Oñati Socio-Legal Series (ISSN: 2079-5971)
Oñati International Institute for the Sociology of Law
Antigua Universidad s/n - Apdo. 28
20560 Oñati - Gipuzkoa (Spain)
opo@iisj.es / http://opo.iisj.net

Regulating social spaces of everyday life: The bottom-up codification of a behavioural norm in a Dutch municipal bylaw

OÑATI SOCIO-LEGAL SERIES, VOLUME 11, ISSUE 6 (2021), 1311–1329: SOCIAL CONTROL, JUDICIALIZATION OF SOCIAL PROBLEMS AND GOVERNANCE OF SECURITY IN COMPARATIVE PERSPECTIVES
DOI LINK: HTTPS://DOI.ORG/10.35295/OSLS.IISL/0000-0000-0000-1196
RECEIVED 07 FEBRUARY 2020, ACCEPTED 15 JUNE 2020, FIRST-ONLINE PUBLISHED 21 MAY 2021, VERSION OF RECORD PUBLISHED 01 DECEMBER 2021

DANIELLE A.M. CHEVALIER*

Abstract

The utopian ideal of public space promotes it as the material manifestation of a freely accessible realm in which diverse social entities engage with one another to discuss, debate and form an inclusive society. In reality, access to and participation in public space is restricted for various factions of society. Formal law plays a large, albeit not exclusive, role in regulating public space. This article explores the attempt of residents to have a municipal ban on using cannabis installed on a small inner-city playground in Amsterdam, offering an example of law being enterprised as a bottom-up strategy to claim dominance over a shared space. As administrative law is employed as a power strategy between citizens, government has to struggle not to be reduced to an instrument in the hands of the elite. This article aims to contribute to literature on juridification of social relations, the production of space and the making of law.

Key words

Juridification; social control; public space; lawmaking

Resumen

El ideal utópico del espacio público promueve éste como la manifestación material de un territorio de acceso libre en el cual entidades sociales diversas interactúan para debatir y formar una sociedad inclusiva. En la realidad, el acceso y la participación en el espacio público están restringidos para varias facciones de la sociedad. El derecho formal desempeña un rol considerable, aunque no exclusivo, a la hora de regular el espacio público. Este artículo explora los intentos de los residentes de conseguir una prohibición municipal sobre el uso del cannabis en un pequeño parque de juegos de

* Assistant Professor Law & Society, Leiden Law School. Postal address: Van Vollenhoven Institute, Leiden Law School, Leiden University, P.O. Box 9520, 2300RA Leiden, the Netherlands. Email address: d.a.m.chevalier@law.leidenuniv.nl

Amsterdam, constituyendo un ejemplo de iniciativa para utilizar el derecho como estrategia de dirección ascendente para reclamar una dominación sobre un espacio compartido. Al utilizarse el derecho administrativo como estrategia de poder entre ciudadanos, el gobierno debe hacer un esfuerzo para no verse reducido a mero instrumento en manos de la élite. El artículo intenta hacer una aportación a la literatura sobre la juridificación de las relaciones sociales, la producción del espacio y la creación de derecho.

Palabras clave

Juridificación; control social; espacio público; legislación

Table of contents

1. Introduction

In the shared social spaces of everyday life, quotidian society comes about; people meet and interact with others in a physical locality, through direct, embodied and sensory contact. In the physical confrontation people present themselves, are confronted with the other and negotiate the communal frame. The social spaces of everyday life structure the daily dynamics of social life, including the power dynamics of social interactions (Goffman 1959, 1966, Lofland 1985, 1998, Sennet 1992, Blokland 2008). This invites the question how such spaces are regulated, and more specifically who is doing the regulating, and who is being regulated. Who has the possibility to partake in the negotiation defining society, and who has the possibility to exclude others from this negotiation? Obviously, formal law plays an important role in the governance of both space and the social dynamics that take place in that space. Often such formal law has the form of local, municipal bylaws pertaining to the public order. Otherwise put, the formal law in play in the shared spaces of everyday life often takes the form of administrative law. The primary connotation to administrative law is that it organizes the vertical relation between state and citizen, as the state regulates the actions of its citizens and applies the sanctions when imposed rules are transgressed. Interestingly and importantly though, the formal law in play in shared social spaces can originate from the very social dynamics it is meant to regulate, as it is propagated by contenders of the social space that is meant to be shared. The case study discussed in this article demonstrates this manifestly.

