drugs was three-tiered—aimed at reducing demand, combating supply, and maintaining public order—Wouters indicates that Dutch drug policy has been changing in recent years, and increasingly the Netherlands conforms to the European parameters. One significant change is the shift in emphasis from public health issues to nuisance (Wouters, 2012: 11).

Of course, a great deal more can be said about Dutch drug policy than these few pages offer opportunity for. In the above the focus has been specifically on soft drugs, as this concerns the present research.¹⁸ Likewise, in the following only a few selected issues of Dutch drug policy are expanded on: the concept of soft drugs and their juridical status, the coffeeshops, attempts to rein in the allowance on use, and the specifics of the drug *qat*.

Selected Issues

The Concept of Soft Drugs

Since 1976, the Dutch Opium Act makes a distinction between so-called soft drugs and hard drugs. Illegal substances are categorized in either one or the other category. These categories are dynamic, and appear in appendices to the national Act; hard drugs are listed in List I and soft drugs are listed in List II. The distinction

¹⁸ For an extensive and wonderfully readable account of the history of drug use and policy in Amsterdam in particular, see also Nabben (2010).

between soft and hard drugs is made on the basis of the harm a drug is presumed to inflict.¹⁹ Whereas hard drugs are deemed to contain ‘unacceptable risks for public health’, soft drugs are generally deemed to be less addictive and less harmful.²⁰ The legal regimes concerning soft drugs and hard drugs differ accordingly. Contrary to what is often thought, soft drugs are illegal in the Netherlands, just as hard drugs are. It is forbidden to produce, trade in, or possess any substance listed in the Opium Act, regardless whether they are categorized as hard or soft drugs. There is however a difference in the sanctions connected to violations: in the case of hard drugs sanctions are stricter, and detection has higher priority than in the case of soft drugs.

In short, denominated soft drugs are illegal in the Netherlands. A confusing factor however is that alongside the Opium Act there is a national directive addressing the Public Prosecutor which also holds force and in part negates the reach of the Opium Act. This national directive states that with regard to soft drugs, possession of up to five grams will not be prosecuted.²¹ In other words, the possession of soft drugs is illegal by law, but exemption from prosecution is guaranteed up to five grams. This exemption used to be standard, but the national directive has been altered, and though it is still the routine, as of 1 January 2013 it is no longer automatic.

Coffeeshops²²

Coffeeshops are designated selling points for cannabis. The initial legal room for maneuver that allowed coffeeshops to emerge was created through the Guidelines for Prosecution of 1978 and 1980. In specific instances, the selling of soft drugs (i.e. cannabis) is, though illegal, not prosecuted. Criteria were formulated to regulate this sale of soft drugs, stipulating no advertising, no sale of hard drugs, no nuisance caused, no drugs sold to minors, and (from 1996) a maximum of five grams per transaction. These are often referred to as the ‘AHOJ-G criteria’.²³ The 1995 Gov-

¹⁹ To note, in autumn 2014 a proposal is under review to list cannabis with an excess of 15% THC (tetrahydrocannabinol, i.e. the principal psycho-active constituent) as a hard drug. Should this come to pass, then soft drugs can no longer be univocally be equated to cannabis.

²⁰ Other categorizations that are argued are the distinction between legal and illegal drugs, and hard or soft use. In the legal/illegal distinction coffee, alcohol, and tobacco are argued legal drugs (see for example: <http://www.trimbos.nl/onderwerpen/alcohol-en-drugs/drugs-algemeen/opiumwet-en-straffen>). In the second categorization, it is offered that soft drugs can be used hard and hence cause serious harm, whilst hard drugs can be used soft, i.e. in a recreational fashion, without risk or harm. See for instance Liebrechts et al. (2013).

²¹ The status in February 2014 is that the drugs are confiscated and a minor is sentenced to twelve hours of community service.

²² In this text I retain the Dutch spelling of the word coffeeshop, to clearly distinguish it from a venue where one drinks coffee. The formal English translation of this term however is coffee shop.

²³ The initials stand for the respective criteria, in Dutch: *geen Affichering, Harddrugs, Overlast, Jeugdigen en (minder dan 30 en later 5) Gram*.

ernmental Memorandum announced a more repressive legal framework for coffeeshops, and since then their room for maneuver has been consistently reined in.²⁴ Their number has been dropping accordingly, from 846 in 1999 to 666 in 2009, the year in which the national inventory expounded upon below was executed (Bieleman et al., 2013: 18).

Some coffeeshops only offer the opportunity to purchase; in most cases however it is also possible to use the drugs on premises, and coffeeshops tend to make their establishment attractive for (potential) customers. Coffeeshops are the main vending venue of cannabis; estimates are that 70% of cannabis bought by its users was acquired in a coffeeshop (Wouters & Korf, 2009: 627). Other venues through which cannabis is supplied are dealers contacted via cellphone, home dealers, home growers, and sometimes street dealers or dealers who deal ‘under the counter’. The proximity of a coffeeshop influences which venue is chosen. The concern for the authorities about the use of venues other than coffeeshops is the possibility of hard drugs also being pushed at customers.

Attempts to Ban the Public Use of Soft Drugs

The exact wording of the Opium Act states that it is illegal to have a substance in possession (*aanwezig te hebben*). Periodically it is argued that it is impossible to use a drug without also having it in possession. Even if someone else administers the drug, the moment it enters the body it is in possession of the person using it. In spite of the attestable logic of this argument, the Opium Act does not explicitly criminalize the use of soft drugs. This has been expressly confirmed in the parliamentary deliberations on passing the 1976 Amendment, and periodically reiterated since then.

In 2005 there was an attempt to pass a national ban on the public use of soft drugs. In an unusual alliance the liberal party (*Vereniging voor Vrijheid en Democratie*) and the conservative Christian party (*ChristenUnie*) together put forward a proposal to completely ban the use of soft drugs in public space.²⁵ The alliance was unusual because overall these two particular political parties hold little consensus on the issue of drugs. The proposal was offered ‘in consideration of the fact that public use of soft drugs leads to the dilapidation of public space’. The Christian party for its

²⁴ See for example Wouters (2012: 13).

²⁵ Motion by Rouvout & Weekers, dated 24 November 2005. Tweede Kamer, vergaderjaar 2005–2006, 30 300 VI, nr. 60.

part hoped that the regulation would curtail the use of drugs in general; meanwhile, the liberal party felt people could just as well use soft drugs either in coffeeshops or at home. The proposal was launched in December 2005, as the run-up to the elections for municipal councils in March 2006 was gathering momentum.

The proposal was passed by a majority of Parliament, but was refused by the minister of Justice. In his reply the minister made the point that the use of drugs in general is not penalized on grounds of addiction treatment.²⁶ Moreover, he argued that the intent of the proposal was apparently to maintain public order, which was primarily the task of local authorities; hence it was at the local level that such a ban should be brought about, targeting the specific areas in which nuisance occurred. In the letter the minister stated that various municipalities had already resorted to such local regulations.

In practice, the regulation of the use of soft drugs in public spaces had already indeed been taken up at the lower level of municipal authority. In their local byelaws municipalities started to ban the public use of soft drugs. The jurisdiction to do so was derived from their authority on public order issues. Hence the motive behind the local bans on the use of soft drugs was different to the motive behind the national Opium Act, namely public order rather than public health. The first local byelaw specifically prohibiting the public use of soft drugs came into force in 2001.²⁷ It was clear that by the year 2009, when I conducted the national survey, there were many more such bans in place. Exactly how many surprised everyone. However, before continuing on with the results of the national survey, I will first make a small sidestep on the subject of *qat*.

*Qat*²⁸

Qat refers to the leaves and twigs of the plant *Catha edulis*. Chewing on the fresh leaves and twigs of this plant produces a mild euphoric effect, and *qat* use is often compared to drinking coffee. It holds little appeal outside its cultural use, as the taste is quite bitter and large amounts need to be chewed to attain any tangible effect (CAM, 2007: 3).²⁹ The production of *qat* has its origins in Yemen and Ethiopia, and in these countries *qat* use has been part of social life for at least a millennium, its

²⁶ Letter from the Minister of Justice to Parliament, dated 14 December 2005, reference 5393056/05.

²⁷ Namely in the municipality Venlo, situated in the South of the Netherlands, on the Dutch–German border.

²⁸ An alternative spelling of the word is 'khat'.

²⁹ In a Dutch television program on drugs a reporter seeks out and tries *qat*. The episode can be viewed via <http://www.youtube.com/watch?v=hOilRnHpAZI>.

use controlled by cultural checks and etiquette (Beckerleg, 2008: 751). Lisa Wedeen has written extensively on the practice of *qat* chewing in Yemen and its place within the political dynamics of the country (Wedeen, 2008: 103–147). In the Netherlands *qat* is predominantly used by Somalis. The Netherlands holds a fair population of Somalis, due to an influx of refugees from the war in Somalia. Their number in the Netherlands is estimated at around thirty-five to forty thousand (Wolf, 2011). Beckerleg states that Somalis only embraced *qat* as part of their culture during the twentieth century, and Somali expatriates have adopted *qat* as a badge of social identity (Beckerleg, 2008: 751, 755). The Trimbos Institute³⁰ reports that *qat* in the Netherlands is used mostly on a social and recreational basis, and this sociality is the main reason for its use. It furthermore estimates that around 11% of *qat* users are problematic users.³¹

Up till January 2013, *qat* was not an illegal substance in the Netherlands, whereas—with the exception of the United Kingdom—it was illegal in the neighboring countries. As a consequence the Netherlands became a port for *qat* traded beyond its borders. Nuisance was reported in the Uithoorn municipality, near Schiphol Airport, which had turned into the distribution hub of *qat*, in addition, it was argued that the trade of *qat* into neighboring countries, where *qat* was illegal, produced large revenues and that these revenues were possibly used to finance terrorist organizations based in Somalia. As of 5 January 2013 the plant is on list II of the Opium Act, officially designating it a soft drug.

Concluding

To recapitulate, contemporary Dutch drug policy is grounded in considerations of public health issues. It makes a clear distinction between hard drugs and soft drugs, and has placed the use of drugs explicitly outside the penal realm. The majority of user-bought cannabis is acquired via coffeeshops, designated selling points for cannabis that are tolerated when adhering to the AHOJ-G criteria. A national attempt to ban the public use of soft drugs was blocked by the minister of Justice, who argued in general to keep the use of drugs out of the penal realm and to relegate public order issues to the competent local authorities. *Qat* is a psycho-active substance used in the Netherlands, predominantly by the Somali community, and declared an

³⁰ The Trimbos Institute is the Netherlands Institute for Mental Health and Addiction (NIMHA).

³¹ <http://www.trimbos.nl/onderwerpen/alcohol-en-drugs/qat/feiten-cijfers-en-trends>. Last consulted on 26-03-2014.

illegal (soft) drug as of 5 January 2013. Following this brief sketch of the parameters of Dutch drug policy relevant to the present undertaking, in the next section the national survey set up on the municipal bans on the public use of soft drugs is expounded upon.

2.2 The National Survey

Though the rise of local bans on soft drugs had been noted in the media by 2008, and individual enactments continued to be reported upon intermittently in the following year, there were no figures at hand on how many such bans were actually in force. Hence, in February 2009 I set up a national inventory to acquire substantiated data on the issue. In the following I will first discuss the way the inventory was set up, and subsequently the results it yielded.

Organization and Design

In February 2009 all of the 441 municipalities³² in the Netherlands were asked whether in their municipality a local ban on the public use of soft drugs was either in effect or in preparation. The question was asked in an email sent to the general email address of each municipality. The email explained that within the scope of a larger piece of research into formal social control in public space, an inventory was being made of local bans on the use of soft drugs. The email was sent out in my name, from an email account of the University of Amsterdam, and the contact details of the Bongers Institute of Criminology were added in the signature of the message. In total four questions were asked:

1. Is the possible enactment of a ban on the public use of soft drugs a point of discussion within your municipality?
2. Have the local byelaws of your municipality been altered to accommodate such a ban?
3. Has a ban on the public use of soft drugs been enacted?
4. Which person or department within your municipality is the contact for possible further inquiries?

³² In 2009 there were 441 municipalities in the Netherlands (the number is shrinking due to mergers of smaller municipalities).

In retrospect, the question set was not optimal. It had been composed with the expectancy that maybe twenty-five municipalities had such a ban in effect, an amount that could easily be investigated further once it was known which these municipalities were. The primary goal had been to find the municipalities in which this was an issue, and to continue the overall inquiry with those specific municipalities. The numbers that replied however completely outdid initial expectations.

The response time was set at two months. Within that time frame a total of 263 municipalities (60%) responded.³³ In principle the information provided the municipalities was leading. In a few cases in which the response was not clear or gave room for misinterpretation I looked up the local byelaws of the municipality in question. In another twenty-six cases of municipalities who had not responded to the mailing, the local byelaws were consulted. In these cases there was circumstantial evidence that a ban was in place, for example through information provided by other municipalities. Most municipalities make their local byelaws available on the internet, and in a few cases a digital version was acquired on request. By looking up the local byelaws it was possible to discern whether a ban on the public use of soft drugs had been set up. It did not however offer information whether in a given municipality such a ban was under discussion or in preparation.

Results

In the end I had information on 289 municipalities (66%) on whether or not they had a ban on the public use of soft drugs in their local byelaws. As a first step, municipalities on which data had been acquired were compared to municipalities on which no data had come in. The comparison was made on characteristics of population size and the presence of one or more coffeeshops on their territory. Of the 152 municipalities on which no data had been retrieved through the survey, the majority—namely 128 out of 152, i.e. 84%—concerned municipalities with a small population—up to 40,000 inhabitants—and no coffeeshop on their territory. It could well be that amongst the 152 municipalities on which I have no data there were also municipalities with a ban in place.³⁴ In the following however I focus on the availa-

³³ One municipality responded with the refusal to cooperate, stating that it only complied with such requests if it considered it in its own interest to do so. I looked up the local byelaw myself of this municipality.

³⁴ By comparison: there are 185 very small municipalities. Of the 115 of which I have data, 22 (19%) have a ban. Likewise of the 157 small municipalities I have data on 99 of them, of which 26 (26%) have a ban.

ble data of the 289 municipalities. In table 2.1 the accumulated data is ranged in an overview.³⁵

Table 2.1 Municipalities with a ban or proposal in place, categorized by population size

Population size	Number of municipalities	Ban on public use of soft drugs			
		no	yes	proposal	unknown
<20,000	185	87 (47%)	22 (12%)	6 (3%)	70 (38%)
20–40,000	157	68 (43%)	26 (17%)	5 (3%)	58 (37%)
40–60,000	42	17 (40%)	8 (19%)	1 (2%)	16 (38%)
60–80,000	21	8 (38%)	5 (24%)	1 (5%)	7 (33%)
80–100,000	11	4 (36%)	6 (55%)	0 (0%)	1 (9%)
100,000+	25	11 (44%)	14 (56%)	0	0
	441	195 (44%)	81 (18%)	13 (29%)	152 (34%)

In total eighty-one municipalities, i.e. 18%, were found to have a ban on the public use of soft drugs. Another thirteen municipalities had such a ban under discussion. Combined this meant that at least ninety-four out of 441 municipalities, in other words 21% or one in five municipalities, had a ban in place or under discussion. This was considerably more than the number of twenty-five originally reckoned with.

The majority of the bans actually in place (n=81) can be found in the smaller municipalities: in forty-eight cases the municipality counts less than 40,000 inhabitants.³⁶ Of the remaining thirty-three bans, fourteen are found in the largest municipalities with 100,000 inhabitants and more, and nineteen bans are in mid-sized municipalities with between 40,000 and 100,000 inhabitants. In absolute terms the amount of bans decreases as municipalities get larger in population size, respectively forty-eight bans in small municipalities, nineteen bans in mid-sized municipalities, and fourteen in large municipalities. In relative terms however, the likelihood of a local ban on the public use of soft drugs increases as the size of a municipality increases:

³⁵ The data on population size of the municipalities was derived from the Central Bureau of Statistics (<http://statline.cbs.nl/statweb/>) and is per 1 January 2009. The data on coffeeshops derives from Intraval and concerns numbers from 2007, which were the most recent available numbers at the time of the survey.

³⁶ Of these 48, 22 have a population of less than 20,000 inhabitants, amongst which two municipalities count even less than 10,000 inhabitants.

respectively from 12% for the smallest municipalities running steadily up to 56% for the largest municipalities.³⁷ This does not seem counter-intuitive; what is perhaps more surprising is that out of twenty-five large municipalities, eleven do not hold a ban on the public use of soft drugs.

Though no explanation was sought for the answers elicited in the email questionnaire, some municipalities did add additional comments in their responses. One example is the municipality of Utrecht, the fourth largest city of the Netherlands. It responded that it did not have a local ban on the use of soft drugs and commented that the issue had been discussed in the past, in relation to nuisance caused by youths. However, the response continued, the local byelaws of Utrecht had enough instruments to deal with such nuisance and there were doubts concerning the juridical feasibility of such a ban. In due time, the municipality of Utrecht would prove to be correct in its doubts with regard to the juridical make-up of a local ban on the public use of soft drugs. Moreover, the instruments already available to combat nuisance in public space were not unique to Utrecht. Most other municipalities had similar tools at their disposal. Nevertheless, eighty-one municipalities felt the additional need for a local ban specifically geared to regulate the use of soft drugs in public space.

Of the eighty-one municipalities with a ban on the public use of soft drugs in place, over half (52%) do not accommodate a coffeeshop on their territory (table 2.2).³⁸ Thirty-nine of the eighty-one bans are in a municipality housing one or more coffeeshops, hence forty-two bans are in a municipality without a coffeeshop. Moreover, of the 106 municipalities with one or more coffeeshop(s) 37% have a ban implemented, 3% have a proposal on the table, 43% do not have a ban, and of the remaining 17% I have no data. By contrast, five municipalities that accommodate more than ten coffeeshops on their territory have not resorted to a ban on the use of soft drugs in public space. In other words, there is no general connection between the presence of a coffeeshop and the existence of a ban. This is not to say the causal connection is never there; a number of bans are explicitly linked to nuisance caused by a coffeeshop.³⁹ The presence of coffeeshops in general however does not unequivocally link to the existence of a ban on the public use of soft drugs, nor vice versa.

³⁷ Small-sized municipalities (up to 40,000 inhabitants): 48 bans on 214 known; mid-sized municipalities (between 40,000 and 100,000 inhabitants): 19 bans on 50 known; large municipalities (100,000+): 14 bans on 25 known. Including proposals, the figures become respectively 28% for small-sized municipalities, 42% for mid-sized municipalities, remaining at 56% for the largest municipalities.

³⁸ Of the municipalities that have a ban under discussion, ten out of thirteen do not house a coffeeshop.

³⁹ The municipality of Middelburg for instance explains that a ban was incorporated in the local byelaw in reaction to nuisance experienced in the vicinity of a particular coffeeshop.

Table 2.2 Municipalities with one or more coffeeshop(s) on territory, divided into presence of ban

Population size	Number of municipalities	Municipalities with coffeeshop(s)	Ban in municipalities with coffeeshop(s)			
			no	yes	proposal	unknown
< 20,000	185	7	5	0	0	2
20–40,000	157	24	10	8	2	4
40–60,000	42	24	11	7	0	6
60–80,000	21	16	5	5	1	5
80–100,000	11	10	4	5	0	1
100,000+	25	25	11	14	0	0
	441	106	46	39	3	18

Of the eighty-one bans in effect, the phrasing of the regulation was scored. The main distinction was whether a ban was formulated in a general way so as to be applicable for the entire municipal territory, or whether a ban was formulated to apply only for a designated area. This distinction mattered as to their validity, an issue I will expand upon in the next paragraph on the juridical issues surrounding the bans. The point made here is that forty-eight municipalities had set up a generally formulated ban, compared to thirty-three municipalities that had—correctly—drawn up a place-specific ban. The majority of the general bans are to be found in the smaller municipalities, but even in the large municipalities half had drafted their ban in a general way. The precise distribution of numbers is rendered in table 2.3.

Table 2.3 Distribution of general and specific bans with regard to population size

Population size	Total amount of bans	General formulation	Place-specific formulation
< 40,000	48	30	18
40,000–100,000	19	11	8
100,000+	14	7	7
	81	48	33

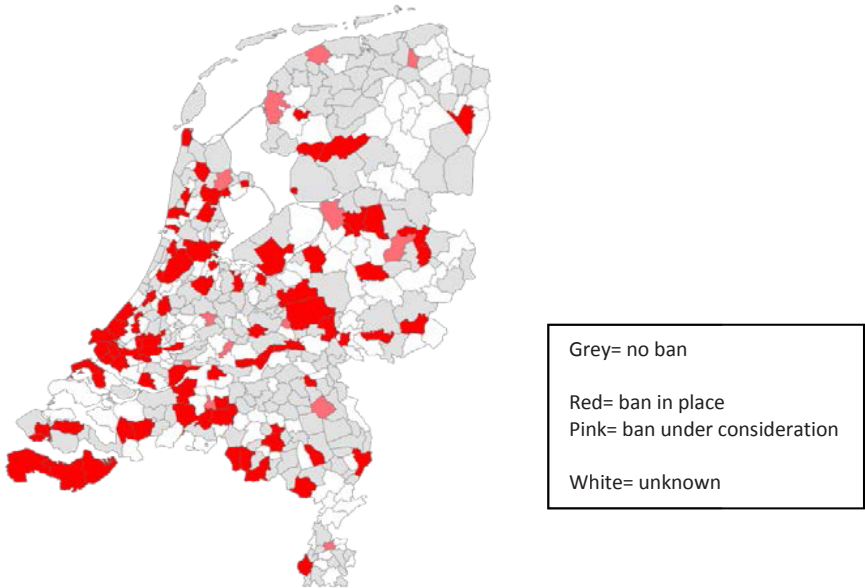
A question I omitted to ask explicitly in the national survey was when the ban was implemented. Again, the expectation before sending out the questionnaire was that the number of bans would not seriously exceed twenty-five. As a consequence, data was obtained on just under half of the bans (n=36) on when they were implemented. Moreover, thirteen proposals for a ban were on the table in the beginning of 2009. Table 2.4 presents the available data. The picture that arises from table 2.4 is that the bans were a recent phenomenon and that their speed of increase grew over the period.

Table 2.4 Number of bans enacted per year

2001	2002	2003	2004	2005	2006	2007	2008	2009
1	-	-	3	3	5	8	14	2 (+13 proposals)

The geographical spread of municipalities with a ban on the public use of soft drugs is large. The map in Figure 2.1 reflects this. Though bans are found throughout the country, three areas particularly come to the fore: the conurbation of western Holland, the Dutch bible belt stretching diagonally across the country, and particular spots with a known touristic function. Moreover, the prevalence of the bans is larger on the southern border of the country than the eastern border.

Figure 2.1 Geographical spread of local bans on the public use of soft drugs in the first trimester of 2009



Another question not asked in the email questionnaire is the motivation for enacting a ban. This information did however come through in quite a few instances. Formally, the bans are grounded in the municipal jurisdiction on maintaining public order (see also section 2.3). This is a wide concept under which many situations can be ranged. Surveying the various motivations expressed for the existing bans, the reasons for establishing a ban can be roughly divided into three categories:

1. Space: Nuisance experienced in a specific space, often connected to the presence of a coffeeshop.
2. People: Nuisance experienced as deriving from a specific individuals, whose behavior is connected to the use of drugs.
3. Behavior: Nuisance experienced by the use of soft drugs in itself, as offensive behavior.⁴⁰

These three categories are not mutually exclusive. Usually multiple arguments are used simultaneously to install a ban. In general though, one of the aforementioned

⁴⁰ In my text I use the words behavior and conduct alternately. However, they are not complete synonyms. As I understand it, conduct is used more readily to describe behavior in social interaction with other people, in a public or formal setting.

categories takes the lead in the substantiation of the ban. To sum up, the bans can be categorized into either targeting a specific space, or a specific group, or the conduct of soft drugs use itself.

Discussion

The national survey rendered some surprising results. To start with, quite a few more bans appeared on the radar than had been expected. Moreover, a primary analysis of the data in relation to size of the municipality and coffeeshop prevalence offers no easy conclusions, other than that the bans could not all be equaled to the ban established on Mercatorplein. Clearly a ban on the use of soft drugs in public space cannot be automatically explained as a self-evident development on the part of large urban conglomerations burdened by problems evidently caused by the presence of coffeeshops.

The results coming out of the inventory gave rise to new questions. A possible way to proceed would have been to continue with the analysis of statistical data. For example: how does the data from the inventory combine with data on criminality and civic feelings of security? Or, taking an alternative angle, how does the data from the inventory combine with data on the political composition of the municipalities involved? These are interesting and relevant questions to be sure.⁴¹ My quest however is a different one: I wanted to get a deeper insight into the processes by which the bans came about. Moreover, I wanted to know what kind of effect the bans had once they were implemented. Rather than test pre-contrived causalities, I opted to let the field do the talking and lead the way. To this end, I discontinued the quantitative approach and set out to investigate a selection of case studies with the use of qualitative research methods.

The selection of the case studies and the methodology used to research them are described in chapter three. The outcome of the subsequent research is to be found in chapters four through to eight. Before continuing with the specific case studies though, I will first conclude this chapter by discussing the juridical issues surrounding the bans in general.

⁴¹ Wouters has for example found that the presence of a coffeeshop is related to the political constellation of a municipal council, and that the number of coffeeshops is related to the population size and degree of urbanization. In short, a liberal local government, a large population, and a high degree of urbanization all correlate with the probability that coffeeshops are present in a municipality (Wouters, 2013: 319). How does the presence of a ban on public use correlate with these numbers?

2.3 Juridical Issues

This discussion of the juridical issues surrounding the bans falls into two separate accounts, divided by a clear marker in time. The first account reflects the juridical status quo at the time of the inventory in 2009, and explains the juridical issues of the bans as they stood at that time. The second account commences when the bans were declared nugatory at the highest judicial level in July 2011. It sets out the specifics of this verdict and its consequences.

The State of Affairs in 2009

The focal point here is the procedural legitimacy of the bans, that is to say the procedure through which they come about and the procedures they emit. To begin with their foundation: the municipal bans are passed by the town council, whose authority to do so is delegated via article 149 of the *Gemeentewet*, the national Municipal Act. The *Gemeentewet* is in turn anchored in the *Grondwet*, the Dutch Constitution.⁴² Article 149 of the *Gemeentewet* determines that the town council passes such ordinances it deems in the interest of the municipality. The ordinances are commonly bundled in the *Algemeen Plaatselijke Verordening* (APV), i.e. the general local byelaws. These ordinances must concern the public interest and fall under issues of ‘municipal housekeeping’. Depending on their content, the execution of APV ordinances are in some instances delegated to the mayor, and in some instances to the Bench of Mayor and Aldermen. Moreover, the ordinances may not trample on the private interests of residents, are limited to the territory of a municipality, and may not conflict with legislation of a higher order. A typical APV starts with a chapter on public order, and this is where the bans on public use of soft drugs are incorporated. To sum up, local bans on the public use of soft drugs are grounded in the municipal authority on public order and they are the result of a local legislative process, ultimately passed by the municipal council.

Commonly the regulation is added to the section in the APV dealing with nuisance and ‘rowdiness’, and often it is appended to the possibility of banning the use of alcohol in designated public spaces. Generally, the regulation refers to soft drugs and stipulates that what is meant are substances as scheduled in List II of the Opium Act. The relationship between the local bans and the Opium Act in due course turned out to be problematic, and it is noteworthy that many local bans explicitly

⁴² The *Gemeentewet* is grounded in Chapter 7 of the *Grondwet*. The public order authority of the local government is grounded in article 172 of the Municipal Act.

refer to and fall in with the Opium Act. In those instances when the regulation is also meant to pertain to *qat*—which was not entered on List II of the Opium Act until January 2013—a more general term is used, such as ‘drugs’. Subsequently, the drugs that fall under the scope of the ban are then separately listed.

With regard to the procedural legitimacy internal to the bans, two interesting issues come to the fore. The first interesting distinction is whether a ban is formulated in a general way, i.e. stating that in a given municipality it is in general forbidden to use soft drugs in public. A similar formula on the use of alcohol has been repeatedly negated by government.⁴³ There needs to be a direct cause for implementing the regulation, founded in the maintaining of public order. If the public order of the entire territory of a municipality is under threat of being subverted, a ban on the public use of alcohol is considered inadequate. If such a threat is not in place, a total ban is considered disproportionate, in accordance with article 3:4 of the *Algemene Wet Bestuursrecht*, the General Administrative Law Act. The same reasoning can be expected to hold for the case of soft drugs. In the national survey, forty-eight of the eighty-one bans on the use of soft drugs in public space were worded in a general fashion. As a consequence, none of these bans would likely hold fast if contested before a judge.

The alternative is to create the possibility to enact a ban for designated areas. However, with respect to the remaining thirty-three bans worded thus, an additional problem arises, namely the allocation of the authority to designate certain areas. This authority should arguably be allocated to the mayor. Within the balance of municipal tasks, it is the mayor who is responsible for issues concerning the public order.⁴⁴ However, in many instances the local byelaws grant this authority to the Bench of Mayor and Aldermen. Again, in those cases where the authority to designate an area for a ban on the use of soft drugs is allocated to the bench and not to the mayor, the bans are juridically imprecise.

In two of the three case studies I investigated in depth, the authority to designate a given area for the implementation of a ban on the use of soft drugs had been allocated to the Bench of Mayor and Aldermen. I asked the responsible municipal officers about this. In the case of the mid-sized municipality the local ban had been set up by the municipal legislative officer. When questioned on the issue, the municipal

⁴³ For example Response by the Minister of Justice to Parliamentary Questions (Tweede Kamer, vergaderjaar 2010–2011, Aanhangsel 1885) and Letter to Parliament by the ministers of Health, Justice, and Home Affairs (Tweede Kamer, Vergaderjaar 2008–2009, 27565, nr. 75)

⁴⁴ Cfm. article 172, section 1 (and article 174) of the Municipal Act. The definition for public order is ‘the civil course of social associations in public space’ (Van Bennekom & Jong, 2010: 8).

lawyer indicated that the delegation of authority to designate hadn't really been an issue of debate. He conceded though that looking at the regulation anew, he could also imagine a different formulation to be warranted. To his knowledge though, no one had ever contested this particular rule, nor had any fine been issued on this rule. In the case of the smaller municipality, the local ban had been formulated by the policy officer in charge of public order and safety affairs. He indicated that he had looked to a neighboring municipality with a slightly larger administration and had simply relied on their formula.⁴⁵

To sum up, the majority of the eighty-one bans found on the public use of soft drugs were juridically shaky. They were either incorrect in their applicability, as it is not possible to ban a certain behavior entirely through a local ban, or they were imprecise in the allocation of authority to designate a certain area. The accompanying observation is that this lack of procedural legitimacy caused no issue. To my knowledge, no one ever stood up and contested the juridical tenability of a local ban on the use of soft drugs. By contrast, other interventions curtailing the freedom of those in public space, such as bans on gathering and designating areas for body checks, received large public discontent. Bans on the public use of soft drugs evidently did not give rise to similar public outcry.

Eventually, the procedural legitimacy of local bans on the public use of soft drugs was judged upon by a judicial court. This did not happen however because someone contested a ban. Moreover, and very strikingly, the municipality that came under review actually had a ban out that was place-specific and correctly allocated by the mayor. As it turned out though, even here the juridical construction was found wanting.

The Ruling of the *Raad van State*

On 13 July 2011 the *Raad van State*, the highest judicial court on matters on administrative law, published a concise verdict in which it effectively declared all local bans on the use of soft drugs in public space invalid. The *Raad van State* resolutely proclaimed that as the use of soft drugs is already prohibited by the Opium Act, the

⁴⁵ A possible explanation for the mistaken delegation of authority is that the bans regarding drugs were commonly affixed to bans concerning alcohol. Local authority on alcohol-related issues used to be a shared responsibility of Aldermen and Mayor, as the regulation of alcohol also concerns policy areas such as economic affairs, town planning, and health issues. Recent legislation (the New Alcohol Act implemented per 1 January 2013) however designates the mayor as the sole authority in public order matters regarding alcohol.

lower authority of a municipality cannot legislate a duplicate ban. Subsequently, all local bans on the public use of soft drugs were nugatory.

The verdict resulted out of legal proceedings undertaken by civilians who had endeavored to have a ban installed in their street and were refused by their municipality. Hence the verdict was not in response to the bans being contested, but in response to proceedings in which the plaintiffs wanted such a ban installed. The particular case which resulted in this verdict was by chance a case study I investigated from the summer of 2008 onwards. The context and dynamics in which the proceedings were undertaken are discussed elsewhere, in section 4.1. Here, the discussion is limited to the legal implications of this verdict, which was surprising, and confusing, on two different points.

First of all the *Raad van State* argues that the use of soft drugs is already prohibited by the Opium Act. It reasons that article 3, parable and section C, forbids the possession of drugs as listed in List II of the Opium Act. It hence judges the use of soft drugs to fall under the scope of this provision, as the use of soft drugs implies the possession of soft drugs. It refers to earlier jurisprudence and parliamentary deliberations on the Opium Act. As stipulated earlier, the reasoning in itself sounds logical enough. However, as was expanded upon in section 2.1, the 1976 Amendment of the Opium Act had decriminalized the use of drugs. This concurs with the minister of justice explicitly arguing in 2005 that the use of soft drugs is not and should not be criminalized in general through national legislation, referring to considerations of addiction treatment.

Blom and Buller (2011), and also Brouwer and Schilder (2011), have remarked on this argumentation of the *Raad van State*. They contend that in the Explanatory Memorandum accompanying the amendment of 1976 it had indeed been stated that the change was purely textual and did not concern content. However, they emphasize that the Explanatory Memorandum was not the final word on the matter. In the subsequent response the minister, under pressure from parliament, stated that a consequence of the change in terminology from use to possession was that the penal position of the user had changed: the use of soft drugs no longer fell under the reach of the Opium Act. In other words, the investigation of the *Raad van State* into the meaning and intent of the Opium Act fell short. A more substantive investigation into the history of the Act would have brought to light that in the 1976 revision of the Opium Act, the act of using a drug had been struck from the law.

The second issue in the verdict that gave cause for dismay was the reasoning that a lower authority may not duplicate the legislation of a higher authority. The *Raad van*

State literally states that there is no room for municipal regulations that duplicate regulations in the Opium Act, regardless of the motive that underlies these regulations. The *Raad van State* here refers to the so-called doctrine of the upper limit of municipal regulations. As also stipulated in article 121 of the *Gemeentewet*, the Municipal Act, a municipal regulation may not conflict with regulations of higher authorities. The precept of the upper limit in itself is uncontested; it is the second part of the formulation that is controversial: ‘regardless of the motive that underlies these regulations’. Here the *Raad van State* seems to break with a principle developed and reiterated in jurisprudence called the ‘doctrine of motive’.⁴⁶ In short, this doctrine allows that a lower authority can complement regulations of a higher order, i.e. regulate something that is already regulated by higher law, when it does so from a different motive. This brings to the fore the importance of the motives on which the Opium Act and the local byelaws are based, respectively: the Opium Act is founded on motives of public health, whereas the local byelaws are based on the municipality’s authority on public order issues. Hence, according to the doctrine of motive, the municipal authority can very well issue regulations concerning topics also covered by the Opium Act, as long as it does so motivated on different grounds. The break with the doctrine of motive is notable because of the possible consequences for many other municipal regulations. Though the wider implications of the negation of the doctrine of motive fall outside the scope of the present project, this ruling of the *Raad van State* elicited broad attention because of it.

One final note is on the difference between *de jure* and *de facto*. Even if one followed the reasoning of the *Raad van State* that possession equals use, a further issue should be taken into consideration: *de jure* the possession of soft drugs is banned by the Opium Act. *De facto* however this ban was nullified by the Guidelines for Prosecution of the Public Prosecution Office that decreed the non-prosecution of any possession under five grams. In other words, even if the use of soft drugs is equivalent to possession and thus falls under the working of the Opium Act, in practice it would not have been enforceable because of the Guidelines. Hence, according to the verdict of the *Raad van State* municipalities cannot install local bans on the public use of soft drugs, whilst *de facto* they cannot rely on national legislation either.

The Aftermath of the Raad van State Ruling

On 14 July 2011, one day after the ruling of the *Raad van State* declared local bans on the public use of soft drugs nugatory, the municipality of Heerlen enacted precisely

⁴⁶ For example: HR 17 November 1992, LJN AD1779, NJ 1993, 409 and Hof Leeuwarden 13 August 2010, LJN BN4006, NbSr 2010, 303.

such a ban. Heerlen claimed to hold due respect for the *Raad van State*, but that it would await a ruling by a penal judge before taking its conclusions.⁴⁷ In general however, most local bans were quietly shelved, their enforcement canceled out. In one of my case studies a police officer reported that he had received a directive to no longer ticket for the public use of soft drugs.

In the juridical arena however, the matter was picked up and brought to trial again in test cases. In Rotterdam a case was brought to trial explicitly as a test case. The defendant was charged with having held in his hand a lighted joint in the public space, thereby violating the Rotterdam local ban on the public use of soft drugs.⁴⁸ The judge in first instance followed the ruling of the *Raad van State* (ECLI:NL:RBROT:2013:BZ0314) and declared the local ban nugatory. As a consequence, though the charge was deemed to have been proven and the defendant was found guilty of smoking a joint, this charge however did not comprise a criminal offense. By contrast, the appeal judge reversed this verdict and effectively reinstated the doctrine of motive (ECLI:NL:GHDHA:2014:205). The latter verdict declared that if a local ban is based on concern for the public order it does not overlap with the Opium Act, as this Act is founded on concern for public health.⁴⁹ This ruling not only reiterated the doctrine of motive, it also made it possible once more to enact local bans on the public use of soft drugs insofar they are instituted to protect the public order.⁵⁰

This verdict, dated 6 February 2014, is the last development taken into consideration in this study. The overall conclusion, albeit self-evident, is that the law is dynamic in content and non-linear in its development. A cautious subsidiary conclusion is that the history of local bans on the public use of soft drugs in general reflects a tendency already noted by Wouters, namely that Dutch drug policy is changing ‘its emphasis from public health issues to nuisance’ (2012: 12).

⁴⁷ The *Raad van State* passed verdict on an issue of administrative law, namely the refusal of a municipality to enact a ban on the public use of soft drugs. The track followed by the municipality Heerlen is to await a case in which a fine based on the enacted local ban is contested: this then is a matter of penal law instead of administrative law and is consequently presented at a different judicial forum.

⁴⁸ Article 3.4.4 APV Rotterdam.

⁴⁹ The loophole found was that the Amsterdam case also seemed to carry issues of public health, in that the requested ban should—also—protect the health of the children using the playground for which the ban was requested. It comes down to whether or not incursions on the health of children are to be considered a public order issue.

⁵⁰ With regard to local bans on hard drugs a similar verdict had already been attained, for example in 2012 in Amsterdam; see ECLI:NL:RBAMS:2012:BY1098.

In the following however we depart from the general trends, the grand total of eighty-one bans, and the juridical intricacies of their content. The query into the prevalence and juridical qualities of the bans has offered interesting observations: there are far more bans than initially expected, their juridical make-up is problematic, and they are instigated in response to experiences of nuisance, but the content of this nuisance varies. The questions of who initiates the bans and what effects they have however remain. In the following therefore we will delve into a selected number of case studies to investigate how these bans came into being and what their effects were in the spaces in which they figured. To this end we first introduce the methodology used and draw up the selected case studies.

3. Methodology

3.1 Research Strategy and Case Study Selection

3.2 Data Collection

Fieldwork: Observations and Street Interviews

Arranged Interviews

Written Materials

3.3 Data Analysis

3.4 Research Validity

3. Methodology

The core of the research underlying this book comprises the investigation of three sites in which local bans on the use of soft drugs in public space figure. These sites, a small playground in inner-city Amsterdam, a neighborhood shopping square in a suburb of Tilburg, and the village green of Spakenburg, are extensively introduced in the next chapter. Preceding the substantive consideration of the cases, this chapter will first expand on the methodology used to investigate the sites. For the larger part the focus is on the methods used to gather and analyze the data of these three case studies. Methodology however relates to more than merely the methods used; the chosen methods are grounded in a specific research strategy and design, which are duly first expounded upon in the following, including the selection of the case studies. Finally, at the end of this chapter the validity of this research is considered.

3.1 Research Strategy and Case Study Selection

Research Strategy

The primary characteristic of this research is that it is qualitative. The strategy of any research is determined by the research question (Bryman, 2004; Corbin & Strauss, 2008; Cresswell, 2013), and the questions that induced this research came out of the results of the general inventory elaborated on in the previous chapter. The inventory gave an indication of the prevalence of local bans on the use of soft drugs, but offered scant insight into why, how, and to what effect the bans were implemented. These questions form the core of the ensuing research, and the exploratory nature of the questions gives rise to a qualitative strategy of research. The quest is an in-depth understanding of the various processes surrounding the local bans and this understanding is sought out through a detailed description of a selection of case studies. The description encompasses not merely the processes on a timeline, but specifically investigates how the processes are perceived and experienced by the different actors involved in or simply affected by the bans. Additionally, in this research 'space' is a pivotal subject of inquiry, and the questions asked of the research sites are descriptive and qualitative. Hence, the strategy of this research is

qualitative in that it explores a limited number of case studies through a detailed and descriptive narrative.

Second, an important characteristic of the strategy pursued here is its inductive orientation. The question on what is actually occurring in the selected case studies is an open one. I had no specific theory singled out beforehand to explain my cases. Rather, I followed an approach in which the research evolved in response to the influx of data. Of course, as for example Bryman (2004: 8) specifies, inductive research also encompasses many deductive steps. In section three of this chapter I further explain how my analysis is an iterative process between data and theory. It would go too far to denominate this research as inductive, but it was certainly instigated and instructed by the data coming in; in the course of this research, the data invariably led the dance.

Third, following the categorization of different kinds of qualitative research made by Creswell (2013: 148–149), this research is best typified as a case study research executed through ethnographic methods. Moreover, the analysis was informed and inspired by grounded theory in the tradition of Corbin and Strauss (2008). Concretely, I studied a delineated issue, i.e. a ban on public use of soft drugs in a specific locality, through participant observation, interviews, and documents, and I analyzed my findings with the use of extensive memoing. The applied methods and undertaken analysis are further expanded upon in the second and third section of this chapter.

I venture that I used ethnographic methods, rather than state I did ethnography. Whether this research comprises an ethnography can be argued both from a broad and—with a contradictory outcome—from a narrow understanding of the concept. I do not venture here to qualify the definition of ethnography,⁵¹ but opt to focus on content rather than classification and instead simply refer to Nader who rightly remarks that the ‘what and how’ of ethnography has always been controversial, and ethnography is an inspiring and dynamic intellectual process because of it. As for content, the ethnographic quality of this work is embedded in the attempt to understand, by being in the field for a continued time and talking with people, ‘how the people studied see and account for their world’ (2011: 211).

⁵¹ As an anthropologist however I thoroughly enjoy the ongoing debate on this topic, as for example held between Wacquant (2002) and Duneier (2002). See also for a comprehensive overview on debates on ethnography Kusenbach (2005).

Selection of Case Studies

In the previous chapter, in the discussion of the national inventory executed in 2009, we discerned that over eighty municipalities had a ban on soft drugs in effect and another thirteen municipalities had such a regulation under consideration, clearly far too great a number for qualitative in-depth investigation. Hence I had to select a sample of case studies from this inventory. There are different strategies for case selection: A distinguishing characteristic is whether the selection is random or information-oriented. Random selection can be completely at random or stratified for sub-groups. In an information-orientated selection one can opt to select extreme or deviant cases, cases with maximum variation, critical cases, or paradigmatic cases. One particular case can answer to more than one strategy, and beyond the strategic choice of a case, pragmatic considerations in the execution also play a role (Flyvberg, 2004).

In this research, the first step in the case selection was to refer to the three categories evolving out of the analysis of the national inventory. To recap, the bans were categorized into three groups on the basis of the reasons offered to establish a ban. The three categories consisted of bans addressing (a) nuisance experienced in a specific space, (b) nuisance experienced as deriving from specific individuals, and (c) nuisance experienced by the use of soft drugs in itself. Subsequently, from each category a case was sought out. The cases chosen were paradigmatic, in that they clearly represented their category. As argued in chapter two, multiple arguments are usually used simultaneously to promote a ban, and these arguments may refer to space, people, behavior, or a mix of the three. In each of the three selected case studies however a clear focus is discernable on one of the issues—space, people, or behavior—in particular. The final selection of cases was informed by practical considerations of doing fieldwork, foremost the possibility of residing in the vicinity of the research site.

Within the category of bans focused on a specific space, the selected case study is a playground in a residential area in Amsterdam. The Amsterdam municipality already had a ban on using soft drugs in effect on Mercatorplein. In the case of the playground selected as case study, a similar ban had been requested by residents of the square hosting the playground. This request was denied by the municipality, eventually leading to the ruling of the *Raad van State* as discussed in section 2.3. Hence a ban on public use of soft drugs figured prominently on this square, though it was not formally implemented. Moreover, and more to the point in this context: the ban was specifically geared towards a particular space. As for practical considerations, this research site was located in the same borough as my home.

Within the category of bans directed at a certain group, the selected case study is a shopping square in the northern suburbs of Tilburg. Though other cases exuded the impression that the bans were directed at discouraging certain groups from public space, the bans which pertained specifically to the use of *qat* were demonstrably directed at a specific sub-group of the users of a public space. As detailed in chapter two, the consumption of *qat* is very group-specific and the drug holds little appeal beyond its traditional consumers. In the choice between two municipalities known to have implemented a ban on public *qat* use, Tilburg was favored for selection because of the possibility of lodging in the vicinity with family whilst conducting fieldwork.

Within the category of bans primarily addressing behavior, the selected case study is the village green of the town Spakenburg. As we saw in the inventory, numerous municipalities argued that their implementation of the ban substantiated their rejection of the use of soft drugs. The specific selection of Spakenburg was induced by the fact that I could lodge with family in the vicinity of the village whilst conducting fieldwork. The ban in Spakenburg was not set up as a general ban, but formulated in a place-specific fashion. This was however only acceded to because of awareness that a general ban would not be valid. The intended reach of the ban was explicitly the behavior of publicly using soft drugs in general.⁵²

The specifics of each case are rendered in detail in the next chapter, as well as the comparison between the three cases on various characteristics.

3.2 Data Collection

My data collection breaks down into three main strands. The crux of the data collection lay with observation, predominantly participatory observation or naturalistic observation, and street interviews. A second category of data collection consisted of semi-structured and pre-arranged interviews with professionals and stakeholders involved with the spaces under scrutiny. The third category of data collection concerned written materials.

All in all my data collection ran from the summer of 2008 to the fall of 2011.⁵³ Maternity leave and teaching obligations took me away from my research intermittent-

⁵² Municipality of Bunschoten, council proposition 287, 13 March 2008.