The setting is a small playground in the inner-city of Amsterdam, the capital of The Netherlands. The playground is located in a residential street in the quiet part of a bustling neighbourhood. It's really no more than a stretch of sidewalk, but it is intensively used and forms a pivotal space for the surrounding community. At one corner end of the playground a so-called "coffeeshop" is located. In the Dutch context, a coffeeshop is a designated selling point for cannabis products. The street terrace of the coffeeshop lies directly adjacent to the sand box of the playground. A group of residents have requested the municipality to install a municipal ban on using cannabis products in and around the playground. The ban is concretely meant to deter people from smoking a cannabis cigarette, in popular language also formulated as smoking a "joint", on the playground. The municipal authorities have refused to install such a ban, with the endorsement of other residents of the area. The residents desiring the ban have taken their request to court, and continued their proceedings to the Dutch supreme court on administrative law, namely the *Raad van State*.

The point of studying the particular case presented here is not to generalize the analysis as such, but to learn from what goes on here (Flyvbjerg 2004). The analysis can serve as a searchlight for other scholars and analysis in other locations. Though the specifics of Dutch law on the use of psycho-active substances in general and cannabis in particular are rather distinct, the dynamics of the case presented here are not unique. Contention over public space is widespread and the conviviality of shared spaces of everyday life is under pressure in many places. Access to public space, and the flip side of exclusion from public space, are pivotal issues of our times. This case demonstrates how law is used as an instrument between factions of a public that stake contesting claims on space they share. Moreover, it demonstrates how in the vertical employment of law between

citizens, governmental authorities have to guard their role and navigate through their possibilities to materialize their vision of how things should be.

In the following, this case will be further expanded on and analysed from an overarching query into the role formal law plays in the regulation of shared social spaces of everyday life. The questions posed include: how desirable is it that social relations are laid down and solidified in formal rules? How does administrative law, traditionally regulating vertical relations between government and citizens, figure in horizontal power relations between citizens? How does law impact the social dynamics of public space? And: why precisely should that be of interest? In the following, first the theoretical parameters of the questions posed here are expanded upon. Then the methodological aspects of the research conducted on this case are briefly laid out. The case study is subsequently presented in two parts, first the juridical aspects are detailed and secondly the social dynamics of the space are presented. In the closing section conclusions are drawn with regard to the power dynamics involved in regulated public space, and how regulations can both consolidate or undercut power claims of those sharing social space.

2. Theoretical parameters

The questions posed here relate to several theoretical bodies of work, including the juridification of social relations, the production of space and the making of law. In the following these three themes are expanded upon and connected to each other.

The juridification of social relations

It was Habermas who brought the concept of juridification to the fore in the late 1980s[1] through his influential work *The Theory of Communicative Action*. In his definition, 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" (Habermas 1987, p. 357).

Brought into fashion by Habermas, the term juridification has since been deployed to cover a whole range of issues, sometimes overlapping, sometimes conflicting. In popular discourse, juridification connects to both 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 entrepreneurship and the European Union. As an analytical concept juridification has been used to describe distinctly different processes of law vis-à-vis society and as a result has morphed into an umbrella concept (Teubner 1987, Blichner and Molander 2008, Magnussen and Banasiak 2013). Against this background Blichner and Molander have carefully unpacked the concept into five dimensions, in their paper *Mapping Juridification*:

> 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

[1] Though the term itself is much older. Teubner (1987, p. 9) has traced its origins back to debates in the time of the Weimar Republic.

> 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. (Blichner and Molander 2008, pp. 38–39)

The common ground is the proliferation of law, or in the words of Teubner (1987, p. 4): "creeping legalism". However, as Teubner (1987, v) argues, "juridification is not to be understood primarily as a quantitative phenomenon of the growth of law and regulation". The real issues lie with the qualitative dimensions of juridification and specifically the changes juridification has induced in the structure and function of law. Elaborating on the function of law, Schuyt (1997) argues that juridification encompasses the shift of the primacy of the social to the juridical when it comes to the ordering of social relations. Juridification is a phenomenon that

> on the one hand can refer to the coming into being and the creation of formal rules for the ordering of social relations, and on the other hand can refer 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 1997, p. 927)[2]

Juridification is rarely described in a norm-free manner, the concept is often laden with implicit or even explicit negative connotations. The normative perspective 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 in a residential street with a playground in it, on which a codified social norm has been installed that is forbidden to smoke a cannabis cigarette in that location?