⁵³ This is not to say I lost touch with my research sites completely after that time. The dataset I worked with however was collected within this timeframe. One notable exception is the legal developments relevant to my research, such as the criminalization of *qat* in 2013 and changes in national legislation.

ly. In the summer of 2008 I commenced researching the site in Amsterdam, and from 2009 onwards I began interviewing stakeholders and attending local meetings on the issue. Apart from reconnoitering the site, this also helped me to further explicate my research plan and draw up my research design. In the summer of 2010 I embarked on fieldwork at the Tilburg site, followed by Spakenburg, the third site, in 2011.

Fieldwork

The bulk of the groundwork of my research ran from May 2011 to October 2011. Within this timeframe I structured my presence in the sites for observations and informal interviews. Per site I spent one week in the spring, one week in the summer, and one week in the fall, totaling nine weeks of on-site observations. On average I spent around twenty-five hours per week on each site, spread out over all the days of the week and all hours between 6 a.m. and 2.30 a.m. In total I clocked over 228 hours of observation in this timeframe.⁵⁴ The three weeks in the summer coincided with the school holidays in each area, and also with Ramadan, which figured substantially in the case study of the shopping square in Tilburg.

The majority of my field notes are in written form, noted down on location. I never hid my reasons and intentions for being in a particular spot. A small part of my notes I recorded into the dictaphone of my mobile phone. This included ideas and thoughts that would come to mind whilst moving to and from my research site, and which in section three I denominate as memos. For the weeks of observation conducted in the spring and in the fall I transcribed almost all my notes digitally within twelve hours of leaving the site. For the weeks I observed in the summer period I managed to transcribe about half my notes immediately, the rest was digitalized later.

Observations

My observations concerned the social dynamics of a space: when it was used, by whom, and in what manner. I focused on the people in the space, how they behaved, and with whom they interacted (or not). My observation of the physical

⁵⁴ I recorded additional hours of observation during scouts in 2008, 2009, and 2010, prior to the structured three weeks per case in 2011.

layout of space was subservient to how these aspects could function as cues for the way people perceived and behaved in the space. Thus after the initial mapping out of the physical structure of a space, during each observation I also noted more changeable aspects such as weather conditions, state of cleanliness, and last but not least formal and informal signs and notices put up. I should perhaps note that the summer of 2011 was infamously wet and cold and not continuously attractive for outdoor leisure in public space.

I did my observations from the space itself, not from a detached vantage point. I made myself part of the setting and shared the cold, the heat, the rain, the noise, and the smell with those I observed. At times I would position myself in the middle of the setting and for example sit on a much used—and much vied-over—public bench. In other instances I would take a second row position, by settling down as a customer of an enterprise or by locating myself at the edge of the site, out of direct sightlines. In all instances, I could easily accost others and try to strike up a conversation. Moreover, and more importantly, people could accost me and question me. In many cases they did. I took notes overtly, and in more than one instance my collocutor would take my notepad away from me, check what I had written, comment on my terrible handwriting, and correct and add to my written notes.⁵⁵

Street Interviews

During my hours of observation I conducted numerous street interviews, informal conversations held in the sites of observation. My interest was not only how people acted in a space, but also how they perceived the space and the ban that figured in that space. Sometimes these conversations were initiated by me, sometimes by my collocutor. Some people I spoke with on multiple occasions, and some of these I came to consider key informants. The majority of these conversations were one-on-one, though at times I would find myself to be conversing with a group.

To structure the informal exchanges with people residing in the space I observed I had composed three general questions. I asked everyone I spoke with in all three locations these same three questions:

1. Which three words would you use to describe this space?

⁵⁵ This happened mostly in Tilburg. As a consequence, I quickly developed a personal jargon to note things I did not want to be easily read and understood by my field. As mentioned, I would also verbally record notes on the dictaphone function of my mobile, whilst pretending to be on the phone with someone.

2. How often do you come here and why?
3. Is anything forbidden here that is not forbidden elsewhere?

I borrowed the first question from Bryan Lawson (2001: 231). Lawson explains how—as an architect—he uses this question to gauge how people perceive a space. In precisely this way the question has worked very well for me. In my variant I first asked people which three words they would use to describe the space. I would subsequently ask them to explain and/or elaborate their chosen words. Their response would be leading in our further exchange. Some people would point out the physical structures, others would talk about other people in the space, some would talk about how it used to be, others would talk about all it was not, some would expand on personal histories, and again others would link to wider political discourses.

The request for three words also worked because few people managed to provide three straight positive or three straight negative descriptions. Often, after two outspoken positive or negative formulations, the third slot would—sometimes grudgingly—be filled with an oppositional formulation. Also, people would often begin to address the image they knew the space to have and either concur with or dispute this. Asking for three descriptions allowed people to also come round to their own focus.

My second question was how often they came to the space and why. This question functioned to get an idea of its importance for a person in the daily flow of life. Some people would only come to a location once a week, because the butcher was worth the trip across town, for the weekly open market on Saturday, or to wait out the violin lesson of a child. Other people used the spaces much more intensively; some would be there daily and I became acquainted with quite a few of them. Some of these became, as Milgram would say, ‘familiar strangers’ (1977: 51). With others I developed a more substantive relationship and these persons would greet me across from the parking lot, or come up to me for a small chat, with topics ranging from the weather to whatever they felt I should be informed about.

The third question zoomed in on the reason I was actually there. These places all had a ban on soft drugs in play. In Tilburg and Spakenburg such a ban was in place whilst I was on location, and in Amsterdam such a ban was under debate. The question was meant to make clear how many of the people residing in and passing through these places were actually aware of the issue that had drawn me and my research to these particular places. In other words: was my issue actually an issue for the users of the space?

Arranged Interviews

To complement the information coming from the spontaneous street interviews I also arranged interviews with people who were linked to the daily life of these sites, but whom I did not encounter by chance on the sites. I conducted semi-structured interviews with professionals and stakeholders.⁵⁶ Professionals are persons with a professional relationship with the space, and who talked to me in their professional capacity. These were the municipal government officials such as the safety coordinator of the district, the legal counselor for the municipality, the policy officer on public order and safety.⁵⁷ Also under the denominator professionals are the formal enforcers; in each location I spoke at least once with the policeman on the beat. Moreover, I spoke with non-governmental professionals such as a representative of a housing corporation, the editor-in-chief of a local newspaper, and the chairman of a neighborhood council.

The stakeholders I identified can be categorized into two main groups: entrepreneurs and residents. The entrepreneurs were stakeholders who had their business on the research site and made their living in that space. Though in Spakenburg and Tilburg larger businesses were present (in both sites for example the bargain supermarket chain Aldi has a store), I spoke with the small business owners: the butcher, the baker, the phone-house operator, owners of the late-night cafés, and the proprietors of coffeeshops. Most of these entrepreneurs lived in the same municipality as their business, but not on the same site. The second group of stakeholders were residents, who actively engaged in the debate on the legal intervention in their space.

In total I conducted twenty-four pre-arranged and structured interviews. The formal interviews lasted on average from about an hour to an hour and a half. Some interviews lasted considerably longer. Only a few of the interviews were recorded on tape. Even without a tape running, I would be told certain remarks were 'off the record', that my respondent 'did not want to read what he had just said in the newspaper', that I was 'not to write down what he was about to say', that he 'had said much more than he had planned to'.⁵⁸ All in all I believe I won more information in the confidence of not recording, than what I lost through not having everything on tape. Either way, recording was often simply not an option. In an effort to capture as much as possible from the interviews, I made stenographic notes

⁵⁶ I also spoke with various professionals and stakeholders in an informal way. I arranged the formal interviews with people I either did not meet in the spaces I researched, or because I had questions beyond the timespan available on chance encounters.

⁵⁷ In each location the responsible municipal official had a different occupation.

⁵⁸ In such cases the information acquired was integrated in the overall analysis, but no ascribable quotes are taken and cited here.

whilst interviewing, recorded impressions verbally into my dictaphone immediately after interviews, and transcribed my notes in almost all cases within a few hours of concluding the interview.

Written Materials

The third category of data collection consisted of written materials. The primary goal of collecting data within this category was to gain insight into the formal processes surrounding the bans: how they occurred, how they were presented in formal communications, and how they were subsequently reported on by the media. The category of written materials can in essence be divided into news coverage on the one hand, and policy documents, including documents dealing with the legislative process, on the other. News coverage on a space was retrieved initially through queries in the search engine Google. Later on I executed focused searches in LexisNexis, a paid database including media content. LexisNexis had the advantage of being able to conduct substantive searches in its database of national newspapers. It had the serious disadvantage of not hosting the local press.

Throughout the entire research I continuously gathered documents on the three case studies. I gathered formal documents by accessing municipal databases and searching them for municipal council texts, policy briefs, and official communiqués on the bans. These were publicly accessible documents, available to anyone who cared to look them up. In a few instances I accessed audio recordings of proceedings in the municipal council and transcribed the relevant sound bites. Furthermore, through informants in the field I acquired a vast range of different documents: minutes of meetings between municipalities and civic platforms, internal exchanges on policy and enforcement, juridical briefs submitted in legal proceedings, letters sent to the newspaper (including unpublished ones), PowerPoint presentations used in public participation meetings, and so forth. In these instances I was completely dependent on what my informants had available and the selection they made of what to offer me—for whatever reason.

3.3 Data Analysis

My data analysis commenced at the start of the data collection and continued in a dialectical fashion with the data collection throughout the research. Collected data

would, in analysis, produce questions that would in turn inform further data collection, and so forth. Though no researcher enters a research completely unburdened with assumptions or expectations, I can honestly contend that, being new to the field of urban sociology when I first started on this project, I entered the research field with little prior theoretical knowledge on the issues at stake. Hence my data analysis was an ongoing process informed simultaneously by data coming in, theoretical knowledge acquired, and the development of my own thinking.

My main train of analysis occurred through continuous note-taking, or as denoted by Corbin (in Corbin & Strauss, 2008), 'memos'. In Corbin's words, memos are 'a specialized type of written records [...] that contain the products of our analyses' (2008: 117). The bulk of my data consists of field notes on observations conducted by myself and verbalized by myself twice: the first time in the field, either through jotting notes in my notebook or my dictating them into my dictaphone, and again a second time shortly thereafter when I transcribed my notes into digitalized texts on my computer.⁵⁹ In a sense those field notes, consisting of more abstract thoughts and interpretations of what I observed, are already a form of memo. In transcription I would often append additional analyses I made whilst rewriting what had been noted and what had occurred during the observations. Many of my enduring analytic insights occurred whilst contemplating or writing out 'first round' memos.

Occasionally, the memos would take on the form of a table or a diagram, in which I would line up the three research sites and fill in how a certain theoretical concept attained from the literature or a practical issue arising from the data played out in each site. This would enable me to compare the sites and find similarities, dissonances, and apparent paradoxes. Such tables subsequently both organized my thinking and aided me in my focus on issues the next time I entered the field.

The memos, in their various forms, built up as a pyramid; a broad base of a multitude of loose notes and thoughts slowly combined into a more pointed focus of abstract ideas and conclusions. This process was substantially aided by discussions with and feedback from direct colleagues, as well as audiences at conferences where I presented parts of my work in progress. Eventually I structured my data on the three different research localities into the three topical categories: constructions of space, juridification, and the working of law. These three topics are each the subject of a chapter in this book.

⁵⁹ I trained myself in the software program atlas.ti for this research. However, in practice I made very limited use of this application. The main reason for this was the fact that I only had access to the software on one particular computer, whilst I worked in many different places with different computers.

3.4 Research Validity

In the previous sections this work has been presented as a qualitative case study research, investigated by one single researcher through the use of ethnographic methods. What does this entail for the validity of this research?

The qualitative design of this research has already been argued as the given strategy with regard to the exploratory questions posed. Moreover it holds with my ontological and epistemological beliefs, formatted by my anthropological background. My ontological position is that there is not one truth. My research quest subsequently is not to pin down *the* reality, but to uncover the different realities held by different actors in a particular situation, and how these realities interact, evolve, and together continuously produce an ever-changing societal constellation. This perspective on reality in turn informs my epistemological stance; as I do not believe there is a single objective truth to be found, but on the contrary multiple subjectively held truths exist, my endeavor is to get close to what I research. To get a grasp on a subjective perspective I enter my field of research rather than regard it at a distance. I attempt to understand the context and frameworks of reference in which my research subjects come to their individual beliefs, and test my findings in interchange with my respondents. As this epistemological stance reveals, the postmodern turn did not pass me by unnoticed. However, though I am sympathetic with many of the postmodern postulations and I concur that all knowledge is relative, I am what Eriksen and Nielsen denominate 'a realist' (2013: 200). I believe that relative knowledge is relevant nonetheless, and that viable scientific knowledge can be attained when adhering to clear rules on methodology, or what Cresswell calls 'validation strategies' (2013: 250).

One strategy followed to anchor the accuracy of the qualitative examination was 'prolonged engagement and persistent observation' (Cresswell, 2013: 250). The research took place over a long period of time: the first excursions into the field date from 2008 and fieldwork continued in a structured fashion up until the fall of 2011. This continuous engagement with the field allowed generous opportunity to check and substantiate observations. A second strategy consists of methodological triangulation, in a manner first outlined by Malinovsky in 1922.⁶⁰ As expounded upon in section 3.2, this research builds on data acquired through different methods of data collection, namely observations, interviews, and the analysis of written documentation. The data attained from these different venues was 'triangulated' to form a

⁶⁰ Taken from Nader (2011: 214).

comprehensively informed view on the subject matter. Similarly, in total three cases were investigated in comparison and in dialogue with each other. Moreover, section 3.3 offers transparency on how the data was analyzed, and in the section below, transparency is offered on the persona of the researcher and how this possibly influenced the research.

A common objection with regard to case-study methodology is that 'one cannot generalize on the basis of an individual case; therefore the case study cannot contribute to scientific development' (Flyvberg, 2004: 421). I agree only in part. Case-study research can substantially contribute to the 'formidable task' of social sciences to 'distort reality into clarity' and hence organize understanding of a world that 'is vague, diffuse or unspecific, slippery, emotional, ephemeral, elusive or indistinct, changes like a kaleidoscope, or doesn't have much of a pattern at all' (Law, 2004: 2). Case-study research makes such understanding attainable, considering that '[c]ase studies often contain a substantial element of narrative. Good narratives typically approach the complexities and contradictions of real life' (Flyvberg, 2004: 429–430). On the other hand, I contend that one cannot simply generalize on the basis of a case study, and I do not argue the outcome of this research, based on three case studies, to be exhaustively applicable to all other instances. However, 'empirical generalization' (Schuyt, 1986: 83–88) is not the intended result here. Rather, the aim of this research is to unravel the processes playing out in the juridification of social control in public spaces, and thereby contribute to the wider theoretical discourse on these issues. I do not argue that what I describe always and inevitably takes place. I do offer that the mechanisms brought to light by this research can apply to and aid understanding of other situations beyond the case studies investigated here.

Persona

As noted, this research was executed by one single researcher. In the following I will clarify the persona of the researcher and discuss how this possibly impressed upon the research.

With regard to my physical appearance and how my field encountered me: I was born in 1973 and at the time of the fieldwork I was thirty-eight years old. I am a female. At 1.78 meters with a fair complexion and reddish-brown hair, my general appearance is Caucasian, and only my very dark eyes hint at a mixed ancestry. I have at times described myself as well fed: I am not overweight on any official scale, but it is evident I eat my greens and then some. I am told I have a friendly and approachable appearance. As with regard to my social position and life experience: I

was born and raised in a prosperous and happy middle-class family. I have a Christian background but received no religious education. I went to university as a matter of course without much financial worry, and I have travelled extensively and lived abroad for longer periods of time. Amongst other things I conducted anthropological research in *el barrio Capotillo* (Santo Domingo, Dominican Republic), investigating economic strategies of women in the informal sector, and in *Omungwelume* (a small rural settlement in northern Namibia), exploring the relationship between traditional authorities and national government. Back in the Netherlands I worked as a government official for several years and subsequently as a consultant, before returning to academia to pursue this project. I have a spouse I love (and like), three small healthy children of both sexes, a mortgage I can afford, and a family car. I live with my family near the center of Amsterdam, in a multi-ethnic and steadily gentrifying area. My life experience is broad but without any traumatic personal distress, and my personal orientation is that of secular petty bourgeoisie.

This was the person with whom the field, through no intent of its own,⁶¹ was confronted. How this person was appraised by the field reflects the very different dynamics of the three sites in which I conducted fieldwork. Characteristically, in Tilburg I was believed to be an undercover police agent, in Spakenburg people suspected I was a journalist, and in Amsterdam nobody doubted that I was another social science researcher. None of these ascribed roles worked in my favor, and only in due time and through my continued presence did people acknowledge and respond to my sincere interest.⁶² A common feature of the sites was that they were so small, both physically and in the number of people who used them, that my presence was quickly noticed and questioned. I opted to be transparent about my objectives. Though I was not always believed to be an academic researcher, I do not think it would have been a viable option to act covertly without inducing suspicion and possible aggression.⁶³ That my investigative purpose was so obvious would at times lead to two hindering types of responses: people would either be very reluctant to talk with me, or would quite the opposite actively try to get me 'on their side'. Re-

⁶¹ As Georges and Jones (1980: 22) bring to attention, much research is a one-sided act, as subjects of research are rarely asked in advance if they are willing to be thus identified.

⁶² Throughout my fieldwork in Tilburg I was occasionally tested by the field to see how I responded to illegal activities (see also Chevalier, 2015). The ascribed role that I myself found most remarkable was that of drugs dealer: in Spakenburg I was accosted as such on two separate occasions. The supposition however apparently did not hold very fast upon closer inspection.

⁶³ As it was, I experienced a few physically intimidating incidents during my observations in the field, all on the case-study site of the shopping square. For example, one time I had my smartphone stuck in the breast pocket of my jeans jacket and my collocutors thought I was filming them. They took my smartphone from me to verify this was not the case and, luckily, then returned it to me. Other experiences of physical harassment pertained specifically to my quality as a female; see also the section 'gender'.

luctance to talk with me would at times also include making me feel very unwelcome in a space. Recruiting me for one side of the story would likewise include an emotional assertion. Field notes on how experiences in the field impacted me personally were duly included in the overall analysis of the data emanating from the sites. All in all though, I attained a pleasant and productive connection with the majority of the people I encountered on the various sites. One issue however stands out concerning my persona on this research, and merits a separate review: my gender.

Gender

I am a female, and in one research site in particular this posed an additional element of consideration, namely the shopping square in Tilburg. As will become clear in the extensive description of this case study in section 3.2, the shopping square was a multi-ethnic and male-dominated space. In short, in this research site I experienced various incidents of sexual harassment. The harassment was mostly verbal, though a few physical incidents also occurred. Those exercising the harassment on my person were often half my age or younger. In time I came to realize the incidents were not so much about sex as they were about negotiating the social hierarchy between the male youths and myself (cf. Duneier, 1999: 200).⁶⁴ The following is taken from field notes describing events on a Saturday evening in a social venue on the shopping square where I was conducting fieldwork.

'It is around 10 p.m. and I am in the Egyptian grillroom. Aside from the two bar ladies I am the only woman in the place. Also in the bar is a young Somali male I have seen before on the square. He is in his mid-20s, well groomed and a well-trained physique He starts to focus his attention on me, takes the seat next to me and remarks that I give a man three legs. I tell him I do not like the insinuation, and he retorts that he did not mean anything with the remark, I am hearing things he did not say, I am making much about nothing, it is all in my head. He stays where he is and starts talking to my neighbor at the bar. Pretty soon afterwards, he leans over the bar counter to reach for something, and in the process crushes me between himself and the counter. I am not a small person, but this is a pretty big guy, and his "third leg" is pressed firmly against me. I manage to squeeze free and angrily tell him not to do this. In reply, he blows his top. He yells at me, first in my face and subsequently whilst he removes himself to the other side of the bar. Though I feel the whole bar monitoring the situation, nobody lets on that they are aware of what is going on. I sense that if I leave now, I forego my access to this pivotal place in my fieldwork site. Hence I stay where I am, sip my

⁶⁴ I have more extensively reflected on the dynamics of doing fieldwork on this specific site in Chevalier (2015).

ice-tea and eventually strike up a conversation with another person in the bar. Meanwhile, I try to figure out how to resolve the situation. Eventually, I do this by appealing to my personal status. When I am ready to leave I approach my aggressor and ask if I can say something. He makes a dismissive gesture. I say, loud enough for all to hear, that I have a husband and that I am the mother of three young children. I want to give due respect, but for this I need to receive due respect. I do not want to have a problem with him, and I do not want him to have a problem with me. So can we agree to respect each other? And I offer him my hand for a handshake. He lets my hand hang mid-air for a moment too long, then shakes it, does not meet my eyes, but sighs "sure". I figure this is as good as it will get, smile and say "wonderful". I gather my coat and stuff, say a general good evening to everyone there and make my way out of place.'

This extensive anecdote is reproduced here to illustrate that the particulars of my persona certainly did impact the fieldwork, and this came most clearly to the fore in one particular site and with regard to my gender. At the level of analyzing the data, being hassled and confined to my female identity on this site made me sensitive to the way others were hassled and confined to only one dimension of their person. Moreover, it made me aware of power plays underneath the surface of the easily observable. At the level of obtaining data, my persona in some instances hampered the acquisition of data and in other instances facilitated it. In the evaluation of one of my key informants on the shopping square: *'well, if you'd been a white guy, it would have been much worse'*. In general, considering all three sites, another researcher with a different profile would most probably come back with other experiences and field notes. I contend however that such a researcher would nevertheless recognize and concur with the overarching conclusions presented here.

4. Introducing the Case Studies

4.1 The Neighborhood Playground

4.2 The Local Shopping Square

4.3 The Village Green

4.4 The Cases Compared

4. Introducing the Case Studies

Scene one: A residential city street on what has clearly been a wet day. The air is festive; a crowd is out and toting colored balloons. It's mostly women and children, toddlers holding on to their mother's hands, a baby carriage. The people are clad casually but well, with a light bohemian feel. Two small girls don Spanish flamenco dresses with matching shoes. The balloons have small notes attached to them and are let go with much hurrah. The camera then swings ninety degrees and stops at the corner building. There is a street terrace set out, with colored tablecloths and a tarp spun out against the rain. Three municipal signs can be discerned, of which two combine to indicate a two-way cycling path. A third sign displays an amount of text and has clearly been vandalized. The pole of the sign is used to secure a sturdy-looking bicycle with a child's saddle. The camera continues forward and shows a municipal bench incorporated into the street terrace by matching it with a table. Directly behind this table a small playhouse can be discerned, and further away the structure of a swing is visible. With just a few steps the camera enters the corner building and a watery sun appears. The scene exudes the friendly festive feel of the moment. It also shows how comfortable this group of parents with children is on this site, and it gives a clear idea of the proximity of the street terrace to the playground: the two are truly adjacent to each other.

Scene two: A small 1960s style built shopping square on a cloudy but warm day. One registers the sound before the visual. A band of eight young dark-skinned men enter the picture; one of them is conducting the others, one is playing the tuba, and the remaining six each play a different drum. The music is sweeping. A crowd looks on, sitting and standing around the band. A camera shot of food on a plate, deep fried with a red sauce, and then of children jumping up and down on a gigantic air cushion. Next, a couple dancing in a mellow style. The woman is wearing dark sunglasses and multiple large necklaces and has her hair up in a large Rastafarian cap. The man is also wearing a long necklace, a jazzy hat, and a (too) close-fitting sleeveless t-shirt. In his hand an open half-empty bottle of beer. More music, two young rappers with low-hung trousers and baseball caps on, one worn backwards. The crowd knows the words to their song. Some more shots show more food, women with headscarves, and quite a few obese people. The congregation is evidently an ethnic melting pot, the people and the space have a shabby feel to them. The atmosphere is festive but not exuberant.

Scene three: A village square on a sunny afternoon. The people are well dressed, well fed, and all native white. A lot of children are milling about, groups of teenagers are seated together, and several elderly people dot the scene. A woman in a traditional folklore costume walks by. Then the sound system of the square starts playing a hymn and it transpires that a 'flash mob' is being filmed here. Almost everyone on the square stops with what they are doing, those sitting down stand up, and all join in with the song. It is a Christian song praising Jesus—the Dutch version of 'À toi la gloire'—and it is sung loud and clear by the gathered crowd. When the song ends people applaud. The scene conveys a homogeneous and content community in the sun, where people are at ease in each other's company. The setting is a roomy village square, with cobbled stones arranged in neat patterns and flowers in the plant borders. Traditionally styled houses encircle the square and the space exudes prosperity.

The scenes above offer a first introduction to the three case studies. They can all be found on the internet, in a video clip on YouTube.⁶⁵ The clips represent the popular image of the places and they don't surprise in what they relay. I refer to these visual depictions here because they concisely instil the apparent differences between the three sites: the bohemian inner-city residential street; the multi-ethnic suburban low-end shopping square; the prosperous, homogeneous and ecclesiastical village green. It is only upon closer inspection that the connecting themes in the cases come to the fore.

This chapter introduces the three case studies on which this study rests. In the following each case is presented separately and described from three different entry points: the geographical site, the people who figure in it, and the ban under reference. In the course of the descriptions, the answers to the empirical questions posed at the beginning of the book are discerned: how the bans came about (by whom they were initiated, why, and through which process; how they were drafted; and how they function in the spaces in which they figure). The accompanying aim of this chapter is to give the reader a sense of the places and the people in them, to become acquainted with their characteristics and specifics, their context and dynamics. In the following chapters considerable reference will be made to the cases introduced here, while an answer is sought to the second question set formulated at the outset: how does a legal intervention effect the space in which it figures?

⁶⁵<http://www.youtube.com/watch?v=pvQ-Lo8IDaE>; <https://www.youtube.com/watch?v=ENIBpFYeVJE>; <http://www.youtube.com/watch?v=kJ9ZA4Q1Fw0>; last accessed 27-05-2014.

4.1 The Neighborhood Playground

The first case study is a neighborhood playground, located in an inner-city residential block in Amsterdam. In August 2008, residents living directly by the playground requested that the municipality install a local ban on smoking cannabis in the locality of the playground. Their request was denied, and no ban came about in this space.

The playground is considered the heart of the Hemonykwartier, an area part of a larger district known as De Pijp, a nineteenth-century urban expansion south of the city center. Traditionally a blue-collar workers' district, it has been steadily gentrifying since the turn of the millennium. It is one of the most densely populated neighborhoods of Amsterdam. The municipal statistical office reports for 2011 that 18% of the residents are of non-western descent, 37% of the residents fall in the low income group, and 24% of the residences are owner-occupied (O+S Amsterdam, 2011: 33–37).

The neighborhood De Pijp harbors a total of thirty-one coffeeshops.⁶⁶ Though they mostly lie outside the city's primary tourist district, they do not cater solely for their direct neighbors. Part of their clientele comes from the outlying district Amsterdam South East, which has no coffeeshop itself. Both by road and by public transport (the metro), De Pijp is easy to reach from Amsterdam South East. Within the grid of the Hemonykwartier a total of four coffeeshops are located, including one directly adjacent to the playground. One of the other coffeeshops has won prizes and subsequently widespread fame for the quality of the products it sells.

The playground runs the length of one block and is about fifty meters long and five meters wide. It is the product of a long process of civic consultations and was constructed in its present form in 2006. It is also commonly referred to as a *plein*, i.e. a square. Commencing on the south side, adjoining the space of the street terrace of the coffeeshop located on that stretch, a section is portioned off for toddlers. Inside a knee-high fence of wooden poles there is a log play cabin and a sandbox. In the middle of the square there is a mini soccer field, with a knee-high mesh wire fence and two small goals. At the north end of the playground there is a large swing, comprising a single circular basket of a meter diameter. At both ends of the stretch, on the intersections with the cross-cutting streets, there are bicycle racks, though more bicycles are parked there than the racks can accommodate. To the east side the

⁶⁶ In mid-2011 there were 222 coffeeshops in Amsterdam, about a third of the national quota. Most of the coffeeshops in Amsterdam are located in the central borough.

playground overflows into the pavement, to the west side it is separated from the bicycle path by a low fence overgrown by a resistant shrub.

Picture 4.1 The neighborhood playground viewed from the south end; coffeeshop Yo-Yo is located on the corner partly obscured by the tree (image: Google Street View).



This stretch of the street has been closed off for cars, but a bicycle path guarantees a thoroughfare for cyclists. Ostensibly, only mopeds with a speed limit of twenty-five kilometres per hour are allowed on the bicycle path, but often enough mopeds with more power also pass through. Safety islands have been realized on the bicycle path to slow down traffic, and to dodge these bumps some of the traffic moves to the pavement. Residents in turn try to keep fast traffic off their pavement by parking their bicycles and cargo-bikes transversally on it. Trees are planted in a row along the length of the block, separating the bicycle path from the playground. Moreover, with the exception of a building belonging to the housing corporation, all the buildings have a so-called *geveltuin*, a 'façade-garden'. This is a small patch of greenery adjoining the buildings, on land made available to this end by the municipality, on the condition that residents maintain the greenery.

The square is very open and easily accessible. It does not offer much shelter. As a resident notes: *'It has struck me that homeless people never settle here. It isn't a very sheltered spot. If I was homeless I wouldn't set myself here either. It's an open space and a lot of people come through here. And when it's windy, it is really windy here. And all the buildings are residential, there is no spot where you can sleep undisturbed.'* Because the street is relatively narrow, the view from the residences regarding the playground is pretty

much restricted to the immediate space in front of their houses. Indoors, what occurs at one end of the street is not apparent at the other end.

The buildings are four to five stories high. At the east end of the street the buildings are the original late nineteenth-century structures, and large window fronts on the ground level reveal that previously shops were situated here. On the west side, the southern half also has original structures, in part in bad repair. The northern half is of more recent origin. In the middle of the street looms a 1980s structure owned by a housing corporation. Next to it, stretching all the way to and around the corner, stands an even newer structure, built at the end of the 1990s and containing high-end, owner-occupied apartments. Almost all the buildings are residential. The exceptions are located on three of the four corners of the block. On the north-east corner a small restaurant based around French cuisine offers a three-course meal for under thirty euros. At the south end one corner is occupied by a daycare center that has been on this location since the mid-1990s. The wooden furniture is made by the proprietress herself, only organic food is served, and opening hours are from 9 a.m. till 3 p.m. Longer opening hours are not deemed beneficial for the children. Situated across the road on the opposite corner is Yo-Yo, a coffeeshop selling organic cannabis that opened in 1993. When weather allows, Yo-Yo has a street terrace out in front of its entrance.

The square is used intensively. Right around the corner there is a large community house and elementary school. The playground functions as an extra schoolyard for the school during school hours. Moreover, the square is used intensively during the lunch break and after school. This holds for the elementary school, but also for the preschool facilities housed at the community house. At other times, the children playing in the playground in the late afternoon and early evening or on weekends are predominantly from the residences located on the square and from the surrounding neighborhood. Thus its use is not limited to the school, but the rhythm of the school does very much influence the rhythm of the playground.

Upon entering the playground from either side a large municipal sign can be discerned, with the following text:

'This is a children's playground in a residential area.
It is not a place for hanging about or smoking joints.⁶⁷
Thank you!
Residents and coffeeshops Hemony neighborhood.'

⁶⁷ The Dutch verb '*blowen*' refers to the act of smoking joints, i.e. cigarettes rolled using cannabis.

Picture 4.2 The municipal sign on the playground (image: author).



The sign has been vandalized more than once. In the picture shown the word ‘*geen*’ has been altered to ‘*een*’ by erasing the letter ‘*g*’. The English equivalent would be altering the word ‘*none*’ to ‘*one*’ by erasing the letter ‘*n*’. Hence by erasing the one letter on the sign, it now reads that it is actually a place for hanging about and smoking joints. Moreover, at a later point, the adjective ‘*two*’ has been added in front of the word ‘*residents*’, to convey that ‘*residents*’ as stated on the sign should not be read to refer to all the residents of the neighborhood.

To the opponents of the ban, the sign is an affront to their space and their societal convictions. The concrete objection is the signature of ‘*residents*’ on the sign: they were not consulted, the statement on the sign does not have their support, and they feel used. ‘*That sign, it has my name on it, so to speak.*’ Another resident formulates her objection slightly differently: she objects to being denominated a victim. Furthermore, the sign projects an image of the playground as problematic and this does not concur with the perspective of these residents. On the southern side of the playground, the sign is located more or less on the street terrace of Yo-Yo. Not everyone sees people enjoying a joint in the vicinity of children as objectionable. One of the residents for example is a regular patron of Yo-Yo. He smokes his joint whilst his children aged two and eight play in the playground.

Yo-Yo: Coffeeshop and Neighborhood Living Room

On the north-east corner of the playground, Yo-Yo is housed. It has been on this spot since the early 1990s. It is a coffeeshop, gallery, community center, neighborhood living room, and vendor of scrumptious home-made wholewheat apple pie. The entrance is the first door on the pedestrian stretch of the street. The façade is painted mint green and is overgrown by unkempt greenery. Invariably several notices and posters are posted on the window, announcing neighborhood events. When the weather allows, a small terrace is put out on the pavement in extension of the entrance. The patio furniture is stored near the entrance, and customers are free to put out the furniture themselves. A public bench stands between the terrace site and the fenced-in playground for toddlers.

The building that houses Yo-Yo belongs to a housing corporation and the bad repair of the edifice is starting to make it stand out from its gentrified surroundings. The neo-renaissance building dates from 1882. Apart from Yo-Yo, the building contains thirteen residences. The building is a site of social contention. The housing corporation is accused of trying to buy out the social housing tenants and rent out the residences in the private sector for exorbitant rents. Neighborhood activists fulminate that such rents would be affordable only for expats who would not contribute to the neighborhood, whilst the sitting tenants have lived there for many years and many are actively engaged in the neighborhood. The housing corporation claims that the necessary overhaul of the building is only financially viable if rents can subsequently be adjusted. As of yet the situation remains in a deadlock and operates as a symbol of the contention in the neighborhood.

Yo-Yo is run by a petite and sturdy lady with a blond bob. She is a single mother in her fifties with two teenage children who used to live in the area but moved elsewhere some years ago. She holds a pivotal role in the neighborhood activities and undertakes a large variety of community activities, also facilitating them by making the space of Yo-Yo available for events. Examples vary from a 'living room project', aimed at bringing together women who lack a social network, to the 'repair café' where volunteers help people repair their broken stuff, mending anything from clothes to bicycles. She has a keen understanding of the workings of institutional social work and maneuvers through its labyrinths and marshes do to what she can for those she sees as needing help. She has neither a ready smile, nor does she emit the resigned cynicism often found in aging social activists. The income from the coffeeshop enables her to pay the rent and ply all her other trades. She would not be able to make ends meet on selling just coffee and apple pie.

Yo-Yo and its proprietress symbolize the old neighborhood. To summarize the emotions evoked by this image: the old neighborhood consisted of people who did not perhaps meet the petty bourgeois standards, but who respected each other, allowed each other the space to be different, and looked out for each other, took care of each other when this was asked and within the means possible. Like the attempts of the housing corporation that owns the building to evict the social tenants and replace them with moneyed strangers, the request for a ban on the public use of soft drugs is seen as an attack on Yo-Yo and all that it symbolizes. The opponents of the ban are not specifically defending their right to smoke a joint on the square. Many of them do not actually use soft drugs themselves. They are defending the publicness of their space, the right for others to be there without restrictions.

Instead of undertaking formal action against the nuisance that they do acknowledge to exist, they consider the nuisance to be part of the overall package, an intrinsic part of the place, contributing to exactly the open atmosphere that welcomes them also. Yes, some of the passers-by are certainly less desirable. Their presence however is dealt with informally rather than challenged formally. The very typical character of coffeeshop Yo-Yo, located on the site since 1993, helps to decipher the many opposing interests, sentiments, and viewpoints converging on this very small stretch of quintessential social space.

Newcomers and Incumbent Residents

As already mentioned, the neighborhood of the playground is a neighborhood in transition. With gentrification, a new kind of resident enters the scene. The district's safety coordinator words it as follows:

'De Pijp is a neighborhood that... well, traditionally a lot of squatters, libertines, and what more live there. And then you know, a lot is possible in De Pijp. There is freedom for everything and everybody. As long as you more or less leave each other alone, there is room to experiment and the like. At the same time of course it is evident that De Pijp is gentrifying. So the resistance on the part of the squatters' movement towards that process is of course substantial. Social housing is being sold off or demolished and replaced by expensive condos, and one notices that De Pijp is changing from a blue-collar neighborhood where a lot was possible, to a, well, more average kind of neighborhood. In the course of which the tolerance of the new residents deviates from that of the old residents.'

The lead applicant for a ban on the use of cannabis on the playground is a relative newcomer to the neighborhood: he moved to the square in the spring of 2008. The

fact that he is a newcomer is cited frequently by those opposing the ban. Though it is never explicitly spelled out as such, it is clear that as a newcomer he is considered to have less say over the square. The proprietor of the coffeeshop in a nearby street, which is alleged to attract a lot of nuisance, at the same time invokes his seniority in the neighborhood:

'I came here in 1994, and before that there was also a coffeeshop here. Up until 2008 I never heard anything about nuisance. Those who complained are new residents, that gentleman has only been living here for a year or so. He knows there is a coffeeshop here, so why does he buy a house here? Now he comes here and spoils my bread. Go live somewhere else then. Really, the Netherlands is a big country.'

The legal defence of the district administration calls upon a similar argument in its written defence before the committee deciding on the administrative grievance: *'In a big city like Amsterdam it is unavoidable that children are confronted with the drug use of others.'* At the public hearing the district's legal counsellor adds that if the applicants do not like this, they should get up and move out of the big city. This remark was not represented in the formal minutes of the public hearing. It does however figure prominently in my field notes of the occasion and years later, the applicants still hail it as one of the more hurtful statements in the entire procedure. The suggestion made regarding the newcomers is specifically that they belong to the high-income petty bourgeoisie.

'It's connected: as the number of owner-occupied properties rises, people make higher demands on their living environment. But then if you see what the houses here are supposed to sell for, the prices that are asked. If you pay that much for a house, you'll have your demands.'

The local police officer also acknowledges the influx of a new kind of resident in the neighborhood:

'Ten years ago this wouldn't have been a problem. I think, and this should be investigated demographically, that there is a different composition of the population nowadays. The incomes are increasing, the level of education is rising. Maybe I shouldn't say it like this, but I think with a higher level of education interference also increases.'

The implicit argument made here by the old residents is that the request for a ban on behavior that they do not find contestable is part of a larger movement to demolish their neighborhood's character and liveability. It concurs with the hostile takeo-

ver of their habitat by ‘damn yuppy scum’, for whose benefit social housing is sold short and transformed into expensive apartments.

Smoking Cannabis as Contested Behavior

Notably, no one really denies that there was annoyance in the summer of 2008. Everyone concurs that a lot of traffic came through the playground, and occasionally settled on the playground for a while. The passers-by clearly came from outside the neighborhood, you recognized them by the way they were dressed and the way they walked, and yes there had been that incident with those Antilleans and their fighting dogs. The opinions on the suitable solution to this nuisance however differed considerably, and this linked in with the different appreciations of the use of soft drugs. For a large part, this divide ran between the old residents and the newcomers.

The crux of the difference in opinion lies in classifying the smoking of cannabis on a playground as nuisance. For some, this is not the case. *‘It’s a public square! That is the reason it is there, that’s why there is a public square: to sit. They don’t make a public square just to look at it. If that’s the case they should demolish it.’ ‘Those youths have a right to be here too, don’t they? Look, if one of them gets takeout chicken and they leave the mess all over the place, then I agree that’s not okay. But what’s the harm if they just sit here to smoke their joint? And if they get noisy you just walk up to them and say hey guys, my kids, could you quiet down a bit or move further up? [...] I sit here too to smoke my joint. This is public space, is it not?’*

The institutional take on the matter exudes resignation. The view is set out in the advice of the municipal hearing committee on the administrative grievance, which states: *‘The mere use of soft drugs in itself cannot be prevented through article 2.17 section 5 of the local Byelaw.’*⁶⁸ The district police officer offers: *‘I think I can’t do anything against those smoking a joint. If I come there and some of these youths are smoking their joint amidst the children, I really don’t have anything on them. If I ask them to leave and they don’t, well, maybe I can address them on rowdiness or something. The mere smoking of a joint doesn’t suffice.’*

For those advocating a ban, on the other hand, the issue is crystal clear: smoking cannabis in the presence of small children is intolerable and comprises nuisance. As stated in the petition for the district court, *‘Having present or using drugs amidst play-*

⁶⁸ This article refers to nuisance in general.

ing children by definition constitutes nuisance.' The subsidiary complaint is the noise, littering, and urinating caused by those smoking their cannabis on the square.

The Media Involved

Developments around the nuisance and the requested ban in this playground made it into the newspapers. Several articles were placed in the Amsterdam newspaper *Het Parool*, and a couple of articles were placed in the national newspaper *De Telegraaf*. These articles did not materialize on their own accord, but were strategically solicited to create support and motivation for a ban to be installed. The lead applicant moreover sent a letter to the *NRC Handelsblad*, another national newspaper. In this letter he reacted to the opinion of the then mayor of Amsterdam against closing down coffeeshops in the vicinity of schools. He denounced the mayor's policy, referring to the situation in the playground in front of his house to illustrate his case.⁶⁹ He himself was surprised by the extended response he got on this: *'I mean, I don't always read the letters-to-the-editor section myself, but it was very well read, because I was at work I had some lawyers on the phone who said, hey was that your piece and then the editors of Pauw en Witteman called, if I wanted to be on the show.'* Eventually, the letter he had sent in to the newspaper indeed led him to appear in *Pauw en Witteman*, a daily popular late-night TV show with a large audience.⁷⁰

The induced media attention angered the ban's opponents. *'What occurred at times was that stories were twisted, journalists that came in for a one-sided story, that only wanted the story of the ban. That went awry. A resident sent in a letter to the newspaper, to protest against the negative news coverage about a playground that by itself functions very well. And that people should be aware that the value of their property diminishes because of all the fuss.'* Other media items were also countered. Another resident sent in a letter to *Het Parool* to counter claims made by the lead applicant, with the following wording: *'Mister — extensively uses the word "we", but it is not clear who he represents. He does not for example represent the crèche he names in his account. [...] My family lives across from the named coffeeshop, and we elected to do so. We do not need to be "protected", as — writes "in name of all the children in the neighborhood".'*

Amidst all the media turbulence, even the district administration issued a press release on the topic. On 10 March 2009 a press release declared a joint action of resi-

⁶⁹ <http://www.nrc.nl/handelsblad/van/2010/februari/13/we-zijn-heel-benieuwd-naar-cohens-maatregelen-11850706>, last accessed 25-09-2014.

⁷⁰ Broadcast of 24-02-2010.

dents, coffeeshops, and the district administration against the extensive nuisance occurring on the playground. The press release has two interesting features. First of all it talks about the future in the past tense, stating that 'On 11 March two signs have been placed.' Secondly, it states that the district administration does not want a ban on public use of soft drugs, in part because if such a ban were implemented, 'also those smoking a joint without causing any nuisance will have to be prosecuted'.

Chronological Sequence of the Juridical Procedure

The requested ban on using soft drugs on the playground did not materialize, but gave rise to substantial judicial proceedings with extended effects. The juridical procedure regarding the ban commenced on 27 August 2008, when the initial request was directed to the mayor of Amsterdam. The letter was sent on to the district administration and receipt was confirmed on 22 September 2008. Several exchanges followed, but no formal response was given. The spokesman of the applicants solicited a written decision on their request from the district administration. He did so twice, on 27 October 2008 and again on 5 November 2008. The district administration formally turned down the request on 27 November 2008 and posted this decision on 3 December 2008. This written decision then fell under the scope of the *Algemene Wet Bestuursrecht*, the General Administrative Law Act, and hence became eligible for administrative grievance and subsequently administrative appeal.

The administrative grievance was lodged on 12 January 2009 and a public hearing organized on 12 March 2009. In accordance with the advice of the commission that heard the grievance, the mayor ruled the grievance unfounded on 14 March 2009. Following this decision, the applicants subsequently lodged an administrative appeal at the Amsterdam district court on 22 June 2009. Some fifteen months later, on 3 September 2010, the district court turned down the administrative appeal. Up till this point the applicants consisted of the original group representing six households. After the ruling of the district court, the lead applicant continued on to the next procedural step on his own. On 13 October 2010 the applicant lodged an appeal at the Administrative Judicial Review Division of the *Raad van State*. This was the last resort: the decision of this institution is conclusive and not eligible for further appeal. This final verdict was published on 13 July 2011, almost three years after the original request was made. In it the *Raad van State* ruled that the municipality had been right to turn down the request for a ban on the public use of soft drugs on the playground. Not however on the basis of the reasoning used by the municipi-

pality, but because, according to the *Raad van State*, the municipality lacked the authority to install such a regulation (see also section 2.3).

The Social Dynamics of the Juridical Process

On 27 August 2008 a committee of residents on the playground directs a request to the mayor of Amsterdam to install a ban on the use of soft drugs on the playground in front of their house. They do so in writing. Four couples and two individuals, representing six households, sign the request. They underpin their request stating that their children, between two and a half and eight years of age, are confronted with drug use when playing at the playground. Their children see people using the drugs and get enveloped in the smoke. Moreover, the applicants state, the drug users spit on the ground, urinate, and litter the playground with among other things residues of their drug use. Impermissible behavior, the applicants offer, in a public space meant for small children. Besides, the people using the soft drugs can also do this at the coffeeshop or in their own home.

The request is not worded in a humble fashion. The applicants cannot imagine that the mayor will let this situation continue, and straightaway emphasize they will challenge a negative decision in court. Considering the gravity of the situation and with regard to the principle of administrative care and the principle of legal certainty, they expect that the legal deadlines for the administration to respond will be kept. Throughout the letter, the position is argued that the ban on the use of soft drugs in public is actually a compromise on the demand to revoke the permits of the coffeeshops.

The letter addressing the mayor is sent on internally within the city administration to the responsible department. Receipt of the letter is confirmed on 22 September 2008 by the safety coordinator of the municipal district governing the playground. The safety coordinator invites the applicants to a meeting with the district chairman on 1 October 2008. This meeting does not go well. The applicants, according to the lead applicant, feel they are not taken seriously and not treated 'professionally'. It would seem the district chairman describes their neighborhood as 'anarchistic' and unsuited for the requested ban. Moreover, at the start of the meeting the chairman supposedly declares that he has already made up his mind to not grant the request. Whatever the case, the applicants feel they have been treated with disregard and disrespect.

On Monday 27 October 2008, when the deadline for the municipality to respond to the original request has expired, the lead applicant requests a formal decision on the request for a ban. He does not receive a response. One week later, on Monday 3 November 2008, he sends another mail to describe events on the square on Friday 31 October 2008. Following this, the district administration communicates its intention to organize a meeting of residents on 16 December 2008. It does so on 5 November 2008. The lead applicant responds the same day reiterating they desire a decision on the request of 27 August 2008. By decision on 27 November 2008, the request for the ban is formally denied.

On 7 December 2008 the formal invitations for the evening meeting of residents on 16 December 2008 are distributed in the neighborhood. The invitations do not reach everyone who would have liked to receive one. The lead applicant denotes the date on which the invitations are distributed unprofessionally late. It contributes to his general feeling of not being treated in a respectful and serious manner. The meeting of 16 December 2008 turns out also to consider traffic nuisance experienced at another location, but caused ostensibly by the same coffeeshops.

The district administration is pleased with the meeting, thinking that their proposal to the residents and coffeeshops to join forces and together combat the nuisance in the area has been picked up at the meeting. *'I thought, well, there are nights that you really walk home whistling and thinking, well this is really a symbiosis like we are together going to make this work.'* The proposed collaboration however meets with fundamental dismissal: *'Then they said we had to make arrangements with the coffeeshop entrepreneurs. Well, I am not doing that. It is a matter of principle, I am very formal in that respect. I mean, first of all these people are engaged in criminal offences, even if nobody thinks so any more, it remains the case. So according to the district administration we had made arrangements. They even published it in the local rag. I got very angry about that.'*

As they had already announced in their primary request, the applicants lodge an administrative grievance on the negative decision of 27 November 2008. The public hearing on the administrative grievance, on 12 March 2009, is another letdown for the applicants. *'The whole time I remained positive. I thought, from the commission dealing with the appeal we will at least get a well-considered judgement. But unfortunately this was not the case. I got really, really... I got really furious at that hearing.'* The administrative grievance is dismissed on the basis of several arguments with which the applicants fundamentally disagree, and of which they consider particularly offensive the statement that a ban on public use of soft drugs is an *ultimum remedium*.

The applicants continue the judicial proceedings and lodge an administrative appeal at the district court. The district court performs a limited judicial review, which

is to say they only review whether the administration followed the correct procedures to come to its decision. This disappoints the lead applicant: *'I thought, at least we will get a well-considered verdict. I said at the time, look, even if the court rules against us, but it does deliver a good verdict, maybe we should consider whether we should want to continue.'*

The lead applicant is also upset by several of the statements of the court. *'And there was one sentence, and that was the point that I said, for me that was really, well they argued other things as well, they thought it all, you can think me formal, they said we should cooperate with the coffeeshops, I think that very strange that judges consider it normal that we should cooperate, yes, with people who act criminally, [...] and they wrote: "moreover the existence of coffeeshops in the direct proximity is a given". So this is what I wrote in my memorandum of appeal to the Raad van State: "from the mouth of three judges a distressing and reprehensible statement" and I still firmly hold this opinion.'*

Between launching the administrative appeal on 22 June 2009 and receiving the verdict on 3 September 2010, two summers pass on the playground. The coffeeshop assumed to attract most of the nuisance is closed down for six months because hard drugs are found on the premises. This shutdown lasts from 7 April to October 2009 and thus effectively the whole summer. The square has been added to the route of the city sanitation department and overall has a cleaner feel. The people on the square seem more alert about nuisance. Moreover, the subsequent summer of 2010 is wet: a lot of rain falls, especially in the month of August. Whatever the reason, all the stakeholders concur that the nuisance on the playground does not reach anywhere near the levels of the summer of 2008.

After the ruling of the district court on 3 September 2010, the lead applicant, on his own this time, lodges an appeal at the Administrative Judicial Review Division of the *Raad van State*.

'Well, it was partly on principle, but also in part practical, I just don't want any nuisance here. The past year there has been a positive effect, like I said, by our actions, the sign, we said that, it works, but insufficiently, because still we have to send people away too often, but maybe because more people with children have come to live here, that I get the impression that those smoking joints stay away, when there are really a lot of people sitting on the benches and children are playing, then it's just too busy, but if there are just a few children then you see they settle down easier, because yes it is really a very pleasant space. My son always plays there, he has some friends living in the center and you notice that they are always inside and he is always outside. There are kids of all ages playing here so that's really nice and it's really a very good playground and I want to keep it that way. And a part of it is

principle, on the arguments and actions of municipal officers, but also like I said of the court stating that “coffeeshops are a given”, well then if you’ve come this far you also take that last step.’

Though the legal procedure was initiated in 2008 because of immediate and substantial perceived nuisance, it was in part continued out of frustration with the response offered by first the municipal and later the judicial authorities. Towards the end of the procedure, intrinsic principles come increasingly to the fore in the motivations of the applicant. The focus of the request has also shifted: the ban was originally requested to combat nuisance activities originating from people using their soft drugs on the playground. As time goes by, the stakes change to combating the nuisance caused by the use itself.

The decision of the Administrative Judicial Review Division of the *Raad van State* has already been detailed in section 2.3. The decision sets out that the mayor was wrong to deny the request for a ban, considering the grounds he used to do so. The verdict states that the use of soft drugs is already banned by the Opium Act, and this ban cannot be duplicated by the municipal authorities. In short, the mayor should have denied the request on the grounds that he is not authorized to install such a ban.

The applicant is happy with the decision of the Administrative Judicial Review Division of the *Raad van State*. Though it doesn’t address most of his grievances and it doesn’t bring him his ban, it does support his fundamental challenge: drugs are illegal.

‘Because of all those bans on using soft drugs in public space people thought that it was allowed everywhere except for the spaces which had such a ban. So in that sense it has been worthwhile, in that it made everybody stop and think that, oh yeah, it isn’t legal.’

The ruling of the *Raad van State* is not the end of the matter for the playground. On 19 July 2012 the newspaper *Het Parool* runs an article that a ban on using soft drugs has been installed on the playground. According to the article the ban is instigated by the then two largest political factions in the district council, both liberal-orientated parties.⁷¹ Several news outlets pick up on it and repeat it. However, when I ask the district administration (by email) how this ban is juridically organized, it responds that it is not: *‘The new sign that has now been placed on Hemony’square is a sign without a juridical backdrop. It is more a warning not to smoke a joint on the playground.’* In the four years though spanning the initial request in August 2008 and the moot installation of the ban in 2012, the political opinion has clearly shifted. In 2008 the

⁷¹ Namely the VVD and D66.

ban is argued too strong a measure for the subsidiary nuisance complaints, in 2012 the moot installation of the ban is motivated by the undesirability of soft drug use in a children's playground.

In Conclusion

The playground is a small and intensively used space in an inner-city residential area. A ban on the use of soft drugs in this locality is requested by residents who are relatively new to the area. The request for the ban is initially triggered by occurrences on the playground that are generally constructed by all residents as nuisance. Whether these incidents warrant a ban, however, is an issue of dispute. Those causing the nuisance do not really figure in this contention on the square. The dissent is between residents, and the issue of the ban represents larger issues at play in the gentrifying area.

4.2 The Local Shopping Square

The second case study concerns a small low-end shopping square in the suburbs of a provincial city. A ban on psycho-active substances, pertaining not only to cannabis but also to *qat*, has been in effect on the square since 2007.

The shopping square is the central point of Stokhasselt, a post-war neighborhood to the north of Tilburg, a mid-sized city in the south of the Netherlands.⁷² Stokhasselt was built in the 1960s and 1970s according to then-dominant urban planning ideas: it is a car-friendly area, with a lot of communal green and high-rise flats. Built for and originally dominated by lower middle class and middle middle class ethnic Dutch residents, the composition of the population started to shift in the 1990s. The neighborhood houses a little under seven thousand inhabitants (officially; the unofficial count is possibly much higher). Around 40% are native Dutch, whilst around 50% are of non-Western descent. Of the district's inhabitants, 12% are older than 65, while almost 30% are eighteen years old or younger.⁷³ I have no official figures on the background of the population of non-Western descent; a community worker estimated that a quarter has a Moroccan background, a quarter has a Turkish back-

⁷² Tilburg is the sixth largest city in the Netherlands with a population of about 207,000 in 2011.

⁷³ Figures concern the year 2011 for the district Stokhasselt-Noord and have been obtained via the municipal statistical website: <http://tilburg-stadsmonitor.buurtmonitor.nl/> last accessed 25-09-2014.

ground, 15% is of Antillean descent, and 15% is of Somali descent. The moving index hovers around 20%, meaning that one in five residents leave the neighborhood every year. Of the residences in the neighborhood 30% are owner-occupied. The remaining 70% consists predominantly of low-income social housing and is almost exclusively owned by a single housing corporation. The district does not house a coffeeshop.⁷⁴

Picture 4.3 A bird's-eye view of Verdiplein, taken from the high-rise apartment building facing the square at the south side (image: beeldwerkt.com).



The shopping square has a typical 1960s architectural build and is laid out in a U shape, with three sides containing retail space and the opening to the south side. The three sides with shop space all have a covered archway, shielding pedestrians from the rain and sun. There are parking spaces in the U, as well as along the open south arch. In the northwest corner there is pedestrian access to the square, thus the U is not enclosed. Only the east arch is two-storied, and on the top level four privately owned apartments are situated. Along the open south end runs the main

⁷⁴ In 2011 the municipality of Tilburg housed ten coffeeshops (Bieleman, 2012: 74), but none of these were situated in Stokhasselt.

access road into the neighborhood, which in turn connects to the main thoroughfare from Tilburg to the northern hinterland, including De Efteling in Kaatsheuvel.⁷⁵

Picture 4.4 The west tier of Verdiplein, with the popular green bench in the center. In the background the high-rise apartment building facing the square (image: author).



The square supports mainly shops and restaurants. The main attraction is the Aldi, a discount supermarket chain store. In addition, there is an Islamic butcher shop, an Islamic grocery shop, an Islamic bakery, a Dutch bakery, a Pakistani phone house, a Chinese restaurant, an Egyptian-Italian-Greek restaurant, a snack bar, and a lawyer's office. An Association of Entrepreneurs exists, but in a dormant state. The municipality periodically tries to activate this association to transfer to it the initiative and responsibility for activities on the square, but with limited success. The Aldi is the biggest retailer on the square, but Aldi's company policy is not to participate in local affairs. For most of the smaller entrepreneurs their enterprise is, in the words of the local policeman, 'not making them a fortune'. The majority of the

⁷⁵ De Efteling is the Dutch equivalent of Disney World. It attracts 3 to 4 million visitors per year (4.1 million in 2011) and counts as one of the main attractions in the Netherlands.

shops are not owner-occupied and most of the retail property is owned by a distant real-estate investment company.

The range of shops on offer is volatile and keeping the shop space occupied is a constant worry. During the course of my fieldwork several shops changed. In the summer of 2010 the drugstore present on the square closed because the entire chain withdrew from the Dutch market. The shop space stayed empty for the duration of my fieldwork, giving the pedestrian throughway an abandoned feel. The office supply shop also closed its doors, quite suddenly. The word on the square was that the proprietor had a nervous breakdown and lost his enterprise: *'He's been shut for two weeks now. He couldn't take it anymore, was completely cracking up. He's gone bankrupt, they say.'* In the summer of 2011 a new proprietor reopened this business without much success, and again the doors closed with no notice. The proprietor of the phone house explained they had looked at the books with a view to a possible takeover, but didn't consider the business viable. Eventually the Moroccan baker opened a frozen fish shop in the space, which seemed to run well. The Chinese restaurant had gone bankrupt, but reopened in the course of 2011. The Pakistani shop selling everything but the kitchen sink that I had encountered on my first scout in 2010 at the southeast end was gone in 2011. The space remained empty for the duration of my fieldwork in 2011, save a few weeks when it was used as an outlet by the Aldi. From the early 2000s municipal reports state that 'There are habitually a few shops empty on the square.'

On the east side of the square there are four residential apartments above the shops, two of which are privately owned and two of which have been bought up by the housing corporation. The owners of the apartments and the shops together form an Association of Owners and this Association holds legal ownership over the square, including the terrain enclosed by their combined property. As mentioned previously, however, most of the units are not owner-occupied. In the direct vicinity the square is surrounded by residential flats that predominantly house ethnic Dutch pensioners. To the west of the square stands a relatively new flat built in 2004, consisting of forty-five owner-occupied apartments. To the east is stands a complex of twenty-four senior citizen apartments owned by a housing corporation. To the south, separated from the square by the main access road into the neighborhood, stands a high-rise gallery flat. This high-rise holds a total of 256 apartments, and the housing corporation owning the flat is putting individual units on the market.

Reputation

During my fieldwork on the square in 2011, a journalist from the regional newspaper *Brabants Dagblad* had taken up residence on the shopping square for a period of three months. Twice a week he wrote an article on ‘the blackest neighborhood of Brabant’.⁷⁶ Though his topic was the entire neighborhood, he used the banner of the shopping square as marker for his pieces. His reports were critical and not well received by many of the inhabitants of the neighborhood, who felt they were being depicted from a one-dimensional negative stance. Many people were aware of the articles, but did not know the journalist on sight. The journalist—a two-meter tall thin blond man—had a bi-gender first name: René. I had several encounters in which people thought I was this journalist:

‘A woman approaches me. Am I that person writing all that stuff, that journalist? I explain that I do write things down, but that I am not the journalist. The journalist is a tall blond guy. Okay, well, she had just said to someone that if I was that journalist she would give me a right piece of her mind. The woman is a short and stocky, I estimate her in her fifties. I ask what the journalist is doing wrong. Well, she says, we already have a stigma and then he adds to it. Yes, it is true, there is a lot of trash lying about. And she went over there herself to look, to the flat where the dirty diapers were simply thrown out the window. Some of what he writes is true, but does it really have to be published in the newspaper like that? I’ve been living here for twenty-one years, and sometimes it’s not so wonderful, and if you’ve been elsewhere and come back here it’s as if you are in Africa or Turkey. Of course it all fine, the people there, the weather, they live outside. And the yelling, apparently we whisper. But it’s just too bad it has to end up in the newspaper every time.’

There were also voices clearly in favor of the articles. This was more from a strategic viewpoint than due to considerations on the content of the newspaper articles. According to one of the residents, *‘It’s a positive thing the negative stories are published in the newspaper.’* It was thought that the negative publicity would shake things up and shake people awake: *‘When the mayor or council members come for a working visit they only stop at the positive points. The municipal officer isn’t stupid. But this neighborhood has been the same for fifteen, twenty years, it is only deteriorating.’*

⁷⁶ Brabant is the name of the province in which the city Tilburg is situated.

Residents and Shopkeepers

One of the owner-occupied apartments on the square itself houses a couple who have lived there from the very beginning—close to forty years when first interviewed in 2010. They reminisce about how it used to be: *'The square was much prettier. There were trees in the middle of the square and there was a sandwich restaurant. The entire neighborhood came there on Sundays to get an ice-cream. The first fifteen years everything was good.'* From their perspective however, things have changed, and for the worse: *'those who could leave have left [...], all the nice people have left.'* The residents of all the flats bordering the square have a prime view over what goes on there, and the atmosphere on the square permeates through their living room windows. Noise nuisance is a much expressed complaint and is registered often with the police. Especially for those who are not mobile and whose lives play out in the close vicinity of their home, the situation on the square has an important impact on their daily routines.

For the shopkeepers the atmosphere on the square impacts on its attractiveness for potential clientele and thus their revenues. Some of the shopkeepers experience nuisance and feel that the youths lolling about on the square give a negative impression. The Islamic butcher shop and the Dutch bakery put up similar notices in their shop windows, requesting people not to loiter in front of their shops. Their economic interest does not merely pertain to their daily revenues, but also to the resale value of their enterprises. The Dutch baker has been on the square for forty years and he is approaching retirement age. The baker owns both the business and its premises, and is the chairman of the Association of Shopkeepers. He is an active spokesperson for the discontented, and a fervent lobbyist at the municipal authorities for more intervention.

For some of other shopkeepers the people who are viewed to cause nuisance are their clientele. *'Those guys are my customers. The more of them the better for me. They don't cause me any nuisance. They come to the square for something and then they hang about a while. I never called in nuisance to the police. [...] Sure, they come into my place as well and try to pay with a five-hundred-euro note. Of course they are dealing, but what can you do? If I ask them where they got the money they tell me to mind my own business. For me it's a good square, I've never had any trouble, never had any violence in my shop. In the beginning I was worried about the Antilleans, but they are very nice people.'*

Shoppers and Socialites

Aside from the residents and shopkeepers of the shopping square, be they owners or tenants, the visitors to the square can be categorized into two groups: the shoppers and the socialites. Of course the activities of shopping and socializing often overlap. The shoppers however come to the square with the main purpose of doing their shopping. The socialites come to the square with the main purpose of socializing.

The shoppers can in turn be subcategorized by their mode of transportation. Some of the shoppers choose the shopping square because it is compact, convenient, and car-friendly. The square is an easy turn off the main thoroughfare north out of town and more often than not it is possible to park the car right in front of the shop. In the early mornings, heavy articulated trucks easily find room to park and get some sandwiches or some cans of energy drink from the Aldi supermarket. In the summer months a lot of people come in from the campsites in nearby Kaatsheuvel. They frequent the square out of convenience.

For the second category of shoppers, the square plays a much more crucial role in their daily lives. The square is their nearest shopping point and they lack the mobility to opt for other shopping venues. These shoppers come on foot: young single mothers accompanied by three small children, and elderly people wheeling a pushcart. They depend on the square for their daily groceries and the square is important in their perception of their residential environment. It is also important in their daily social interactions. The Dutch baker for example knows many of his older clientele by name, and often also their health status and the achievements of their grandchildren. In the other shops as well many customers are recognized and greeted with personal inquiries. Shoppers meet familiar faces on the square and use the opportunity to exchange pleasantries and gossip.

The socialites are also subcategorized here into two groups. On the one hand are the Somalis, congregating on the west side of the square around 'their' metal green bench and in and around cars parked on the parallel road to the south side of the square. They come to the square to meet others, to socialize, and to discuss the state of the world. Many of them do not frequent the shops at all. Their voices are loud and their gestures are embodied. They do not speak Dutch—sometimes not at all and certainly not amongst themselves. The age range of the group is from early twenties to quite elderly and the group consists almost solely of men. They show little interest in persons on the square not belonging to their group.

The other category of socialites is youngsters, from mid-teens to late twenties. Again the members are predominantly male. According to the police the youngsters are divided in subgroups, loosely along lines of ethnicity, with Antilleans on the one hand and a predominantly Moroccan group on the other hand. During my fieldwork I did not discern this division; all the youths frequenting the square knew each other and intermingled. The lingua franca is Dutch. Disruptions between group members occur intermittently and are at times clearly noticeable from outside the group, influencing the general atmosphere on the square. The youths frequent the phone shop and the grill room and their usual position is in front of these two establishments. They come to make an appearance and the square is their stage. As the local policeman narrates: *'These boys are not going to go to those outlying soccer fields and stand there in the dark. They want to be seen.'*

Accordingly they make an effort as regards their appearance, preferably entering the stage by means of ostentatious motorized vehicles. Their efforts are noticed, and are not appreciated by everybody. In the words of an elderly Dutch woman: *'They'll be eighteen, have good cars and be here whole the day and night on the square. I here think: how do those boys get that kind of money?'* A valid question perhaps when the car in question is a metallic silver Mercedes cabriolet with red leather upholstery. The local policeman has a partial explanation: *'A car is very important. Many of those boys rent a car, for a few hours or a few days.'* All in all, outward show is a primary reason for this group to make an appearance on the square. Though their peers are their target audience, the wider audience is not dismissed altogether by the youths. They are aware of the spectators outside their group and although they do not actively acknowledge them, they do not ignore them completely either. The square is their turf and their emotional tie to the square is linked with the possibility it offers them to perform, to be seen, and to participate, in their way, in society.

One of my regular acquaintances on the shopping square is Edward,⁷⁷ a fifty-five-year-old Antillean. A big man, though not tall, and generally well groomed. I met him early in my first stretch of fieldwork in the spring of 2011 and meet him often after that. At some point he lets on that he had already noticed me during my scouts on the square a year previously. In a way he befriends me. He never answers a direct question that might compromise anyone, but he converses with me, from time to time offers titbits of information, lets me sit with him, and through acknowledging our acquaintance he validates my presence on the square. In retrospect I realize he is one of the few men, and certainly the only Antillean, who does not try to hit on me as a sort of continuous and obligatory side-show. He has lived in the area for

⁷⁷ This is the name he gave me and which I use here. I am quite sure it is not his real name: when I referred to him as Edward to his wife sitting near him she asked me who Edward was.

almost ten years. Before that he lived in Rotterdam and he was born in Curaçao, where he still has a lot of family. Edward compares the shopping square to a nearby larger and more upmarket shopping mall as follows: *'The other place is enclosed, there is a roof over it. It's different, you can't smoke inside. Here you can sunbathe, look at people. You don't have to do any shopping, you can also just sit, like I am doing right now. Make a phone call, meet people you haven't seen and they show up here.'*

The Backdrop of the Multiple Restrictive Regulations on the Square

In the summer of 2003 the shopping square made the national news. On a Monday afternoon in late July a fight broke out on the square. Initial police reports stated that over eighty people were involved in a street fight, using sticks and clubs. The image conjured up through the newspaper articles is one of a large rumble in clear daylight between two opposing gangs of Somalis versus Antilleans, bashing each other in the central public space of the neighborhood. A collocutor in a street interview however downplays the intensity of the event: *'In the newspaper it said we were fighting with steel bars, but that's rubbish. There was this one guy with the rod of a vacuum cleaner he had just bought.'* The police too report that the incident was less serious than initially broadcast, but this mitigation received little attention.

The news of the clash caught the national attention and imagination in the backwash of an incident two weeks previously in the same city. On the evening of 18 July 2003, an eighteen-year-old male had been beaten to death in front of his twin brother and a friend, in a street robbery gone awry. The four perpetrators were strangers to the victims, under the influence of alcohol and cannabis at the time of the failed robbery and violent murder. They declared they had been bored and had wanted to acquire some cash to go out that night. In the press coverage of the incident, two of the four perpetrators are specifically identified as Antilleans. Though the two incidents were unconnected, in combination they triggered the public sentiment on ethnic youths in Tilburg. There had already been other incidents relating to public safety in the region, but this episode firmly consolidated the image in the collective consciousness that the shopping square was a troubled area. A public outcry for strong action ensued. As a municipal officer reminisces, the societal pressure on the mayor to do something became enormous.

On the shopping square closed-circuit television surveillance (CCTV) was installed in April 2004. At the same time a ban on gathering was enacted, with gathering being defined as a congregation of more than three people, of whom it can be as-

sumed that their gathering is linked to repeated nuisance. A ban on the public consumption of alcohol had already been in effect on the square from 2002 onwards. The local byelaws were amended in 2005 to offer the possibility of banning psycho-active substances in designated public spaces, and eventually in December 2007 a ban on the use of and trade in *qat* was put into effect on the shopping square.⁷⁸

The Coming About of the Ban

In February 2005 the municipal council of Tilburg amended its local byelaws on multiple points. The amendments were the result of a process initiated to update the municipal toolbox to address abuses in the city's public order and liveability. To this end the local byelaws of several other municipalities had been examined for regulations that were up till then absent in Tilburg's byelaws, but whose implementation would offer the sought-after tools. All in all, twenty-three amendments were proposed to 'revise, and/or add to or sharpen' the local Byelaw. One of the twenty-three proposed amendments was to add to the existing ban on alcoholic beverages a ban on the use of 'pleasurable substances'.⁷⁹

The comprehensive augmentation of regulations to control public order seems a logical, sequential response to the general sentiment on the status of public order and safety. However, within the municipal organization not everyone applauds the chosen track. As the municipal legal counsellor recalls, in his perception the amendments were a product of process, rather than a response to concrete social issues:

'We—the legal staff I mean—were raised with the idea of minimizing the amount of regulations. The way it went was that we got a whole package of regulations. We managed to ditch a few of them. In general, and certainly with regard to the local byelaws, but also in general it is my view that you can make as many rules as you want, but you always have to test them on their concrete applicability: can you use it? Can you enforce it? It is not enough to say look I found this wonderful regulation in the local byelaws of Rotterdam—really, one can find anything in there—we should get it too. I mean, does it gain us anything? Or is it just playing to the gallery, because it's in fashion?'

⁷⁸ All the above bans ran almost continuously from their initial implementation onwards.

⁷⁹ Council decision 43, year 2005, record 3953. To note, the Dutch word used by the municipality was 'genotsmiddelen', which literally translates into substances of pleasure. What is meant of course is 'psycho-active substances' beyond the definition of soft drugs in the national Opium Act, as the ban also pertained to *qat* which at the time was not an illegal substance in the Netherlands.

On the more public side of the process, i.e. the political debate, no reservations were voiced regarding the process as a whole. Of the twenty-three proposed amendments, there were two that gave cause for discord, first in the Commission for Modern Administration of 14 February 2005, and subsequently at the City Council meeting of 28 February 2005. The two amendments in question were a ban on street artists and a ban on begging. Both manifestations were argued not to comprise nuisance and an appeal was made for the public to be more tolerant. The objections to these two provisions voiced during the municipal council's meeting however were overruled by the majority, and eventually all twenty-three amendments were passed.

One of the amendments enlarged the reach of what was then article 51 (now article 69) of the local byelaws, previously concerned only with the public consumption of alcoholic beverages. The existing clause was extended to regulate, in addition to 'alcoholic beverages', other 'psycho-active substances' as well. The amended clause includes three interesting technicalities.

First, through the amendment the ban becomes two-tiered. The first subsection of the clause forbids the use of and trade in alcoholic beverages and (other) psycho-active substances in general, insofar as this 'is accompanied with behavior that disrupts the public order, affects the living climate, or causes nuisance in any other way'. Hence, substance use causing nuisance is always forbidden. The second subsection is newly introduced. It likewise forbids the use of and trade in said substances, but in areas so designated by the Mayor and Aldermen. In the latter case, no provision of hindrance exists. Thus, on the basis of the second subsection, the mere consumption or trade of said substances constitutes a criminal offence.

The second interesting technicality is the wording: 'pleasurable substances that can affect one's awareness'. The explanatory memorandum clarifies that the wording is intended to accommodate the regulation of the use of *qat*.⁸⁰ At the time *qat* was not an illegal substance in the Netherlands and did not fall within the reach of the Opium Act. Hence the referral to the Opium Act found in so many other municipal bans on use of soft drugs in public space does not figure here. In 2007 the amended article—which through renumbering of the local byelaws had become article 69—formed the foundation for the ban on *qat* in Tilburg Noord.

The third interesting technicality is the delegation of authority. The clause delegates the authority to designate certain areas for a ban on the consumption of said sub-

⁸⁰ The substance *qat* has been expounded upon in section 2.1.

stances to the Bench of Mayor and Aldermen. As explained in chapter two, this authority should be delegated to the mayor, as he is responsible for public order issues. When questioned on the issue, the municipal lawyer indicates that the delegation of authority to designate hadn't really been an issue of debate:

'That the authority is with the bench? I think it had to do with the living climate. It's a grey area. There wasn't any big discussion on the matter, if I think about it know it could well be arranged differently.'

The provision in the local byelaw on substance use was eventually called upon when, as of 1 December 2007, a ban on the public consumption of and trade in *qat* in was announced for the entire area of Tilburg Noord. The motive cited was the nuisance experienced on the shopping square. In the official announcement of the ban, the municipality explicitly recognizes it as a serious and far-reaching method (Municipal Board Decision 071107-07-GO, dd 06-11-2007), but states that it nevertheless 'expects the regulation will contribute to the improvement of the climate' on the shopping square (in local newspaper *De Tilburgse Koerier* 15 November 2007, p.9). To date the ban has not been contested, and according to the municipal lawyer the legitimacy of the regulation has not come under discussion.

Campaigning for the Enforcement of the Ban

In the summer of 2010 a resident of the neighborhood campaigned to have the ban on *qat* properly enforced.

'It would always be busy here with people who weren't shopping for their groceries if you know what I mean. [...] If I approached the police on the matter, those guys driving around in their patrol cars, they would give me a glazed look. They wouldn't know about the ban, those things peter out.' He recounts: *'It wasn't a collective action. I went about it on my own, it has to have added value to do it with others. Look, my neighbor says 'no blacks for me'.⁸¹ That's also an opinion, people here are used to giving their opinion without any varnish. But it doesn't help what I was trying to do.'*

Eventually the resident managed to get invited to make a presentation during a Town Council Meeting.

'You get five minutes of allotted speaking time and not a second more. So what can you tell in five minutes? What I did is I made a PowerPoint, referred to the ban in the local byelaw

⁸¹ What was literally said in Dutch was: 'ik mot die zwarte niet'.

and showed them pictures I had made of what was happening in the neighborhood.’ He was content enough with the result. ‘After the presentation we got a whole squad of enforcers, what do you call those people with a blue jacket but without the service gun? It still goes on the area, but nowhere near as bad as it was.’

Upon my request the resident later sent me the PowerPoint presentation he had used. I especially wanted to see it because I had been told it also included a picture of a man defecating between parked cars. There was no such picture and upon inquiry I was assured ‘No, I don’t have a picture of that. If I had I would have most certainly used it.’ The issue of defecation arose because the municipality had in the summer of 2010 circulated flyers which had on the one side a reminder about the ban of *qat* and on the other a reminder about bans on making loud noise, littering, and defecating in the public space. More than one person was disquieted by the connotation made between the use of *qat* and defecating in public space.

Picture 4.5 Both sides of the municipal flyer distributed in 2010 to broadcast the ban on *qat*.



In Conclusion

The venue of the shopping square figures prominently in the daily lives of many different users. These users have diverging perspectives, needs, and interests with regard to the shared space of the shopping square. Those causing the proclaimed nuisance are themselves direct contenders for the space. The ban has been instigated through public pressure and is a reaction to actual occurrences. It represents the contention between the—physically less dominant—native Dutch and other groups using the space to accommodate their idea of socializing.

4.3 The Village Green

The third case study is the village green of the town Spakenburg, a small waterfront village situated in the center of the Netherlands. In spring 2009 a local ban on the use of soft drugs in public space was installed in the town center, around sport facilities, schools, preschools, and youth meeting places.

Spakenburg has been a fishing village since time immemorial. In 1916 however a large flood wreaked havoc in large coastal areas of the South Sea, on whose coast the village was situated, and in its wake the Afsluitdijk (1927–1932) was constructed. This dam transformed the brackish South Sea into a freshwater inner lake and eventually led to the demise of the village's traditional fishing industry. The village still harbors the biggest collection of *botters*—traditional wooden shallow-keeled fishing boats—in the Netherlands, but these are in existence as museum ships and entertainment vessels. The last professional fisherman of the village ceased work in 2008 (Ter Beek, 2009: 78). The communal identity in the collective memory however is still strongly connected to its fishing background.

The population of almost twenty thousand inhabitants supports a total of fifteen churches (Ruizendaal, 2008: 65). The village is rooted firmly in the Dutch bible belt and has a strong protestant orientation. The church as an institution is dominant in everyday society and local politics. To a casual visitor this is most noticeable on a Sunday. The village is an appealing tourist destination that attracts many daytrippers cycling or motoring through the surroundings. The *botters* are in use as party ships and during the summer various festivities are organized celebrating traditional village life, crafts, and folklore for daytrippers. Sunday as a Sabbath however is strictly upheld and an uninformed tourist would be completely at a loss for a cup of coffee on a Sunday morning. From noon onwards the Chinese restaurant is open for business, and the small pizza place and grillroom open later in the afternoon. All

the 'respectable' businesses however keep their doors closed and also have all their street furniture neatly tucked aside.

'There is no hotel here, they won't issue a permit for it. It's on account of the Sabbath. [...] There's a wonderful restaurant there, but it's closed on Sundays. It gets a lot of business from the municipality, you see.'

Picture 4.6 Bird's-eye view of the village Spakenburg, seen from the waterside (image: municipality Bunschoten).



The village green centers around the old harbor and has recently been comprehensively redeveloped, with a strong adherence to the traditional architecture of the setting. The central focus is a large square at the head of the harbor, set where previously a sluice connected the harbor to the inland waterway. The square is lined with an array of shops and café-restaurants. It is closed to traffic, formally for all motorized vehicles, although mopeds habitually traverse the square. The pavement consists of attractive cobblestones, the plant boxes are filled with colorful flowers. A wooden structure is reminiscent of the harbor function of bygone days; fountains are set in the ground that on hot days can be turned on for children to play with. The street terraces of the cafés take up a large portion of the square.

A little off this central square but still in the very midst of the village are situated several nightlife venues, attracting customers primarily on Friday and Saturday night. They cater predominantly for the local population. Adjacent to the central square there are two other squares, one dedicated to parking and housing a low-end supermarket, and the other designed as leisure area with its own assortment of shops and two supermarkets.

On my first Saturday evening in the village I was baffled to come across a very fancy and shiny public urinal, in the corner by the nightlife venues. I had already spent more than a few hours in the village, but I did not recollect having seen this very obvious structure before. I later found out that the urinal is mobile in the sense that it can be stored underground, and it is only brought above ground when circumstances demand it. It can be operated from a distance and is usually handled by one of the nightlife venues.

Picture 4.7 The central square of Spakenburg (image: Wikimedia commons).



The Community

The village is known as a small, closed, inward-looking community. A telling illustration is that the community largely consists of a few families that do not figure

elsewhere.⁸² The village continues to exert a strong pull on its youngsters, and many stay. In an informal group interview with several youths, a seventeen-year-old boy tells me his plans for attending a hotel management school, but this greatly upsets his girlfriend: *'Well, I never want to live anywhere but here!'*

The reminiscence of poverty and the accompanying shame of times past resonates in the collective memory.

'And when you were poor you shelled shrimps. As an eight year old you were woken up at five or six in the morning to peel shrimps, and there were no showers or nothing, so when you went to school they smelled you and said oh you have no money at your place.'

Money, and the propriety it brings, is highly valued. Hard work is respected and outward appearances appreciated. People take care in their dress, the upkeep of their front gardens, their public consumption. Typically, bicycles form an important part of outward appearance. The village is supposedly an excellent place to buy a second-hand bike, 'because a villager will buy a new bike whenever his neighbor does.' Home ownership is high (Ruizendaal, 2008: 50), and, I am told, levels of mortgages issued are low.

The villagers take pride in their origin and the social cohesion of their community. On at least five different occasions I was told that in the village no one would lie dead in their house for three or four days without being missed. On the last three occasions I was able to remonstrate that actually, exactly this had come to pass recently. Well, yes, the reply would be, but that man had not been *born* in the village. Stories of how people take care of each other were framed in the narrative of times past. With the men away at sea all week, the women had to make do on their own and with the help of each other. When a breadwinner was lost at sea, the community would do their shopping at the shop his widow would set up. More contemporary examples were offered of elderly widows being swindled out of their savings by perverted financial institutions and how the community rallied to come to their aid. On the other hand, more 'shameful' problems such as undisciplined financial behavior, drug abuse, or marital infidelity are seriously frowned upon by the community. Such problems, I was assured more than once, are consequently dealt with within the confines of family and kept private as long as possible.

There is a shared anxiety amongst the village elders and dignitaries, firmly represented in church councils and local government, that the village is losing its grip on

⁸² For example, in 2008 the two biggest families each gave their name to almost 10% of the population (Ruizendaal, 2008: 71jo50)

the younger generation of their community. These youths are hardworking and hard living, just like they were and are. The community's identity is built on this image of working hard six days a week, letting your hair down on Saturday night, and attending church at least twice on Sunday. Young people still work hard: the values of economic independence remain (start working at an early age, hold no mortgage, and show your prosperity). Saturday evening is still the main evening for relaxing and loosening up. But the influx of serious money and the changing times have added the consumption of drugs to the consumption of alcohol. And on Sundays the houses of worship are not as full as they used to be; adherence to the church is slowly but surely declining. There is a general anxiety over an elusive but veritable change in the societal make-up of the village.

The Positioning of a Social Problem

Whether the use of cannabis in public space actually constitutes a problem in the village is subject to widely diverging opinions. Two basic positions on the issue can be discerned: there is a problem versus there is no problem, but between these two oppositional takes on reality, several varieties show. The position that no problem exists can be found in two variants. In the official communication accompanying the announcement of the ban, the municipality held that no problem exists. This was duly repeated by the media circulating the announcement. This positioning that 'there is no problem' is a media strategy, meant to deflect questions concerning drugs in the village.

This strategy was not groundless, as the municipality had already had its share of bad press on drugs issues. In 2002 the regional newspaper had published an article on the front page of the Saturday edition, stating that fish companies in the village supplied their employees with cocaine to make them work harder.⁸³ The article caused uproar in the community, instigated lawsuits against the newspaper's publisher, and provided unwanted national attention. Aside from such targeted news coverage, the village is often lined up in association to other former Zuiderzee fishing villages and their alleged drug issues (see Korf, 2009; Kool, 2005). All in all, reasons can be identified for insisting to the media that no problem exists in relation to public soft drug use in the village.

The second variant of the position that no problem exists takes the shape of a pragmatic outlook. General consensus within this group is that the drugs are there and

⁸³ Newspaper *Gooi- en Eemlander*, 9 November 2002, p.1

cannabis use occurs, but not in any extraordinary measure and not in such a manner that it causes public order problems. Respectively a police officer and a bartender state:

'Soft drugs are widely used, mostly indoors, when parents are away, or in the sheds out back, or in the communal rooms of those so-called social workers. But it doesn't happen in public space.'

'There is no impropriety here related to the use of soft drugs, I don't buy that. Soft drug use anyways is not such a problem in this village [...] In fact, we have little nuisance because of soft drug use. The fights, those are not youths who used soft drugs. No. Soft drugs don't really happen in the nightlife, you quickly smell it, notice it is being used. It happens very rarely.'

This opinion can be found amongst the professionals quoted above, whose framework of reference is broader than that of the village, and also amongst the youngsters who supposedly cause the impropriety of publicly using soft drugs. On a Thursday afternoon in June a group of youths hanging out on the village green tell me:

'No, soft drugs are not an issue, certainly not in the group we hang with. Over at the skate track, they use it there. And the older kids, at the — field. Older is nineteen and twenty years old. But it doesn't bother us, and it doesn't bother the small kids who come there either, they really set themselves apart.'

What these people argue is that it can perhaps be ascertained that soft drugs are used, and occasionally used in public space, but this in turn does not constitute a social problem (Spector & Kitsuse, 1973: 145–146). The occasional occurrence of joint-smoking in public space does not warrant the enactment of a ban on using soft drugs in public space in the local Byelaws. Indeed, the instalment of the ban came as a surprise to them, and they speak of it in a derogatory fashion. According to a café proprietor on the square:

'There is no nuisance here deriving from the use of soft drugs. I don't buy that. The use of soft drugs in itself is not really an issue here in the village. We didn't understand the need for a ban, really, it is not a problem here.'

The alternative position—that there is in fact a problem regarding the public use of cannabis—can be categorized into three different types: as a normative viewpoint, as a tactic of othering, and as an outlet of self-critique. The normative viewpoint holds that drugs in themselves are the problem. Impropriety does not stem from the

trade or use of drugs, the use in itself is morally wrong and must therefore be combated. Drugs are evil, full stop. The ban is promoted because it sends out a clear signal that the use of soft drugs is not considered normal. As the municipal spokesperson declares in the press: *'We want to avoid the use of soft drugs to be considered normal.'*⁸⁴

A second approach to the view that there is a drug problem centers on a tactic of othering. According to this position, drugs are a problem, but not for anyone known personally. Drugs are used by other groups of youths, and by people who are not from here, or who have not had much education and do not hold highly regarded jobs. Lack of moderation is the problem—regardless of substance—and excesses are the domain of lower socio-economic classes.

Third, in some cases the assertion of the problem works as an outlet for self-critique: drugs are a problem for specific individuals and their families, but the real problem is the shame and denial surrounding this problem. The way the drug problem is dealt with exemplifies deeper and more substantial problems within the community. It demonstrates that the social cohesion the village prides itself for is a farce. This superfluous ban in the face of other serious drug problems shows the failure of the community to deal with the profound and contemporary challenges faced.

A common feature of these three strands arguing that a problem does exist is that they do not continuously make the distinction between soft drugs and hard drugs. The use of soft drugs is not an autonomous problem, but is part of a larger issue surrounding all drugs. The explicit distinction between hard drugs and soft drugs made at the national (policy) level and within the various legal frameworks pertaining to drugs does not appear in the arguments made to underpin the existence of the problem. Furthermore, the objective existence of public soft drug use is a central premise of all three strands.

The Coming About of the Ban

The first mention of a possible ban on the use of soft drugs in the village is made in September 2006. A regional newspaper devotes a small article to the long-range plans of the municipality for the years 2007–2011. The piece is 261 words long and is placed on page six of the newspaper. It comments on tax propositions, plans to investigate the feasibility of a multicultural center in the library, the abolition of two police invigilators, attention for the protected rural area, and, also, the intention to

⁸⁴ Newspaper *Gooi- en Eemlander*, 29 January 2008.

consider (my italics) introducing a ban on the use of soft drugs in public space to counter nuisance caused by drug users. The clipping refers to a '*blowverbod*' without further explaining the word, but the paper had published articles on *blowverboden* in connection with other localities on previous occasions.

The next public mention of a possible ban is a full year later, when the intention is reiterated in the 'Covenant Safe Nightlife', endorsed in November 2007. Signatories to this covenant include most of the bar and restaurant owners, the police, the fire department, the Public Prosecutor, and the municipality. In this covenant the municipality pledges to include a ban on using soft drugs in public space in its local byelaws (pledge 55). The language used is informal: the ban is literally indicated as '*blowverbod*'. The pledge is placed under the title 'Approach nuisance', rather than under another of the document's headings, 'Approach drug-trade and use'. The internal municipal document accompanying the covenant through the administrative channels implies that the proposed ban is one of several desired additions brought by the *Kwaliteitskring*, which is in charge of executing the covenant.

In early 2008, the proposal for the ban goes into process. Technically the proposal was to amend an existing local byelaw by attaching a ban on the use of soft drugs to the existing ban on the use of alcohol in designated areas. The designated areas are to be appointed as such by the Bench of Mayor and Aldermen in a separate provision. The proposal was drawn up by the municipal policy officer for public order and safety issues and is dated 17 January 2008, and numbered 287. The proposal is discussed by the Commission of Council and Means in their meeting of 21 February 2008. Several questions are raised in regard to the proposal concerning the geographical positioning of the ban, its juridical validity, and the organization of its enforcement.

Interestingly, the mayor goes to some length to assert that there is a very real problem with the public use of soft drugs. Such drug use might not be rampant in the village, but it definitely occurs and the police receive indications of youths causing nuisance. He states that in such cases the police can fine those youths who are drinking, but not those who are smoking cannabis. The mayor also states that they would prefer to just ban it completely, but this is legally impossible. Churches are places where youths convene. He doesn't argue that the church-going youths use drugs, but states that the presence of youths can attract dealers and that this should be countered. Moreover, he states that if a person has a sachet of cannabis for private use, which is, he (wrongly) argues, not punishable in the Netherlands, and plans to use this, why would this person overtly carry it in public space? He states

this would either be to show it is for sale, and this you need to counter; or, he says, it could be an act of provocation. However, he goes on, if someone decides to initiate a test case, then we'll see what happens then. Thus overtly carrying soft drugs either means you're looking to deal in drugs or that you are looking to provoke. This would perhaps be a reasonable argument once the overt use has been banned. Meanwhile, recreational use in the open air does not seem to be an option; by this account, the use of soft drugs in public space does not conform to the desirable behavior of respectable citizens.

The proposal on the ban on using soft drugs in public space is subsequently submitted to the Municipal Council meeting of 13 March 2008. Again questions are posed pertaining to the enforcement, general necessity, and desirability of installing such a ban near churches. Also a new issue is raised on the accompanying costs. If such a ban is installed, it is argued, it has to be made known to the public via street signs. Such signs cost money. Moreover, should such signs near churches be considered desirable? The issue of street signs is not addressed in the reply and does not surface again. No public signs about the municipal ban on the use of soft drugs in public space have actually been erected in the village.

Again, the mayor stresses there is actual nuisance. He states that in the village center there are certain spaces where youngsters under the age of sixteen are regularly encountered with alcohol and drugs. In these cases the police should be able to fine not just those with alcohol, but also those with cannabis. Villagers regularly indicate to the police that they encounter nuisance from such situations. It is important that the municipality acquires the means to deal with this. This is the aim of the proposal. The mayor stresses that it is an instrument to deal with nuisance. When given the authority to act, the bench will subsequently inform the council on how they deploy that authority. As in the preceding Commission of Council and Means meeting, the mayor is careful on the question of church localities. Youngsters go to churches on weekdays to attend catechism, for example. Incidents do occur. Not everywhere, but for some churches it might matter.

After this, the chairperson asks if a roll-call is needed to vote on the proposal. None is requested and the proposal is passed by general consent on 13 March 2008. Accordingly, the local byelaws are adjusted to authorize the bench to assign spaces for a ban on using soft drugs. The actual assignment of such spaces takes almost another full year. In the weekly bench meeting of 24 February 2009, the bench assigns the spaces in which the ban will be enacted. These spaces are the center of the town, a hundred-meter radius around all sport facilities, a hundred-meter radius around all school and preschool facilities, and a hundred-meter radius around all public youth meeting places. No mention is made of spaces connected to churches. This decision

is subsequently published on 1 March 2009 and comes into effect on 3 March 2009, one week after the formal decision was taken.

Juridical Format of the Ban

The ban on using soft drugs in public space is a two-stage regulation. The first step is an article in the local byelaws granting authority to the Bench of Mayor and Aldermen to designate certain spaces in which it is forbidden to use soft drugs. The proposal to insert this article into the local byelaws was approved by the Municipal Council in the Council Meeting of 13 March 2008. This article in itself does not constitute a ban in force, it merely provides a juridical basis for such a ban to be called into existence. The article granting authority to the bench is placed under Section 5 of the local byelaws, titled 'usage and regard of the public road', which includes the regulations on alcohol use in public space. Notably, it has not been placed under Section 14, titled 'drugs impropriety', which contains the ban on drug dealing in public space. Other articles situated under Section 5 concern loitering, anti-social behavior, obstructive trees and greenery, and so forth.

Article 2:48, formerly pertaining only to alcohol use, is extended into a ban on the use of soft drugs. Section 3 of the article states that 'it is forbidden in a public space that constitutes part of an area so designated by the bench, to use or overtly have at hand soft drugs'. Section 4 then proceeds to define soft drugs as all substances listed on list II under Section B of the Opium Act, i.e. the national Law on Drugs. The assignment of spaces in which the ban applies, dated 24 February 2009, is duly carried out by the bench—though within the jurisdiction of the bench it is filed under the portfolio of the mayor. This assignment of spaces actually enacts the ban. No time-limit is connected to the assignment decision, nor is any intent voiced to evaluate and reconsider the ban at a given point.

A bird's-eye view of the formal process of setting up the ban shows two and a half years pass between the first announcement of the intention to install the ban in September 2006 and the its actual enactment on 3 March 2009. Thirteen months lie between the drafting of the proposal (the version that was submitted to the confirmation process is dated 1 February 2008) and the enactment of the authority therein. This course of events does not convey any sense of urgency with regard to the actual necessity of this ban. Moreover, the juridical wording of the ban is inconsistent with the requirements known at the time the ban was drafted.