The negative expectation of juridification is that it undermines the processes of a duly deliberative society. In *The Theory of Communicative Action*, juridification in the contemporary epoch manifests itself through "colonization of the life-world" (Habermas 1987, p. 356), meaning that "law comes to intervene in a systemic way in the social relations of everyday life" in concordance with the system, cancelling out the mechanisms of the lifeworld (Deflem 1996, p. 8). Law in this view subverts the ability of society to reach mutual understanding and workable compromises through communicative action. There is however an alternative argument to be made. From this viewpoint, law does not divide, but on the contrary 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 (Schuyt 1997, p. 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.

[2] Translation from Dutch to English by author of this text.

In spite of the discernible proliferation of law and the subsequent relevance of the question on the dangers and opportunities encompassed by the expansion of law, the polemics on juridification remain 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 and Banasiak 2013, p. 325). Applying the theoretical discourses on juridification to empirical data offers an opportunity to discern the strong and weak points of those discourses in real time.

The relevance of public space

Space is not merely "a setting in which life transpires" (Molotch 1993, p. 888). The supposition that space is an "empty medium" has long exited the realm of spatial thinkers (Lefebvre 1991, p. 87). Just as societies produce space, space produces societies. Viewed at a more mundane level, space accommodates and forms social interactions whilst at the same time it is formed by the social interactions taking place in that space. This entails that when social interactions are subject to juridification, as discussed above, law as a consequence impacts how space comes about and who is accommodated by that space.

In the literature, a fundamental distinction is made between public and private space (Madanipour 2005). Viewed from a sociological angle, the distinction is made on the nature of the social relations and interactions realized in the space (Lofland 1985, 1998). Private space then is dominated by private or intimate relations, with the home as an oft used example. Private space versus public space is not a categorical opposite, but rather the other end on a continuum. Staying with the example of the home, the bedroom is often considered more private than the salon. Public space is dominated by strangers, ranging from familiar strangers (Milgram 1977) to strangers beyond one's public familiarity (Fisher 1982, Blokland 2009); that is to say one has no understanding how to assess the behaviour of the strangers encountered, and thus what tactics are called for to deal with a given situation.

In this article, social spaces of everyday life refer to public spaces, in which strangers are encountered. The everyday quality entails that some of the strangers are encountered regularly and as a consequence become familiar. At the same time, the publicness of the space sustains the possibility to be confronted with unfamiliar strangers. There is always an element of the unknown and the possibility of surprise, with the challenge of finding a shared understanding on which the public space can be navigated through.

From a legal angle, the definition of public space can be based on characteristics such as who owns the physical locality and which legal regime is in place. Notably, privately owned space can well fall under a regime of public administrative law. Subsequently, my preference is to define space private or public in accordance with the legal regime in place. Public space then is space in which public order regulations apply, regardless of who actually owns the space. Additionally, regulating is an opaque term, and can refer to legal as well as social regulation. In this article, legal regulation is used to refer to formal state law, backed by the apparatus of the state, including mechanisms for enforcement and sanctioning. Social regulation takes place via social control, situated in the power dynamics of social interactions. In part, people determine their spatial

environment by how they use it; they apply 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. Claiming space as such is crucial to consolidate one's presence in space, and this in turn is crucial to being heard and reckoned with in the ongoing negotiation of society. The momentous importance of space as a constitutive factor in social interactions and social order is formulated by Lefebvre as follows:

> 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. (Lefebvre 1991, p. 53)

To summarize, public space is a pivotal factor in the negotiation of society and consequently presence in public space is crucial to partaking in that negotiation. Moreover, space and the social interactions that take place in that space are impacted by both social and legal regulations. The following paragraph then takes a closer look at the legal regulation of public space, and specifically where such regulations originate from.