What is remarkable is the discrepancy between the public announcement of the ban and the internal treatise of the proposal. The municipality sends out mixed messages on this issue: in the internal discussion of the ban it is asserted that the ban is needed to address an existing problem; in the external media communication, meanwhile, it is declared a preventive measure for a non-existing problem. The press release explicitly states that there is no nuisance, no immediate cause for installing the ban. However, in the council meeting in which the ban is eventually passed, the mayor indicates that there are real reasons for imposing it. In the Council meeting he explicitly cites situations in which youths using cannabis cause nuisance, and argues that without this regulation these youths cannot be tackled through fines. In defending the proposal of the ban on soft drugs the mayor states: 'the ban concerns overt ownership and use of cannabis. Villagers regularly report to the police that they encounter nuisance regarding this issue. It is important that the municipality has power to act in such cases. That is the purpose of this proposal.'

In Conclusion

The village green plays a prominent part the narrative of the community. Actual instances of the behavior targeted by the ban are very limited, and the existence of the ban is not communicated through municipal signs. The ban in part represents a schism between the older generation who dominate the local authority, and a younger generation for whom soft drugs are more normalized. Concordantly, the ban represents an attempt to keep unwanted external developments from entering the community.

4.4 The Cases Compared

At a physical level, the sites of the three case studies differ in size, design, and function. The village green is a large area offering a variety of shops, cafés and restaurants, and nightlife venues. Its public space has different spatial compartments, and various spots afford the opportunity to repose in the space for any length of time. The space is diffuse and cannot be surveyed in a single glance. The village green and the local shopping square are alike in function, they both house shops, cafés, and restaurants. In contrast to the village green, however, the shopping square is an enclosed square, reminiscent of an inner courtyard. There are no secluded niches, the entire square can be overseen from any angle. The playground resembles the shopping square in its clear arrangement, but in a much smaller scheme. There are

no shops on the playground, only a café-restaurant and a coffeeshop. The playground is designed as a public leisure space, whereas the shopping square and the village green have a much broader function that also includes shopping and consumption.

The three spaces connect with each other at a fundamental level: they are intensively used public spaces and have a core group of everyday users. On the sites there is substantial interaction between people who are familiar to each other. Moreover, there is a relationship between the users of the space and the space itself. These characteristics the spaces hold in common are expanded upon in the next chapter, in which the spatial angle is expounded upon and unpacked.

The sites moreover have in common an issue with a local ban on the use of psycho-active drugs. In all three cases the grounds for installing a ban are ambiguous. Formally, the bans are a response to public order situations, but upon closer inspection the bans and the processes through which they evolved represent issues above and beyond a straightforward public order disparity. The spaces all harbor conflicting social constellations. The playground is part of—and epitomizes—a gentrifying neighborhood. By contrast, the neighborhood of the shopping square is developing in a direction that is the opposite of gentrification, a process in which the original white-collar workers find themselves alienated from the space. On the site of the village green a closed community is prized open by a substantial influx of wealth and external influences.

Just as there is no uniformity in the users of the spaces, there is also no consensus on how space should be used and what comprises nuisance. Whereas in the village green the ban was installed without much ado, the enforcement turned out to have little importance. On the shopping square, by contrast, the enforcement of the ban turned out to be an issue of contention in itself. In the case of the playground, the contention arises in relation to the desirability of such a ban being installed. The social processes in which the bans are formulated and solicited are expounded upon in chapter six, which is dedicated to the concept of juridification.

The dialectical relationship between the space and the ban sounds through in all three cases, ranging from how physical signs of the bans in the spaces are interpreted, to depictions in the media of what happens in space. How the bans subsequently figure in the social spaces from which they emanate is approached from different viewpoints in chapter seven, which addresses the working of the bans.

5. The Spatial Angle

5.1 Shared Spaces of Everyday Life

Public Space

Social Space

Meaningful Space

Emotionally Owned Space

5.2 The Production of Space

The Planned Dimension

The Lived Dimension

The Perceived Dimension

5.3 The Dynamics of Space

The Relevance of Public Space

Contestation and Conflict

Winners and Losers on the Shopping Square

5.4 In Conclusion

5. The Spatial Angle

A Monday afternoon in early May, I am on my first visit to the village green. The sun is out and a frisky breeze lightens the spirits. Driving into the village one notices the luxuriant and high maintenance public greenery, and the many church buildings. The scenery gives an impression of Calvinistic prosperity: the real estate is well-kept and on show—not hidden behind tall hedgerows as in other villages in the region. I reach the central square, park my car, and ask a man sitting on his balcony near where I parked if I need to get a ticket somewhere. No, he says, not here, not yet. A church bell chimes the time: it is one o'clock in the afternoon. Upon entering the central square a large billboard announces a service of prayer and salvation to be held the coming Friday evening at the indoor tennis court. The poster looks as if it is advertising a pop concert. The central square is roomy and tidy, flanked by shops and restaurants. It is clearly in use as a meeting point. The street terraces have their fair share of customers and the public benches are also in use: by a group of construction workers on their lunch break, by a mother with a toddler in a pram, by me. The people using the central square are very alike in their appearance, though closer inspection reveals physical variety under the homogeneous presentation of dress and wear. Several elderly men show up on the square, some on foot, most by bike. They generally enter the site alone but quickly meet someone they know. They greet and chat, and chat some more. The scene is tranquil and harmonious. Then I notice a sign informing the reader that there is camera surveillance on the square. I look around and find two cameras. I remember why I am there: I am there because a ban on the use of soft drugs has been ordained for that space. The existence of the ban and the camera surveillance are at odds with how the space impresses me on that first encounter with it. The contrariety leads me to wonder how a space transmits a certain quality and how a space comes to be what it is.

The purview of this chapter is the functioning of a τόπος (*topos*), a physical locality. Space however proves to be more than merely a physical phenomenon. In each case study a certain geographical space is investigated in terms of its different dimensions, of which the physical manifestation is an important but not overriding aspect. Rather, the spaces are the physical expression of the social dynamics convening in those localities. One such dynamic forms the topic of this study, namely the regulation of the use of soft drugs in a locality. To understand this regulation from a spatial angle, the following chapter unpacks the quality of the spaces, the way they come about, and the dynamics they incorporate and instigate.

5.1 Shared Spaces of Everyday Life

Though the three case studies vary widely in their particularities, they converge in the fact that they are shared spaces of everyday life: people live their lives in their spatial dimension. These spaces figure in the everyday experiences of the people who use them. The spaces are adjacent to their front door, house the shops they frequent for their daily groceries, facilitate their daily routines. Even when people do not actually call in at the space every day, the spaces still figure in their mundane frame of reference. Moreover, others also use these spaces: the spaces are shared by different individuals who are connected, though sometimes by no more than the fact that they use that same space. In other words, the fact that the spaces are shared does not automatically entail that they are also communal spaces, in the sense that they are localities of shared values and expectations. They are not per se the sites of homogeneous and harmonious communities. What is shared is the physical space. The other persons in a shared space might be familiar, but this is not to say those others—or the frames of reference from which they operate—are known.

Public Space

There is a fundamental distinction to be made in the typology of space between private and public space. From a legal perspective one could take the issue of legal ownership as the deciding factor in whether a space is public or private. Public space then is owned by the state and defrayed through public funds, whilst private space by contrast is owned by private legal bodies. Such legal positivism however does not concur with reality. For example, the real estate of the shopping square, including the parking lot on the square, is jointly owned by the owners of the shops and the apartments.⁸⁵ Despite the fact that the property is privately owned, the square is in fact (in use as) public space.

Instead of looking at legal ownership, a more viable alternative is to look at the legal regime of a given space. On the shopping square and in the other case-study sites, public administrative law applies,⁸⁶ such as the municipal byelaws on the public use of soft drugs that figure in those spaces. These regulations pertain to the *openbare*

⁸⁵ Most of the shops however are not owner-occupied, but owned by a real estate company located in another town. According to one of the owners of an apartment on the first floor, the owner-occupiers' association as a consequence is *een wassen neus*, i.e. doesn't amount to anything.

⁸⁶ Public law of course also applies in private space, ranging from building permits to bans on domestic violence. Public administration law here specifically refers to the municipal authority to regulate public space in terms of public order, i.e. '*de openbare weg*'.

weg, literally the 'public way'. Hence it is not the issue of ownership,⁸⁷ but the prevailing legal regime that defines a space as public. Juridically the shared spaces of everyday life under scrutiny in this project are public spaces because they are under the legal regime of public administrative law.

Social Space

From a sociological perspective the character of a space is dependent on the social activity and the quality of social relations in that space. Typically, public space is space in which one encounters strangers, and this 'world of strangers' is the 'quintessential public realm' (Lofland, 1973, 1998). There is an element of the unknown and the possibility of surprise in the public space. Whereas private space is dominated by private or intimate relations (an often used example of private space is the home), public space in contrast is dominated by strangers: an individual in public space knows nothing personally about the vast majority of others with whom they share the space (Lofland, 1973: 3). Moreover, those strangers represent a wide variety of people. As Sennett phrases it: to be comfortable in public is to be comfortable in diversity, among strangers (1992: 17).

Public space interactions are nevertheless based on some form of cooperation and shared expectations. The manner in which public space is traversed has been studied extensively within urban sociology, exploring the way people navigate a space also used by other people. Jane Jacobs has famously likened the dynamic in which people move about bustling public space to a 'sidewalk ballet':

'This order is all composed of movement and change, and though it is life, not art, we may fancifully call it the art form of the city and liken it to the dance—not to a simple-minded precision dance with everyone kicking up at the same time, twirling in unison and bowing off en masse, but to an intricate ballet in which the individual dancers and ensembles all have distinctive parts which miraculously reinforce each other and compose an orderly whole. The ballet of the good city sidewalk never repeats itself from place to place, and in any one place is always replete with new improvisations.' ([1961]1993: 65–66)

⁸⁷ With regard to the concept of ownership: this can surpass the mere legal realm, and specifically in the case of spaces of everyday life, ownership can also be argued beyond the legal deed to the property.

Lofland subsequently argues that the choreography of this dance is built on ‘cooperative motility’, meaning that humans cooperate with one another to make their movement through the public realm without (major) collisions.

‘Inanimate objects alone pose minimal challenge (at least for most people—we all know the exceptions). However, animate objects and animate propelled inanimate ones—involving, as they do, movement that is guided by *intention*, are harder to read, their paths are harder to predict. [...] Just where is that woman approaching me on the sidewalk headed and wherever it is, what route is she going to use to get there? Is that person just ahead holding the door open for me or only for herself? Nonetheless, most of us get through doors without incident, most pedestrians don’t collide with other pedestrians.’ (1998: 29)

Lofland also refers to the act of ‘civil inattention’ that facilitates the sharing of space with unknown others. Civil inattention was first articulated by Erving Goffman, who describes it as the occasion in which

‘one gives to another enough visual notice to demonstrate that one appreciates that the other is present (and that one admits openly to having seen him), while at the next moment withdrawing one’s attention from him so as to express that he does not constitute a target of special curiosity or design.’ (1966: 84)

Multiple unwritten rules of co-presence in public space have been unraveled and investigated. These rules however are not necessarily universal.

‘Monday afternoon early June. I am on the shopping square, seated in my parked car working out some notes and viewing the square. There is a group of eight or ten men gathered at the end of the green bench. As far as I can gauge they are all Somali. They are talking and gesturing and effectively blocking the throughway. A woman rounds the corner and comes upon the congregation. She pauses in her stride, looking at the men, but they give no response. As far as I can make out they do not make eye contact or acknowledge her presence in any way. I get the impression that the woman does not ascertain any response to her presence either and she seems unsure what to do. Then she lunges forward into the group. The men step aside to let her through, still without the slightest form of acknowledgement of her presence. They continue apparently completely enmeshed in their own conversation and close the throughway once the woman has passed. The woman continues onwards to the Aldi without looking back.’

On this occasion, the group of men did not meet the woman’s expectation of a show of civil inattention. She did not receive any indication she had been noticed, she

picked up no sign that she would be granted passage. Nor had I discerned such a sign, watching the episode from the sidelines. The Somalis (presumably) mean no offence, but their behavior sends off ominous signals to those with a different frame of reference.

Public Familiarity

An understanding of a setting and how to maneuver in it is achieved via a sense of ‘public familiarity’ (Fisher, 1982; Blokland, 2006; Van der Zwaard, 2010). Familiarity with a public setting offers one a framework of reference to understand and gauge situations and interactions. An important factor in public familiarity is language. A resident of the shopping square narrates:

‘The Roma, you can’t understand them. They come here to the phone shop. They drive BMWs with German license plates. Young men. Lovely little girls, but shouldn’t they be in school? They came last year for the first time. There was some dealing with a sports car. “Mother Superior” got out the car, a fight ensued right here on the square. But you can’t understand what they are saying, and that I mind the most.’

The crux of public familiarity is understanding what goes on and how to react to it. Public familiarity does not equal feelings of safety or being at ease.

‘A Monday in June on the shopping square, around six in the evening. The square is busy with shoppers getting their last supplies for dinner. I am standing near the entrance of the Aldi, chatting with four men in their late twenties. At a certain moment an ear-piercing shout rings out over the square. To my ears it sounds like a distress call. In my perception the entire square freezes for a second, like a movie still. My collocutors have stopped mid-sentence in their banter and look to where the noise comes from. There appears to be a skirmish amongst some men standing near the green bench, but apparently it does not escalate in the here and now. The moment passes, the atmosphere relaxes, and quickly enough the square continues in its flow.’

Public familiarity offers an understanding of when a situation is safe or dangerous, and what tactics are called for to deal with a given situation. Without familiarity there is neither trust nor distrust, but a state in which a person has no pointers to assess a situation or the behavior of others. Blokland (2009a: 23), building on Sztompka (1999), has denominated this as *mistrust*: lack of familiarity with the presiding rules of engagement entails that people do not know what they can or should

expect from others in the shared space. Mistrust in a setting leads to disorientation and feeds feelings of insecurity. The absence or disappearance of public familiarity in a shared space of everyday life instigates a sense of displacement and alienation.

Parochial Space

Public space and private space are defined in relation to each other: space is public insofar as it is not private, and vice versa. Public and private space are in other words two opposites on a continuum. The boundary between what is public and what is private is not fixed: it differs from place to place, person to person, and moment to moment. Some private spaces are more public than others and some public spaces are more private than others. In reference to the nature of the social relationships in a space, Lofland has coined the term 'parochial space' (1998: 10) to denote space that is neither public nor private, but both at the same time. The same physical space can be public to the one person, and parochial to the next. The determining factor is the social network of a person in that space.

The spaces under scrutiny here figure as parochial space for most of their users. Of course, the playground also hosts a cycle lane thoroughfare for commuters traversing the city, and the village green sees its fair share of tourists coming in to visit its picturesque harbor and open-air markets. Even the shopping square attracts shoppers who come only for the Aldi supermarket or the renowned Islamic butchery. All three spaces however have a substantial group of users for whom the space features prominently in their daily lives, and these persons recognize the other habitués of the space. Parochial space is not dominated by intimates nor by strangers, but by familiar faces of whom one has some personal knowledge. In parochial space there is a high chance of repeated encounters with the 'familiar stranger' (Milgram, 1977: 51). As an example, a cyclist with a sound set fixed to the luggage carrier of his bike would intermittently come along the cycle path that runs through the playground space. The sound set would invariably be on with the volume up high, playing a classical piece. All the regulars on the square were familiar with the existence of this cyclist (and his musical preferences), even if they did not know his name or history.

Milgram defines the familiar stranger as a person repeatedly observed over a certain time period with whom one does not interact. Milgram further argues that familiar strangers are not prone to interact in their scene of routine encounters. The research originally forming the backdrop of this concept was done in the 1970s at commuter stations feeding into New York City. By contrast, in the parochial settings of the case studies, being a familiar stranger often functioned as a first step towards

further acquaintance. This occurred between neighbors, shoppers sharing the same routine, or simply the person one sees so regularly that one started to nod in greeting years ago. They would notice and comment on an arm in a sling or a baby in a carriage, without knowing each other's name or home address. I myself was approached regularly with the remark that I had been spotted before in that space.

'I am sitting on the green bench in the south-west corner of the shopping square, amidst a group of teenage boys. I see "Tony" approaching [I have no idea what his real name is, I never asked for names, in my mind I call him Tony after Tony Montana from the movie Scarface, he practices the same kind of swagger]. It is the first time I see him again in this stretch of fieldwork. During my previous sojourn he aggressively ignored me, now he walks straight towards me and shakes my hand. "Hej Ma'am, you're back. I thought to myself, what is a woman doing there on the square, but then I saw your car and I knew it was you."

Defining space through the social interactions that take place in it entails that a given space will have different meanings to different people. As a result people will consider different things appropriate or not appropriate in that space. This is in turn complemented with and complicated by the ongoing privatization of the public domain, as observed and untangled by Sennett in *The Fall of Public Man* (1992). Sennett argues that in contemporary society people want to be authentic to themselves in public, just as they are in private. One consequence is that the public realm no longer holds its own code of conduct, but is commandeered and measured by the codes of the private realm. Sennett propounds: '(c)onfusion has arisen between public and intimate life. People are working out in terms of personal feelings public matters which properly can be dealt with only through codes of impersonal meaning' (1992: 5).

The 'colonization' of the public realm by the codes and modes of the private realm finds an exemplary translation in the much used-Dutch admonishment: 'you would not do that at home, would you'. Sometimes though, that is exactly the point. The adolescents in the public spaces of the shopping square, the playground, and the village green indeed would not behave like that at home. The public nature of the spaces in question offers them a form of privacy they do not enjoy in their own homes.

'A Thursday in June, around lunch time. I've hooked up with a group of five girls hanging out on the village green. They are fourteen, fifteen, and sixteen years old. They come there to "chill", to hang out together. Also to cover for each other if one of them wants to smoke (a cigarette). They'd rather their parents don't find out they smoke.'

As far as these girls are concerned, different rules certainly apply in public space than in private space. In certain regards, public space is the space in which they can express themselves more freely than in the parent-controlled space of their familial homes. However, it is important to note that even when public space is granted a regime different from the one ruling the private (or, as Sennett denominates it, the intimate) realm, this regime still connects to, builds on, and is influenced by codes and mores of the private realm. Public space may be populated with strangers, but it is viewed and evaluated from a perspective that is rooted in one's private domain. Subsequently, issues arise when in a shared space of everyday life different qualified users do not share common expectations or viewpoints on its appropriate use.

Meaningful Space

In the previous section the focus was on the social interactions and relations between users in a given space. An alternative approach to drawing the public-private divide is looking at the relationship between user and space. I explore two perspectives on this relationship in the literature. In the first the focus is on the meaning a given space has for a person, while in the second the focus is on the control a person strives to exert over a space.

Place Attachment

The issue of people bonding to certain spaces is explored with the concept of place attachment. In this concept space is 'a medium or milieu which embeds and is a repository of a variety of life experiences, is central to those experiences, and is inseparable from them' (Altman & Low, 1992: 10). Note that when speaking of 'place attachment' the generic concept of space is replaced by the term place. This is because 'place [...] refers to space that has been given meaning through personal, group, or cultural processes' (Altman & Low, 1992: 5). Subsequently, attachments to public spaces are argued to be 'weaker, more generic, and personally less meaningful' than private spaces (Rubinstein & Parmelee, 1992: 149). In some instances attachments to a place are based on the social relations that occur in that space. Hence, 'the social relations that a place signifies may be equally or more important to the attachment processes than the place qua place' (Altman & Low, 1992: 7). This links in with Lofland, who defines physical space by the nature of the social encounters that take place in that space. The idea of place attachment complements Lofland's categorization by stressing that the type of encounters experienced in a

space also effects how the geographical *topos* in which these encounters occur is experienced.

In the concept of place attachment, the attachment itself has a high affective quality and centers on the emotional level; it is 'a set of feelings about a geographic location that emotionally binds a person to that place as a function of its role as a setting for experience' (Rubinstein & Parmelee, 1992: 139). This emotional bonding to a space has a broader base than the social interaction taking place in that space on which Lofland focuses. In a variant on the private–public distinction, Rowles develops the concept of insideness, referring to the bonding to a certain space.⁸⁸ He distinguishes three aspects of insideness that can facilitate such emotional bonding: physical, autobiographical, and social (Rowles, 1984: 146). First, 'physical insideness is an implicit awareness, an experiential familiarity with the physical features of a place as a result of repeated use' (Rubinstein & Parmelee, 1992: 146). But familiarity with an environment in itself does not automatically entail emotional attachment to it. Second, 'autobiographical insideness signifies a sense of personal history or bondedness with a place as a result of having experienced personally meaningful events there' (Rubinstein & Parmelee, 1992: 147). And last but not least, social insideness pertains to the integration into 'the social milieu of a place' (Rubinstein & Parmelee, 1992: 148) and 'evolves not only from everyday social exchanges and relationships, but also from a sense of being known and knowing others' (Rowles, 1984: 146–147). Emotional bonds with a place can be facilitated by a combination of these three aspects of insideness. Note that the aspects concur respectively with physical features, psychological frames, and social interactions. This is a triad we will encounter again further on, as these three aspects of the physical, the social, and the autobiographical also resonate in the way a space is in turn produced.

Examples of all three aspects can be found in each of the case studies, but I will make a cross-reference to illustrate the point. On the shopping square, autobiographical insideness figures strongly for both the elderly residents and the adolescents. For the elderly it is a place they pioneered and created, where they raised their children and lived for more than half their lives. Likewise, for the adolescents the shopping square is their social ground where they spend (all) their free hours and grow up to adulthood. In the playground, physical insideness figures strongly for all who live on the square, the square is always their first step upon leaving or last step before entering their private domain. On the village green, the dimension

⁸⁸ In reference to the psychological proximity of a space for a person, e.g. the hierarchy in importance of spaces to a person. Rowles applies it specifically within the topic of the elderly, but I argue that it has a wider applicability.

of social insideness manifests itself: it is a site for meeting someone you know well enough to greet, for being known and being noticed. Hence a space becomes a place through the emotional meaning connoted to it. This emotional attachment can find expression in the meaning induced by the physical features of a space, its relationship to one's personal history, and the sociality connected to that space. Considering their quality and function, spaces of everyday life readily become 'place' for many of their users.

Territoriality

Another perspective on the relationship between user and space focuses on the degree to which an individual will try to control a given space. Space in this sense becomes a territorial concept.⁸⁹ Though a sense of territoriality can be highly emotional, at its crux lies the endeavor to exert control (Madanipour, 2005: 50). Altman (1975) uses a territorial approach to categorize space into primary territories, secondary territories, and public territories. His classification refers to the degree to which people try to exert control over a space and the likelihood of their defending that space. This relates to how central a territory is to a person or group, and how prominently it figures in their everyday lives. Primary territories are 'owned and used exclusively by individuals or groups, are clearly identified as theirs by others, are controlled on a relatively permanent basis, and are central to the day-to-day lives of the occupants' (1975: 112). At the other end of the spectrum, public territories have a temporal quality in that they are only briefly claimed by their occupants and almost anyone has free access and occupancy rights (1975: 118–120). The secondary territory forms a bridge between the primary and the public territories, and also functions as a buffer between firmly controlled and uncontrolled spaces. There is a degree of control and regulatory power, but there are multiple qualified users and the space is not identified as belonging solely to one specific set of users. The case studies fall into this middle category of Altman's categorization. Precisely because of their ambiguous character, secondary territories hold a high potential for conflict and miscommunication (Altman, 1975: 114–118).

⁸⁹ As a side note: Lefebvre distinguishes between spaces that people inhabit versus habitats. 'To inhabit meant to take part in a social life, a community, village or city' (1996: 76).

Emotionally Owned Space

The classification of primary, secondary, and public territory links up with the categorization of public, parochial, and private space. These different approaches—focusing on social interactions between users on the one hand and exertion of control by users over space on the other—demonstrate the many dimensions captured by the physical manifestation of space. Overall, the categorizations based (a) on the social interactions in a space, (b) on the meaning a space holds for its users, and (c) on the degree of control exerted over space all prove to be applicable to the shared spaces of everyday life of the case studies. However, they do not completely cover the gist. It is true that the shared spaces of everyday life are parochial, in that they provide the setting for social interactions with intimate strangers; furthermore, many of the users of these spaces have a place attachment to these spaces and strive to exert control over these spaces. Yet in the approaches above there is an element missing that strongly comes to the fore in the research data. It is not just the desire to control the space, there is also a responsibility felt over the space. The users of the space feel a sense of duty towards that space, beyond their own direct and specific interests. In a very mundane fashion, this could be expressed by the act of keeping a place in proper order by literally sweeping the place clean.

‘Tuesday morning, half past eight, on the shopping square. I see Mr. —, with his eighty-four years, out and about, busy with a big broom, a dustpan and a bucket. He is wearing gloves. I approach him and greet him, remind him of our previous encounter and start to chat. I remark that the sanitation service has just come through the square. He responds that yes that is true, but well, there is glass everywhere and he thought to himself he would sweep it up. The glass is likely to puncture the tire of a bicycle or hurt a playing child. He adds: “The square gets messed up every night.”’

In the playground, too, a resident literally sweeps the place tidy:

‘The municipality has no regard for the playground, — continues. When I address a man from the sanitation department to also clean the playground, he just looks at me like “huh?” So I was given a broom. I said: “I am the only one keeping the square clean, so can I have a broom.” And I got a broom. The playground is intensely used by the school, and by the after-school childcare and by the playgroup for toddlers. And then they put such a small trash can here.’

The concept of territoriality derives from studies of animal behavior (Altman, 1975; Lawson, 2001; Madanipour, 2005). The wish of individuals in the case studies to control a shared space however does not purely come from a territorial instinct to

be boss and keep others out. It also derives from a felt responsibility to make a place good. This is deemed desirable not exclusively or even specifically for oneself, but also for known and unknown others. The ban on the village green was installed, according to the official communiqué, to impress on the public that using cannabis should not be considered normal behavior and to protect the youth from being confronted with it. The ban was organized to serve a common good. Likewise, the bans on the shopping square and the playground are credited with defending the liveability of those spaces not just for the individuals vying for the ban, but for everyone. On the playground, the six households that together lodged an administrative appeal at the district court formulated it in their plea to the court as follows:

'We want a ban on the use of soft drugs on the children's playground to protect the health and well-being of our children and all the other children from the neighborhood that play on the square.'

I bring to recall the utter dismay of the applicants for a ban for the playground at the suggestion that if they didn't like things as they were, they should move out of the city. There is a large body of literature however documenting cases where people do exactly that: they retreat from public space and pull back into a private domain (for example Davis, 1990; Caldeira, 2001; Low, 2006). One mode is withdrawing into the home. Another mode is to relocate. An illustrative example of the latter are the gated communities where people live their lives in secluded space, and public space is only used to navigate from one enclave to the next. In the sites under scrutiny here, the people do not withdraw from the spaces, either by locking themselves indoors or by leaving altogether and moving to another place. Instead, they stay put, and put up a fight. They do so not because they lack an alternative, or solely out of a primordial drive to control their territory.

I propose an additional way to denominate space in accordance with the degree to which a space is under *emotional ownership*. By using the term ownership, a connection is made with the legal concept of ownership: it brings certain rights, but also entails certain duties. An owner has a duty to maintain his or her property, and can be challenged to take responsibility for it. Hence the concept of ownership not only implies rights and control, but also has connotations of care. Moreover, ownership is practiced in opposition to others. In the Dutch Civil Code, ownership is defined as the right over something to the exclusion of others—and in reckoning with others. Hence ownership is a circumstance that is practiced in interaction with others, in a shared context. If no one else stakes a claim to an object, no claim of ownership is necessary.

To sum up, the term 'emotional ownership' encompasses emotional place attachment, the right to control, and the duty to care. The measure in which space is emotionally owned can also be seen on a continuum, from space over which no one feels emotional ownership to space over which one specific person holds exclusive emotional ownership. This can and often will more or less correspond to the continuum between public and private space. Shared spaces again hold the middle ground in this continuum. The shared spaces of everyday life are emotionally owned by the individuals who use them: they have an emotional attachment to the space, they feel they have a right to control it, and they feel a sense of duty towards it. The emotional ownership of one person interacts with the emotional ownership held by another. The measure of emotional ownership in turn correlates to the extent to which individuals participate in a space and consequently partake in the *production* of that space.

5.2 The Production of Space

The spaces of the case studies are sites where the everyday takes place. From a dramaturgical perspective they can be likened to the front stage on which the actors present themselves (Goffman, 1959). The shopping square in particular offers multiple illustrative examples of this. The local police officer explains that the adolescents on the square have no interest in the hangouts created for them near outlying sports fields. They come to the square to see and be seen.

'A Wednesday afternoon in June, the shopping square is busy. A young adolescent man enters the square as if he is the main act on the center stage, fully dressed and groomed for the occasion. His stride is long and lazy and relaxed. He owns the moment. He is cool, and he knows it. Then is he hailed from across the square by a woman who clearly knows him too. Not meaning any disrespect, her diameter seems to equal her height, her hairdo is short and practical. I estimate her in her fifties. She radiates bustling energy and there is no escape: he is bound to this social exchange. I catch bits and pieces of their conversation, the woman is asking after his mother, asks how he is doing and how school is going. After a while the woman rounds up, impresses upon the young man to pass on her regards to his mother and in a flurry of waves and byes moves on. The adolescent, who had been bending his upper body forward towards the woman in attentive politeness, first straightens himself upward and then moves his upper body again behind his pelvis. He recovers his stride and continues on with long and easy paces. Something of the magic of his first entry however has been lost.'

The shopping square is a stage for some of its users, just as it is a site of leisure and a space for socializing. It is not however merely a 'setting in which life transpires' (Molotch, 1993: 888), the spaces of the case studies are more than arenas for social interactions to take place in. The supposition that space is an 'empty medium' has long exited the realm of spatial thinkers (Lefebvre, 1991: 87). Just as societies produce space, space produces societies: space, used by people to live their lives and negotiate their society, is in that process also created by people.

This creation of space moreover does not happen only at the physical level, on the drawing table of urban planners. Space in practice does not necessarily equal space as planned or designed. Though within the discipline of planning and architecture this is often presented as an astounding revelation (for example Lawson, 2001; Madanipour, 2005), sociologists have long expanded on this issue. Herbert Gans, for one, worked out the distinction between the potential environment and the effective environment. The potential environment, according to Gans, is the physical environment, such as 'the park proposed by the planner' (1991: 26). The effective, actual environment is subsequently determined by the people who use it. People do this by applying their social system and cultural norms to define and evaluate portions of the physical environment relevant to their lives, and also to structure the way they use and react to this environment.

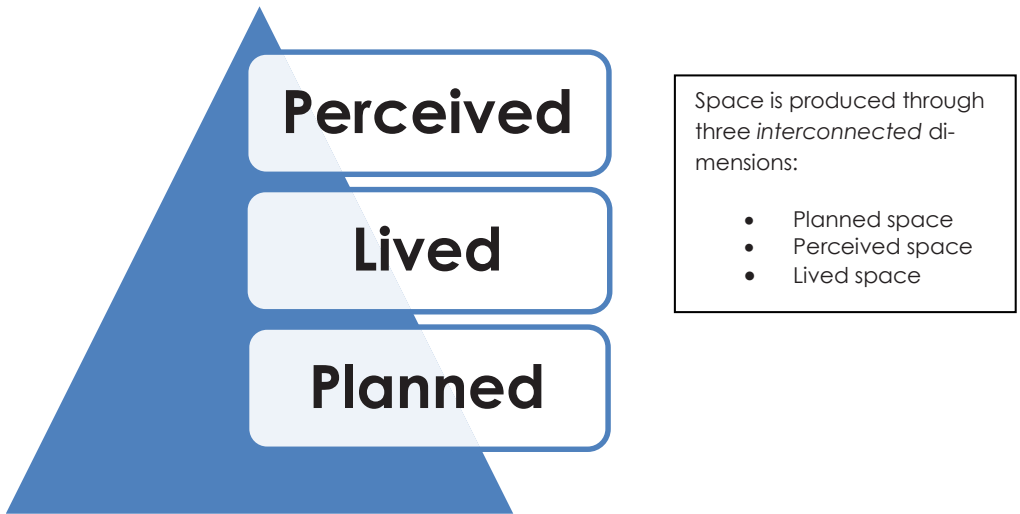
A well-used example of architectural elements in a space that are used differently than intended are places to sit. People do not automatically sit themselves in public space where urban planners designate them to sit, nor do people use so-designed seating structures as intended. Common examples are stairs in public space that are used to settle and sit on, or public benches that have been designed in such a way that it is (sometimes nearly, but not quite) impossible to lie down on them.⁹⁰ In the case studies various examples can be found where the effective environment diverges from the planned environment. The playground in our case study was designed as a play spot for children. It includes a large swing, consisting of a large circular plateau about a meter wide and wonderfully comfortable to lie in. A big hit with small children, it also proves very attractive for older persons, whose subsequent use of it is deemed considerably less endearing by many of the residents. Particularly when this use entails loud laughter and shouts in the early hours of the morning, residents living near the swing object that this was not how the playground had been planned to be used.

⁹⁰ A classic report on this is the unequalled documentary 'Social Life of Small Urban Places' by William H. Whyte (1980). In this visual report of an in-depth study of the use of public plazas in New York, Whyte demonstrates that people make their own decisions on how to use public space and that these decisions do not necessarily connect to the logic of the urban planner.

Space then comes about in part according to how it is planned, and in part due to how it is used, but this is still not the whole picture. The French philosopher and sociologist Henri Lefebvre has unraveled the process by which space comes about in his work *The production of space* (1974; English translation 1991), and he adds in several factors. First of all he states that people do not merely use an environment or space in a particular way, but also ‘produce’—that is to say alter and mold—a space in the process. In other words, the relation between the potential and effective environment is not one-way, but reciprocal. Moreover, the effective environment is not the end product but one of the constitutive factors producing space. Furthermore, Lefebvre explicates the continuous process by which people produce a space. Instead of a linear mode from planned to used space, Lefebvre describes the production of space as a continuous and generative process in which multiple factors interact with each other and lead to a production of space.

Moreover, Lefebvre distinguishes different dimensions through which space is produced. Moving beyond the dialectic of planned and effective environment, he explicates a third dimension: the dimension of perceived space. Space according to Lefebvre is ‘an interlinkage of geographic form, built environment, symbolic meanings, and routines of life’ (Molotch 1993: 887). Three different levels in the production of space come together in a conceptual triad. These levels refer to mental space, physical space, and social space; Lefebvre denominates them as spatial practices, representations of space, and representational spaces (1991: 38–39).

The words Lefebvre uses reflect the richness of his argument, but in their application they tend to confuse (me). Hence I use Lefebvre’s framework, but employ a simplified terminology. Building on the work of Lefebvre in the following, I denominate the planned realm, referring to the engineered environment; the lived realm, referring to the routines of everyday life; and last, the perceived realm of space, relating to the symbolic meaning ascribed to and read from a space. To sum up, Lefebvre’s formulation of spatial practices, representations of space, and representational spaces, in the following corresponds respectively to the perceived, the planned, and the lived realm.



To truly understand space and how it works, Lefebvre argues, one must look at how spaces come about. This is to say that one must discern and look at the three interconnected levels through which they emerge: how they are lived to be in everyday life, how they are imagined to be and how they are engineered to be. Together, though certainly not always in harmony, these three levels combined produce a given social space. The three levels all represent human interference: space is produced through human intent, albeit conscious or unconscious. As space both produces and is produced, in continuous interaction, 'social space works (along with its concept) as a tool for the analysis of society' (Lefebvre, 1991: 34). In other words, to understand space is to get a grasp on the society that exists in that space.

In the following section I will further unpack the three dimensions and relate them to the case studies. The eventual aim is to position and understand the bans on the public use of soft drugs within the framework of the production of space. This links back to one of the central research questions articulated in chapter one, inquiring after the role of the legal in the spatial dimension.

Planned Space

Planned space in Lefebvre's framework is 'the space of scientists, planners, urbanists, technocratic subdividers and social engineers' (Lefebvre, 1991: 38). It is space that is developed using the head rather than the senses; it does not evolve organically (Merrifield, 2006: 62), but is instead imposed upon those who reside in it. It is the space constructed by professionals and technocrats, heavy with knowledge and

power, emanating the 'bureaucratic and political authoritarianism immanent to a repressive state' (Lefebvre, 1991: 49). The dimension of planned space runs parallel to Gans's definition of the potential environment. It is the space that is formally organized, planned with a specified goal. Planned space as I understand it falls into two main categories: physical features and formal regulations. Lefebvre's exploration of the production of space falls under his larger project of elucidating the struggle of the ordinary man versus the state, the bourgeoisie, and capitalism. My focus here however is a different one, I wish to explicate the struggle of ordinary people amongst themselves over their shared space. Within the frame of my case studies I argue that ordinary people also engineer space. They partake in the conception of physical features, at times through a participatory process and at times on their own initiative. The neighborhood playground for example is a green area because it is lined with façade gardens, which are created and kept solely on initiative of the residents. The planned dimension is not only the domain of institutional actors; ordinary people can and do seize a role in the engineered dimension of space. This includes the formal regulation of a space. The 'moral entrepreneurs' of the case-study sites play an active role in the engineering of the formal regulations reigning over a space. As a resident of the playground reports:

'There was this guy from the City Council who came by and said well what if we take away the benches then those guys can't sit here anymore, and I said well if you do that you also have to take away the swing and the fence around the panna court and the fence around the sandbox because they sit on there as well, that's not dealing with the problem, but with the side-effects of the problem. You can reason that those people have to be able to smoke their joint somewhere, but do they really have to be able to do that? There seems to be some kind of taboo on the issue. If the problem had been alcohol I'm sure we would have had a ban ages ago, now they just make up all kinds of other things, but the point remains that we want a ban on the use of soft drugs here.'

Planned space is a dimension that figures strongly in the overall coming about of space and it is often dominated by the institutional forces of state and capital. It is however, I argue, also a dimension in which ordinary people find a means of socially engineering their own space to their own accord.

Lived Space

The lived space according to Lefebvre is 'the space of the "inhabitants" and "users", [...] the dominated—and hence passively experienced—space which the imagina-

tion seeks to change and appropriate' (Lefebvre 1991: 39). This is space not as it is perceived, but as it is actually encountered and directly lived through everyday experiences. Consequently, the lived space is also alive, dynamic, and elusive. Because it is elusive and yet so central in experience, there is an overarching urge to master it, to catch it and control it.

Though Lefebvre is not precise in his description of what he terms 'spaces of representations' (nor for that matter in his description of the other dimensions), he seems to ordain the lived space as a passive experience, an experience that plays at an emotional and affective level. However, in the apparent passive experience of everyday life, one can still distil purposeful tactics to appropriate and accommodate the space to one's own needs. Whereas Lefebvre zooms in on the fact that lived space is experienced, De Certeau (1984) expands on the issue, noting that through living space, it is also produced. The act of living a space is not an intellectual practice per se, but this is not to say it is without intent.

'A Monday afternoon in September on the playground. The weather is stormy but dry. One of the residents is sitting on a bench in front of his house. It's a wooden bench painted pink, privately owned. His daughter is playing on the curb next to him and he has placed a long cargo bike crosswise on the curb next to the bench. This is done on purpose: the bike thus placed keeps fast traffic off the pavement where he and his daughter are sitting.'

Both the crosswise positioning of the cargo bike and their combined presence on the pink painted bench represent embodied usage of the space that alters the space by its enactment.

In Gans's view, the potential, planned space only becomes reality, that is, effective space, as it is taken in use by people of flesh and blood. However, this is not the full story. The binary frame of planned and lived (i.e. potential and effective) space is complemented by a third dimension contributing to the overall production of space.

Perceived Space

The third dimension participating in the production of space is the mental realm of perceived space. The perceived space mediates between the lived and planned space, keeping them apart and at the same time linking them to each other. It is how space is imagined to be, and it both 'propounds and presupposes it' (Lefebvre, 1991: 38), referring to the manner in which a space is read and 'decoded'. The spatial codes used to read a space determine how a space is perceived, and at the same time how a space is perceived induces spatial codes (Lefebvre, 1991: 17–18). Most

users of a space have a clear perception of that space; they have an idea of what it is and what it is not. Consensus on the perceived space however is not always reached, and perceptions of a space can and do differ widely. On the shopping square, the elderly native Dutch base their perception of the square on times past.

'The square used to be much prettier. There were trees in the middle of the square and there was a diner. Back then the whole neighborhood went there on Sundays to get an ice cream.'

A visitor coming to the square especially for the Islamic butcher codes the square according to his perception:

'This square is wonderful. It a social meeting ground. I am interested in other cultures and well, you see things differently then. It is a merger of cultures here and you have two kinds of people: Dutch people who are not familiar with that and are afraid of it, and people like myself. You see more and more people doing things differently, and if you do not delve into those issues it gets very complicated. Most people do not look beyond their front door. [...] We live on the other side of town and only come once a fortnight, for the halal butcher on this square. My wife is Iranian and she insists on getting the meat from there.'

However it is not only people who actually come to the square who have a perception of the space. The square also gets coded based on the stories in the media.

'— laments: she and her husband were visiting friends the other weekend, in a nearby village. There was also a couple present from another village nearby and they said do you know where that shopping square is, the one that is in the news all the time. And she had answered yes, that is right where we live, and those people had said oh no how terrible for you and had been very commiserating. And well, yes, there is trouble on the square, but it is not all as bad as that.'

As this quote illustrates, the perceived space is interdependent with actual experience, but does not necessarily derive from it. Most of the people I spoke with who code the shopping square as dangerous concur that they have never personally experienced any unpleasantness, nor do they have personal knowledge of anyone else with such an experience. At the same time, perceived space structures reality, it determines how reality is taken in. The elderly residents who still code the square as a place for Sunday afternoon strolling and ice cream at the ice-cream parlor have seen that perception become divorced from reality for quite some time. The perception of a space relates to how a space is imagined to be, and it also determines how that space is deciphered. The following two quotes both come from street inter-

views on the shopping square. One has lived in the neighborhood for decades; the other has just moved to the area.

'I have no words for it, I do not care for it one bit. I've been living in this neighborhood since '69 and the place has been degenerating since 1980, 1986, 1990, I don't know exactly. That's when the mixing of the races started.⁹¹ Other traditions, other customs, that doesn't go down easy. They frightened the square. They don't do anything, but the people see them congregate and they do not mix.'

'I like it here. I moved here from a neighboring village and you have your youth there, mind you. I've been living here since December and there is youth here. Sometimes they bother me, like the other day they were lighting fireworks and I thought the windows would spring [she laughs], but no they don't really bother me. I had heard the stories, about this square, that it was very criminal, with drugs and everything, but well, there are criminals everywhere and I experience no nuisance at all. I live here on the square, in that flat over there. I walk my dogs in the evening and I don't feel unsafe. I have contact with the other people in my flat and on the street, those are people from another culture. They say hi and I say hi. I like people and I don't care whether they are white, black or yellow.'

Mental space structures reality, and also structures action in reality. As we will see further on, when the three dimensions of space do not synchronize it results in distress for the individual user. Attempts will be made to line the three dimensions up with each other. One could imagine that of the three dimensions, the perceived dimension would be the easiest to adjust for ordinary people. This however seems not to be the case. The perception of space proves to be pretty static.

5.3 The Dynamics of Space

Space is produced, and this is a continuous process. It is not however always produced harmoniously, and this relates to the relevance space holds. In the following I will first expound on this relevance and subsequently on the possible conflicts that accompany the production of space.

⁹¹ This is a literal quote, the term races was actually used in this way. To note, the speaker himself belonged to an ethnic minority and was an aging Moluccan man.

The Relevance of Public Space

Two approaches to the relevance of public space are juxtaposed here. The first focuses on the produced space, evaluated against an ideal type of public space. The second approach focuses on the process by which space is produced.

The first approach is well represented in urban sociology. It takes a normative ideal of safe and tolerant co-existence in a society of diversity and argues how public space can—and should—contribute to attaining this ideal. Public space then is where society meets the other, and through repeated meeting society is familiarized with diversity, learns to deal with it, negotiate it, and become tolerant to it. Consequently public space is constitutive of a socially cohesive society with a well-functioning framework of informal social control. Jane Jacobs is an eloquent proponent of this stream, and wrote a seminal book, *The death and life of great American cities*, on how public space should be in order to fulfil this potential. In her wake, many have taken the normative ideal as a starting point and have subsequently measured and evaluated public space in terms of its contribution towards realizing this ideal.⁹²

Based on observations in her own neighborhood, Greenwich Village, in the 1960s, Jacobs formulated the concept of ‘eyes on the street’ ([1961] 1993: 45). Eyes on the street are a direct and straightforward method of monitoring and controlling the behavior of strangers one does not know. To ensure an effective number of eyes and ensure they are used she advocated a lively measure of street activity. This could be attained by mixing the functions of living and working, instead of segregating these activities in residential suburbs that are deserted in the daytime and business parks that are deserted in the night time. However, notwithstanding Jacob’s propositions, it must be remarked that the mixing of functions is not a sure recipe for success. Specifically when enterprises cater for a different public than the people who have their residency in the vicinity of the enterprises, tensions can and do arise. The coffee shops situated near the playground, the late-night venues on the village green, the telephone shop and the Egyptian grillroom on the shopping square are all examples in case.

Instead of pinpointing a given ideal end product of space, an alternative approach is to focus on the process of the production of space. In this case the desirable outcome is not fixed upfront and hence cannot be taken as a benchmark. The advantage is that the question then is no longer whether something works; instead the more

⁹² Arguably, the whole range of social spatial justice.

open question arises of how something works. This broadens the scope of the investigation considerably. Here again I turn to the work of Lefebvre. In his exposé on the production of space, he unravels how the production process of space works, what it comprises, and what the possible outcomes are.⁹³ This offers room for the assumption that different users of a space can have different—and non-compatible—normative ideals concerning the functioning of a given space.

Contestation and Conflict

On the playground, the normative ideas and ideals of the residents are oppositional, and who is to decide which of these views should be considered correct? The issues in case are value-laden, the norms are emotionally charged. As the following quotes indicate, both sides of the argument are strongly felt. It is interesting to note that the two people cited here live almost next door to each other, directly adjacent to the playground, and both have small children using the playground on a daily basis.

‘Shall I tell you what I think? Look, a playground—I really feel that they are two extremes, a playground and using soft drugs. It just does not go together.’

‘Twenty years ago we fought for the normalization of cannabis, now we have forgotten how important that is. I do not use soft drugs myself, they are not an issue to me, but I do really feel that people should decide for themselves what they do.’

In that contestation over non-compatible normative ideals, Lefebvre underpins the pivotal role of the space.⁹⁴ He comprehensively argues that space is a constitutive factor in social interactions and social order and repeatedly posits the importance of the spatial:

‘Any “social existence” aspiring or claiming to be “real”, but failing to produce its own space, would be a strange entity, a very peculiar kind of abstraction unable to escape from the ideological or even the “cultural” realm. It would fall to the level of folklore and sooner or later disappear altogether, thereby immediately losing its identity, its denomination and its feeble degree of reality.’ (1991: 53)

⁹³ To be clear, Lefebvre does have a clear normative ideal outcome. What he sees happening is an ‘overall colonization of space’ (Merrifield, 2006: 95), in which space is formed by the global ruling class to accommodate capitalism, while what he wishes for is space being formed through a spontaneous organic method in response to the needs of those who inhabit it, like a seashell for its inhabitant (Merrifield, 2006: 65).

⁹⁴ To note: ‘Lefebvre, for Castells, had strayed too far, had reified space’ (Merrifield, 2006: 101).

Hence, societies produce space, but space is at the same time a prerequisite for a society to be. Not partaking in the production of space equals not partaking in the society that space supports. Translating this to the concrete: for the participants in the shared spaces of everyday life it is elementary to figure in the production of a space, in order to guarantee that it will accommodate their needs and urges. In the field notes this is repeatedly formulated in the sense that they too have a right to be present in a space and to *be*, that is, not just be present, but also do their thing, in a given space.

'A sunny Thursday afternoon in June on the village green. I am sitting and chatting with a group of youths. One of the girls who had kept quiet up till then starts a passionate plea: You know, ma'am, they should make a spot to chill for us. Yeah, ok, so there is one, that blue shack, but that's way at the end of the village, it'll take you ten minutes to bike there. We are not allowed to chill anywhere, we get sent away everywhere.'

In sum, space is relevant because it is constitutive to a social order. That social order holds a wide variety: it also comprises the youths who want a place to 'chill' without being commanded out of sight. Thus it can well be that the ideal space of the various users of a space is so different that they are in practice incompatible. As the stakes are so high and space plays such a crucial role in the establishment of a social order, participation in the production of space can offer cause for serious strife. Though often enough planners and policy makers define upfront what the social order should be and how space should contribute to it, for those on the ground the desirable result may be a completely different picture. Rather than arguing for a given desirable outcome, in the following section the focus will be on how different participants in a space try to steer and influence the outcome of the production of space.

The diversity of the users of the case-study sites⁹⁵ brings with it competing and often contradictory modes of producing space. Different interests come to the stage and 'seek to inscribe their own social vision on territory' (Molotch, 1993: 889), attempting to pass the 'trial by space' (Lefebvre, 1991: 416) and make their mark. At times, distinctive social visions and modes of production of space co-exist, or merge into shared visions and a shared production of space. At other times, distinctive

⁹⁵ The diversity of society is often approached from the perspective of ethnic or migration research, or from a socio-economic angle. Studies on neighborhoods going through transition caused by large-scale influx of ethnic minorities and/or 'white flight', as well as studies on transitions caused by either gentrification or ghettoization, abound. Of the three case studies presented in this paper, the case of the village green demonstrates that the diversification of society has a wider reach. In a close-knit village community, the contestation over space in the case of the village green plays out between generations and their different perceptions of viable usage of shared space.

modes of producing space clash and lead to contestation. Here the focus is on instances where distinctive modes of producing space lead to strife.

The materiality of space explains why space is worth fighting over, but not how that is done. Sometimes the production of a space is seized in a very mundane fashion: a physical show of who owns the site and the moment. A resident on the playground recounts:

'Yeah, I was almost attacked at one time. They were really those kind of boys from South-East, really very criminal like you actually don't see that much here, with a few pit bull terriers. My husband had already asked them to leave and then I went up to them and said "hey guys this is a playground, you are really not supposed to smoke a joint here". They reacted pretty aggressively, but I didn't want to be scared and I said again that I wanted them to leave or otherwise I would call the police. And then I went inside and stood in front of the window whilst calling and they shouted at me "I know where you live" and "I will get you for this" or something in that order. I found that way out of bounds, with the dogs and everything.'

The contestation over space in the sites under scrutiny here however is not (generally) fought out through sheer physical force. The contestation often takes place in a different dimension.

The three case studies have in common that they are sites of competing modes of production; that is to say, people using the space conflict over the sort of reality it constitutes. Concretely, people conflict over what constitutes proper behavior in that space. The daily routines of some people lead to usage of the space that aggravates the sensibilities of others using the same space. A municipal ban on the use of soft drugs in public space figures in these sites. In the three cases these bans are instigated by people using the spaces in their everyday lives, and the bans are directed towards others also using that space in their everyday lives. The bans represent the social norm of a section of the users of a space, who feel that the said behavior is not appropriate in that space.

Winners and Losers on the Shopping Square

In the shared everyday space of the shopping square different groups⁹⁶ stake a claim on the space, most notably the elderly residents who are predominantly native Dutch, young adolescent males of mostly Antillean and Moroccan background, and Somali men of all ages. Translating Lefebvre's conceptual triad to each of these groups delivers the following.

For the Somali men the perceived space is public space, well suited to congregating and socializing. The accompanying ritual is the use of *qat*, linking them to their roots and each other. The lived space is in sync with the perceived space. Coming to the square, they have a pleasant bench with a nice view, and they will most likely find someone from their group and pass the time. The planned space does not correspond: bans have been installed on congregating, on trading *qat*, on using *qat*. These bans are intermittently enforced, and the possibility of this happening always hovers in the background.

A similar situation applies for the young adolescents. Their perception of the space of the square is that it is theirs. They grew up in the neighborhood, the square is their turf. Often coming from large families housed in small units, the square is like their living room. The lived space is in sync with the perceived space. For the male adolescents as well, the regulations from the planned dimension traverse their perceived and lived dimension of the space.⁹⁷

To the elderly residents the perceived space of the shopping square is tied in with how it used to be, when there was still a large enough clientele to support a hairdresser, a Dutch butcher where one could get a good piece of pork, a florist, an ice-cream parlor. It was a place to stroll and meet neighbors, decent white-collar workers like themselves. The lived space of the shopping square is one of empty shop-fronts, a low-end supermarket, a phone shop, two Islamic butchers, and congregations of dark-skinned men they find intimidating. The regulations of the planned space are in sync with the perceived space, but in the everyday experience of the space, the regulations seem to be without consequence.

Hence each of these groups have their own mode of producing the space they share with others. At some points these modes converge: the perceived space of the male adolescents and the Somalis are not normally contradictory. At other points, the

⁹⁶ For the sake of brevity I do not problematize the concept of groups here; cf. Brubaker, 2002: 164.

⁹⁷ Notably, the regulations challenge their sense that the square is their turf, i.e. their emotional ownership over the space.

modes diverge: the perceived space of the Somalis and the elderly residents are in practice irreconcilable.

Lefebvre argues that the three dimensions of his conceptual triad combined produce a given social space. He furthermore posits that the three different realms of perceived, planned, and lived must be interconnected, in order to let an individual member of a given social group move from one realm to the other without confusion (1991: 40).⁹⁸ In other words, when the lived dimension of space does not connect with the planned dimension, or when the perceived dimension of space does not concur with the lived dimension, confusion and disorientation ensue. People do not feel comfortable in space in which the three dimensions do not line up for them. And this is precisely what I argue is happening in the spatial loci under scrutiny here. For some people the perceived space is different from the lived space, while for others the lived space does not reflect the planned space. In all cases, the mismatch between dimensions leads to a degree of unease. In the following I focus on the specific circumstance where people experience a space in the lived dimension in a different way than how they perceive that space *ought* to be.

I argue that when the lived space does not match the expectation of it, adjustments in the planned dimension of space are entrepreneured. That is to say, the legal regulation of a space is reviewed. This legal regulation holds the codification of norms, of perceptions of how it should be. Codification asserts these perceptions. The 'juridification' of social norms in public space is an intervention aimed at bringing about changes in the lived realm, specifically in accordance with the perceived realm. Concretely, by banning behavior perceived to be improper, the lived and experienced space is altered to realign it with the perception of how it should be. Here the strategy of juridification enters the scene and power relations come to the fore.

The case study of the shopping square demonstrates that the synchronization of the lived and perceived dimensions of a space for the one group entails that they do not, or no longer, converge for another group. When the lived and perceived dimension coincided for the Somalis, they diverged for the elderly residents. The codification of social norms into legal bans is consequently a strategy employed in the contestation over space and the reality it constitutes. A ban on certain behavior

⁹⁸ To the reader well versed in the work of Lefebvre I must submit the following. I take from Lefebvre the importance of space for the social, and the need for humans to make their mark on space. I veer away from Lefebvre's path in his attention for the schism between state-led interventions and space evolving organically from human need. At the micro level of my case studies, the state is not an external (evil) force. Space, like law, is also at the formal level produced by individuals. The producers in my story are the people who seek to harmonize the space they use in their daily lives, in concordance with their needs and urges. The contestation arises when people with different needs and urges strive to produce their space in the same physical locality.

is an intervention in the planned dimension of space, aimed at bringing the lived dimension into line with the perceived dimension.

It is worth noting that, as the case of the playground shows, an attempt at juridification does not always succeed. In the playground the established residents managed to avert the legal intervention of a ban on the public use of soft drugs. For the newcomers who had petitioned for the ban but failed, the planned and lived space did not synchronize with how they perceived the space should be. Nonetheless, the attempt had consequences for the perceived dimension, a point to which I will return in chapter seven.

5.4 In Conclusion

Space typically refers to a geographical location. It acquires its quality through the social dynamics that take place in that space. In the first section of this chapter we saw how space is categorized through the interactions taking place in and with that space. I proposed the concept of emotionally owned space to refer to the shared spaces of everyday life of the case studies. This concept incorporates qualifications of sociality and meaning, but adds in an important factor of responsibility and care felt for a certain space.

In the second section we observed how space is more than mere décor for society, and is produced through different but interconnected dimensions. Building on Lefebvre's framework on the production of space, a third dimension is acknowledged that complements the traditional binary conception of planned versus used space. This third dimension centers on the perception of what space is thought to be, including what it is thought space ought to be.

Space is not only produced by society, but in turn itself also produces society. Users of space have a stake in participating in the production of space. Different types of users vie for different, often competing, productions of space. At times the three dimensions contributing to the production of space do not line up for all the users of a space. The case study of the shopping square is used to illustrate this dynamic. Consequently in the production of space, and specifically in the production of the shared spaces of everyday life of the case studies, there are winners and there are losers.

The bans on the use of soft drugs in public space figure in the production of space, as they are interventions in the planned dimension of space. Considering that all three dimensions are interconnected, the bans not only affect the planned dimension, but also the lived and the perceived dimension of space. How the bans affect the three dimensions is expanded upon in chapter seven. First however the social dynamic of the bans themselves is scrutinized: how should their coming about be understood? As this chapter has delved into the quality, production, and dynamics of space, so the next chapter examines the quality, production, and dynamics of the processes underlying the bans under scrutiny in this research. Theoretically, we leave the spatial domain and enter the juridical realm.

6. From a Juridical Perspective

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6. From a Juridical Perspective

'I am talking with a resident on the playground. She sighs and says to me: I don't know what it is, there seems to be some kind of taboo on the issue. If the problem had been alcohol I'm sure we would have had a ban ages ago, now they just make up all kinds of other things, but the point remains that we want a ban on the use of soft drugs here. They proposed to put a sign, with rules of conduct, that this isn't a space to smoke a joint or to hang around. They were shocked and not amused that we appealed the decision not to install a ban on the playground. Well, we appealed because we think the playground is not the place to use drugs. If we say to those people "have a look at the sign there" they will probably say well "ok, you know, whatever". But if I can say "what you are doing here is prohibited, there is a ban in place and if I call the police to come here you will get a fine", yeah I think that will help.'

The present chapter focuses on the bans on the use of soft drugs in public spaces from a juridical perspective. The concrete processes by which the individual bans of the case studies came about have been described in chapter four; here the underlying processes are elaborated upon. In the following I will first expand on the relationship between law and the society in which it operates, and discuss how different ideas about this relationship translate to what the case studies demonstrate. I will then focus on the issue of juridification and define it for the purposes here. Defining the concept of juridification and delving into what it refers to doesn't however explain *why* it occurs: why are local bans on the public use of soft drugs instigated, their enactment and enforcement sought? In search of an answer to this question, the dynamics of juridification are explored in the final section of this chapter.

6.1 The Relationship between Law and Society

The thinking on the relationship between law and society often builds on the premise that they are in essence two different matters. To exemplify this implicit notion that law and society are two peas from different pods, I draw on the work of German sociologist and philosopher Jürgen Habermas and his influential work *The Theory of Communicative Action* (Volume 2, 1987). In this work Habermas presents his answer to the question of how social order is possible in modern societies.⁹⁹ In a

⁹⁹ A project he pursues whilst upholding the tradition of Enlightenment reason and furthering 'the unfinished project of modernity' (Finlayson, 2005: 65).

nutshell, Habermas states that social integrity and thus social order is achieved through communicative action and discourse. Communicative action aims at reaching consensus—that is to say recognition and acceptance—on the validity of social claims.

Habermas proposes ‘that we conceive of societies *simultaneously* as systems and lifeworlds’ (1987: 118). The lifeworld is the domain of communicative action, aimed at securing understanding and consensus, and as such it is the base and glue of society. The system, on the other hand, is the domain of instrumental and strategic action, and is governed by instrumental logic. The lifeworld consists of the ‘unregulated spheres of sociality’ and pertains to ‘the everyday world we share with others’. The system divides into two subsystems: money and power on the one hand, and state administration on the other. The cultural and social reproduction of society occurs within the lifeworld, the material reproduction of society takes place through the system. According to Habermas both the system and the lifeworld are conducive to society. However, whereas the lifeworld is a ‘self-standing and self-replenishing medium’, the system is embedded in and dependent on the lifeworld. The point of worry is that though the system is dependent on the lifeworld, it tends to invade and corrupt the lifeworld. The word used for this process is ‘colonization’, and an example of ‘colonization of the lifeworld’ expanded upon by Habermas pertains to law (Finlayson, 2005: 47–56).

Habermas’s idea that ‘law as a medium of state administration supplants communicative contexts of action’ (Ashenden, 2007: 121) echoes two related ideas that need to be teased out. First is the idea that law derives from the state in opposition to ‘the everyday world we share with others’: in other words, the idea that law and society should be considered as separate and even oppositional entities. Second, connected to this premise is the idea that law stands in opposition to informal mechanisms of mediation. This latter idea is widespread amongst both legal sociologists and urban sociologists. In the following section I will expand on and question these two premises.

Law vis-à-vis Society

From both the classical and the instrumental perspective, law is primordially considered as regulating the vertical, unequal relationship between state and citizen.¹⁰⁰ Law regulates this relationship, protecting the citizen from the state, be it a whimsical tyranny (Locke), a hostile regime (Hobbes), or an impersonal bureaucracy (We-

¹⁰⁰ Citizen in the sense as subject to state authority, not in the sense of having specific citizen rights.

ber). Of old, law has of course also played a strong role in regulating relations between citizens, for example in family or contract law. Even in this horizontal radius, though, law itself is still considered as deriving from an external and autonomous state.¹⁰¹ The legislative power of the state is clear: the mandate to enact regulations backed by formal sanctions lies with the legislative branch of government. The authority to enact legislation however does not automatically equal the initiative to bring about legislation. Howard Becker lifted out the initiative for regulation in his work on the sociology of deviance, and stated:

‘Rules are the products of someone’s initiative and we can think of the people who exhibit such enterprise as moral entrepreneurs.’ (Becker, 1963: 147)

A moral entrepreneur in the work of Becker is more concerned with the ends than with the means. Drawing up and enacting legislation are steps in the process of establishing a new rule, and are not usually the forte of a moral entrepreneur. As we have seen in chapter four, the formal regulations were initiated—‘morally entrepreneurial’ in Howard Becker speak—by certain users of the spaces. Neither the municipal authorities nor the municipal legislature were the instigators, they were merely auxiliary to the moral entrepreneurs. The regulations in the case studies here were not examples of controls imposed through state power, but rather of controls organized by citizens to control fellow citizens. On the subject of the village green, the municipal officer relates:

‘It wasn’t as if the phone rang off the hook, but we got some signals. Yes, from citizens, we got signals from citizens, they, let’s say they pass it on to the politicians. It wasn’t a massive thing, but well, drugs are a sensitive issue around here. No, no other signs of nuisance reached us, not from the police or the owners of the cafés and discotheques. The signals came in via the councilmen, you know, many of them are also elders and deacons at their churches. The bench had to draft the proposal of course, but it never gave rise to discussion, it was passed on the nod.’

The formal control of the municipal bans on the public use of soft drugs were enacted by the legislative authority of the state, but they did not originate from there. These regulations originated in the community; law and society in these cases are

¹⁰¹ In the paragraph on the instrumentalist view (in section 2) there is reference to where law is thought to derive from: the social or some higher order.

truly two peas from the same pod. This in turn has echoes in the relationship between formal and informal control of the social.¹⁰²

The Formal and the Informal

The relationship between formal and informal control is often understood to be diametrically opposed. There are strong proponents for the idea that formal control occurs when informal control fails. I briefly cite two such proponents, each well known within their disciplinary turf, and both revered and put to the sword for their ideas. In the previous chapter the urban sociologist Jane Jacobs and her concept of 'eyes on the street' was discussed. She argues that social control emanates from the informal, from the 'eyes on the street'. When such informal social control is absent, a situation akin to a 'jungle' ([1993] 1961: 37) will gain headway, and it becomes necessary to resort to formal control. Many urban sociologists follow in her wake, heralding informal control over formal control.

In a very different corner of academic endeavor, legal sociologist Donald Black received a much more ambiguous evaluation of his work, while arguing more or less the same case.¹⁰³ In his theory on *The Behavior of Law* (1976) Black defines law as 'governmental social control'. In the wider perspective of the entire legal field, this definition can clearly be argued to be too confined. With regard to my research, however, this definition quite adequately covers the topic under consideration. Black literally poses informal and formal control as communicating vessels and postulates that 'law varies inversely with other social control' (1976: 107).

Jacobs and Black share the premise that formal and informal control are contrasting mechanisms. The case studies however offer a more complicated constellation. First of all, in shared public space, different systems of informal control operate, with varying influences on the different users of that shared space. Second, the formal control is instigated by a selection of users of the shared space. It is not posited from a higher, external, and unconnected authority on a space void of informal social control; rather, it originates in one of the constellations of informal control operating in that space. This constellation is strong enough to rally the support needed to have its norms codified. Law as 'governmental social control' (Black, 1976: 2) does not

¹⁰² Though this is ultimately the case in all democratically organized societies, the micro level of the case studies allows a clear picture of these mechanisms.

¹⁰³ I contend, with Horwitz (in his response to Greenberg's critique), that Black's work is far from perfect, but that it does offer an innovative vision on and approach to the sociology of law. Or as Horwitz would have it, Black's work offers a stimulating departure from the 'theoretically trivial and empirically uninteresting' (1983: 381) conventional approach to the study of law.

balance itself out with other forms of control. As we see in the case studies, more law does not correlate automatically with less social control. On the contrary, more governmental social control is often instigated simultaneously with more informal social control.

To clarify and illustrate the above, I turn to the ban figuring in the context of the neighborhood playground in Amsterdam. Different systems of informal social control exist on this square. Unattended children are minded, and if needs be, corrected. Rubbish is deposited in the garbage containers, the playground is swept regularly with a commandeered broom, the various strips of greenery adjacent to the buildings are well kept. The owner of Yo-Yo is what Jacobs denominated a 'public character' ([1961]1993: 89). Yo-Yo's street terrace attracts 'eyes on the street' as it offers opportunities to tourists and regulars, to convene and be hip (the tourists), or to discuss community politics, health issues, and their kids' progress in learning how to swim (the regulars). Many of the regulars live on or near the square. On that street terrace the occasional joint is lighted up, for example by a father sitting on the terrace keeping an eye on his youngest playing in the sandbox. He proves not to be susceptible to the social control emanated by his neighbor four doors down, who is vehemently against the use of soft drugs in the vicinity of children.

The playground however does not fulfill the description of an 'urban jungle', devoid of informal social control. In the situation above, as in the other case studies I investigated, the regulations were not indicative of a lack of informal social control. On the contrary, they emanated from strongly felt social control and passionately advocated social norms. The codification of these particular norms was instigated by the fact that the informal social control did not achieve the desired effect. To circle back to Habermas: the formal control is installed not because the base for informal control is lacking, but because communicative action falters. Subsequently, social norms were morally entrepreneured into codified regulations, instrumentalizing law as a means to a social end.

A Constitutive Approach to Law

In the previous section we discerned that formal and informal social control are intertwined in the case studies, and that the bans are not 'just discrete commands imposed on society from an exclusive domain above' (McCann & March, 1995: 228). This advances the assumption that the bans and the social contexts in which they operate do not have an unidirectional relationship, but that they interact. Law, here

in the concrete emergence of these bans, does not come into existence unconnected to the social context it is meant to govern. As Clifford Geertz states, 'law is neither distinct from society nor does it act on society from without'. Moreover, law is 'constructive of social realities, rather than merely reflective of them' (Geertz, 1983: 232, cited in Mautner, 2011: 849).

The notion that law is not only an instrument of social control but also constitutes social relations has gained ground in legal theory since the 1980s. Denominated the 'constitutive approach' by Mautner (2011: 841), a framework of analysis has developed to study the meaning of law on social life, beyond the scope offered by the traditional, positivist causal models. Ewick and Silbey are articulate advocates of this approach, investigating *The Common Place of Law* (1998). In their work they 'conceive of law not so much [as] operating to shape social action but *as* social action' (Ewick & Silbey, 1998: 35). The constitutive perspective on law argues that 'law does more than reflect or encode what is otherwise normatively constructed; in the constitutive perspective, law is part of the cultural processes that actively contribute in the composition of social relations' (Silbey, 1992: 41). In other words the constitutive approach is so called because it views law as constitutive to social relations. Mautner writes that Pierre Bourdieu has captured the essence of the constitutive approach best in the following quote

'Law is the quintessential form of the symbolic power of naming that creates the things named [It] is the quintessential form of "active" discourse, able by its own operation to produce its effects. It would not be excessive to say that it creates the social world, but only if we remember that it is this world which first creates the law.' (1987: 838–839, cited in Mautner, 2011: 850)¹⁰⁴

Contrary to what Bourdieu's words might suggest, it is not the social world in its entirety that creates the law. The constitutive approach 'holds that the source of law lies in the control that social groups exert over the institutions that create law' (Mautner, 2011: 850). This idea that law is created by social groups exerting control over legislative institutions links in with the work of Becker, in particular his proclamation that 'Rules are products of someone's initiative and we can think of the people who exhibit such enterprise as *moral entrepreneurs*' (Becker, 1963: 147).¹⁰⁵

¹⁰⁴ To note, Mautner subsequently places Bourdieu as central to an approach (distinct from the constitutive approach) that sees law as a distinct cultural system.

¹⁰⁵ Note that the work from Becker dates from 1963, some twenty years prior to the rise of the constitutive approach. As far as I am aware, the literature on the constitutive approach makes no reference to the work of Becker.

The framework of constitutive analysis makes it clear how the existence of a ban can be unpacked into understanding the social context in which it plays. This point is very vividly illustrated by a document that turned up in the research on the shopping square. As recounted in chapter four, in the summer of 2003 the shopping square made the national news through a series of incidents. The events of the summer led the then police head of the district to write a pressing letter to the mayor. In this letter he words his concern for the atmosphere on the shopping square. Here follows an extensive transcription of that letter:¹⁰⁶

'With this letter I wish to inform you of my concern for the increasing intolerance towards allochtoneous¹⁰⁷ residents of Tilburg Noord, in particular the neighborhood Stokhasselt and the consequences this has for the execution of police matters regarding enforcement and surveillance of the public domain.

The moment Bart Raaymakers became the victim of a robbery by allochtoneous youths, it seemed the autochtoneous residents saw their chance to start an offensive via the media in which the allochtoneous resident, Somali, Antillean or Moroccan in or around Verdiplein was pointed at for the feelings of personal insecurity of the residents on and around the square. My worry is then this feeling of insecurity of these often elderly autochtoneous residents. In spite of all our efforts and conversations we cannot take away these sentiments. I will and shall not trivialize these feelings.

As long as these residents passively and from a safe distance merely regard what occurs in the public domain of Verdiplein and one cannot or will not sympathize with such gatherings, that fit in with the cultures of the fellow residents in Tilburg Noord, these feelings will not diminish. The passive behavior of residents and entrepreneurs that from the sidelines irritate themselves over the getting together of allochtoneous fellow residents and they have apparently found opportunity via the media and politics to have these people driven away by the police.¹⁰⁸

What worries me is the arguments that people articulate with less and less hesitation. The economic arguments people first used are more and more traded in for straightforward statements about "blacks" that should be moved out.

¹⁰⁶ Contrary to the main text, here I have kept the reference by name of the locality, in order to keep the translation as pure as possible.

¹⁰⁷ This typical Dutch linguistic construct does not translate. What it formally pertains to is people of whom at least one parent was born abroad. Informally, it is generally used for anyone of non-Western descent.

¹⁰⁸ Original sentence in Dutch also misses a verb.

I ask for awareness and extra attention for arguments offered to adjust the legal regulations. It cannot be that on the basis of the perception of a limited group another group is driven from the public space. I ask myself on what grounds this should be.

Where is the limit? Combating nuisance on the basis of irritation, dominance, or intolerance or combating nuisance to enlarge the liveability and safety? This group too, of allochtonen, have interests and are a part of the population of Tilburg Noord. Will they be heard or will they be banned to uncertain meeting venues?

The Verdiplein has a function and it is and remains a meeting place for people.'

In his letter the police head reflects on the processes he observes taking place on the shopping square. He draws attention to the endeavors to 'adjust legal regulations' and warns about the motivations behind these endeavors, as well as their possible consequences. The police head remonstrates that the legal adjustments are requested for situations in which he considers an active interest and emphatic sympathy are called for, rather than regulations designed to drive fellow residents out of a public space intended as a meeting place.

The letter¹⁰⁹ confirms what the constitutive approach stipulates: law is social action, and it forms the social just as the social informs law. This is not the same as stating that law as formal control is consecutive to informal control instead of opposite to it. Law does not only encode the norm, by capturing the norm in a legal regulation it gives it more symbolic power than it had before. The police head in his letter warns of the symbolic power enshrined in formal law and asks for *awareness and extra attention for arguments offered to adjust the legal regulations*.

6.2 The Concept of Juridification

As a legal translation of a social norm, the municipal bans are examples of what has been termed 'juridification'. Though not a concept that one hears casually used in everyday language—it is not, as Bourdieu would say, a 'category of practice' (Brubaker & Cooper, 2000: 4)—it is nonetheless progressively in use. Juridification is predominantly deployed as a political and analytical concept, to cover a whole range of issues, some overlapping, others conflicting. Moreover, even when the term itself is not used,¹¹⁰ the process of juridification and its effects on society are

¹⁰⁹The letter dates from 3 September 2003. The then mayor addressed in this letter stepped down from his post on 17 September and died on 22 September 2003 of esophageal cancer. I have not been able to trace a response.

¹¹⁰Sometimes no term is used, at other times terms used are 'judicialization' and 'legalization'.

hailed and debated upon, with less or more nuance, across a wide spectrum of commentators. In popular discourse juridification connects both to calls for more and firmer regulations—for example concerning the financial sector or issues of public safety—and to calls for less restrictive and bureaucratic regulations—for example concerning small and medium-sized enterprise or the European Union.

In relation to the municipal bans under investigation here, the concept of juridification aids in understanding how and why these bans came about and exploring their effects on how the legal figures in the shared spaces of everyday life.¹¹¹ It also works the other way around. The polemics on juridification are predominantly at a theoretical and a philosophical level. There is a reiterated need for more empirical research on the issue, as the ‘empirical knowledge of the social implications of various processes of juridification is weak’ (Magnussen & Banasiak, 2013: 325; but see Polak, 1997: 924). Applying the theoretical discourses on juridification on the empirical data of the case studies offers an opportunity to discern the strong and weak points of those discourses in real time.

Descriptive Content

It is generally agreed that juridification is an elusive concept and no simple definition is offered in the prevailing literature: ‘the concept of juridification is unclear’ (Magnussen & Banasiak, 2013: 325); no single ‘workable generic definition’ is distinguishable (Blichner & Molander, 2008: 38); ‘the term has come to designate so many diverse phenomena’ that no sensible pronouncements on it can be made at all (Teubner, 1987: 5). Through time, the concept of juridification has been used to describe connected but distinctly different processes of law vis-à-vis society and as a result it has morphed into an umbrella concept. In essence, juridification alludes to the increasing role of law in society. This general statement however vests a variety of uses, perspectives, and agendas. The width and breadth that this concept has attained explains the possible ensuing confusion when commentators engage on the topic, whilst understanding different things by it. A closer look at the descriptive content of ‘juridification’ is therefore warranted.

The content of the concept has been carefully unpacked by Blichner and Molander in their paper ‘Mapping juridification’ (2008). They delineate five dimensions of juridification, operating within a distinctly legal framework of reference.

¹¹¹ The latter, the effects of juridification on the legal, is part of chapter seven.

‘First, constitutive juridification is a process where norms constitutive for a political order are established or changed to the effect of adding to the competencies of the legal system. Second, juridification is a process through which law comes to regulate an increasing number of different activities. Third, juridification is a process whereby conflicts increasingly are being solved by or with reference to law. Fourth, juridification is a process by which the legal system and the legal profession get more power as contrasted with formal authority. Finally, juridification as legal framing is the process by which people increasingly tend to think of themselves and others as legal subjects.’ (2008: 38–39)

The extensive unraveling of the concept by Blichner and Molander shows how broad the concept of juridification is in its usage. Another possibility is to dissect the use of the concept from a disciplinary viewpoint. Legal sociologist Gunther Teubner discerns three perspectives on juridification in concordance with three scientific disciplines:

‘the juristic view of juridification as a “flood of norms”, the concept of conflict appropriation propounded by sociologists of law and the political science perspective which sees juridification as restricting the room for manoeuvre of social movements and interest groups.’ (1987:10)¹¹²

The common ground here is the proliferation of law. However, Teubner argues, ‘juridification is not to be understood primarily as a quantitative phenomenon of the growth of law and regulation’. The real issues according to Teubner lie with the qualitative dimensions of juridification and specifically the changes juridification has induced in the structure and function of law (1987: v). I will pick up on this point in the next chapter, on the consequences of juridification for both the spatial and the legal.

Though the proliferation of law, or ‘creeping legalism’ (Teubner, 1987: 4), had been noted and gained increasing attention in different fora throughout the last quarter of the twentieth century,¹¹³ it was Habermas who brought the concept of juridification to the fore in the late 1980s through his influential work *The Theory of Communicative Action*. Habermas’s definition and ascription of juridification has become a

¹¹² To be clear, Teubner finds all three perspectives wanting. His own take on juridification focuses on the role of law in the welfare state and the changes in the function of law, in its legitimation, and its norm structure (1987: 14).

¹¹³ Teubner retraces the origin of the concept juridification (*Verrechtlichung*) to the time of the Weimar republic and the academic discussion on the juristic containment of social conflicts and political struggles (Teubner, 1987: 9).

benchmark in subsequent discourses on the issue.¹¹⁴ The definition Habermas offers of the concept is rather succinct. In his words, 'juridification' pertains to: 'the tendency toward an increase in formal (or positive, written) law that can be observed in modern society', either in the form of 'expansion of law, that is the legal regulation of new, hitherto informally regulated social matters' or 'increasing density of law, that is, the specialised breakdown of global statements of the legally relevant facts [...] into more detailed statements' (1987: 357).

In the Netherlands public debate arose around the matter of juridification in the 1990s, and in 1998 the Dutch government presented a cabinet position paper on the matter.¹¹⁵ It referred explicitly to juridification in public administration, and aired the intention of pushing back juridification for the better good of the democratic decision-making process. A year previously, in a special edition of *Het Nederlands Juristenblad*, Dutch sociologist Schuyt applied a sociological lens to the issue of juridification. He refrains from formulating a definition, but instead specifies both the notion and the phenomenon of juridification. The phenomenon in the words of Schuyt is twofold: on the one hand it can refer to the coming into being and the creation of formal rules for the ordering of social relations, and on the other, to the subsequent societal process of increasing, or frequent, or exclusive, or excessive use of such formal rules for the ordering of social relations. Schuyt concludes with the statement that juridification is a gradual notion. It refers to the shift of the primacy of the social to the juridical in the ordering of social relations.¹¹⁶

All in all, juridification is potentially very wide in its application. For purposes here I employ a limited conceptualization of juridification. It combines Blichner and Molander's second dimension of juridification as 'a process through which law comes to regulate an increasing number of different activities'; their third dimension, 'a process whereby conflicts increasingly are being solved by or with reference to law'; Teubner's legal sociology variant of conflict appropriation; and the first half of Habermas's definition that posits juridification as 'the tendency toward an increase in formal law that can be observed in modern society in the form of the legal regulation of hitherto informally regulated social matters'. Last but not least, its central point is Schuyt's observation of the shift of the primacy of the social to the juridical in the ordering of social relations. Combining all these elements, juridifica-

¹¹⁴ However, in later work (*Between Facts and Norms*, 1996) Habermas adjusts the take on juridification he articulates in *The Theory of Communicative Action*.

¹¹⁵ Tweede Kamer, Vergaderjaar 1998–1999, 26 360, nr. 1. Note, in 1997 the working group Van Kemnade brought out a critical report on the juridification of public administration and the soundbite of this report resounded through Dutch policy and politics for quite some time.

¹¹⁶ This graduality in his view explains the difference in the valuation of juridification. Juridification in itself can be good. Too much juridification, as the adverb 'too' readily indicates, is not good.

tion then is defined here as *the codification of hitherto informally regulated social matters into legal regulations*.

This expansive exercise on the delineation of the concept not only serves to define with precision what it is we are talking about here. As we will see in the following, what is understood by juridification is also of consequence in how juridification is valued.

The Normative Evaluation

The normative meaning of juridification pertains to whether the expansion of law is regarded as a good or a bad development. Juridification is rarely described in a norm-free manner, the concept is often laden with implicit or even explicit negative connotations. The normative perspective applied to the case studies can be formulated in a polemical manner: are codified social norms an evil of our times that mark the downfall of a society founded on communicative action, or are they a sanguine sign of a civilized society finding common ground beyond the diverging ideological and religious pillars of society? To put it more pragmatically, and perhaps more evocatively: should you want to live on a residential square that carries a codified social norm, like a ban on publicly using soft drugs?

I will discuss two opposing views with regard to the normative characterization of juridification: first a negative outlook, and subsequently a—cautiously—optimistic perspective. Both perspectives can be found in the literature; the prevailing question here is how they relate to the case studies themselves.

The negative expectation of juridification is that it undermines the processes of a duly deliberative society. In Dutch parliament the process of juridification was discussed with concern, working from the assumption that the ‘serious juridical compression’ erases the possibility of interacting in an alternative, more informal manner with each other to resolve conflicts.¹¹⁷ This has echoes of Habermas. In *The Theory of Communicative Action*, juridification in the contemporary epoch manifests itself through ‘colonization of the life-world’ (Habermas, 1987: 356),¹¹⁸ meaning that ‘law comes to intervene in a systemic way in the social relations of everyday life’ in con-

¹¹⁷ As stated by the Permanent Parliamentary Commission for Internal affairs and Kingdom Relations and for Justice in their introductory remarks for the Plenary Meeting on the Cabinet Viewpoint on Juridification. Tweede Kamer, vergaderjaar 1999–2000, 26 360, nr. 2.

¹¹⁸ The process Habermas refers to as the colonization of the lifeworld is when the communicative potentials aimed at understanding in the lifeworld are eroded in terms of the systemic imperatives of monetary and bureaucratic systems interventions (Deflem, 1996:5). To note: Habermas distinguishes several waves of juridification; it is the final thrust occurring in the social state that is worrying (Teubner, 1987: 11).

cordance with the system, canceling out the mechanisms of the lifeworld (Deflem, 1996: 8). Law in this view subverts the ability of society to reach mutual understanding and workable compromises through communicative action.¹¹⁹

There is however an alternative argument to be made. From this viewpoint, law does not divide, but on the contrary it binds: it does not polarize difference, but bridges gaps. Schuyt, reflecting in general on the processes of juridification in the Dutch context, articulates the conception that in an ever-diversifying society that has lost its overall religious and ideological anchorages, law can function as a common ground for social cohesion (1997: 930). This perspective argues that juridification is not only an unavoidable development in a complex and diverse society, but that law can offer a viable alternative to receding religious and ideological pillars for the grounding of common norms. Juridification then offers a basis for social cohesion in a fragmenting society.

Both viewpoints echo through in the case studies. In the playground, one of the articulate opponents of the ban sighs and laments his neighbor's wish for a formal regulation.

'There was a problem, a little bit of a problem, and there was this guy, it got personal, he's frustrated. I have nothing with smoking joints, I'm quite indifferent to it. It's just something that is. I think, people should decide for themselves. I'm afraid they'll succeed in getting the ban, the whole reason we moved here, the whole atmosphere is ruined.'

Two doors down the owner of the crèche fails to see what good the formal regulation of a social norm will do.

'You can complain about so many things. But you can also just solve it yourself, just ask if they could please quiet down, they'll do that if you ask friendly. Can't you remember to back when you were young yourself? [...] I haven't been on this spot very long yet, about fifteen years now. I really like this place, as long as it lasts.'

The alternative viewpoint also resounds: with so many different people using the space, it should be clear what is and what is not appropriate.

'Some of the residents of the square are on the playground with their kids. They are discussing the nuisance on the square. They appear to avoid endorsing the ban. Eventually though one of the women, somewhat hesitantly, offers: "But it is very nice to be able to say it is not

¹¹⁹ To reiterate footnote 114: The reference here is to Habermas's work *The Theory of Communicative Action* (1987). In later work Habermas shifts in his perception of juridification, for example in *Between Facts and Norms* (1996).

allowed here. To be able to refer to the ban. I used it like that once. It does make it easier to say something. You know, in the daytime, when the kids are playing here.”

A tempting analysis would be that those who do not agree with the norm are against its codification and those in favor of the norm are duly in accordance with its codification. As it happens, reality (of course) gives a more diffuse picture. There are also those partially in favor of the norm, and they contend that consequently the norm can only be rightly applied through communication:

‘So yeah, they shouldn’t smoke their joints when the little kids are out playing, but that hardly happens. Most of the customers of Yo-Yo they come for their shit [rommel] and leave again. In the evening kids come here. Maybe that bothers people. But what harm is there in them using the square? Where else are they supposed to go? I have a sixteen year old myself and it is really unbelievable, she was talking with a friend the other night, saying goodbye after an evening out, and she was yelled at for making too much noise, I mean it was maybe eleven in the evening, and my daughter, she is really well behaved, it wasn’t as if she was a screaming drunk or anything. What happens is that kids go and swing in the big swing late in the evening and then giggle and banter. That’s probably bothering them. I think, smoking joints is often used to make it seem worse.’

The appreciation of codification would seem to hold together with whether informal communication is expected to work. Where there is no faith in the power of communicative action, translating the norm in a legal rule backed with formal sanctions is hailed as a viable solution. One of the proponents of a ban on the playground explains:

‘I’m prepared to accost those boys, but every time I do I feel like I am taking a risk, because sometimes they are really aggressive. I don’t know those boys, I don’t know what kind of stuff they’ve been using. You can think it’s only a joint but I don’t know what else they have been taking or doing, often they are also drinking beer [...] and I am standing there with my kid and before I know it I can get battered and my kids are with me and everything.’

My collocutor here fears that there is no context for discourse nor a shared desire to find consensus together on the shared sociality of the space. In the same line, the shopping square offers ample examples where communication between different participants in the space falls short:

‘Sunday late afternoon, in June, on an almost deserted shopping square. A group of six to eight youths in their late teens are gathered on the square, mucking about. One youth leaves, a second arrives, a third returns: the group is fluid. The main topics are anything to do with sex and who has let off that last very nasty fart. My presence is tolerated, I am incorporated in the banter, but I feel like am walking a tightrope. I manage to keep them respectful to-

wards me, just. This means they refrain from all too leery sexual remarks and do not fart against my car a second time when I forcefully protest after the first time. During their bantering the youths correct each other's Dutch grammar. Then two elderly native Dutch women enter the square. I estimate them well beyond their sixties, donning Sunday dress and with their hair neatly styled. Both are pushing a wheeled walker. One of the youths shouts at them: Hey! The women ignore him. The youth makes a show, he demonstratively gets off his bike, he shouts that this kind of thing makes him aggressive, he acts like he is going to chase the women. The women get off the square as quickly as they can, all the while ignoring him. When the youth returns to the group I remark I found his behavior towards the older women very disrespectful. He scoffs at me. Why is it disrespectful to greet someone? He thought it very impolite of them not to return his greeting. If he'd said hello—and here he points at a native Dutch youth also present in the group—well they were sure to have replied to the hello.'

The gap between the dismissive old ladies and the unruly youths is too wide to bridge at the informal level on that windy Sunday afternoon. Communicative action then sounds attractive on the paper of a policy document, but neither party will come close to any semblance of communicative action without some ground rules being laid out; then the regulations do not stymie communicative action. On the contrary, if anything formal regulations can provide a framework within which communication becomes feasible.

The case studies offer a nuancing of both the negative and the positive perspective on juridification. In response to the doom and gloom scenario: the codification of a social norm does not necessarily cancel out communicative action, it can also offer a structure that enables communication between discordant parties. In response to the optimistic viewpoint: juridification only underpins social cohesion when the codified norm has sufficient social basis in a situation. The evaluation of juridification holds together with the evaluation of the norm that is codified. The connection between the two however is not unambiguous. This calls for a further exploration of the relationship between law and norms, the prevailing question in the matter being how that relationship is perceived: are the norms that get codified *found* or are they *formed* by law?

Juridification and the Instrumentalization of Law

The classical perspective on law is that it exists in its own right. Law is believed to have an autonomous, intrinsic value and to exist regardless of its eventual legislation. As Thomas Aquinas asserted, 'a law that is unjust seems not to be a law' (Tamanaha, 2006: 9). There is a higher law, to which man-made law is subordinate and defeasible. In sum, in the classical view law is thought to be found, not founded through legislation.

In the instrumental perspective of law, by contrast, law is seen as a means 'to serve the social good' (Tamanaha, 2006: 2). Law then becomes an instrument to work towards certain social goals, and the belief is that it 'should be declared at our will and shaped to achieve our collective social purposes' (Tamanaha, 2006: 1). This perspective is a significant departure from the traditional¹²⁰ formalistic perspective of law that views law as deriving from a higher order and having an intrinsic value of its own. The instrumentalist perspective that law is a means to an end stands in opposition to the idea that 'law is predetermined in some sense, consistent with what is necessary and right' (Tamanaha, 2006: 2). In a very short summary, the distinction is whether law represents respectively *a* social good, or *the* social good.

Generally, law is nowadays viewed as instrumental in nature. Law is considered an instrument in organizing society, that is, an instrument of 'social engineering'. Nonetheless, the classical idea that 'law is predetermined in some sense, consistent with what is necessary and right' (Tamanaha, 2006: 11) echoes through in the righteousness of the endeavors of the moral entrepreneurs. There is an implicit circular reasoning that a norm is codified because it is just, and that a norm is just because it is codified. As the mother in the sandbox of the playground cited above states: it is nice to be able to say, look it is not just my personal opinion, it's the rule and hence it is above our discussion, it is what is right for this place.

In the case of the local bans on the use of psycho-active substances in public space, these bans represent both processes of juridification and of instrumentalization of law. To be precise, juridification is a phenomenon of the shift towards the instrumentalist appreciation of law.¹²¹ The bans are examples of juridification in that these bans are the codification of (or, in the case of the playground, represent the desire to have codified) the social norm of a section of the people who live their everyday lives in the space in question. They are examples of the instrumentalization of law

¹²⁰ Traditional, classical, and historical are here all used as synonyms.

¹²¹ As Tamanaha states, law was already used in an instrumental way long before the shift took place in law being understood as instrumental. Examples are the role of law in the consolidation of state power and the creation of bureaucracies. This links in with Habermas's perception that the processes of juridification accompanied the evolution of bourgeois society.

as they are employed as a means to an end. Formally, the goal of the bans is the protection of public order, and accordingly their juridical basis is founded in the jurisdiction of the municipal authority to uphold public order. Under this formal veneer of protecting the public order, however, lies a complex system of beliefs, perceptions, and motivations for wanting the bans installed. Those initiating the regulations, the moral entrepreneurs who endeavor to have the norm codified, do so in the belief that the norm represents the social good. The proposal for a ban on the public use of soft drugs on the village green is formulated to the town council as follows:

*'The use of soft drugs in public is considered nuisance. Moreover, such behavior can result in the use of soft drugs becoming considered normal. [...] Municipalities have the possibility to curtail this public use. We are of the opinion that we should make use of this.'*¹²²

The same conviction can be found in the wording of the administrative appeal for a ban on the playground:

'We want a ban on the use of soft drugs on the children's playground to protect the health and the welfare of our children and all the other children of the neighborhood who play on the square.'

On the shopping square the need for the regulations is argued on grounds of security:

'Those groups that gather and socialize on the square give rise to feelings of insecurity. In the daytime everything is fine, but late afternoon, evenings, and weekends it gets unpleasant.'

The initiators of the bans articulate the regulations as instrumental in that they strive towards certain social goals. Those goals however are ascribed a higher truth. The initiators do not feel that they are acting out of a strategic self-interest, the good they defend exceeds their individual persons and embodies the common good. This implicit sentiment that law explicates the common good is further elaborated upon in the last section of this chapter.

¹²² Municipality Bunschoten, Council proposal nr. 287, 13 March 2008.

6.3 The Dynamics of Juridification

To call upon Geertz once more: ‘Law is a system of meaning, it constitutes social relations and is constituted by them’ (cited by Mautner, 2011: 849). This dialectical relationship entails that by investigating the law, the social relations that interact with the law can also be divulged. In order to now unpack the dynamics in which juridification takes place I turn to the work of Bourdieu and in particular his concept of *doxa*.

Doxa Disrupted

The word *doxa* derives from ancient Greek (δοξα). It is the noun of the verb ‘to mean, to presume, to suspect, to expect’ (δοξαζω: doxazo), which is contrasted to the verb ‘to know’ (επισταμαι: epistamai). In its original meaning, *doxa* refers to opinion or expectancy concerning the future, in contrast to knowledge in the sense of conscious insight (Wolters, 8th edition 1961). Pierre Bourdieu has elaborated on the term and incorporated it as a key concept into his thinking. He has taken *doxa* in its opposition to conscious insight and defines it as unconscious opinion. In Bourdieu’s own, more eloquent, wording: *doxa* is ‘the sum of all theses tacitly posited on the hither side of all inquiry’ (1977: 168). *Doxa* is the universe of the undiscussed and hence undisputed, and stands in contrast to the concepts orthodoxy and heterodoxy. Orthodoxy and heterodoxy relate to conscious opinions and are positioned in the universe of discourse. A pivotal distinction between the two that I want to stress is that a conscious opinion can be the subject for discussion, *doxa* cannot.