The coming about of legal regulations

Technically, legal rules derive from a legislative body with the power to enact and enforce such regulations. As the case study of this article demonstrates however, the initiative can originate from elsewhere. In the words of Howard Becker (1963/1997, p. 147): "rules are the product of someone's initiative". Becker specifically relates to rules encompassing a value or social code. He argues:

> People shape values into specific rules in problematic situations. They perceive some area of their existence as troublesome or difficult, requiring action. After considering the various values they subscribe, they select one or more of them as relevant to their difficulties and deduce from it a specific rule. The rule, framed to be consistent with the value, states with relative precision which actions are approved and which forbidden, the situations to which the rule is applicable, and the sanctions attached to breaking it. (Becker 1963/1997, p. 131)

The point is however that values need not be universally shared. Notably, a shared value need not give any rise to strife. It is in shared social spaces in which values are not ubiquitously shared that problematic situations arise. Contesting groups will then attempt to have their own value installed as the dominant and controlling standard. Whose value subsequently actually does become the ruling norm, depends on the relative power of the groups involved. Otherwise put, the codification of a norm into law is used as strategy to set and consolidate certain power relations.

As a consequence, "[w]herever rules are created and applied, we should be alive to the possible presence of an enterprising individual or group" (Becker 1963/1997, p. 145). Translated to the setting of shared social spaces of everyday life, when a legal regulation is called for to organize that space, it is relevant to see who is enterprising it and why. When the legal regulation comprises administrative law, a question could be which competing interest group best connects with the general interest. An alternative question could be which interest group best succeeds in making their interest the public standard to which others should comply.

Law impacts the way space comes about and in turn structures the social negotiations taking place in that space. In this process, law is not a neutral. Law can be wielded as a strategy to install certain values in a given space. Such codified values can conflict with the values of others using the shared space, and can hamper others in their free use of space.

3. Case study approach and methodology

This article is based on research conducted as part of a larger PhD project on the juridication of social control in public space in the Netherlands. The research was a joint project between the Faculty of Law and the Faculty of Social and Behavioural Sciences of the University of Amsterdam.[3] The specific case presented here is one of three cases that was selected for in-depth qualitative exploration, following a quantitative nationwide survey on municipal bylaws regarding the use of psycho-active substances in public spaces. Two of the selected cases contained a ban on the use of cannabis, a third investigated a ban of *qat*. *Qat* refers to the leaves and twigs of the plant *cathu edulis;* these produce a mild euphoric effect when chewed on. In the Netherlands *qat* is predominantly used by the Somali community.[4] Cannabis most commonly refers to hash and marihuana, products of the hemp plant. It is a psycho-active drug that can be used as an extract, by vaporizing, mixing it with food or by smoking it. Smoking cannabis is usually done by combining it with tobacco and rolling a so-called cannabis cigarette or "joint", which spreads a specific scent. The case presented here concerns regulating the smoking of cannabis in public space through a municipal bylaw. The legal intricacies concerning the use of cannabis in the Netherlands are expounded upon below in section four.

All three cases of the wider project were researched in a qualitative manner, through a triangulation of methods. Document analysis of legal proceedings, municipal texts and media channels was combined with extensive ethnographic fieldwork and semi-structured interviews with the main stakeholders, including residents and entrepreneurs of the spatial setting, the involved municipal policy-officers and legal advisors and the neighbourhood police officers. Only part of the accumulated data is presented here, focusing on one case expanded upon below. Moreover, the data presented here runs the length of the juridical proceedings this article focuses on, starting from the first legal action taken in 2008 to the final verdict of the Dutch supreme court on administrative affairs in 2011.[5]

4. The case study: Dutch policy and the playground

To understand the context of the case study, it is necessary to have an idea of the legal frame in which it operates. What follows therefore is first an abridged introduction to Dutch drug policy and legislation, to better understand the legal aspects of the application for and refusal of a ban on smoking a joint on a children's playground.

[3] PhD defended in June 2015.

[4] For more information on qat, its prevalence in the Dutch context and the legal contextualization, see Chevalier 2015a and 2017.

[5] To note, I have lived in the vicinity of the fieldwork site up until 2017 with concurring data. The main body of the research, however, took place from 2008 to 2012.

Subsequently the particulars of the case study are discussed, starting with an overview of the legal proceedings that took place and then expanding on the social context of the case.