In the investigation at hand, I borrow the concept of *doxa* from Bourdieu as the unconscious, undiscussed and undisputed opinion. I use it however to a different end than Bourdieu: I apply it to the microcosmos of a small neighborhood public square.¹²³ *Doxa* then is the body of unconscious thought, of undisputed ideas on proper behavior in public space. These dormant ideas become clear when they are transgressed by practices, when the behavior of individuals in that space runs coun-

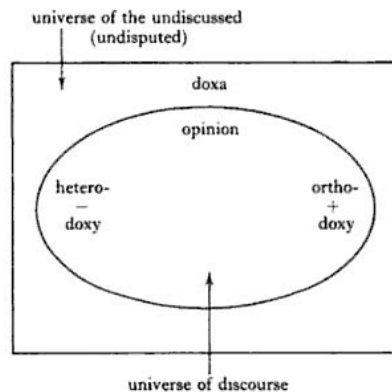
¹²³ A point on which I diverge from Bourdieu’s grasp of the concept of *doxa* holds with the difference in scale of my own microcosmic inquiry and Bourdieu’s more macro-oriented work on social fields. Bourdieu pictures a social field with a singular *doxa* universe in contrast to a singular universe of discourse, and he investigates what happens within that one social field. Hence, he looks at the effects of *doxa* on all the agents in the field under scrutiny and particularly at the effects on the dominated within that field. My topic of investigation however is not a Bourdieusian field, but a concrete physical space. Following the categorization of Bourdieu, multiple fields exist in that concrete physical space: a social field, an economic field, a legal field, and so forth. The agents then operating in the social realm of the physical space are the users of that space. The complication is that not all of the agents operating in this field fall under the *doxa* of this field. Different users of a space hold different *doxas*.

ter to the doxic norms on proper behavior held by other users of that same space. *Doxa* only reveals itself in retrospect, when it comes

‘to be suspended practically. The practical questioning of the theses implied in a particular way of living that is brought about by “culture contact” [...] which brings the undiscussed into discussion, the unformulated into formulation’ (1977: 168).¹²⁴

As the undiscussed and hitherto undisputed beliefs on a space are ‘suspended practically’ through the activities of fellow residents in a space, these beliefs pass into the realm of discourse. When a doxic belief is thus disrupted and hurtles into the capacity of an opinion, it is from then onwards available for discussion, and consequently it can be disputed.¹²⁵

Figure 5.1 *Doxa* (Bourdieu, 1977: 168)



¹²⁴ For Bourdieu, the concept of *doxa* is a tool to unravel the unseen and taken-for-granted mechanisms of thought that impose an unfavorable reality on the dominated classes. *Doxa* figures prominently in Bourdieu's theory of symbolic violence. He explains: 'The social world doesn't work in terms of consciousness: it works in terms of practices, mechanisms and so forth. [...] In a sense it is easy to revolt against discipline because you are conscious of it. In fact, I think that in terms of symbolic domination, resistance is more difficult, since it is something you absorb like air, something you don't feel pressured by; it is everywhere and nowhere, and to escape from that is very difficult.' (Eagleton & Bourdieu, 1991: 113, 115). I opt to take one step back and concentrate on the meaning of *doxa* in itself.

¹²⁵ Again, I have an understanding of *doxa* that runs parallel but not synchronous to that of its founding father. *Doxa* as I understand it is not a static given. *Doxa* structures society, but is also in turn structured by it. Norms can transfer from the *doxa* universe to the universe of opinion and this is the process my research focuses on. Likewise—and perhaps this is where I stray from the path laid out by Bourdieu—orthodox norms can pass into the *doxa* universe. Hence, I am not arguing that the doxic norms have, up until the point that they are revealed, always existed in the doxic universe. I am merely positing that the norm was doxic at the moment it became explicated through practices running counter to it, i.e. at the moment that it became 'to be suspended practically'. Social norms come into existence at some point. Some of those come into existence in the universe of discourse and over time progress into the universe of *doxa*. Subsequently, some then move back in the universe of discourse when changed societal circumstances give the floor to practices that contest and thereby expose the norm. I base this view on Elias's treatise on etiquettes (1939).

The unconsciously held thoughts on proper behavior in public space form part of the frame of reference users of a space employ to evaluate that space. The issue is that different users in a space can and do hold different frames of reference from which they appraise the space. Consequently, a space can be perceived and appreciated in very different ways by different users. I use an example from the shopping square as an example in case.

In the street interviews I invariably asked the same question: which three words would you use to describe the square? On one end of the spectrum, the word used most was: *'gezellig'*. Though I do not know of a one-word direct translation, the word *'gezellig'* means social, convivial, cosy. It is an intrinsically positive description. Another often used description compared the shopping square to a home away from home: a place you go to when you are awake, to meet friends, to hear what's new, to relax before going to work.

'Gezellig! Sometimes too boisterous, but you have to realize you are in Noord, here you find a large concentration of foreigners together. The people like to be in the street, maybe something will happen. I don't live here anymore, I am studying in X. But today I am visiting my parents and here I run into all my old mates.'

'The square is the end point: when people have done their thing they come here, or when they still have to start up, they first come here, or when they can't find someone, or can't reach them, or when they simply don't have anything to do.'

At the other hand of the spectrum there is not one word that is repeated, but all the words used express a shared sentiment of abhorrence, often connected to strong nostalgia for times past. General consensus would be that the square started to go downhill from the 1990s onward. One of the more strongly formulated quotes already made an appearance in the previous chapter:

'I do not have words for it, I don't like it one bit. I've been living in this neighborhood since '69 and the whole place is going to the dogs, since 1980, 1986, 1990, I don't know exactly. The mixing of let's say the races starting then. Other customs, other habits, it doesn't go easy. The Somalis really shook up the square.'

Some respondents are more roundabout in their descriptions, but many are unabashedly frank:

'At times it will be black with people here, literally!'

The trigger was when I had exactly the same description used by two respondents on opposite ends of the spectrum. That description was: *'It's just like the market-*

place in Morocco here.’ The one respondent used this to express what a wonderful place the shopping square was, the other respondent used this comparison to convey the total degeneracy of the square. To be clear, neither respondent was Moroccan and both were middle-aged. For the rest they were both representative of the ‘ordinary’ inhabitants of the neighborhood.

This double meaning of the description ‘it is just like the marketplace in Morocco here’ neatly summarizes the wide variation in appreciations of the square. The variation lies not so much in the lived experience of the dynamics of the square, but in the subsequent valuation of this experience. In other words, a certain situation is interpreted in completely different ways by different people, dependent on the characteristics they pull to the forefront. This is in part because they operate from different frames of reference. In the one there is a doxic belief that the marketplace in Morocco is an awful place, in the other is the doxic presupposition that the marketplace in Morocco is a wonderful place. For some people the boisterous congregation of men, predominantly young and fit, predominantly non-native Dutch, equals nuisance. For others, those congregations emulate an experience of *gezelligheid*.

The social becomes ever more complex and heterogeneous, and in that process increasingly social norms held in diverging *doxa* realms are revealed through practices. The social norms are doxical in the sense that they are—up until their revelation—self-evident and held unconsciously. The fact that these social norms exist and are held only becomes evident when concrete conduct challenges the norms. The subsequent reaction to the disclosure of a *doxa*-norm is the codification of that norm. Hence, the mechanism (or one of them) behind the process of juridification consists of the augmenting challenges to existing doxic norms, brought about by the practices of increasingly diverse groups in society.

Securing Orthodoxy

The users of the shared spaces of everyday life do not share a communal *doxa*, a communal universe of undisputed thought. As a consequence, in the public spaces of the case studies there is a repeated occurrence of a clash of *doxas*. What the analysis of the practices embodied in the public spaces of the case studies uncover is a clash of incompatible and deeply held convictions on correct behavior in a given space. Doxic norms are revealed both through the embodied practices and the reactions to those practices.

The codification subsequently lays bare the power relations in that space. According to Bourdieu, the dominant class has a vested interest in 'defending the integrity of *doxa* or, short of this, of establishing in its place the necessarily imperfect substitute, *orthodoxy*' (1977: 169, italics in original). I alter Bourdieu's reasoning in that I contend that groups have an interest in upholding *their doxa*. In the case study of the shopping square, the Somalis do not purposefully, often not even consciously, challenge the *doxa* of the elderly ethnic Dutch. They are acting within their own framework of reference. With their practices they reaffirm their own doxic norms on the use of public space. They do not perceive themselves to be shouting in an offensive or unpleasant manner. They do not view themselves as intimidating when they are gathered in a large group and in fierce discussion, it is not in their frame to offer civil inattention to a woman who wishes to pass the group on her way to the shop. The mechanisms of 'civil inattention' (Goffman, 1963: 84) and 'cooperative motility' (Lofland, 1998: 29) as they are understood by the elderly native Dutch are not concordantly part of their doxic make-up.¹²⁶

Once a norm leaves the doxic realm and enters the universe of discourse, it becomes tangible and perceivable for all. In the universe of discourse, it becomes available for deliberation and communicative action. This deliberation does not always however deliver what it promises. In this instance, a group strives to ensure that their doxic norms that have been disrupted at the very least become the orthodox opinions. Orthodoxy pertains to the presiding opinion, aiming, 'without ever entirely succeeding, at restoring the primal state of innocence of *doxa*' (Bourdieu, 1977: 169). I argue that in the effort to attain an orthodox status for a previously doxic norm, codification is inserted as a strategy. In other words, the process of juridification, the process by which social norms are codified into legal regulations, can be explained by the contestation of *doxa*. As society diversifies, these contestations increase and hence juridification increases.

Following the reasoning above, it would hold that the one whose original doxic norm gets codified is the dominant party in that space and subsequently sets the societal structure. The on-ground reality of the case studies however shows a more nuanced situation. The codified norm becomes something for the other parties to contend with, but they would seem to do this only at the practical level. The Somalis on the shopping square adhere to the legal regulations forbidding the trade in *qat* and the gathering of more than three people, but only insofar they foresee a possibility of the rule being enforced. The orthodox opinion of the dominant group does not influence their appreciation of their practices, which are rooted in an entirely

¹²⁶ This points to a limitation of the concept of *doxa*. It would seem that Bourdieu regards the universe to be divided in two parts: the universe of the undiscussed and the universe of discourse. It does not seem to leave any room for non-issues.

different *doxa*. Hence the legal regulation structures the practices, but does not influence the mindset of the other party. Bourdieu states that the ‘doxic attitude does not mean happiness; it means bodily submission, unconscious submission, which may indicate a lot of internalized tension, a lot of bodily suffering’ (1991: 121).¹²⁷ In the case studies, on the contrary, the tension arises for those advocating the bans when it becomes clear that their doxic beliefs turned legal regulations are not sufficient to establish or maintain their dominance in a physical space, for example because the legal regulations are not always enforced or simply complied with. The regulations in other words have effects on the symbolic order of both the legal and the spatial. In the next chapter I will expand on this.

6.4 In Conclusion

The bans on the use of soft drugs in public space are the codification of hitherto informally regulated social matters into legal regulations. As such the bans capture both the social norms and social relations in existence in the spaces in which they figure. Juridification in itself is inherent to a complex society, though whether it should be lamented or celebrated is dependent on the sort of complexity in which it is instigated. Regulations can both facilitate and stifle deliberative communications between strangers. Translating a norm into a regulation is an instrumental act, but the norm gains a symbolic meaning through its codification. The formalization of a norm in the case studies originates from a setting with strong informal control, in the sense of people who care and take action to address their concerns. These regulations do not originate from some external autonomous force, but are initiated and employed horizontally, between citizens. The bans are social action.

Why juridification takes place, i.e. why the bans on the public use of soft drugs were instigated in the case studies investigated, is explained with the aid of Bourdieu’s concept of *doxa*; the venture to bring such bans about is triggered by the disruption of doxic beliefs, deeply held convictions on what is and what is not right in emotionally owned, shared spaces of everyday life. *Doxa* is disrupted by the practices of others in a shared space who operate from a different frame of reference. Codifying a norm is an attempt to secure a belief from discussion and anchor it in the realm of orthodoxy. However, even when a norm is successfully codified this does not automatically equal dominance in the spatial realm. This connects with the different

¹²⁷ In part this holds with Lefebvre’s statement that when the three dimensions of space do not line up, disorientation ensues.

dimensions of space discussed in the previous chapter, and the way the bans work in those different dimensions, which will be further explored in the next chapter.

7. The Working of the Bans

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7. The Working of the Bans

'The shopping square, Saturday afternoon around 3 p.m. I am sitting on the curb near the green bench. The sun is out, the square is bustling, and the atmosphere is gregarious bordering on boisterous. The square is vibrant and alive, hot and dirty, "summer in the city" in suburbia. On and around the green bench several Somalis have gathered, involved in a loud group discussion in a language I do not understand. They occupy the space beyond their physical form through the energy and noise they emanate as a group. A boy enters the square from the west side, via the corner where the Somalis and I are situated. I estimate him to be ten or eleven years old. He is carrying an empty plastic bag and headed towards the Aldi supermarket. My guess is he has been sent on an errand, to pick up a forgotten grocery item. Level with the green bench he stops to read the poster in the shop window of the empty store on the corner. The poster originates from the municipality and has been distributed to all the shopkeepers on the square. It is of a bright orange color with prominent black lettering, and it warns of all the bans in effect on the square. I watch the boy standing there and reading the notice. He is standing with his back to me and I cannot see his face, but I hear and I feel the energy of the place and the moment, just as he must. I look on as he reads about the municipal ban on gathering with more than three persons and the ban on using qat, whilst within spitting distance a group of eight or nine Somalis is noisily congregating. No one is ostentatiously chewing qat, but the ground is littered with used qat twigs. The scene in which the boy is standing is at complete odds with the message broadcasted by the municipal poster. After a while the boy moves on, continuing on his errand, and leaving me to wonder what the experience has done for his perception of the square, as well as for his perception of the municipal message emitted by the poster.'

From the start, this project voiced a two-tiered ambition, namely to investigate both the origin and the subsequent working of the municipal bans on using soft drugs in public space. In chapter five we traced the qualification of the research sites as social spaces, and discerned that the production of space takes place through three separate but interconnected dimensions: planned space, lived space, and perceived space. The bans on using soft drugs in public space are interventions made in the planned space, that is to say the dimension in which space is conceived and engineered. The subsequent impact of the bans on the lived space of everyday experience and the perceived space of the mind was indicated, but not fully explored. The present chapter picks up on this. What is the actual impact of the bans in the shared spaces of everyday life? Is there any substantial impact? And if so, does it impact the lived space and the perceived space in equal measure? Do the bans deliver as

bargained for by those who instigated them? And what else do they bring about in the spaces in which they figure?

As was done for space in chapter five, in chapter six we delved into the process of the juridification of the social norm. After describing the concrete coming about of the bans in chapter four, chapter six subsequently set out the process leading to juridification. Juridification, it was argued, occurs as a group in society strives to secure their disrupted doxic beliefs in a state of orthodoxy. Previously unconsciously held beliefs and values are disclosed through the confrontation with practices of others in shared spaces of everyday life. Upon exiting the doxic realm, those beliefs and values, operationalized in norms, become available for discussion and hence dispute. Through codifying a doxic norm, it is positioned in the realm of orthodoxy rather than heterodoxy. In other words, codifying is an attempt to keep a norm absolute rather than letting it slide on a scale of relativity.

Though the genesis of the concrete bans and the dynamics behind the process of juridification have been expounded upon, the legal working of the bans has not yet been explored. The impact of the bans on the lived and perceived space however is linked to the manner in which the bans operate in real time. Is the existence of the bans known in the spaces, and what situation do they address? Are the bans enforced at all? Do people comply with them, and how does this relate to the doxic beliefs the bans incorporate and the strategy they fulfill in the production of space? How does the disposition towards the doxic norm incorporated by the ban subsequently relate to the issue of the legitimation of law?

In the following section the working of the bans is initially explored separately from the two perspectives that run as distinct but interconnected lines throughout this work. It is in the actual working of the bans that these two lines—space and law—draw together and become intertwined. The first-hand experience of the legal working of the bans influences the way space is perceived, just as the perceived space influences the way in which the bans are experienced. In the following we will first pick up on how the bans legally function in practice, followed by how the bans impact lived and perceived space. In the final section, the lines of space and law are traced into their mutual enmeshment.

7.1 The Legal Working of the Bans

We have discerned the bans entering the spatial realm via the planned dimension of space. The bans are formalized social control, and what distinguishes formal from informal social control is the possibility of state-monopolized sanctions. Formal regulations are backed by formal enforcement. Viewing the formal rule as something that applies to an unwilling other, enforcement is a logical angle to investigate the legal working of the bans. Are the bans enforced? If so, through which mechanisms and on which grounds? How is the issue of enforcement understood by those for whom the ban is something that others should adjust to? As we will see, the proponents of the bans and the formal enforcers appraise the issue of enforcement very differently.

An alternative perspective is the viewpoint of those targeted by the ban. Enforcement then turns out not to be the only motivator for compliance or noncompliance with the ban. Other considerations are factored in, such as the degree to which a certain rule is supported and the degree to which the ruling authority is supported. Here the legal working of the bans links in with the legitimacy of law, and specifically how that legitimacy is assessed by those who are affected by the bans.

From the Perspective of Enforcement

'I can assure you most firmly that no attention is paid to it. Never. The ban has been in place for a year now and no attention is paid to it at all. [...] I don't think that even one fine has been issued on it, it simply isn't taken into consideration.'

There is a large divide between a ban being installed and a ban actually being enforced. The proprietor of a bar on the village green cited above is very clear on the matter. The lack of enforcement on the village green is in part because there isn't that much to enforce. As the local police officer contends:

'The ban isn't based on nuisance in the public domain. Sure, soft drugs are used, a lot, but mostly indoors, when mom and pop are gone, or in the shed out back, or in the so-called living room of the so-called social workers, but not in public.'

A barman concurs:

'There is no nuisance here deriving from the use of soft drugs, I don't buy that. The use of soft drugs in itself is not really an issue here in the village. We didn't understand the need for the ban, really, it is not a problem here.'

This is not to say that no soft drugs are used in public. Just off the central square there is a small enclosure with a public bench and a play set. Teenagers sometimes hang out there in small groups in the afternoon, and though I never encountered it myself, residents indicate substances are used there. I receive more reports of soft drugs being used in public space, but the general picture that emerges is that it is an occasional phenomenon. Moreover, in those instances that public use of soft drugs is reported, no automatic connection to nuisance is made. Drugs are an issue in the community, but not in relation to the public order and security of public space.

The absence of nuisance is readily affirmed by the police and the municipality. The national journal *Binnenlands Bestuur*, which reports on issues of domestic governance and is widely disseminated and read nationwide by municipal policy officers, relays:

*'Is there that much nuisance caused by youths hanging about and using soft drugs? "No" the police say. Have there been problems in the past with youths smoking soft drugs? "That neither" police press officer Meulenman admits.'*¹²⁸

The original bill proposing the ban, as discussed and passed by the local council, contains a double argument: first, the fact that public use of soft drugs can cause affront, and second, that the public use of soft drugs can contribute to a public opinion that such behavior is normal.¹²⁹ In sum, on the village green the ban is not enforced because there is nothing to enforce. The ban is installed as an affirmation of the doxic belief that drugs, of any denomination, are to be prevented from entering and settling into the daily affairs of the community.

On the playground, by contrast, the use of soft drugs in public space was already an affirmed practice. This motivated the wish to secure the doxic belief of the newcomers that using soft drugs is something you just do not allow on a playground and it formed the driving force for the applicants to have a ban installed. As we saw, this wish did not materialize and no ban was granted. The political response was that a ban on the public use of soft drugs was not suited for that particular location. The applicants were greatly upset over the believed insinuation by the district mayor that their neighborhood was 'anarchistic':

¹²⁸ *Binnenlands Bestuur*, 4 March 2009.

¹²⁹ Municipality Bunschoten, Council proposal 2008/287, 13 March 2008.

'He denies it, but three people affirm he really said it: "well, De Pijp is an anarchistic neighborhood, you can expect that sort of thing there". Well, excuse me, but I get so very angry about that.'

The resident quoted above does not agree that such behavior is to be expected and should therefore be accepted on the playground in front of her door. Quite the contrary, in her opinion it is unacceptable and consequently should be forbidden by law.

The institutional professionals involved, i.e. the local police officer and the safety policy officer with responsibility for the area, are decidedly less resolute than the residents or politician in their estimation of the situation. The police officer offers:

'A ban like that is a very rigid, strong measure. I think the proposition of the City District to put up an attention sign and not a prohibition sign a good one. [...] I don't think it is my place to have an opinion on the nuisance. People experience nuisance and, well, if people were to move away from that square because of the nuisance I would regard that as evidence of police failure. [...] Residents state that the playground is misused by people using soft drugs. I come there a lot, I bike there quite often. My outlook is that those complaining are right. I do have the impression though that the problem is presented a bit heavier than it actually is. [...] I will support the residents on the square.'

Nuisance is a subjective experience and not an opinion automatically shared. The police officer on the playground states that he is willing to assist the residents in their grievances. He acknowledges the grievances are felt and appreciates the weight these grievances have for those who experience them. This is not to say he concurs with the assessment that using soft drugs in public is to be banned completely.

'If you ask me, in the daytime when kids are playing there you don't want youths using soft drugs there. [...] Look, in the evening, is it a problem then? There are no children using the playground then. A twenty-four-hour ban isn't necessary then, if you are concerned with the playground being used by small children.'

The police officer also comments on the subjective nature of nuisance:

'Ten years ago this wouldn't have been a problem. I think, and this would have to be researched, demographically or something, that there is a different demographics now. Income has risen, level of education is rising. Maybe I shouldn't put it like that, but I think that with a higher level of education comes a higher level of interference. With the changing demographics the problems have increased.'

The police officer states that he sees youths using soft drugs in various places on his beat, but the playground is the only place where nuisance is systematically reported. The applicants of the ban on the other hand do not have the feeling that their grievances are heard:

'We stopped calling in to the police completely because it doesn't have any effect. Once, once they called us back. The police officer said they had driven past but hadn't seen anything. Well, I told him, there are seven persons standing there right now. You know, they come in a patrol car and drive past over there because you can't come any closer with a car and of course they don't see anything then.'

The frustration of police not considered to be responding adequately to reported grievances is similarly felt on the shopping square. In contrast to the playground, there bans on undesirable behavior have been successfully entrepreneured. The enforcement of the bans by the police however is not considered effective.

'It's Tuesday morning and I have entered the Dutch bakery on Verdiplein. An employee is in the front helping customers, but the proprietress appears quickly from the back when she hears my voice. She's upset. On Saturday morning there had been a whole gang of youths, congregating at the entrance of the bakery. The entire façade of the bakery is glass, from ceiling to floor, bathing the shop in light and providing a wide overview of the square. And a front-row view of what occurs on the square and even more so in front of the bakery. The youths had been jostling and making loud noises and impolite gestures at them. It had been very aggravating to them and, even worse, intimidating for their customers. They had called the police, more than once. They did not have a direct number and had to go through the national operating system and explain their story every time. Eventually a patrol car showed up on the square early afternoon. It circled the square and came to a halt level to the youths. The police did not come out of their car. The proprietress repeats this several times, with exasperated unbelief. Instead they rolled down their window, called over to the youths and spoke a while, still seated in their car, with the youth who had ambled over to the patrol car. Quickly enough, they finished their conversation, appeared to exchange amicable goodbyes, and drove off again. The youths of course continued for a while in front of their shop, until they apparently got bored with it and moved on. She had been so unbelievably hopping mad. The youths should have been fined for congregating in a group, their behavior was really off limits. And the police, she had no words for it, not even getting out of the car. She was so completely fed up with it all. That same afternoon they pulled down the municipal poster that had been in their shop front.'

The proprietress is seriously disillusioned with the institutional forces that supposedly uphold the public order on the square. The rules are clear and in effect; through posters and other verbal communications the municipality ostentatiously

supports their endeavors for the square to remain attractive to the customers they have been serving for over forty years. However, they do not see their efforts or the verbal modes of support backed by concrete and effective enforcement.

From a different point of view, the police officer responsible for the shopping square explains his position:

'We use the bans to keep the situation a bit under control. The shopping square is not a good place to control, if you enter the square everyone immediately disappears. You have to avoid getting caught up in a cat and mouse game, you really don't want that kind of situation. I prefer having them on the square and not branching out into the neighborhood, into the residential areas. There they will really cause nuisance, much more than on the square.'

In none of the cases does the local policeman on the beat concur with the norm encompassed by the ban. There is no resonance that the use of soft drugs in public is an affront to the senses, nor any personal assessment of outrageous nuisance caused. That nuisance is experienced is duly acknowledged and taken seriously, but there is no ideological motivation to prioritize the enforcement of the bans. For the institutional enforcers the bans represent what they formally are: instruments to uphold the public order in a literal sense. The municipal authority to uphold the public order is the juridical foundation of the municipal bans. Formally, the local byelaws are not a means of fixing normative values. However, as is life, *is* and *ought* do not always coincide. As one police officer concludes:

*'Sometimes I get the impression everybody is practicing window dressing. A byelaw like that is installed to show, look, this is what we are doing. And the police are left holding the baby.'*¹³⁰

The cases show how different expectations are connected to enforcement. These diverging agendas lead to irritation and frustration on the part of the proponents of the bans. They have chosen the strategy of anchoring their deep-felt belief in a legal rule. Through codification they consider their norm to be confirmed and their endeavor justified. Their desire and expectation is that others acknowledge this and adhere to the rule. For the institutional enforcers, meanwhile, the bans are means to a different end. To the police the bans represent in essence and in practice an instrument to uphold the public order. Hence enforcing the ban is a pragmatic decision and at times they will consider another tactic more viable. As a result, the proponents of the bans look on in bewildered frustration in those instances when police

¹³⁰ The original phrase in Dutch was: *En de aap wordt bij de politie op de schouders gezet.*

do respond to their appeal for intervention, but this response does not involve actual enforcement of the bans on undesirable conduct.

Enforcement in the above has been taken as the viewpoint of the proponents of the ban and the institutional enforcers. A contrasting perspective is of those who find themselves targeted by the bans. Enforcement, or the lack of it, only in part explains adherence to legal regulations. Rule compliance has a wider base. In the following section we will shift perspective from external to internal motivators for adhering to the bans. How are the bans assessed by the regulatees, other than the possibility of their being enforced?

Rule Compliance

'A weekday afternoon on the shopping square. It's not very busy on the square, but there are some people about, a few youths are standing in front of the Egyptian grillroom, two or three youths are in front of the phone house, a small group is gathered around the green bench. The atmosphere is uneventful. It takes me a few seconds to register the abrupt change. Suddenly all the youths are gone, they seem to have melted away, disappeared into thin air. I start to slowly count to myself. Around the count of thirty-five I see a patrol car approaching on the access road. It turns in the direction of the shopping square, enters and slowly drives a full circle. I recognize one of the police officers and return a nod of the head in greeting. The patrol car continues on without stopping, exits the square and turns into the neighborhood. About ten minutes later I see it go past again and leave the area. Not long after that the square starts to fill up again.'

The observation above dates from the beginning of my fieldwork on the shopping square and in that instance I didn't pick up on any sign being emitted to warn for the patrol car. I had though already been alerted to the procedure by an elderly resident, who had colorfully described to me how the square tends to empty out just before a patrol car arrives. In later instances I become more tuned into the unobtrusive communications: a bleep from a smartphone, a nudge to a collocutor, a gesture to the other side of the square. And afterwards first a single individual on a bike or in a car, making a round on the square and checking the scene. Only once did I experience someone running up to the square and shouting a loud warning of a patrol car approaching. Sometimes I would miss the initial sign but pick up quickly the changed atmosphere and the people disappearing. The ban on gathering was most visibly and continuously transgressed. The other bans likewise appeared to hold little deterrent power. Cars were invariably parked on the square outside shop

hours, when a parking ban was in force. Moreover, and more relevant for this research, alcohol, *qat*, and other intoxicants were used with little inhibition.

Noncompliance with rules is a well-documented issue, but Bantema (2012: 84) observes that the focus is usually instrumentalist. In other words, compliance or non-compliance is often reasoned with regard to the chance of getting caught and the possible costs and benefits of such (non-)compliance. In the case of the shopping square, the instrumentalist approach offers a pretty clear-cut but one-dimensional perspective: the chances of getting caught are negligible if one remains attentive, and in the face of enforcement regulations are duly adhered to.

'I am sitting on the green metal bench. Edward cycles onto the square and comes to a standstill behind me. He remains seated on his bicycle and maintains his balance by placing a foot on the bench. After we have exchanged our greetings—"rustig", "rustig"¹³¹—he starts to scold me: I really gave them a fright yesterday in the grillroom. They thought, who is that, is she from the municipality, an enforcer on the ban on smoking. I gave the poor man a heart attack! I shouldn't do that. Edward himself didn't approach me yesterday in there: he didn't know if I was working or not, and if I was working he didn't want to disturb me. He had told them: no, no, she is a researcher, but the proprietor was really scared. Everybody had to smoke outside. He was completely nervous, that you'd be from the municipality. All the ashtrays are gone from the counter.'

However, other considerations can also factor in whether regulations are complied with. In the following, the formal rules are shown to be adhered to insofar as they coincide with the informal rules acknowledged by this person:

'It is Sunday afternoon on a warm, autumn day. I have been on the square for a couple of hours, hanging out with whoever comes by. I've just had a relaxed conversation with a Moroccan-Dutch male in his early twenties and a regular on the square. He has explained why he would not drink alcohol in the public space of the square, but has no qualms about enjoying the joint he is smoking whilst we converse. Both the consumption of alcohol and the use of other intoxicating substances is banned from the public space of the square by municipal byelaw, and these bans are duly signaled on large street signs on the square, as well as on municipal posters that almost all the shopkeepers have put up for display on their shop windows. The formal prohibition however does not figure in his considerations on whether the one action is acceptable and the other is not. His argument runs that if he is accosted on the square by an acquaintance who knows his family, the smell of the joint—of course readily

¹³¹Rustig can be translated into 'quiet', 'peaceful', 'untroubled'. Edward consistently used the phrase for 'hello' or 'goodbye'.

chucked away—could be reckoned to come from any other person. Alcohol, on the other hand, even if you get rid of the substance itself, can still be smelled on your breath.'

An alternative approach to the instrumentalist view is to regard the normative considerations for complying or not complying with the rules. Braithwaite (2009) has developed a model of what she calls 'motivational postures' that define the degree in which rules and regulators are supported and the subsequent responses to the rules and regulators.¹³² She distinguishes in total five motivational postures: commitment, capitulation, resistance, disengagement, and game-playing. The first two correspond with compliance, and the latter three correspond with noncompliance:

'Central to the motivational posturing process is the notion of threat from the authority. Authority threatens everyone, by virtue of its power. Power is a reminder of personal vulnerability. As a tax authority's threat increases, taxpayers use their motivational postures to adjust their social distance and establish a comfort zone for themselves in relation to the authority. Different contexts bring to the fore different postures, and different postures direct individuals to make different responses, some obliging and deferential, others adversarial and dismissive. *Commitment* and *capitulation* are postures that represent willingness to go along with authority either because we want to or because it is too troublesome to refuse. If we are displeased with how the authority is using its power, we might try *resistance*, criticizing and complaining in the hope that it will change its ways. If we consider the authority unworthy of having power, our posturing moves from resistance to dismissiveness. Hope lies not in protesting about how the authority carries out its duties, but in moving the authority to a state of obsolescence. Withdrawal enables us to imagine this has already happened and so we may adopt the posture of *disengagement*. If ignoring the authority is not satisfying, challenge is another option. We adopt the posture of strategic *game playing*.' (2009: 20)

The focus here is on the set of motivational postures regarding noncompliance. Noncompliance with the rules can take on different forms, but is in all cases related to a lack of support for the rules and the regulators alike. Resistance is characterized by open protest; disengagement refers to disagreement without action; and game-playing pertains to covert contra-actions.

In the researched sites, open resistance towards the police is rare because the overall belief stands that invariably the formal enforcers will win. This is not to say that the

¹³² Braithwaite's eventual goal is to define leverages that regulators can use to shift regulatory postures into compliance. In part, her research efforts have been supported by the Australian Taxation Office.

behavioral bans are not openly transgressed. They most certainly are, and often in full awareness of their existence. On the village green, youths enter the public space with raging hormones and daring swagger. They make a point of not appearing too law-abiding. At 2.15 a.m. on a Saturday night, just after closing time for the discotheques on the square, I watch a severely intoxicated youth requesting the present police officer to help him search for his bicycle key, *'and hey, if it's all the same to him he will quickly take a leak against that wall, cuz, man, he really needs to go'*. That same police officer had sighed to me half an hour earlier his wish for some serious rain from 2 a.m. onwards. The police officer allows the youth some leeway, but when he indicates that the limit has been reached, the youth packs it in and moves on. Likewise on the shopping square, the bans are only openly transgressed when no official enforcers are present.

Resistance towards known advocates of the bans on the other hand occurs consistently. On the playground customers of Yo-Yo continue to seat themselves on the street terrace, underneath the municipal sign broadcasting the ban, and smoke their joints next to the playground. Some do so ostentatiously, others do not make a big deal out of it. The sign requesting that the playground not be used to hang out or use drugs in has been repeatedly vandalized, to great amusement of those who are against the ban. On the shopping square, the youths act out repeatedly against the Dutch baker and his wife. The incident described above of congregating and blustering in front of the bakery is one of many. The youths view them as key instigators behind the restrictive bans and periodic police surveillance. Through their behavior they demonstrate their resistance to the authority of those who strive to have their norm established as the rule.

Other examples of noncompliance are less openly professed. The bans under investigation here are specifically formulated for public spaces. As we have discussed in chapter five, however, the publicness of a space is in the eye of the beholder and in the perception of the user. One way of dealing with a ban in a public space is by altering the public nature of that space, in other words by marking out a piece of private space in the public setting. The youths on the village green do this by occupying niches in the public space, by moving from plain sight into public but secluded alleys and closes. On the shopping square private space is carved out from public space through the use of cars. A car parked on the shopping square is a clearly delineated bubble of private space, a private island in a sea of publicness. The practice of relocating to a car to consume a forbidden substance is subsequently an act of disengagement. A car, even if on the public road, will be felt to be separate, i.e. *'dis-engaged'*, from the public domain. Transferring to the back seat of a car parked on

the shopping square to consume a forbidden substance is an act of non-confrontational deference.

Specifically on the shopping square, game-playing as a mode of noncompliance is practiced extensively, either out of practical considerations or as a pleasant way to pass the time. Game-playing according to Braithwaite 'signals a lack of deference to the authority, although there may still be respect for being law-abiding in the technical sense (2004: 1; see also Braithwaite, 2003). A player looks for the loopholes and grey areas of a regulatory measure. A practical variant of game-playing is wrapping a napkin around a cold, condensed can of beer, to enjoy it in the afternoon shade in the open of the square. As Edward argues:

'Well, we know it is not allowed, but you know, I want to sit here and enjoy my beer. So I wrap a napkin around the can, and nobody has to take note that what I am drinking is beer.'

The motivational postures are not strict categories, but border one another on a continuum. Game-playing can also be about giving the authorities 'a run for their money'. Combined with a lack of deference to authority and removing the optional inclination to be law-abiding, some of the game-playing borders on resistance:

'A summer evening around 10 p.m. I am on the shopping square. I've managed to secure a seat on the green bench, and some of the youths have flocked around me. My general impression in situations like these is that I am fair enough amusement, for lack of anything better. — has also shown up and he is in a talkative mood. He is telling me about his hobby of free running¹³³ and this prompts one of the other youths to laugh and reminisce on "that time when". — is a bit hesitant at first, but the story is clearly too good to not tell. He points at the CCTV camera in the middle of the square. It is attached to a pole and pretty high up in the air. I am not very good at gauging distances, but I reckon the camera to be fixed at least five meters high. — recounts how once he climbed up that pole and covered the CCTV camera with a plastic garbage bag. It had been great fun. It took the police a while to show up, but they came in great force with screaming sirens and flashing lights and wow did they look stupid looking up at the garbage bag. — and his friends had watched them from the other side of the access road.

All in all, the case studies offer ample examples of noncompliance with the bans. The noncompliance is related to the measure of enforcement, but not in a unique causal relationship. Braithwaite connects noncompliance with rules to the presence of social bonds and shared understandings (1995: 253). She argues that the way in which regulatees approach a regulatory system brings together the personal, the

¹³³ Free running is an urban sport in which the city is used as assault course. Check for a visual impression http://www.youtube.com/watch?v=nqng_U4DwN8.

social, and the institutional. Translating Braithwaite's model to this research, the personal pertains to personal characteristics, the social concerns a person's position in the social constellation, and the institutional refers to the appraisal of the regulatory system and how it operates. In the preceding chapters I connected the coming about of the bans with the transgression of doxic norms and competition in the production of space. The bans in part represent a lack of shared understandings and fragile or polarizing social bonds. Noncompliance then is not only induced by disagreeing with the content of the ban, but also instigated by protest against what the ban is considered to represent. In the following I am going to tilt the lens one degree further and link in with issues concerning the legitimacy of law.

Legitimacy of Law

The legitimacy of law can be approached as an issue of process and as an issue of content. As an issue of process, the legitimacy of law is dependent on how law comes about and how it is enacted. As an issue of content, however, the crux lies with what a law contains and brings about.

As we saw in chapter two, addressing the bans in general, in terms of process the bans on public use of soft drugs harbored some serious issues. A substantial proportion of the bans had been set up with an overall reach, whilst experience with bans on alcohol had already proven this to be untenable. Those municipal bans that did encompass the assignment of specific areas in which the ban applied had in many cases allocated the authority to assign such areas to the wrong governing body. Instead of allocating this power to the mayor, it was placed with the Bench of Mayor and Aldermen. This was the case in two of the three research sites: the village green and the shopping square. In both cases there was no juridical explanation for this aberration, the formulas used had not been a matter for deliberation. Overall, the procedural legitimacy of the bans had never been questioned or contested formally. When eventually the procedural legitimacy was denounced by the *Raad van State*, this happened in judicial proceedings initiated by people appealing against the denial of a ban.

The shortcomings in the procedural legitimacy of the bans however do not figure in the legal valuation of the bans by the users of space. Noncompliance with the bans—as well as irritation over noncompliance—is explained through normative arguments. For the people living with the bans, the focus is on both the content of the bans and their origin. For those in favor of the bans, the substantive norm of the

ban has been validated through its codification. Together, the content and its validation by a legislative body provide a double reason why the bans should be adhered to. Noncompliance likewise is argued through contesting the content of the ban, as well as the authority from which the ban emanates. A youth on the shopping square pointedly argues his perspective on the authority promulgating the ban that controls his presence on the square:

'Well, if he were to get fined, no way he'll be paying the fine with his own money, or his parents' money. If they give him a fine, he'll go get the money to pay for the fine from them as well.'

Though who exactly 'they' are is not explicated, it is clear that the bans and their sanctions are viewed as emanating from an oppositional and unfriendly force. Should that force infringe on him, the youth will in turn infringe upon that adversary to settle the score. The youths on the shopping square do not discern the bans to be about maintaining public order, they regard the bans as being directed against their presence.

'About those bans, this is our place, we are not leaving. We are fighting back, even if they barricade the square. [...] Why is this bench here? To sit on! Exactly, yeah. [...] This is our place, the spot where we come every day.'

Disregard for the content of the bans is fueled by the belief that using soft drugs in public does not cause nuisance. In the words of a youth on the shopping square 'Smoking a joint makes you easy. You don't stir trouble after smoking'. His opinion is echoed by a counterpart on the village green who declares his incomprehension over the ban in a regional newspaper, as blowers do not cause nuisance; on the contrary, 'people who smoke a joint, they are always very relaxed'.¹³⁴ An opponent of the ban on the playground is convinced that people are simply intolerant of the youths hanging out and making noise, and that the issue of using soft drugs is only called upon to make things sound worse.

Though the eventual downfall of the bans was based in their deficit of procedural legitimacy, their legal working in the shared spaces of everyday life centered on their normative legitimacy. To loop back to Schuyt and Habermas, and the discourse on juridification in the previous chapter: whether juridification leads to an obstruction of communicative action or, on the contrary, to social cohesion depends on content rather than process. The legal working of the bans stretches further than the behavior they try to rule out. What the bans are considered to represent matters as much as what they contain.

¹³⁴ Newspaper *Algemeen Dagblad / Amersfoortse Courant*, 15 March 2008, p.11

7.2 The Social Working of the Bans

The social working of the bans refers to their working in the lived dimension of space, specifically. The lived dimension of space is the here and now, the actual experience of space, where one is bodily present in the space and when the movie reel so to speak is running. Lived space is the dimension in which a person physically encounters a space, connects to a space via the bodily senses, and feels—rather than rationalizes— at home or insecure, at ease or unsafe, in sync or ‘out of place’. It is something that is done rather than a status or condition, and it takes place in a specific moment in time. The lived dimension results from planned space and perceived space, and in turn forms the input for the way space is conceived and planned, as well as how it is deciphered and perceived.

The working of the bans in the lived dimension of space holds together with how they figure for people in their experience of a space. This breaks down into two different possibilities. One is when the behavior targeted by the ban occurs in a space. The experience of such behavior taking place evokes the existence of a ban regulating that behavior. The other possibility is of the ban itself being physically present in space through a physical representation. Concretely this presence might take the shape of a (municipal) sign declaring the ban to be in force. The ban then figures in a space even when no events take place that would be governed by the ban.

Contested Behavior Displayed

In some instances the bans hardly figure in the lived dimension. In the case of the village green we have seen that the bans regulate something that only infrequently occurs in the space. Moreover, many people are not even aware that the ban exists. Those who know of its existence are not often confronted with it, because the targeted behavior does not occur, or does not occur in their sightline. The ban on using soft drugs doesn’t really play a part in the daily experience of the space. As part of my methodology I asked respondents of the street interviews the same three questions: (1) Which three words would you use to describe this space; (2) How often do you come here and why; and (3) Are there any bans here you are aware of that do not exist everywhere?

On the village green even the third question did not bring the ban on using soft drugs into the discussion. The most cited answer was the ban on entering the space with a motorized vehicle, and mopeds specifically were hailed as a serious cause of nuisance: noisy, smelly, and dangerous. The youths targeted by the ban on soft drugs also felt much more encumbered by other regulations in place, such as the aforementioned ban on mopeds and the (national) legal obligation to always carry an identification card on you. On a Wednesday afternoon in June I have joined a group of seven boys hanging and smoking (cigarettes):

'We come here because it's comfortable here, when you're thirsty you can get something to drink there, when you're hungry you can go there and there is always something to do. We come here to hang about, to do nothing, for the "gezelligheid"'.¹³⁵ You come here and there's usually someone else and when there's a few of you, more join up. It can get pretty loud. Police come by often and warn us. You are not allowed to come here with a moped, hej G. how much is that fine again? The fine for drinking alcohol is €70, I know that for sure. Also, you get checked for your ID all the time. Usually though the police will wangle us.'

The ban nevertheless does appear on the radar of the lived dimension occasionally, namely through outside observers who come in to investigate why the ban has been installed. In chapter three I discussed the many roles I was ascribed by my field during fieldwork—and how none of them worked in my favor. It is in the village green that I was most often thought to be a journalist, and people would refer to newspaper articles when I directed a street interview to the issue of the ban. Without a prompt from my side however the bans did not figure in the narration of direct experience of the space of the village green.

In the playground the behavior targeted by the ban was experienced by just a small company of people. As one street respondent indicates:

'I work at City Hall and then Council Members came by here to inquire after the nuisance. Well I live around the corner and of course that is different from actually living on the square, but I thought to myself, are they talking about a place just around my corner?'

The pressure on the square is substantial, it is a small space that is intensively used by many different users. The public space of the playground is both accessible and attractive. A leader of a preschool that uses the square to play words it as follows: *'It functions well, this space. Maybe too well.'* The difference in how the ban is regarded is not just a matter of difference in the level of tolerance one holds, it is also a difference in experiences at the lived dimension. Many of those who frequent the play-

¹³⁵ As stated before, there is no good translation for the word 'gezelligheid'. The official translation is coziness, but it doesn't do justice to the concept.

ground do not actually live on the square itself. Even on the square it makes a difference where exactly one lives, whether bedrooms are situated at the street side, whether the house has double glazing. The playground is really a just stretch of street lined with four- to five-story buildings, and the physical structure functions as a resonance box. *'In the summertime you can't have the living room windows open if you want to have a conversation inside, it is so loud.'* Another resident has decided to move away, mostly because his family is expanding, but he asserts: *'I've lived on that square for eighteen years and I've seen it all happen. One thing I know for sure, wherever we will end up next, I am never living on a convivial square again.'* The entire square is intensively used and this induces noise, but there is a small section of the residents that bears the brunt of it.

With regard to the shopping square it is clear that the contested behavior targeted by the bans is commonly on display. This behavior figures dominantly in the everyday and sensory experience of the space. For those aware of the existence of the bans, their presence was continually brought to mind through the perpetual transgressions. This holds as much for those committing the transgressions as for those observing the contested behavior. Being (made) aware of the bans in the lived dimension of space in turn affects the legal working of the bans discussed in the previous section.

Physical Representation

A ban figures in the lived dimension insofar as it actually induces a consequence for the experience of the moment. This can be because the behavior covered by the ban exhibits itself, but also because the ban itself is presented in a physical form. A substantial difference between the village green on the one hand and the playground and the shopping square on the other is the presence of an optical cue of the existence of the ban. On the village green no notification can be found in the space itself. As the municipal policy officer states:

'There are no municipal signs stating the ban, no. We do have such signs for the CCTV cameras, that's compulsory. With regard to the ban, it was never taken into consideration, we never thought about it. But well, yeah, how are people to know such a ban is in place... yeah.'

The whole point in this case however is that on the village green people are not aware of the ban. They might know that such a ban is in place, but this knowledge

is not transformed into acute awareness in the lived dimension of the space and does not consciously figure in their experience of it.

Having the ban clearly stated on a municipal sign however does not automatically mean that everybody is therefore aware of it. The sign erected on the playground was of sizeable dimensions, and this had been disagreeable to opponents and proponents of the ban alike. Despite its considerable size, however, it was not very obtrusive. With black-on-white lettering it did not call any particular attention to itself. Hence a casual passer-by would not necessarily remark upon it. As — explains: *‘Those guys, you can put up a sign, but they will just pass it by. There are so many signs.’* A similar mechanism functioned on the shopping square. At the entrance to the square several different signs were grouped together to indicate the various bans in place there. Even respondents who pointed at those signs to demonstrate to me their knowledge of the bans in place on the square would not have registered the adjacent signs asserting the parking regime on the square and the ban on parking outside shop hours. These municipal signs are only noticed if people are attentive to them.

The sign on the playground is a constant reminder of uncomfortable situations and of the possibility of those occurring again. It aggravates people on both sides of the divide. The opponents feel that the sign sends out a message in their name as it is signed with ‘the residents’, whilst they don’t subscribe to the message. As one of the opponents indicates: *‘That sign, you could say it has my name on it.’* Another resident on the playground states passionately:

‘That sign, out of nowhere it was there. What kind of freak does something like that? How can they just put up a sign like that? There wasn’t any consultation, just that sign.’¹³⁶

For those who are aware of the sign, its continuous presence in the space creates a constant awareness of the ban, even when the behavior targeted by the ban is not in display. The sign brings the ban and the issues it represents to the repeated attention of those who are aware of the sign. The sign is seen as coming firmly from the advocates of the ban. They instigated it, they brought it about. It is not really considered as deriving from the municipality, but rather exhorted by a specific player in the space. The sign is also literally viewed as the edifice of the proponents:

¹³⁶ The opponents were also aggrieved over the fact that that sign had been erected in ‘their’ space. No one had consulted them, no one had informed them, though they clearly felt this should have been the case. This connects with the sense of ownership they feel over the square. The square is not public in the sense that the municipality can do as it considers best for the public. They strongly feel they should at the very least be heard on possible adjustments to the space.

'One of the women laughs: the sign also comes in handy to fix your bike to. That's what they (the lead applicants) do, they fasten their cargo bike onto the pole of the sign, so it is their sign in that way as well.'

On the other side of the divide, the proponents of the ban see the sign as a failure of their endeavor to get the municipality committed. As one of them words it:

'Supposedly twenty-five people here are angry about the sign. Well I know who those people are. They are angry about the sign because it is signed with "residents". Let me tell you, I am not happy it says "residents" either. I would rather have the sign to be signed by the police.'

Another proponent concurs:

'That sign, it says coffeeshop owners and residents. I can assure you, it was not our text. Why not put up a sign with the rules of the game and sign that with police and municipality? Like you see such signs everywhere.'

In sum, the ban figures in the lived dimension of the playground. Not all the time, and not for all the people, but it figures substantially for those most often on the square. Its existence has changed the space, making it more accommodating for the one faction and alienating it to a certain degree for another faction. It is has not however led to an irredeemable breach between the various emotional owners of the space. On a rainy September Saturday, the yearly neighborhood feast takes place. The tables and a small podium have been set up on Yo-Yo's street terrace. There is a singing contest, children line up for extravagant facepaint, a tai-chi practitioner has been lined up to provide chair massages, and a two-piece band plays a small repertoire including the song about the Yo-Yo Man.¹³⁷ Dinner is exquisite and has been cooked by an Afghan habitué of the living room project. During the meal I have a drawn out conversation with the chairman of the committee organizing the feast. This committee comprises himself, the proprietress of Yo-Yo, and two other

¹³⁷ The song apparently inspired the naming of Yo-Yo. It roughly goes as follows:

*I'm a little town boy, never felt free,
Tied to my job, tied to my people,
Living like a chili bean in a can,
When along one day came the Yo-Yo man...
He said he went where he wanted and he did what he pleased,
And never had it hard and the living come easy,
Mighty good words for a mighty young man,
Gonna leave my home and my friends if I can,
And be a: Yo-Yo man*

For an audio version see YouTube, for example by The Smothers Brothers on <http://www.youtube.com/watch?v=UR39tRbDcBk>.

residents of the square. He asks me if I am acquainted with the applicants of the ban and then contends:

'They were present today and that was very good. We talked about that, how we could avoid discord from happening on the square. The square is too small for that, it really is a stamp. It was nice that they were here. To wit, last year they hadn't come.'

Notwithstanding the fact that the production of space is a *perpetuum mobile*, I left the playground in a relative balance. That balance had shifted through the advent of the ban, but the new balance had been negotiated into a polite truce. People agreed to disagree and continued as neighbors in public conviviality. Not all stories have such happy endings however. On the shopping square the multiple bans reflect a much more pronounced distinction between winners and losers in the contest over the production of space.

On the shopping square, physical representations of the bans are very present in the daily experience of the square. The bans are emitted via official municipal signs ranged at the entrance of the square, but also for example via the bright orange posters fixed in the various shop windows. These posters easily catch the eye, also for an unsuspecting passerby. The optical cues however range beyond such official notifications. At one point I interview a Somali man who comes to the square often when visiting family but himself lives in Italy. When I ask him if he knows of things forbidden on the square he says: *'I am a muslim, I am not drinking, but people here cover their can of beer, so I think that is forbidden.'* This man does not get his information from the posters and signs set up in Dutch, he gathers his information through his experience in the lived dimension. He gathers from the behavior of people what is apparently forbidden in that place. He undoubtedly also gets his information from his peers. He is well aware of the ban on *qat*, but he also confides in me:

'If they catch you, they do not arrest you and you do not get a fine. They take your wares however and that costs a lot of money.'

The visual experience in the lived dimension also informs his explanation of why the bans have been installed:

*'The people from the high flat, they are coming to do their shopping, walking like this (he mimics pushing a walker), and they see the Somalis, all are black, all are noisy and the people they are scared. One day the police come and say we cannot be here anymore.'*¹³⁸

¹³⁸ To note: I spoke with this person in English, these phrases are not translated from Dutch.

On the shopping square the bans figure prominently in the lived dimension both through physical representations of the ban and through manifestations of behaviors covered by the bans. For those practicing the behavior targeted by the bans, the bans mean that they have to be attentive at all times. The social act of coming together, socializing, catching up with gossip, and chewing *qat* together is curtailed by the existence of the bans. This is not to say they completely refrain from using *qat*, but they do not conduct their business freely. We expanded on this in the previous chapter. The alteration in the planned space, namely the ban, has consequences in the lived realm. The ban diminishes the correspondence between the planned dimension and the lived dimension, and the produced space is less adapted to their needs and urges.

For those set against the behavior regulated by the bans, the consistent noncompliance causes heartfelt grievances. The exercise of the undesirable behavior in spite of the existence of the bans causes double affront: first the behavior, which runs counter to their felt norms, and second the flagrant disregard for the law. With the presence of the signs, it is felt there can be no confusion as to what is and what is not acceptable behavior on the square. As expounded upon in chapter six, the bans are the codification of doxic norms that have been disclosed by the suspended practices of others. Codification of the norm confirms its validity. Transgression of those norms is not just a disregard for the norm, but also for the system of formal control and law in general. As we have seen, these formal rules are not in opposition to informal control, but consecutive to it. The continuous noncompliance is for the proponents of the bans a continuous violation of their entire normative make-up. The fact that the behavior has been formally banned makes the affront worse.

In conclusion, the working of the bans in the lived realm can be distinguished through two mechanisms: the degree to which the conduct the bans are aimed at occurs in the lived realm, and the manner in which these bans are physically present in the spaces through written signs. As a consequence the working of the bans in the lived realm is context-dependent, as to place, time, and individual. The social working of the bans moreover is ambivalent, and certainly does not only have the positive effects reckoned on by their proponents.

7.3 The Symbolic Working of the Bans

Having discussed the legal working and the social working of the bans, there remains one dimension not yet explored: the perceived dimension. Whereas the lived dimension is firmly rooted in the here and now, the perceived dimension is less fixed in time and is not solely dependent on personal experience. Moreover, perception is the subjective interpretation of situations from the scope of the personal framework of reference. As such, perceptions illustrate what truth a space holds for the perceiver.

'I am sitting with an elderly native Dutch resident on her balcony on a sunny afternoon, overlooking the shopping square. She sighs and points to a company of youths gathered in the corner of the green bench, mucking about, having fun. "Look at them", she says, "hanging around there at this time of day, doing nothing, constantly touching each other. Why don't they go find a job, and earn some money so they can take some nice girl out on a date?" She shakes her head in resignation.'

Conditioned to the rhythm of white-collar work, this woman equates the lolling about of youths during daytime hours to unemployment and idleness. In part, she is undoubtedly right. However, a fair share of those using the space of the shopping square as their living room come there to relax before or after their work; being employed in blue-collar jobs, their work is often cast in shifts, not bound to a nine-to-five regime.

The working of the bans in the remaining perceived dimension is denominated 'symbolic', to underscore the role the bans fulfill in the 'propounding and presupposing' of space. Often the perception one has of a space influences how a space is experienced, and at the same time the way one experiences a space influences the perception of that space. The perceived dimension however distinguishes itself from the lived dimension in that a space can be perceived in a certain manner without having actually experienced it in the lived dimension. In the following section we will first look at how the bans figure in the perceived dimension in relation to the lived experience of a space. Subsequently the influence of the bans on the perceived dimension in relation to the planned dimension is explored.

In Relation to the Lived Dimension

On the shopping square the symbolic working of the bans resonates in the narrations of those who relate that the square is really a nice place. At the end of section

5.2 I cited the lady in her fifties who had just moved to the shopping square from the other side of town and went to lengths to stress that—contrary to popular perception—the shopping square was really a very nice and convivial space. The negative popular perception of the square beyond its actual users rings through in multiple accounts. In chapter four we already expanded on the reputation of the square and the weekly articles in the regional newspaper that were advertised as reports from ‘the blackest neighborhood of Brabant’. These articles were widely read and residents were confronted with their effects, as the following quote¹³⁹ illustrates:

‘She and her husband were visiting friends the other weekend, in a nearby village. There was also a couple present from another village nearby and they said do you know where that shopping square is, the one that is in the news all the time. And she had answered yes, that is right where we live, and those people had said oh no how terrible for you and had been very commiserating. And well, yes, there is trouble on the square, but it is not all as bad as that.’

The bans underline the popular perception that the space is troublesome. Their presence codes the space as dangerous to both present and external perceivers of the space. The drawback for the external perceivers is that they have no inference or corrective working from the lived dimension to adjust their perception.

On the playground a similar dynamic is discernible, the presence of the ban has a strong symbolic working for those who inhabit the lived dimension of the space. On the one hand, the bans are tangible evidence of a neighborhood being taken over by arrogant and intolerant yuppies. The following is extracted from a letter to the editor by a former resident of the neighborhood. It is titled: ‘I fled from the yuppies’.

‘In 1977, when I came to live in the Tweede Jan Steenstraat, De Pijp was still a working-class neighborhood. In time, the elder Amsterdammers died or went to live in Almere near their children. The farmer’s daughters and sons who did not want to return to their villages after finishing university got well-paid jobs and started to pay increasingly absurd prices for a house in De Pijp. You recognize them immediately from their trendy bicycles and arrogant airs of “look at me being a real Amsterdammer”. The coffeeshop in Hemonystraat has been there for over twenty years. The people who complain about the playground being next to a coffeeshop knew that when they came to live there, but well, they want to put their mark on Amsterdam. It’s just like the people who want to silence the church bells of the Westertoren.’¹⁴⁰

¹³⁹ Repeated from section 5.2.

¹⁴⁰ In newspaper *Het Parool*, section *Het laatste woord*, p.26, Wednesday, 25 July 2012.

The bans fuel the perception of the neighborhood being taken over by a new sort of people, and this perception is backed by the increasing appearance of expensive cargo bikes and the advent of hipster coffee houses in the area. The worry connoted of course is not just about the regime on the street changing, but also about affordable social housing being relinquished to expensive owner-occupied properties.¹⁴¹

The symbolic working of the ban on the playground also affects resident stakeholders in their daily routine. In the case of the playground the contestation over smoking a joint in public is in part a dispute between different ideologies. On the one side there is a deeply held conviction that soft drugs have no place on or so near a children's playground. On the other side is the deeply held conviction that using soft drugs is an optional component in a community where people respect each other and have the right to be themselves. Those opposing the ban on the use of soft drugs consider it primarily in the light of Yo-Yo's existence. As discussed, Yo-Yo is ingrained in the social fabric of the neighborhood. The venue is the center of a company of people who do not fit into mainstream bourgeois society, and are comfortable in that fact. Its presence and activities are of great influence to the lived dimension of space. Exploiting Yo-Yo as a coffeeshop guarantees its economic viability: it would not run on coffee and apple pie alone. The municipal sign informally requesting people not to smoke joints is erected squarely in the space where Yo-Yo sets up its street terrace. It is duly ignored by the customers of Yo-Yo:

'Such a ban, come on, what is it you want. I am simply sitting here and smoking my joint. That sign, where is it applicable? If I move my chair over there, then I fall outside its reach? Come on, it doesn't work like that.'

Smoking a joint however on Yo-Yo's street terrace has become an act of defiance. Something they have always done naturally has suddenly become a statement. As a consequence, the space has changed, it has moved away from those who have inhabited it for so long. The ban—even though it is not formal, and even though it is not formally enforced—and all that it is perceived to represent permeates the lived dimension of the space.

The ban on the village green was not primarily directed at a change in the lived dimension such as was the case on the shopping square and the playground. Nor was it inspired by events or actual experienced nuisance in the lived dimension. As we saw, the ban hardly figures in the lived dimension of space of the village green. When it does enter the perceived dimension it is usually via external media attention. When I came to the village and started asking questions I was immediately

¹⁴¹ A worry for that matter that proves to be well-founded.

suspected to be a journalist. For some people this was a reason to flat-out refuse to talk to me and for others to feed me popular images of youths snorting large amounts of cocaine.

'It's Saturday evening around 10 p.m. I am sitting on a public bench at the harbor end of the square and I've just been talking to a somewhat grubby man in his sixties. He accosted me whilst walking past and joined me to talk about how beautiful the village is and how nice the harbor area is. He was born and raised here. He stays on to chat, is clearly happy with the company, apparently his wife is in hospital for a while now. He is pretty drunk. After a while another man bikes past and comes to a full stop when he sees us. Hey! he shouts to my interlocutor, you said you were going home! This man also joins us, and he is really drunk as a skunk. He can tell me everything about the village, and about drugs in the village. Nah, no soft drugs, the smell is too identifiable. The kids they snort it up, inside the cafés, in the restrooms. He's worked behind the bar, you see them go to the back and when they come back, you look into their eyes, and you have to be really dense not to notice what is going on. The man continues on in this fashion for a while, until he eventually gets the other man to join him for just one more drink.'

As the perceived dimension 'propounds and presupposes' space, perceived space at times translates into lived space as a self-fulfilling prophecy. Formal regulations can alter the perception and subsequent experience of a space in a substantial way. The following anecdote from the shopping square illustrates this:

'A lazy autumn Sunday afternoon on the shopping square. I've been talking to some youths I know, but they have moved on. Close by a man I haven't seen before on the square has been standing in a relaxed pose and taking in the scene. When I am on my own again he accosts me. He asks me who I am and what I am doing. His manner is easy and conversational, he's clearly up for a chat. He hasn't been on the square for ages, but he used work close by and come often. Today he was in the neighborhood and decided to drop by. He really likes the square, it's a place where one feels comfortable, feels at home. To emphasize his point he points out to how I am sitting, and I have indeed reclined into a rather leisurely position. "I like it when it is lively, and the square is alive, the people here don't hide away. Too many people stay inside and hide, messed up with their own personality and afraid to come outside. That's a shame, because here is where you get your energy, from being here, outside." When I ask him if there are any bans on the square he—somewhat to my surprise—says no: "If there were bans on the square I'd see cameras, and I don't see any. If there were cameras it would be unsafe here, weapons, drugs, you know." In response I point out the various cameras in position on the square, and subsequently the signs stating the bans. Perhaps I shouldn't have, their presence seriously disillusioned him. His response though is very illus-

trative. "Oh yeah. Now I see them, I hadn't noticed. I didn't know it's like that here. Now that I know I look at the place differently. You don't feel free in your movements. You know, when you go to a playground with your kids and you see a sign not to disturb the neighbors, you no longer move freely." The realization of the cameras and the bans moreover instigates my respondent to continue on an "us and them" narration as he reacts against "the Dutch"¹⁴²: the Netherlands has no identity. If you've been somewhere else and you come here, you really don't get happy. The Dutch don't know who they are. The Netherlands is disrupted by rules.'

For this particular respondent the presence of the bans shifts his perception significantly. They change the square from a place where you get energy and really feel at home, to a place where you no longer move freely and that is subverted by 'the Dutch' and their pathological inclination to regulate.

In Relation to the Planned Dimension

On the shopping square perceptions figure strongly, it is not a bland space. In the above we saw how the realization that bans are active on the square substantially changed the perception my collocutor has of the square. The dynamic also works the other way round, whereby the perception of the space induces the bans. The youths targeted by the bans explain the presence of the bans because the square is perceived to be unsafe. They blame this mistaken perception on popular media, steadfastly depicting immigrant youths as petty criminals.

'Those old people, they sit in their homes and look at "Opsporing Verzocht"¹⁴³, and then they come here and they don't see the difference. They think we are all criminals.'

On this particular occasion, the group I was talking with went into how hurtful this unjustified ascription was:

'We are not like that. We are not like the gypsies who also come here in their big cars. They are really trash. They would rob an old lady for a few euros. We would never do that. If we rob someone, we take a mature guy, you know, one that can fight back.'

¹⁴² Earlier he has identified himself as a Hindu from Surinam who came to the Netherlands when Surinam became independent in 1975. Moreover he states he is forty-two years old (and a grandfather), meaning he was about six years old when he came to the Netherlands. Nevertheless, in this context he clearly does not identify with 'the Dutch'.

¹⁴³ *Opsporing Verzocht* roughly translates into 'wanted by the police'. It is a television program that has aired on Dutch TV since 1975. It is a joint venture between the Public Prosecutor, the police and public broadcasting channel. Its format consists of the general public being asked to assist in solving police cases.

The perceived dimension of a space is however not just the realm of those who experience a space first hand. The perceived dimension is also inhabited by those who do not experience the lived dimension of a space. Put in a less complex formulation, the perceived dimension is also the domain of popular opinion. On the playground, therefore, stakeholders worry about the perception the ban—materialized through the sign—emits about the square. Some object because they feel the ban sends out a message of repressive and intolerant space with which they do not concur. Others object because they feel the ban marks the space as problematic and this could negatively influence the value of their property. Either way, impression management towards the outside world was a marked argument against the ban.

On the village green by contrast, the working of the perceived dimension is not from the local space to the wider world; rather, it is perceptions of the wider world that are projected on the local space. What is seen to happen elsewhere gives reason to take action within the local realm. As we have seen, the use of soft drugs in public space did not form a problem for the public order of the village green. Drugs however did figure strongly in general anxiety about unwanted developments in the village. The following anecdote reflects the ingrained narrative of the character of the village and an abhorrence of the societal degeneration elsewhere.

'A Saturday evening in August, I am at the village green near the harbor talking to a small group of men in their sixties. One of them answers my question set. The village is beautiful, it is really wondrous. There was an open market on the square today and look, it is completely tidy now. There won't be anything open tomorrow (i.e. the Sabbath), all the restaurants and cafés will be closed. He supposes that someday they will open, like everywhere else, but he sincerely hopes it will be after his time. He comes here every day, on his bike, tours around the harbor. Sometimes he comes several times a day. The conversation shifts to another person present, but somewhere he interrupts: "Did we see on the news? What occurred today in Amsterdam? That, well that he really found terrible, and the Minister (of Defense) participating and everything, all those children, all those homosexuals, the counseling in schools, dreadful." The other men present nod and murmur in assent. I recall that the Gay Pride had taken place that day.'

The perception of soft drugs being used publicly elsewhere and posing problems, instigated the ban being implemented in the village. The motivation of the ban was to prevent such conduct from gaining a foothold in the community; the effect of the ban in the perceived dimension is the leading reason to install it. As the bill proposing the ban explicates, and the municipal communiqués repeat, the ban was installed to disseminate the idea that the use of soft drugs in public space should not

be considered normal. The ban on the village green was not primarily directed at a change in the lived dimension, such as was the case on the shopping square and the playground. Nor was it inspired through events or actually experienced nuisance in the lived dimension. Moreover, the ban hardly figures in the lived dimension of space of the village green. It doesn't figure in the embodied experience of the space and broadcasting its existence in the physical space through municipal signs or notices was never contemplated. The intervention of the ban on the village green was solidly directed at the perceived dimension.

7.4 In Conclusion

The main question formulated at the beginning of this chapter was what the actual impact is of the bans in the shared spaces of everyday life. We subsequently explored this impact at the legal level, in the everyday experience of space, and in the perception of space. Whereas the legal working of the bans was explored through their impact on the legal reflections of those affected by the ban, their spatial working was investigated socially and symbolically, that is to say in the lived and the perceived dimensions, respectively.

At the legal level the bans have a relationship with the manner in which the law, and the authority that emanates the law, is valued. The juridical technicalities of the bans have very limited significance. The content of the ban primarily indicates who has the upper hand in the planned dimension of space. From the case of the shopping square, it becomes clear however that merely getting the ban installed does not ensure a winning hand in the *overall* production of space. Put simply, installing a ban in a public space does not automatically show who is boss in that space. Moreover, non-effective enforcement and effective noncompliance give a ban an effect at the legal level that is the opposite of what the proponents of the ban bargained for. The bans then work to undermine the force of law, rather than the force of law reinforcing the social norms codified by the ban.

The social working of the bans finds expression in the lived dimension of space. Whether the bans figure in the lived dimension is strongly related to whether they address an issue that occurs in the daily experience of space and whether the ban is itself proclaimed in the space. An intervention aimed at the perceived dimension of space—such as the case of the village green—need not play any role in the actual experience of a space. A symbolic regulation can have only negligible effects on the lived dimension of the production of space. An important factor is whether the ban is physically represented in space and how obtrusively this is done; even when a

ban is inscribed in the physical manifestation of a space, the cue can still be missed by those moving about in the lived dimension. Noticing a municipal sign stating a ban is less a matter of course when the issues it addresses do not play a role for the observer.

All three bans figure substantially in the perceived dimension of space, though the manner and level of their interference in the perceived dimension varies. In all cases the perceiving is done by an audience greater than solely those experiencing the space in real time. The perceived dimension of a space is inhabited and formed by everyone with any knowledge of the space, ranging from the daily habitué to an unconnected newspaper reader.

By regarding the working of the bans the interconnectedness of the three dimensions that together produce space comes to the fore. The bans are an intervention in the planned dimension of space, but their effects resound and reverberate in the other dimensions. The man visiting the shopping square after a long absence is seriously disillusioned when he learns from me that there are bans and CCTV installed on the square. His narration relays how a ban can substantially alter the perception of a space and consequently how that space is experienced. The resident on the playground continues to smoke a joint on the street terrace of Yo-Yo, but the sign raised on that spot changes this act from business as usual to an act of defiance. His account demonstrates how a ban changes the everyday experience of a space and thereby alters the perception of that space. Vice versa, the shopping square and the playground are examples where the lived experience of a space induces people to seek the enactment of restrictive regulations. In a different dynamic, the village green describes how the perception of the local space in relation to the perception of spaces elsewhere can induce regulations to be set up as preventive measures. Space and law are thus intertwined: law impacts the spatial level, and vice versa.

8. In Conclusion: Playing It by the Rules

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Epilogue

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Playing It by the Rules

The time has come to conclude. In the previous chapters several lines of inquiry have been set out and followed through. In this chapter the red line running through this work is reviewed, and eventually traced to the explanation of the title heading this study: 'playing it by the rules'.

8.1 A Peculiar Phenomenon

The research was triggered by curiosity about the sudden proliferation of bans on the use of soft drugs in public space, against the backdrop of the widely publicized ban on smoking cannabis installed on Mercatorplein in Amsterdam in 2006. The ban on Mercatorplein was firmly positioned as a necessary response to public order problems caused by raucous immigrant youths drawn to the square because of the multiple coffeeshops in its vicinity. The sudden rise of similar bans in other localities invited investigation into what these bans were indicative of. The incipient question posed was:

'What has been the development in recent years in the coming about of local bans on the use of soft drugs in public space, by whom and why were these bans solicited, and what were their effects in the situations in which they figured?'

This starting point evolved into an examination of larger issues concerning the relevance and dynamics of shared spaces of everyday life, the legalism creeping in social relations, and the dialectical relationship between law and social space. The first step however concerned the empirical reply to the exploratory question above. The answer was sought along two different lines of inquiry: a survey on the prevalence and the juridical quality of the bans, and a qualitative investigation into why, by whom, and to what effect. The first line of inquiry concerned a national inventory, the second line of inquiry consisted of case-study research.

The National Inventory

In the first half of 2009 a national inventory was set up with regard to the prevalence of the bans. The results surprised. It transpired that over eighty municipalities had such a ban in place, a ratio of circa one in five. The majority of those bans had been enacted in small municipalities with less than forty thousand inhabitants, and more often than not the bans appeared in places that did not accommodate a coffee shop. It quickly transpired that the ban on Mercatorplein in Amsterdam was far from exemplary for such bans in general. Overall, the bans could be categorized into three reasons for establishing them: nuisance experienced in a specific space, nuisance experienced as deriving from specific individuals, and nuisance defined on the use of soft drugs in itself.

The general juridical exploration of the content of the bans also resulted in some notable findings. The majority of the bans had been drafted in debatable phrasing. More than half had been formulated to be applicable to the entire territory of a municipality, although similar total banning of alcohol consumption had already proven legally untenable. Of the remaining ordinances targeting specific locations, many had placed the authority to enact a ban with the Bench of Mayor and Aldermen, whilst public order issues fall under the jurisdiction of the mayor. Despite these deficits, no one ever contested the juridical validity of these restrictive interventions in public space. When the bans were eventually judged upon by judicial authorities, this occurred in a procedure initiated against the refusal of a municipality to install a ban on the public use of soft drugs in a certain locality.

Residents of a neighborhood playground in Amsterdam had requested a ban on smoking cannabis to be installed on their playground. When the municipality denied their request, the applicants of the ban initiated and pursued legal proceedings up to the highest court on administrative law: the *Raad van State*. The *Raad van State* ruled in the end that the municipality lacked the authority to install such a ban, as the use of soft drugs was already prohibited by the national Opium Act. This ruling had three striking consequences. First, it effectively negated all municipal bans on the use of soft drugs. Second, it contradicted the established legal accord that the actual use of substances falls outside the scope of the Opium Act. Third, it contradicted the doctrine of motive, which argues that a lower authority can duplicate a regulation of a higher authority if it does so on different grounds than the higher authority. The ruling of the *Raad van State* was not the last judicial word on the matter. In subsequent test cases brought to court by the Public Prosecutor concerning comparable situations, the verdicts diverge from the ruling of the *Raad van State*, and amongst other considerations reiterate the doctrine of motive.

To summarize, answering the question ‘what has been the development in recent years in the coming about of local bans on the use of soft drugs in public space’ brought forward remarkable answers on both the number and the juridical qualities of these bans. With regard to prevalence there turned out to be far more bans than initially expected, and also in situations that held little similarity with the media-genic turmoil on Mercatorplein. With regard to the juridical quality it emerged that many of the bans had a shaky juridical grounding, even before the *Raad van State* ruled all of them nugatory. Neither their tottery juridical basis nor their restrictive content however induced action to be undertaken to abolish the bans. This falls in line with the observed shift in emphasis from public health issues to nuisance in Dutch policies on drugs. When eventually the bans were judicially reviewed and found wanting, the issues under discussion pertained to the reach of the Opium Act and doctrine of motive. The quality, production, and dynamics of the spaces in which these bans operated did not enter front stage.

Three Cases Further Investigated

Having established that over eighty municipalities had an ordinance prohibiting the public use of soft drugs, often with faltering juridical grounding, it became time to focus on the second part of the incipient question, namely ‘why and by whom were these bans solicited and what were their effects in the situations in which they figured?’ To investigate these queries three case studies were selected from the eighty-one cases found. One was selected for each category discerned on the basis of the motivation for installing a ban: nuisance experienced in a specific space, nuisance experienced as deriving from certain people, and nuisance experienced by the act of using drugs in itself. In each case study the focus of the research lay with the physical locality in which the ban figured. These localities were respectively a neighborhood playground in Amsterdam, a local shopping square in Tilburg, and the village green of Spakenburg.

Methodology

The three case studies were investigated in a qualitative fashion through a triangulation of research methods: participant observation, interviews, and document analysis. The basis of the data collection consisted of extensive onsite observations, including numerous street interviews held with people going about their business on

the sites. The observations focused on the social dynamics in the spaces and the street interviews centered on how people perceived and lived the spaces under investigation. I structured the street interviews, which I held with a wide variety of people, in different localities and under diverse circumstances, by always starting with the same three questions: which three words would you use to describe this space; how often do you come here and why; is anything prohibited here that is not prohibited elsewhere? Transcriptions of these observations and street interviews form the backbone of this research, and I have quoted extensively from these field notes. Additionally, document analysis was employed to map out the formal processes surrounding the bans. It focused on institutional communications such as policy documents and judicial briefs on the one hand, and on reports in the media on the other. Arranged interviews with professionals and stakeholders affiliated with the spaces under scrutiny filled in blank spots.

Characteristics of the Case Studies

The first case study concerns a neighborhood playground in the inner city of the nation's capital. The playground runs the length of a city block and accommodates various outdoor equipment geared towards pre-teens. It is flanked by predominantly nineteenth-century-built residential housing and at one end lies adjacent to the street terrace of a coffeeshop. This coffeeshop has been housed on that spot for nearly twenty years. Besides selling organic cannabis, the coffeeshop also functions as an art gallery and community meeting place, and it is the organizational base of living room projects, repair cafés and the yearly community feast. The neighborhood of the playground is traditionally a blue-collar working district. Since the turn of the century however the area has steadfastly been gentrifying and as a consequence the demographics of the area are changing. The playground caters to a wide base of users, who carry widely varied opinions on both what exactly constitutes nuisance and how in the event of nuisance it should be addressed.

The second case study pertains to a local shopping square in the suburb of a southern provincial town. It is the center of a neighborhood built in the 1960s for white-collar workers, according to then dominant ideas in urban planning. The shopping square has the form of a U and is flanked by high-rise apartment buildings. It struggles with a lack of occupancy and the current shops cater predominantly for the lower end of the market. Many of the first-time residents of the area, now at an elderly age, still reside there, but in the past two decades there has been a large influx of non-Western immigrants. Notably, the neighborhood houses one of the largest concentrations of Somalis in the Netherlands. The different groups in the

neighborhood all stake their claim on the space of the shopping square, vying with one another for the space to accommodate their daily routines and to meet their idea of socializing. The needs of these different groups diverge and often conflict. The area has a bad reputation, though the perceptions of the many different users vary considerably and not all are negative.

The third case study considers the village green of a prosperous and homogeneous village in the Dutch heartland. Though of old a fishing village, it lost its seafaring tradition when the Afsluitdijk cut off its access to the open sea. The village is renowned for its picturesque harbor and traditional folklore dress which is still worn, and it has a sound touristic appeal. It is also firmly set in the Dutch bible belt and the church figures strongly in everyday society and local politics. The community contentedly displays the wealth acquired through hard work and takes pride in taking care of its own people. The village has had some bad press on the topic of drug use, specifically cocaine. Though the use soft drugs is acknowledged in the village, this hardly figures in the central public spaces of the community and is generally not considered a public order issue.

Who Instigated the Ban?

In all three cases the initiative for the ban originated in the setting for which the ban was sought. The instigators of the ban are most clearly discernible in the case of the playground. Here the ban was aspired to by residents living directly on the playground. They formally requested that the municipality install a ban in that space, and initiated judicial proceedings when their request was denied. As we have seen, in the end no ban was installed. Instead their efforts lead to a ruling of the *Raad van State* that declared municipal bans on the public use of soft drugs nugatory. In the case of the shopping square the initiative for the ban cannot be traced back to specific individuals, but rather to public pressure in the aftermath of two violent incidents. The police head of the district denominates the instigators as 'often elderly autochtoneous residents' who via the media and politics endeavor to remove 'blacks' from the social venue of the shopping square. In the case of the village green the precise origin of the ban was obscure, but it was clear the initiative for the ban did not come from the police or the municipal policy level. Rather, it appears to have been pitched via the church councils into the agenda of the town council and subsequently set up without much ado. The common characteristic in the three

cases is that the ban was not imposed from above, but morally entrepreneured from within.

Why Was the Ban Initiated?

All three bans are based on the municipal authority to regulate public order and formally address nuisance experienced in public space. The content of the nuisance experienced however varies. In the case study of the shopping square the behavior targeted by the ban and causing the experienced nuisance is readily observable. The square is a central venue for socializing, and such socializing by Somalis is at times accompanied by the consumption of *qat*, and when the young males convene, often enough a joint is lighted and passed around. The experienced nuisance translates into feelings of insecurity and alienation brought about by the—frequently boisterous—congregation of dark-skinned men. In the case of the playground feelings of insecurity also play a role, but the predominant issue of nuisance is the smoking of cannabis in the locality of a playground for small children. Such behavior is unwanted from passing customers of the many coffeeshops in the vicinity, but also from the sometimes more familiar clientele of coffeeshop Yo-Yo. In the case study of the village green the reason for installing a ban is more opaque. Though some public use of soft drugs does take place, the nuisance this brings about at the level of public order is arguably negligible. Rather, the ban represents the desire to keep disruptive situations discerned elsewhere from entering the societal make-up of the community.

How Does the Ban Function?

On the village green the effects of the ban on the space for which it was called into being are minimal. The ban is not called to mind by municipal signs, nor by confrontational display of the forbidden behavior in the spaces for which the ban has been enacted. Most habitués are not consciously aware of the ban when they move about in the space, and it does not play a role in the experience of the space. For those supporting the ban it figures as a protective barricade for all they find good in their community against the corruptive influences perceived elsewhere. For others it is a confirmation of what they already perceived to be true of the place. The ban figures mostly in the external perception on the village and its community.

On the shopping square the ban on psycho-active substances is broadcasted broadly, through municipal signs, posters, and flyers. On one municipal flyer attention for the ban on *qat* is combined with the reminder that defecating in public is also forbidden. In spite of the forceful advertising of the ban, it is not readily adhered to without an observed chance of formal enforcement. On the one side these bans fortify the perception that the shopping square is an unpleasant and insecure space that requires such regulations. The subsequent disregard for the bans enhances the idea that the space is ranging out of control. On the other hand, for those targeted the instalment and enforcement of the bans gives rise to the perception that the measures are aimed at displacing their persons from that space.

On the playground, though no ban was actually installed, the effects of the ban hovering over the space are readily discernible. At a tangible and physical level the request for a ban induced the erection of a municipal sign stating that the playground is not intended for loitering or smoking cannabis. This sign acts on the one hand to the applicants of the ban as a constant reminder of their failed endeavor, and on the other hand as a constant reminder to those opposing the ban of the assault on the cherished character of their space. This antagonism resounds in the media appearances of the proposed ban. Though no formal prohibition is installed, the events surrounding the ban have charged the smoking of cannabis on this spot with meaning and intent previously absent from the act.

In Review

Reviewing the three case studies the answer to the question as to why the bans were called into play patently pertains to nuisance perceived and/or experienced. What exactly comprises the nuisance differs from one situation to the next, but in each situation it is taken seriously enough to instigate action. Who instigated the bans cannot be traced conclusively for each case, but it does become clear that the bans are not initiated by institutional players. The initiative for the bans derives from the setting for which they are proposed, and they are prompted by people using that space in contest with others. The question on the effects of the bans at first glance leads to ostensibly different answers. The common ground is that the bans resonate in the way the spaces are experienced and perceived.

To sum up, the three case studies are substantially different with regard to the feel of the physical localities, the people who populate them, and the content and status of the bans figuring in them. To state the obvious: these cases do not uniformly echo

the ban installed on Mercatorplein. Nonetheless, they do connect with each other at a fundamental level of space and law. By investigating and comparing them on their communal points it becomes possible to move beyond the individual and factual answers to the questions of 'why and by whom were these bans solicited and what were their effects in the situations in which they figured?' New questions arise from this comparison at a more abstract level and the focus tilts towards the role of the legal in the spatial dimension, the impetus to formalize social control, and the wide span of the working of the legal in the social.

8.2 The Legal and The Spatial

Building on the results emanating from the case studies the following more general and abstract query was formulated:

'How does a legal regulation relate to the space in which it figures?'

In the introductory chapter this question was broken down into three sub-questions that each formed the basis for a thematic chapter. Overseeing the theoretical continuation of this study, it transpires that the question includes three different but related issues. The first issue is why a social norm on behavior in a public space becomes codified, with the focus on the enterprise of having a norm translated into a formal regulation, i.e. juridification. The subsequent issue is why this is done for a particular space. That such an endeavor is undertaken for a certain space in particular says something about the relationship between that space and the people who use it. The concluding issue is what the effects are of codifying a norm with regard to shared space. This culminates in the question of whether juridification is a facilitator or an obstacle when negotiating society over difference.

These issues are addressed by unraveling how the spatial operates. The question of why juridification takes place is answered with the help of Lefebvre's conceptual triad on the production of space; the question of why formal rules are entrepreneurial for a specific space is answered with the formulation of emotionally owned space; and the question on the desirability of juridification is answered by investigating what it entails to 'play it by the rules'.

Securing Shared Understanding

Lefebvre's conceptual triad refers to the different dimensions that together produce space. Space is first of all conceived, constructed, and engineered, both physically and through a regulatory system. This is the planned dimension of space. Planned space is taken into use by people: it is employed, traversed, and experienced. This is the lived dimension of space. Planned and lived space is also regarded, evaluated, and decoded. This is the perceived dimension of space. The perceived dimension mediates between the planned dimension and the lived dimension. Perceived space moreover both presupposes and propounds space, it is both the result and the determinant of how space is experienced in the lived dimension. Lefebvre summarized this by stating that space is both produced by society and in turn produces society.

The local bans on the public use of soft drugs are interventions in the planned dimension of space, and they are the result of and resonate in the lived and perceived dimension. The codification of a social norm pertaining to shared space is entrepreneurial to secure shared understanding—note that this does not automatically entail consensus—in the planned dimension of space. Frames of reference informing the perceived dimension of space differ between users of space, and confrontations in the lived dimension of space ensue. Codifying a norm is a strategy to both secure the own norm as the prevailing norm and to ensure that the three dimensions of space line up in harmony for those who subscribe to the secured norm. In this section the focus is on how the bans emanate from the lived and perceived dimension.

Confrontations in the Lived Dimension of Space

The localities researched in this study are public spaces because they are ruled by a legal regime of public administrative law and are in principle accessible for all. This entails that they are shared with strangers and it is with these strangers that a shared space has to be negotiated. In these shared spaces of everyday life people are confronted and have to deal with others they do not personally know. Such interactions are ideally based on shared expectations. The strangers encountered in a shared space may not be personally known, but they can be familiar in the sense that they are comprehensible. In the embodied experience of lived space, familiar strangers and familiarity with the public sociality of a space contribute to under-

standing a space and the situation in which one finds oneself; this public familiarity organizes understanding of what to expect and which tactics to employ.

When expectations are not shared but based in different frames of references, when strangers are not only unknown but also unfamiliar, when the *rules* of engagement are unclear, people become disorientated, and in the case of previously familiar turf they become alienated: they lack the knowledge to assess the lived experience of the moment, because it does not fall in line with their perceptual frame of reference. Occurrences experienced in the lived realm then startle and confuse—and in a negative experience, disrupt and agitate.

Dissent in the Perceived Dimension of Space

The perceived dimension is the mental realm in which space is imagined, both in terms of how it is and how it should be. The perceived dimension is informed by and in turn informs the other two dimensions of lived and planned space. It is grounded however in the frame of reference of the perceiver, and this explains the wide variety: the qualified users of the spaces studied often operate from different frameworks of reference. The impression that a space 'is just like the marketplace in Morocco' means very different things to the two people who evoke that same comparison to illustrate their deciphering of a space. If content-wise the frames of reference informing the perceived dimension can differ widely between persons, structurally they share certain characteristics; these frameworks incorporate personal experiences, cultural grounding, ideologies, and preferences. They also incorporate unconsciously held beliefs. The focus here is on those unconscious beliefs, and Bourdieu's concept of *doxa*—the universe of the undiscussed and hence undisputed—is used to understand what happens when unconscious beliefs are put to question. *Doxa* can be disrupted by the practices of others, whose behavior transgresses doxic norms and in the process makes those norms reflective. Once a norm becomes consciously held, it also becomes available for discussion and dispute. To defend the integrity of a deeply held conviction, transformed from an unconscious belief into a conscious opinion through the actions of others, the holder of the disrupted *doxa* will strive to secure the belief by codifying it.

We have seen that manifold perspectives on the issue at hand exist: alongside the conviction that smoking a joint in public is completely inappropriate exists the belief that a ban on using soft drugs is an undesirable and unnecessary curtailing of the publicness of public space. These multiple and sometimes conflicting informal

norms exist in the perceived dimension of space. By contrast, only one norm reigns in the formal, planned dimension of space.

Shared Understanding in the Planned Dimension of Space

The legal regulations viewed in this research derive from the social setting in which they operate. They are the formalization of an informal norm. As a codified rule, they are part of the planned dimension of a space: the dimension of the conceived space, professionally constructed and formally organized with a specific goal. There exists only one variant of the formal norm: the use of soft drugs is not appropriate in the specific locality in which the ban applies. The planned dimension of physical structures and regulatory measures offers the best basis for shared understanding of the applicable rules in a space.

Morally entrepreneuring a social norm into a legal regulation secures that norm because a formal norm is backed by formal sanctions: it can be formally enforced. Moreover, after transgression of the norm it is not necessary to negotiate the value of the norm. One can simply refer to the regulation and argue that regardless of personal viewpoints, the contested behavior is simply not allowed. There is furthermore an additional dynamic at work. Though law is nowadays generally regarded as instrumental in nature, something of the classical idea of law representing a higher order still resonates in the perception of law. The idea that law is not founded, but rather found through legislation entails that successful codification represents a higher truth than human and discussible opinions. As a consequence, a former doxic belief secures a quality of 'truth' when it acquires juridical status.

In Review

The quality of a space will differ from one person to the next. First of all the lived experience of one person of a space will be different from the experience of the next, for example because their emotional attachment or their frame of reference regarding the space differs. Likewise the perceived dimension of space will vary from one person to the next. The point is that when the three dimensions of space do not line up for a person, it will lead to unease. Hence people will try to bring the three dimensions into accordance with each other. The case studies show how people for whom the three dimensions of a space do not match attempt to bring these three

dimensions into line with each other through an intervention in the planned dimension. By instigating a regulation in the planned dimension, they seek to bring about a change in the lived dimension and line it up with the perceived dimension. The crux is that the perceived dimension can hold multiple and diverging norms on a space. The planned dimension by contrast offers the foundation for one shared understanding of the norm applicable in that space, not on the basis of consensus, but because that is simply how the rule is.

Emotionally Owned Space

Law and society tend to be viewed as two peas from different pods, and formal and informal control as communicating vessels that balance each other out. As the case studies however have shown, the presence of a formal ban does not demonstrate that a space is void of informal control. In reference to the pragmatic question posed earlier: the fact that a ban on using soft drugs figures in a space does not automatically mean you should not want to buy a house there. When the codification of a social norm is morally entrepreneured for a certain space, it may indicate that nuisance occurs in that space. The case of the village green however demonstrates this need not be the case. Rather, when the effort is made to bring a formal regulation into force for a certain space, this signals the relationship between the moral entrepreneurs and the space.

This study focuses on spaces that are shared, with familiar and unfamiliar strangers, in everyday life. Because these spaces figure prominently in everyday life, the people who use them in their quotidian practices are prone to become emotionally attached to them. These spaces are likely to function as a setting for physical, social, and autobiographical experiences that change a space into a place for people. Such emotional attachment makes a space important to a person and can evoke feelings of—as I have coined it—*emotional ownership*. Emotional ownership pertains to a sense of ownership that is not juridically based, but founded on the emotional attachment one has to a space.

The sense of ownership finds expression in the fact that people consider themselves to have a right over a certain space. This right is felt and asserted in the interaction with others with whom the space is shared. It can for example be claimed because one person has been in a certain space longer than the other. This is recognizable in the stance of the elderly residents of the shopping square: they pioneered the new development in the 1960s, raising their children and living their lives in that locality. Accordingly, they feel the space to be their space. The appeal to seniority is also

recognizable in the argument of the coffeeshop holder near the playground, who asserts that his enterprise has been situated there for years and that the complaining newcomer should not have moved into the area if he objected to the presence of a coffeeshop. Vice versa, the competing group on the playground vying for a ban in that locality refer to the meaning the space has as a setting for their quotidian practices, their children playing in its confines, the proximity to their private space. The youths on the shopping square in turn argue that it is their '*plekkie*', their turf in which their daily life takes place. Consequently, they ascertain their right to be there and do not plan to be driven away. On the village green the emotional ownership is based not only on the meaning the space has through autobiographical, social, and physical experiences for individual persons, but also as a setting for the larger community narrative. To be clear, emotional ownership does not principally challenge the publicness of a space nor negate the right another person may have in that space. Rather, emotional ownership functions as a form of reasoning to justify why one has more rights over a space than another person and why a space should be more accommodating to the one asserting the strongest claim of emotional ownership.

The sense of emotional ownership moreover expresses itself not only in having a right over a certain space. It also finds articulation in that people feel responsible for and take responsibility over a space. This can find expression in literally keeping a place clean. It can also find expression in defending what they feel to be the essential character of a space. In the case of the playground, this pertains to keeping it free from a restrictive regulation on the use of soft drugs which would curtail the traditional tolerant and open character of the space. For the youths and the Somalis on the shopping square, care over the space relates to the collective system of warning for possible enforcers of the many formal regulations in the space. The shared lookout ensures that the space can be used and enjoyed for socializing in accordance with the group needs and urges, rather than in accordance with the restrictive regulations.

The concept of emotional ownership helps to unravel why people come into action over a certain space. Emotional attachment does not always instigate action; other issues such as personal traits, institutional context, available alternatives, success assessment, and so forth also factor in. When however action is undertaken, emotional ownership can help trace why this takes place, beyond the one-dimensional explanation of territorial drift. To summarize, the three case studies all consist of shared spaces of everyday life: these spaces figure in the quotidian practices and experiences of many of their users, and are prone to have emotional meaning for

many of its users. Under certain circumstances, an individual will assert emotional ownership over a space that holds emotional meaning for him or her, and from this basis feel the right and the duty to undertake action with regard to that space. One possible route to take action is to play it by the rules and instigate a legal intervention in the planned dimension of space.

Law as Frame or Cause of Conflict

Space is relevant because it is constitutive to the social order, and presence in space is crucial in order for persons and groups to participate in society. As Lefebvre worded it: any social existence aspiring or claiming to be real must pass the trial by space. Being spaces of everyday life, the localities of the case studies play a pivotal role in the negotiation of the social. Moreover, the meaning a space has for an individual combined with the fact that this space has multiple qualified users creates a fertile ground for conflicts. The question that arises is whether juridification facilitates or impedes the negotiation of the social in the shared spaces of everyday life. Is it constructive or deconstructive of an inclusive society offering space to be for all its members? It transpires that this in part hinges on the legitimacy the regulations hold for those effected by the regulations. The legitimacy referred to here is not so much the procedural legitimacy, but rather the content of a regulation and even more importantly from which source the regulation is considered to originate. Rule compliance depends not only on the threat of enforcement, but also on the appraisal of the regulatory system. When people understand themselves to be part of the regulatory system, they will be prone to comply with a rule even if they do not agree with its content. Moreover, they will address their discontent within the working of the regulatory system. Juridification then can offer the framework within which negotiations on the social take place. On the other hand, when people consider themselves outside the regulatory system, they will either disengage from or resist the regulatory system. Juridification then does not offer a frame for communication, but instead works as a catalyst for further polarization.

Dissent can take on two diverging routes: it can be played by the rules or it can be played out on those rules. In this formulation the rules refer to the rules of engagement. When dissent towards a norm pertaining to a shared space of everyday life is played out by shared rules (whether literally by the rules via judicial procedures, or else via known and comprehended procedures of working the media or political networks), law forms the frame for the contest. Here, then, law provides a structure of shared understanding on how the game is played, the foundation or pillar for negotiating the shared social, and the grounds for claiming victory or acceding de-

feat. Law can offer a frame for living together despite differences, be it cultural, generational, or ideological. By contrast, when the rules are contested by opposing the regulatory system that has authored them, law neither bridges differences nor forges new bonds. In this case, law is not the shared frame of reference, but the materialization of unequal power divides beyond the possibility of negotiation, and thereby the barrier on which communication founders.

8.3 Playing It by the Rules

'Playing it by the rules' has connotations of a contest or a game. The production of space can arguably be likened to a game, in the sense that it has winners and losers. There are those who manage to line up their three dimensions of space in accordance with each other, and thus secure a feeling of familiarity and connection with the spaces in which they live their everyday life. These are the victors. The needs and wants of qualified users of a space however vary and are at times at odds with each other. When the three dimensions are lined up in harmony for the one person, they can be out of sync for others. These are the people who lose out. Disorientation is their fate, as how they experience a space is not in accordance with how they perceive a space to be. Alienation occurs when the regulatory system organizes a space counter to the needs and wants of a group. In a worst-case scenario, a social group fails to pass the test of space. A social entity failing to produce its own space fails to maintain its degree of reality and languishes into an abstraction. Thus the production of space can be compared to a game, but it is a serious game of existence or oblivion.

Playing it by the rules further refers to the legal intervention in the planned dimension of space. It is via the planned dimension and its regulatory quality that an intervention is played out. The game of producing space however is not only played out in the planned dimension, and a strong hand in this dimension does not ensure overall victory. Entrepreneuring the regulatory system of a space in accordance with the social norms of one's perceived dimension does not guarantee that the lived dimension will also fall in line. It is quite possible that other qualified users of the space will not abide by the rules: compliance cannot be taken for granted. Not everyone will be playing the 'game' of producing space according to the same rules. Normatively viewed, playing it by the rules invokes an idea of fair play. Playing it by the rules however does not ensure that the other party will not cheat. Moreover, the opponent can argue that the rules themselves are not fair.

Playing it by the rules hence also pertains to the issue of whose rules are used and how the regulatory system itself can be a point of contention. The rules can offer a framework within which contention is fought out, providing the structure for interaction and delimiting the battlefield. A shared understanding of the rules therefore does not entail consensus on the issues at stake, but rather consensus on how the game is to be played. The case study of the playground demonstrates this acceptance of the rules of the game, whilst the issue of whether a ban should be installed remains a matter of contention. By contrast, it is also possible that the rules of the game are contested and the authority emanating the rules is negated. The rules themselves are then the cause of conflict. The case of the shopping square illustrates how non-acceptance of the regulatory system leads to non-compliance with the rules. Law then is part of the problem, not part of the solution.

Epilogue

A question often asked is whether the bans are effective, or in other words: whether they work. What is of course meant is whether the bans attain what they proclaim to strive for. My answer unfortunately will not satisfy those who are only casually interested. This is in part because there is no univocal answer to this question, and in part because this research was not set up as a straightforward policy evaluation. Following from the central question of this research as to what these bans were about, the leading question was not *whether* the bans worked, but rather *how* they worked. The comprehensive reply makes clear amongst other things that the answer to the question whether the bans are successful greatly depends on your point of view.

Both space and law are burdened with strong normative presumptions. I have an opinion on what constitutes good space, and I am interested in what you think space should be. Before debating our viewpoints however, we should understand how space comes to be, where the impetus to codify comes from, and what it signals about that space and the people who share it. Moreover, we should understand the impact of a legal intervention on that space in all its dimensions and how that impact will continue to reverberate beyond the direct effect on the lived experience of a space. The production of space can be allegorized as a game: a serious game of existence or oblivion for those 'social entities' competing for the shared space. The players often are not evenly matched, and the rules are tendentious. I believe however that the playing field can be leveled out somewhat by making the game and the rules by which it is played transparent and comprehensible. If nothing else, it will make how the game is set up and by which rules it is played available for discussion. This work encompasses my attempt to advance our understanding on how the spatial comes to be, and how legal interventions impact that process.

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Summary

Research Topic, Research Questions, and Research Design

The study was triggered by the proliferation of local bans on the use of soft drugs in public space in the Netherlands in the first decade of the twenty-first century. The sudden appearance and increase of these bans cannot easily be accounted for by self-evident explanations. The research consequently focuses on legal interventions in public space, and this topic is researched at the concrete empirical level as well as at a more abstract and theoretical level. The empirical investigation regards concretely local bans on the public use of soft drugs, while the theoretical exploration pertains to the relationship between the legal and the spatial.

This combined empirical and a related theoretical inquiry translates into two connected but different question sets that are expounded upon below. The overall research question jumpstarting the study was:

What has been the development in recent years in the coming about of local bans on the use of soft drugs in public space, by whom and why were these bans solicited, and what were their effects in the situations in which they figured?

To answer this question a national survey was organized to find out *which municipalities in the Netherlands have a local ban on the public use of soft drugs, or have such a ban under consideration*. Subsequently three case studies were selected and researched in a qualitative manner to answer the following sub-questions: *How, why, and by whom was the ban instigated? How is the ban juridically shaped? How does the ban function?*

Following the empirical exploration of the case studies a more general and theoretical investigation came about, which can be summarized in the question:

How does a legal regulation relate to the space in which it figures?

This question was explored using the data emanating from the empirical investigation. The overall question was divided into three parts, each focusing on a different process of the larger whole. Translated into questions, these ran as follows: *How does space come to be? Why and how is a social norm codified? What are the workings of a legal intervention?*

As indicated, the research design is two-tiered. The starting point was a national survey. From this survey three case studies were selected and subsequently re-researched in a qualitative fashion. Data collection consisted first of all of fieldwork, in the form of observations and street interviews, secondly of arranged interviews, and thirdly of written materials. From the data analysis emerged initially the answers to the more empirical question set, and these subsequently fed into the queries of and then articulated the answers to the second more abstract question set.

Findings in Response to the Empirical Questions

The national survey executed in the first trimester of 2009 brought to light that eighty-one of the then 441 municipalities in the Netherlands had a local ban in play, and in another thirteen municipalities such a ban was under discussion. The majority of the bans can be found in the smaller municipalities, without a coffeeshop on their territory. More surprisingly, over half of the largest municipalities explicitly did not carry a local byelaw banning the use of soft drugs in public space. Also noteworthy was the fact that a large majority of the existing bans could already be denominated juridically incorrect at the time of the inventory, either because they were formulated to apply to the entire municipality, or because the authority to designate a certain area for the ban had been wrongly accorded. In the course of the research all municipal bans were declared nugatory in 2011 by a ruling of the *Raad van State*. This ruling brought about quite a ruffle in the juridical field, as it—wrongly—stated that the use of drugs is prohibited by the Opium Act and moreover negated the doctrine of motive.

Surveying the various motivations expressed for the existing bans, the reasons for establishing a ban can roughly be divided into three categories, namely nuisance experienced in a specific space, often connected to the presence of a coffeeshop; nuisance experienced as deriving from a specific individuals, whose behavior is connected to the use of drugs; and nuisance experienced by the use of soft drugs in itself, as offensive behavior. Following the inventory three case studies were selected, each case study representing one of the categories named above.

In all three cases the initiative for the ban originated in the setting for which the ban was endeavoured. The common characteristic in the three cases is that the ban was not imposed from above, but morally entrepreneured from within. All three bans are based on the municipal authority to regulate public order and formally address nuisance experienced in public space. The content of the nuisance experienced how

ever varies. The functioning of the bans in the respective sites is not uniform, but dependant on context-specific variables such as the degree to which the ban is advertised, how much the behaviour targeted by the ban actually occurs, the measure in which a ban is enforced, and last but not least, what the ban is considered to represent to the different users of a space. The question on the effects of the bans at first glance leads to ostensibly different answers. Common ground is the reciprocity between the legal and the spatial.

Conclusions in Response to the Theoretical Questions

To understand how a legal regulation relates to the space in which it figures, first the spatial angle is considered. The spaces under scrutiny are defined as shared spaces of everyday life, holding significance for their users at a practical, and more importantly, at an emotional level. From the emotional attachment arises the feeling that one has both a duty to care for and a right to control a certain space over which one does not hold legal private ownership. The duties and rights felt are felt in relation to others also staking a claim on that space. To denote this dynamic the concept 'emotional ownership' is introduced. Emotional ownership correlates to the extent to which individuals participate in a space and consequently partake in how is space is formed. How space comes to be is unraveled with Lefebvre's framework on the production of space: space is produced through the continuous interaction of the lived and experienced dimension of space, the perceived and imagined dimension of space, and the planned and organized dimension of space. People will always try to line up these three dimensions in accordance with each other and their needs and urges. In cases where the three dimensions do not reconcile, disorientation—or worse—ensues. When different people use a space, different modes of production come into play and possibly conflict. Where the one wins, another loses.

From a juridical perspective the codification of a social norm is a form of juridification: the codification of hitherto informally regulated social matters into legal regulations. The consensus is that contemporary society is increasingly juridifying, but opinions vary on whether this constitutes a positive or a negative development. The one view regards juridification as the colonization of the lifeworld, corrupting the informal negotiation mechanisms on which society is founded. The other view perceives law as a viable replacement of disappearing pillars of societal cohesion such as church or political ideologies. In the cases under scrutiny the codification of the social norm not to use soft drugs in that public space is striven for by people who attempt to anchor their deep felt conviction in a legal frame. Practices of some peo-

ple bring to light previously unconsciously held and hence undiscussed opinions, i.e. doxic norms, of others. The bans then are an intentional intervention in the planned dimension of space, by those whose doxa has been disrupted by confrontations in the lived dimension of space. The bans illustrate dissension in the perceived dimension of space and are an attempt to secure a formerly doxal belief into a status of orthodoxy. As such, they reflect the power constellations in a given space, though they do not necessarily express 'who is boss' in the lived reality of that space.

In action the bans have varied effect. Enforcers view the bans as an instrument to keep public order, and their actual implementation as context dependent. Advocates of the bans on the other hand become frustrated by the lack of consistent enforcement. Compliance with the bans occurs either out of conviction or pragmatic considerations. Non-compliance can take on different forms, and is linked with the appraisal of the authority from which the rules emanate. On the ground, the juridical valuation of the bans is determined by what they contain and (are thought to) represent, rather than their procedural legitimacy. The degree to which the bans play a part in the lived dimension of everyday experiences holds together with the degree in which a ban is broadcasted in a space and the degree in which the targeted behavior occurs. As a consequence the effect of the bans in the lived dimension of the everyday is context-dependent, as to place, time, and individual. In the perceived dimension the bans both propound and presuppose the spaces to be a certain way. The bans are considered to be induced by the circumstances of the space, and the way space is considered is formed by the knowledge that it contains a ban.

In the concluding chapter the different lines running throughout the study are reiterated and brought together, and three themes come to the fore: the dynamic of a sub-group in a shared space of everyday life securing its perception of applicable norms and coherent behavior as the shared understanding; the concept of emotional ownership, explaining why people come into action over a certain space; and the question of when law functions as a frame for conflict, and when law is itself the cause of conflict. The title of the thesis, 'playing it by the rules', is linked to the game or contest of the production of space, resulting in winners and losers. It furthermore refers to the rules by which this game is played, rules that are in part positioned in the legal domain. Finally it refers to the circumstance in which the rules played by—and the authority that emanates them—are contested. The measure of the affiliation to the regulatory system of all those involved in the negotiation of society then determines whether law is viewed as part of the problem, or part of the solution.

Samenvatting

Dit boek gaat over formele sociale controle in de publieke ruimte; het onderzoekt de verschillende manieren waarop gedeelde, alledaagse openbare ruimte wordt gebruikt en waargenomen; het richt zich op de wijze waarop de neiging om dergelijke ruimte te reguleren wordt vorm gegeven, en hoe vervolgens formele controle de manier beïnvloedt waarop ruimte wordt gemaakt en gebruikt. Het startpunt daartoe is een onderzoek naar een archetypisch Nederlands fenomeen: lokale verboden op het gebruik van soft drugs.

1. Inleiding

De opkomst van blowverboden

In 2006 werd er op het Mercatorplein in Amsterdam een zogenaamd blowverbod ingesteld: een verbod om op dat plein een joint te roken. De implementatie van het verbod werd gemotiveerd op grond van ernstige overlast op het plein veroorzaakt door veelal allochtone jongeren die op de coffeeshops rondom het plein afkwamen. Het verbod ging gepaard met een aansprekend verbodsbord en ruime -- nationaal en internationaal -- media aandacht. Twee jaar later verschijnen er berichten in de media over blowverboden die worden ingesteld in onder meer Barneveld en Grave, oftewel plaatsen die een andere associatie oproepen dan Mercatorplein. Deze opkomst van blowverboden kan niet eenvoudigweg verklaard worden door veranderende maatschappelijke en beleidsfactoren. Om de opkomst van de blowverboden te duiden worden ze gepositioneerd als verschijnselen van een 'morele paniek' (Cohen, 2002). Dit biedt een kader om te onderzoeken in welke maatschappelijke processen de verboden zijn gesitueerd.

Empirische onderzoeksvragen

De hoofdvraag die het onderzoek deed aanvangen luidt: *Wat is in de afgelopen jaren de ontwikkeling geweest in de totstandkoming van lokale verboden op het gebruik van soft*

drugs, door wie en waarom werden deze verboden geïnstigeerd en wat waren de effecten in de situaties waarin deze verboden een rol spelen? Om deze vraag te beantwoorden wordt eerst middels een landelijke inventarisatie onderzocht: Welke gemeenten in Nederland hebben een lokaal verbod op het gebruik van soft drugs of overwegen een dergelijk verbod? Vervolgens wordt ten aanzien van een drietal geselecteerde casussen nagegaan: a. Hoe, waarom en door wie is het verbod teweeg gebracht? b. Hoe heeft het verbod juridisch vorm gekregen? c. Hoe functioneert het verbod?

Theoretische oriëntatie

De beantwoording van de empirische onderzoeksvragen leidt naar meer theoretische vraagstukken met betrekking tot de maatschappelijke processen die ten grondslag liggen aan de opkomst van de verboden. Derhalve is er een tweede vragen set, die voortvloeit uit de volgende overkoepelende vraag: *Hoe verhoudt een juridische regel zich tot de ruimte waar deze betrekking op heeft?* Deze overkoepelende vraag wordt onderverdeeld in drie sub-vragen: *a. Hoe komt ruimte tot stand? b. Hoe en waarom wordt een sociale norm gecodificeerd? c. Wat zijn de uitwerkingen van een juridische interventie?* De drie sub-vragen vormen elk het onderwerp van een thematisch hoofdstuk. Zoals de vragen duiden positioneert dit werk zich tussen het ruimtelijke en juridische. Het sluit aan en bouwt voort op werken binnen enerzijds de stadssociologie en anderzijds de criminologie als ook rechtssociologie.

2. Lokale verboden op het gebruik van soft drugs in de openbare ruimte

Het Nederlands drugsbeleid

Aangezien de verboden zogenaamde soft drugs betreffen wordt kort het Nederlands drugsbeleid geïnd. Sinds 1976 wordt er in Nederland onderscheid gemaakt tussen hard drugs en soft drugs. Volgens de Nederlandse overheid brengen hard drugs een onaanvaardbaar risico met zich mee, terwijl soft drugs een toelaatbaar risico behelzen. Beiden zijn illegaal, maar het strafregime en de opsporingsprioriteit verschillen. Het gebruik van drugs is expliciet niet strafbaar, zoals onder meer dui-

delijk gesteld in de parlementaire beraadslagingen aangaande het Amendement op de Opiumwet in 1976. In 2005 is gepoogd een nationaal verbod op het gebruik van soft drugs in de openbare ruimte in te stellen. Dit is destijds door de minister van Justitie geblokkeerd, met de motivatie dat het gebruik van drugs niet gecriminaliseerd moet worden en dat openbare orde kwesties onder de jurisdictie van lokale autoriteiten vallen. Coffeeshops zijn aangewezen ondernemingen waar de verkoop van cannabis wordt gedoogd, onder voorbehoud van diverse restrictieve (AHOJ-G) criteria. *Qat* refereert naar de plant *Catha Edulis*. Kauwen op qat-bladeren geeft een licht euforische roes, in Nederland wordt qat voornamelijk door Somaliërs geconsumeerd. In januari 2013 is *qat* formeel als soft drug bestempeld. Het Nederlands drugsbeleid is van oudsher gestoeld op overwegingen van volksgezondheid, maar de laatste jaren verschuift het accent richting overlast.

De landelijke inventarisatie

In het eerste kwartaal van 2009 heb ik een landelijke inventarisatie uitgevoerd onder gemeenten naar het bestaan of ter discussie staan van een bepaling op het gebruik van soft drugs in de openbare ruimte. Van de in totaal 441 gemeenten zijn van 289 gemeenten data verzameld. Er zijn 81 gemeenten gevonden waar een dergelijke bepaling van kracht was, en voorts 13 gemeenten waar een dergelijke bepaling op tafel lag. De meeste bepalingen op het openbaar gebruik van soft drugs zijn te vinden in kleinere gemeenten, zonder coffeeshop. Opmerkelijker is dat bijna de helft van de gemeenten met 100.000 inwoners of meer geen bepaling heeft, en in sommige gevallen wordt expliciet toegelicht dat een dergelijke bepaling overbodig en juridisch moeizaam wordt geacht. De meerderheid van de gemeentelijke bepalingen zijn geformuleerd als algeheel verbod, een minderheid als in te stellen plaatsgebonden verbod. In geval van plaatsgebonden verboden wordt de bevoegdheid tot het aanwijzen van een gebied soms bij de Burgemeester gelegd, soms bij het college van Burgemeester en wethouders. De bepalingen komen geografisch voor in heel Nederland, met een duidelijke clustering in de Randstad, de Bijbel gordel, plekken met een bekende toeristische functie, en het zuidelijk grensgebied. De bepalingen op het gebruik van soft drugs kunnen op grond van aanleiding ruwweg in drie categorieën worden ingedeeld: a. overlast ervaren in een specifieke ruimte; b. overlast ervaren als afkomstig van specifieke individuen; en c. overlast ervaren door het gebruik van soft drugs op zichzelf.

Juridische overwegingen

De juridische overwegingen zijn tweeledig. Allereerst de overwegingen ten aanzien van de bepalingen ten tijde van de inventarisatie in 2009. De bepalingen zijn gefundeerd in de gemeentelijke jurisdictie op openbare orde en ingesteld door de gemeenteraad. Ze zijn opgenomen in de Algemeen Plaatselijke Verordening. Vaak refereren ze expliciet naar de Opiumwet, in het bijzonder lijst II. Hoewel ze in meerderheid als algemeen verbod zijn geformuleerd, is ten aanzien van alcoholverboden een dergelijke algemene formulering reeds als disproportioneel beoordeeld. In geval van plaats specifieke verboden is de bevoegdheid een specifieke locatie aan te wijzen in de helft van de gevallen bij het College neergelegd, terwijl in deze de Burgemeester de bevoegde partij is. Driekwart van de bepalingen gevonden in 2009 had derhalve een onjuist juridisch format. De procedurele legitimiteit van de bepalingen is echter nooit betwist. De bepalingen zijn uiteindelijk wel onder rechterlijk oordeel gekomen: bewoners van een speelpleintje in Amsterdam hebben de beslissing van de gemeente om geen verbod op dat pleintje in te stellen, aangevochten. Dit heeft er uiteindelijk toe geleid dat de Raad van State, de hoogste nationale rechter in administratief recht, alle gemeentelijke bepalingen op het gebruik van soft drugs in de openbare ruimte van tafel heeft geveegd. In haar arrest dd. 13 juli 2011 bepaalde de Raad van State dat het gebruik van soft drugs conform lijst II van de Opium Wet reeds verboden is in de Opiumwet, en dat – ongeacht het motief – het een lagere overheid niet gegeven is de regels van een hogere overheid te dupliceren. Dit arrest verbaasde in tweeërlei opzicht. Ten eerste is het gebruik van drugs expliciet niet strafbaar binnen de Nederlandse context. Ten tweede stelt de motiefleer dat het wel degelijk mogelijk is voor een lagere overheid de regelingen van een hogere overheid aan te vullen, indien dit op grond van een ander motief gebeurt, zoals in casu de gemeentelijke regeling is gestoeld op openbare orde, en de Opiumwet op volksgezondheid. De omstreden uitspraak van de Raad van State heeft verschillende proefprocessen uitgelokt, waarbij de motiefleer in ere is hersteld. In de praktijk is de handhaving van de verboden opgeschort.

3. Methodologie

Onderzoeksstrategie en selectie van de casussen

Ingegeven door het soort onderzoeksvragen is dit onderzoek kwalitatief van aard: middels etnografische methoden zijn een drietal case studies onderzocht. De drie casussen zijn elk geselecteerd uit een van de drie categorieën, zoals onderscheiden naar aanleiding van de landelijke inventarisatie. Binnen de categorie van bepalingen die zich richten op overlast ervaren in een specifieke ruimte, is een speeltuintje in Amsterdam geselecteerd; binnen de categorie van bepalingen die zich richten op overlast ervaren als afkomstig van specifieke individuen, is een winkelplein in Tilburg geselecteerd; en binnen de categorie van bepalingen die zich richten op overlast ervaren door het gebruik van soft drugs op zichzelf, is het dorpsplein van Spakenburg geselecteerd.

Data verzameling en analyse

Data werden op drie manieren verzameld: in hoofdzaak door observaties en straatinterviews, aangevuld door gerichte en semigestructureerd interviews en door document-analyse. De looptijd van de dataverzameling liep van de zomer 2008 tot najaar 2011, het zwaartepunt van het veldwerk lag in voorjaar, zomer en najaar 2011. Observaties waren gericht op de status van en gebeurtenissen in de ruimten en waren veelal participierend van aard. In de straatinterviews stelde ik stevast de volgende drie vragen: Welke drie woorden zou u/je gebruiken om deze plek te beschrijven? Hoe vaak kom je hier en waarom? Is hier iets verboden wat elders wel mag? Semigestructureerde interviews werden georganiseerd met betrokken partijen zoals institutionele vertegenwoordigers, ondernemers en bewoners. Documenten analyse richtte zich enerzijds op berichtgeving in de media en anderzijds op formele documenten binnen de bestuurlijke en juridische processen. De data analyse was een continu en iteratief proces, sterk ingegeven door het proces van memo's schrijven.

Validiteit van het onderzoek

De validiteit van het onderzoek wordt geborgd door de genomen tijd voor en intensiteit van het onderzoek, de methodische triangulatie en transparantie in de data verzameling, data analyse en de persoon van de onderzoeker. De persoon van de onderzoeker is van invloed geweest op de dataverzameling, maar is niet bepalend geweest voor de conclusies die uit de data zijn geabstraheerd: een andere onderzoeker zal met andere data over dezelfde casussen de onderhavige conclusies herkennen en onderschrijven.

4. De casussen

Het speelplein

De eerste casus betreft een klein speelpleintje in Amsterdam Oud Zuid. Het speelpleintje beslaat een autovrij deel van een straat in een 19^{de} eeuwse woonwijk. Het omvat diverse speeltoestellen en wordt geflankeerd door woonhuizen. De wijk is van oudsher een arbeiders buurt, maar door voortschrijdende gentrificatie is de demografie van de wijk aan het veranderen. Op een hoek van het pleintje is al twintig jaar een coffeeshop gevestigd, die tevens als informeel buurthuis fungeert. De gebruikers van het pleintje zijn zeer divers, en meningen over wat overlast betreft en hoe dat aan moet worden gepakt verschillen wezenlijk. In 2008 hebben een aantal bewoners een blowverbod voor het pleintje aangevraagd. Dit verzoek is door de gemeente afgewezen. Hierop hebben de aanvragers van het verbod een juridische procedure ingezet, die in de zomer van 2011 culmineerde in een uitspraak van de Raad van State, waarin alle gemeentelijke blowverboden van tafel werden geveegd.

Het winkelplein

De tweede casus betreft een buurt winkelplein in Tilburg Noord. Het winkelplein ligt midden een wijk die in de jaren 60 van de vorige eeuw als tuinstad is gebouwd voor kantoorpersoneel. Het plein heeft een U-vorm en wordt omringd door hoge flatgebouwen. Er is continu leegstand en de aanwezige winkels bedienen tegenwoordig voornamelijk het lagere segment. Een deel van de oorspronkelijke bewo-

ners woont nog steeds in de wijk en is nu veelal gepensioneerd. In de afgelopen twee decennia heeft er ook instroom van niet westerse migranten plaatsgevonden en een van de grootste concentraties van Somaliërs in Nederland woont in deze wijk. Verschillende groepen in de buurt maken aanspraak op het plein en proberen het plein te laten voldoen aan hun ideeën over het gebruik ervan. Deze ideeën conflicteren vaak. Het plein heeft een slechte reputatie, maar de verschillende gebruikers waarderen het plein heel verschillend en lang niet altijd negatief.

Het dorpsplein

De derde casus betreft het dorpsplein van Spakenburg, een welvarende en homogene gemeenschap in het midden van Nederland. De Afsluitdijk betekende het einde van de traditionele vissersindustrie van het dorp, maar de haven en museale bottervloot hebben nog een sterke toeristische functie. Het dorp ligt midden in de Nederlandse bijbelgordel en de kerk speelt een sterke rol in het dagelijks leven en de politiek. De gemeenschap heeft hard werken en properheid hoog in het vaandel, en laat zich er op voorstaan goed voor de eigen mensen te zorgen. In recente jaren is er negatieve publiciteit geweest over vermeend exorbitant cocaïnegebruik onder de jongeren in het dorp. Het gebruik van soft drugs in het dorp wordt niet ontkend, maar speelt nauwelijks een rol als openbare orde kwestie.

5. De ruimtelijke invalshoek

Gedeelde ruimten voor alledaags gebruik

De drie casussen hebben met elkaar gemeen dat de ruimten gedeeld worden in het alledaags gebruik. Juridisch beschouwd betreft het telkens publieke ruimte, niet op grond van eigendomsrecht, maar omdat het openbare-orderecht er van toepassing is. Sociologisch beschouwd betreft het telkens publieke ruimte omdat deze wordt gedeeld met vreemden. Het samen met vreemden gebruik maken van publieke ruimte gaat op basis van ongeschreven regels en gedeelde verwachtingen: weten wat je van wie kan verwachten, ook al ken je de ander niet persoonlijk. In de casussen is dergelijke publieke 'familiariteit' echter niet altijd voorhanden, de ongeschreven regels zijn niet voor iedereen hetzelfde en verwachtingen lopen uiteen. Door emotionele binding krijgt ruimte betekenis voor een gebruiker. Emotionele binding

ontstaat bijvoorbeeld door fysiek gebruik, of doordat de ruimte de setting is voor belangrijke gebeurtenissen in het verleden of het hier en nu. De klassieke manieren om ruimte te duiden binnen de sociologie laten een bepaald aspect onderbelicht, en dat is de betrokkenheid jegens en zorg over een ruimte door een gebruiker. Om dit te duiden introduceer ik het begrip 'emotioneel eigendom': de term eigendom refereert daarbij aan de rechten en plichten die gevoeld worden jegens een ruimte, in interactie met anderen. Het woord emotioneel duidt de aard van het eigendom.

De productie van ruimte

Ruimte is niet enkel een podium voor het alledaagse leven. Ruimte komt tot stand door gebruik en gebruikers, anders gezegd: de samenleving, en tegelijkertijd vormt een ruimte diezelfde samenleving. Ruimte wordt geproduceerd, en produceert tegelijkertijd ook zelf. Volgens Lefebvre wordt ruimte geproduceerd door de interactie van drie verschillende dimensies van een ruimte: de geplande ruimte, de geleefde ruimte en de gepercipieerde ruimte. De dimensie van de geplande ruimte refereert naar de formele organisatie van een ruimte, opgezet met een specifiek doel. Ik versta onder deze dimensie zowel de fysieke inrichting van een ruimte, als de formele regulering ervan. De dimensie van geleefde ruimte refereert naar het gebruik van alledag, ruimte zoals die wordt ervaren in de daadwerkelijke confrontatie en directe beleving. De gepercipieerde ruimte is de mentale dimensie, waar ruimte wordt gedacht te zijn. Deze dimensie scheidt en verbindt de geplande en geleefde dimensie. De perceptie van een ruimte komt voort uit hoe een ruimte is gepland en wordt geleefd, en tegelijkertijd beïnvloedt deze perceptie hoe die planning en beleving vorm krijgt.

De dynamiek van ruimte

Ruimte is relevant omdat het een bepalende rol heeft in de dynamiek van een samenleving. De dynamiek van ruimte kan op twee wijzen worden gezien. Vaak wordt een ideaal beeld geformuleerd ten aanzien van een ruimte, en vervolgens wordt een ruimte tegen dat licht geëvalueerd. Een alternatief is om niet naar uitkomst maar naar proces te kijken, waardoor de vraag verandert van *of* een ruimte werkt, naar *hoe* een ruimte werkt. Dit biedt gelegenheid voor de aanname dat verschillende gebruikers verschillende, en mogelijk niet verenigbare, idealen kunnen hebben ten aanzien van een ruimte. In geval van de casussen zijn de idealen ten

aanzien van een ruimte normatief en emotioneel geladen. Waar een ruimte de ene gebruiker accommodeert en voldoet aan zijn of haar ideaal, kan dezelfde ruimte een andere gebruiker vervreemden of buitensluiten. Als de drie dimensies van een ruimte voor een gebruiker niet met elkaar overeenkomen, dan leidt dat tot verwarring en desoriëntatie bij de gebruiker. Elke gebruiker zal proberen een ruimte naar zijn of haar hand te zetten en de drie dimensies voor hem of haarzelf te laten harmoniëren. Dit kan op verschillende manieren, bijvoorbeeld door fysieke dominantie. In dit werk ligt de nadruk op acties om een ruimte naar de hand te zetten, die worden genomen in de geplande dimensie van een ruimte door bepaalde regelgeving te initiëren.

6. Vanuit juridisch oogpunt

De relatie tussen recht en samenleving

Recht en samenleving worden vaak als twee verschillende entiteiten, en soms zelfs als tegenpolen, voorgesteld. Een voorbeeld hiervan is het onderscheid dat Habermas maakt tussen de levenswereld en het systeem. De tegenstelling klinkt ook terug in de vergelijking formele en informele controle, waarbij formele controle wordt gedacht in te springen daar waar informele controle het af laat weten. Echter, hoewel regels worden uitgevaardigd door de bevoegde institutionele autoriteiten, kan hun oorsprong evenzeer gelegen zijn in het informele domein. Formele en informele sociale controle zijn niet automatisch communicerende vaten, zoals bijvoorbeeld Black wil doen geloven. Een toename van formele controle kan evengoed wijzen op een toename van informele controle. De constitutionele benadering van het recht bouwt op de premisse dat recht en samenleving interacteren, en dat recht evenzeer de samenleving vormt als de samenleving het recht vormt. Het recht is dan geen afspiegeling van de samenleving, maar een constituerende factor ervan.

Het concept juridisering

Juridisering is een wijd gebruikt begrip dat in dit werk wordt gedefinieerd als 'de codificatie van tot dan toe informeel geregelde kwesties naar formele regels'. Ik bespreek twee tegenovergestelde perspectieven op juridisering: een pessimistische en een optimistische. De pessimistische visie op juridisering vreest dat juridisering

de overleggende kracht van de samenleving ondermijnt, het mechanisme waar door beraadslagingen en onderhandelingen de samenleving vorm krijgt. De optimistische visie op juridisering ziet kansen voor het recht om als gemeenschappelijke deler grond te bieden voor samenleven, over de religieuze en ideologische scheidslijnen heen. Tot slot valt juridisering als 'codificatie van sociale normen' binnen de instrumentalistische benadering van recht, maar tegelijkertijd is codificatie een manier om te zekeren dat wat als moreel goed wordt beschouwd door hen die de codificatie beijveren.

De dynamiek van juridisering

De juridisering in de casussen, waarbij regels worden geïnitieerd door gebruikers van een ruimte die gericht zijn tegen andere gebruikers van zo'n ruimte, vindt plaats omdat de *doxa* van diegenen die de regel Beijveren is verstoord. *Doxa* is door Bourdieu gedefinieerd als 'al dat wat ongezegd en onbewust in het domein van het onbetwiste verkeert'. Met andere woorden, *doxa* slaat op overtuigingen die zo vanzelfsprekend worden gehouden, dat men zich er niet van bewust is de overtuiging te dragen totdat deze wordt verstoord door het gedrag van anderen. Door de onbewuste vanzelfsprekendheid is een *doxale* norm niet bespreekbaar en dus ook niet aanvechtbaar. Pas als *doxa* wordt verstoord wordt zij geopenbaard en daardoor verschuift een dergelijke overtuiging vervolgens naar het domein van het bespreekbare. Het codificeren van een dergelijke norm is dan een poging om een voormalige *doxale* overtuiging de status van *orthodoxy* te geven, en verder afglijden naar *heterodoxy* te voorkomen. In situaties van verscheidenheid verschillen de *doxa's* van mensen en doen zich gelegenheden voor waar de *doxa* van de een door de acties van een ander wordt verstoord. Het vastleggen van een *doxale* norm in formele regelgeving duidt de maatschappelijke macht van degene die zijn of haar norm gecodificeerd weet. Tegelijkertijd laten de casussen zien dat het gecodificeerd krijgen van een norm niet gelijk is aan de overhand hebben in een gedeelde ruimte van alledaags gebruik.

7. De werking van de verboden

De juridische werking van de verboden

De juridische werking van de verboden wordt gezien vanuit enerzijds het perspectief van handhaving en anderzijds het perspectief van naleving. Wat betreft de handhaving laten de casussen een gemêleerd beeld zien. In de casus van het dorpsplein wordt geheel niet gehandhaafd en lijkt daar ook geen reden toe. In de andere twee casussen speelt handhaving wel een rol. De perceptie van de handhaving hangt samen met hoe het verbod wordt gezien: als doel of als middel. De voorstanders van de verboden ervaren het toezicht op de naleving van hun norm als gebrekkig. De formele handhavers zien het verbod als een instrument in de handhaving van de openbare orde en handhaven het verbod naar discretie. Gezien vanuit de naleving verschuift het beeld naar degenen die door het verbod worden geraakt. Vaak wordt naleving instrumenteel benaderd: de kans op naleving hangt dan samen met de pakkans bij niet-naleving. Een alternatief is om te kijken naar de normatieve overwegingen om wel of niet een regel na te leven. Normatieve overwegingen kunnen grond zijn om een regel na te leven zonder dat deze wordt gehandhaafd, of om een regel juist niet na te leven ook al wordt deze wel gehandhaafd. De casussen laten meerdere voorbeelden zien waar de verboden niet worden nageleefd. Daarbij is men het soms niet eens met de inhoud van het verbod, maar in voorkomende gevallen is het bezwaar fundamenteeler en richt het zich op de hele constellatie die de regel heeft voortgebracht. Dit laatste raakt dan de inhoudelijke legitimiteit van het recht, waar een regel wordt betwist om al datgene, van wat de regel gedacht wordt te vertegenwoordigen. Vertaald naar de discussie of juridisering een positieve of negatieve ontwikkeling is, gaat het erom of men zich onderdeel voelt van het systeem dat de regel heeft voortgebracht.

De sociale werking van de verboden

De sociale werking van de verboden wordt bekeken vanuit de geleefde dimensie van de ruimte. In de geleefde dimensie spelen de verboden op twee manieren een rol: ten eerste doordat het gedrag waarop het verbod van toepassing is, wordt gedemonstreerd en ten tweede door het fysiek aankondigen van het bestaan van het verbod, in het bijzonder door gemeentelijke borden. Indien het gewraakte gedrag niet plaatsvindt, of niet wordt waargenomen, speelt een verbod een heel beperkte rol in de geleefde dimensie. Vindt het gewraakte gedrag wel plaats, dan figureert

dit als herinnering aan de verboden en de uitwerking die ze klaarblijkelijk laken. Borden in de openbare ruimte met de aankondiging van het verbod van kracht in die ruimte functioneren als een continue herinnering, zowel aan het verbod als alle twist daaromtrent. Daarbij zij vermeld dat borden niet automatisch worden opgemerkt, maar makkelijk genoeg ook over het hoofd worden gezien. De sociale werking wordt teweeg gebracht door gedrag en fysieke borden, voor zover dezen zich manifesteren en ook worden opgemerkt. Daarmee is de sociale werking van de verboden in de geleefde dimensie zeer context gebonden en vermoedelijk beperkter dan initiatiefnemers tot een verbod voor ogen hadden.

De symbolische werking van de verboden

De symbolische werking van de verboden wordt benaderd vanuit de gepercipieerde dimensie van ruimte. Deze symbolische werking gaat twee kanten op: enerzijds leiden de verboden tot een bepaalde perceptie, en anderzijds zijn de verboden zelf het gevolg van bepaalde percepties. De verboden als instigator van perceptie geven aanleiding om een ruimte op een bepaalde manier te bezien. Ze kunnen een perceptie oproepen of bevestigen, bijvoorbeeld dat de buurt wordt overgenomen door regel beluste yuppen, of dat het erg gevaarlijk is op een plein. Anderzijds kunnen de verboden zelf het gevolg zijn van een perceptie, bijvoorbeeld dat de hangjongeren op het plein echt gevaarlijk zijn, of dat de verderfelijke invloed van grootstedelijke immoraliteit gevaarlijk oprukt. Hoewel de verboden vaak gericht zijn op de geleefde dimensie van ruimte, kunnen ze ook geheel gericht zijn op de gepercipieerde dimensie.

8. Conclusie: Volgens de regels

Een eigenaardig fenomeen

Het onderzoek werd opgestart naar aanleiding van een opmerkelijke toename van zogeheten gemeentelijke blowverboden in de jaren 00. Een landelijke inventarisatie in 2009 onthulde dat minstens een op de vijf gemeenten op dat moment een bepaling had opgenomen over het gebruik van soft drugs in de openbare ruimte. Dit betrof veelal kleinere gemeenten, zonder coffeeshop op hun grondgebied. De bepa-

lingen waren al juridisch twijfelachtig, nog voordat de Raad van State in zomer 2011 alle bepalingen van tafel veegde in een omstreden uitspraak. Volgend op de landelijke inventarisatie zijn drie casussen op kwalitatieve wijze nader onderzocht. De drie casussen waren zeer verschillend wat betreft de status van de verboden, de fysieke gesteldheid en functionaliteit van de ruimten, het soort mensen dat de ruimte gebruikte en de sociale processen die er in plaatsvonden. Niettemin waren er ook gemene delers. In alle drie de casussen waren de verboden niet van bovenaf opgelegd, maar van onderaf uit de gemeenschap geïnitieerd, door gebruikers van de ruimte in oppositie tot andere gebruikers van de ruimte. Het verbod was telkens gegrond in overwegingen van openbare orde en overlast, maar de inhoud van de overlast verschilde. Het soort overlast dat werd geformuleerd weerspiegelde de sociale processen die plaats hadden in die ruimten. In alle gevallen hadden de verboden hun weerslag in hoe de ruimten werden ervaren en gepercipieerd.

Het juridische en het ruimtelijke

De empirische bevindingen van het onderzoek gaven aanleiding tot meer theoretische reflecties over hoe een formele regel zich verhoudt tot de ruimte waarin deze figureert. De voornaamste conclusies richten zich op de vragen: waarom vindt jurisdisering plaats, waarom worden regels door gebruikers ondernomen ten aanzien van een bepaalde ruimte en is jurisdisering een wenselijke ontwikkeling.

De totstandkoming van de formele vastlegging van sociale normen valt te begrijpen middels de conceptuele triade van Lefebvre. In de geleefde dimensie van ruimte vinden confrontaties plaats tussen verschillende groepen, die elk de ruimte in de gepercipieerde dimensie benaderen vanuit een ander referentiekader, inclusief *doxa*. De confrontaties in de geleefde dimensie en de onenigheid in de gepercipieerde ruimte leiden tot interventies in de geplande ruimte. Deze interventies worden ondernomen in een poging om de eigen norm als gemeenschappelijk norm geïnstalleerd te krijgen en zo een gedeeld begrip te zekeren over wat wel en niet gepast gedrag is in die ruimte.

De regels worden geïnitieerd door gebruikers van die ruimten uit een gevoel van emotioneel eigendom. Emotioneel eigendom houdt in dat bepaalde rechten en plichten worden gevoeld ten aanzien van een ruimte, in interactie met en in weerwil van anderen in die ruimte. Niet alleen wordt recht van zeggenschap gevoeld over wat er in een ruimte dient te gebeuren, ook wordt er een plicht gevoeld om te zorgen dat die ruimte voldoet aan juiste normen. De emotionele eigenaar heeft het beste voor met een ruimte en gelooft zijn goed als het hogere goed: natuurlijk moet

de vrijheid blijven om in het openbaar te blowen, versus natuurlijk kan er niet geblowd worden op een plek die voor kinderen is bestemd. Of daadwerkelijk actie wordt ondernomen is afhankelijk van meer factoren, emotioneel eigendom is een goed startpunt om te begrijpen waarom mensen ten aanzien van een bepaalde ruimte in actie komen.

Of juridisering een goede of schadelijke ontwikkeling is, laat zich vertalen naar de vraag of de codificatie van een sociale norm naar een formele regel de onderhandeling van de samenleving ondersteunt of doorkruist. Dit hangt samen met de vraag of men zich onderdeel voelt van het bestel dat de regel heeft voortgebracht. Wanneer men het oneens is met een verbod kan dit op twee verschillende manieren gestalte krijgen. Men kan binnen het bestel de specifieke regeling aanvechten, en men kan de regel als aanleiding zien om het hele bestel loochenen. In het eerste geval fungeert het recht als kader, waarbinnen geschillen kunnen worden geslecht over de scheidslijnen heen van bijvoorbeeld religie en ideologie. In het tweede geval is recht geen kader, maar juist instigator van het conflict, en faciliteert het niet maar verergert het juist.

Volgens de regels

De titel van dit werk luidt in vertaling: 'Het volgens de regels spelen'. Dit heeft een connotatie met een wedstrijd, of een spel. De productie van ruimte kan ook worden gezien als een spel, in de zin dat er winnaars en verliezers zijn. Zij die de drie dimensies van ruimte voor zichzelf in harmonie op gelijnd krijgen zijn de winnaars van het spel, zij die dat niet lukt de verliezers. De laatsten voelen zich niet (langer) thuis, of erger nog, kunnen zich niet handhaven in hun ruimte van alledaags gebruik en voldoen niet aan de toetssteen van ruimte. De productie van ruimte kan worden opgevat als een spel, maar met dien verstande dat het een serieus spel is, waarbij winnen of verliezen serieuze consequenties heeft.

'Het volgens de regels spelen' refereert voorts naar het type interventie dat wordt gepleegd in de productie van ruimte: de interventie wordt gespeeld via de geplande ruimte en bijbehorende formele regulering van ruimte. De productie van ruimte vindt echter plaats langs meerdere dimensies, een aanpassing van de regels wil nog niet zeggen dat anderen het spel volgens die regels zullen gaan spelen. Men kan vals spelen, of de regels aanvechten.

Voorts roept 'het volgens de regels spelen' ook vragen op wiens regels worden gevolgd. Niet alleen een specifieke regel, maar ook de het regelgevende systeem en de regelgevende autoriteit kunnen onderwerp zijn van conflict. Regels kunnen een kader bieden om onenigheid op te lossen, een structuur bieden voor interactie en een afbakening van het speelveld. Overeenstemming ontbreekt dan op de specifieke regel, maar bestaat wel ten aanzien van de regels van het spel. In tegenstelling hierop is het ook mogelijk dat de regels van het spel worden betwist, en de autoriteit van de regelgever ontkend. In dat geval zijn de regels onderdeel van het probleem, en niet onderdeel van de oplossing.

Epiloog

Mensen vragen vaak of de verboden die ik heb onderzocht effectief zijn. Ze bedoelen dan of de verboden brengen waarvoor ze zijn ingesteld. Mijn antwoord zal helaas de slechts terloops geïnteresseerden niet tevreden stellen. Deels komt dit omdat er geen eenduidig antwoord op die vraag is, en deels omdat dit onderzoek geen beleidsevaluatie betrof. De hoofdvraag in dit onderzoek was niet *of* de verboden werkten, maar *hoe* ze werkten. Het uiteindelijke antwoord op de *hoe* vraag maakt onder meer duidelijk dat het antwoord op de *of* vraag zeer afhankelijk is van het perspectief van de vrager.

Zowel ruimte als recht zijn zwaar beladen met normatieve veronderstellingen. Ik heb een mening over wat goede ruimte behelst, en ik ben benieuwd naar uw mening over goede ruimte. Voordat we echter onze standpunten bediscussiëren, moeten we begrijpen hoe ruimte tot stand komt en wat de drijfveer achter het codificeren van een sociale norm is, wat het zegt over de ruimte en de mensen die deze ruimte gebruiken en delen. Daarenboven moeten we begrijpen hoe een formele interventie een ruimte in al zijn dimensies raakt en hoe de effecten van een dergelijke interventie doorklinken voorbij de dimensie van het geleefde. De productie van ruimte kan worden vergeleken met een spel: een serieus spel waarbij voor de sociale entiteiten die met elkaar wedijveren om een ruimte de inzet is het zich handhaven of in vergetelheid raken. De spelers zijn vaak niet gelijk gematched, en de regels partijdig. Ik geloof echter dat het speelveld wat gelijk kan worden gemaakt door het spel -- en de regels volgens welk het spel wordt gespeeld -- transparant en inzichtelijk te maken. Zo niets anders, dan zal het duidelijk maken hoe het spel in elkaar steekt en de regels vrij maken om ter discussie te stellen. Dit werk omvat mijn poging om bij te dragen aan de kennis over hoe ruimte tot stand komt en de wijze waarop juridische interventies dat proces beïnvloeden.

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