Dutch drug policy

In general, Dutch legislation on drugs is often marvellously misunderstood and not without reason: it is a complicated legal frame that is the result of a long history of political negotiations and policy decisions. Key to understanding Dutch drug policy is realizing that it is founded in public health considerations. As a consequence, the use of drugs in The Netherlands is explicitly not criminalized. The 1976 Amendment of the Opium Act introduced a distinction between trade, possession and use, and whereas trade remained completely illegal, use was decriminalized and possession in amounts deemed for personal use was exempted from prosecution.[6] The idea is that when use is criminalized, the user becomes harder to reach for treatment. In 2005, in the run-up to the municipal elections in March 2006, an attempt was made in Parliament to pass a national ban on the public use of cannabis. Though the legislative proposal was passed by a majority of Parliament, the minister of Justice refused to comply. In his motivation the minister made the point that the use of drugs in general is not penalized on grounds of addiction treatment.[7] The aim is to separate the primary effects 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, pp. 199-203).

Another important issue in the Dutch context is the distinction made between so-called soft drugs versus hard drugs. Illegal substances are categorized in either one or the other category in appendices to the national Opium Act. The distinction between hard drugs and soft drugs is made on the basis of the harm a drug is presumed to inflict; Hard drugs are considered to carry unacceptable risks for public health, whilst soft drugs are deemed less addictive and less harmful. The legal regimes concerning the two categories differ accordingly, in the sense that sanctions put on violations regarding soft drugs are less strict, and that detection of violations regarding hard drugs are prioritized over those concerning soft drugs. Nonetheless, equal to hard drugs, soft drugs are illegal in the Netherlands; It is forbidden to produce, trade in or possess any substance listed in the Opium Act, regardless whether they are listed as hard or soft drugs.

Though possession of cannabis is illegal by law, exemption from prosecution is routine up to an amount of five grams. Similarly, an amount of five grams can be bought and sold in so-called coffeeshops, without fear for prosecution. Coffeeshops are designated selling points for cannabis. In some instances, they consist of no more than a vending counter. In most cases however it is possible to use the drugs on the premises, and coffeeshops tend to make their establishment attractive for potential customers. In 2018, a total of 567 coffeeshops existed in the Netherlands, and 168 of these were located in

[6] With regard to cannabis, the amount was originally set at 30 grams, and in 1995 lowered to 5 grams. Additionally, there is an age limit and when caught, goods are confiscated by the police. Possession of small amounts is not prosecuted, but nevertheless illegal.

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

Amsterdam.[8] In 2011, the year the *Raad van State* ruled in the case study under scrutiny here, there were 222 coffeeshops in Amsterdam and 31 of those were located in the district of our playground under scrutiny here. In the vicinity of the playground, within a radius of 160 meters, five coffeeshops could be found. The coffeeshop next to the playground had been located on that spot since the early nineties, long before the playground had been erected.

The ban on the playground: Juridical proceedings

The juridical procedure regarding the ban on smoking cannabis cigarettes in and around the playground commenced on 27 August 2008, when a group of residents petitioned the mayor of Amsterdam. Though directed at the mayor, the letter was not sent to City Hall, but to the (sublevel of the) district administration. Receipt of this letter was confirmed by the administration and several exchanges followed, but no formal response was given. This was important, because without a formal response the juridical process came to a standstill. The chairman of the applicants twice wrote to the district administration requesting a written decision on their petition, first on 27 October 2008 and again on 5 November 2008. Eventually, the city district formally turned down the request for a ban on the playground on 27 November 2008, and posted this decision on 3 December 2008. It argued the requested measure unsuited for the specific context. The written decision fell under the scope of the General Administrative Law Act. According to this Act, "a written decision by an administrative body, holding a juristic act under public law" is eligible for administrative grievance and subsequently administrative appeal (article 1:3 General Administrative Law Act / *Algemene Wet Bestuursrecht*).

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 municipality, but because, according to the Raad van State, the municipality lacked the authority to install such a regulation.

The Raad van State did not convince in its reasoning. Amongst other things, it resolutely proclaimed that the use of cannabis is also prohibited in the Opium Act, and that a lower authority such as a municipality cannot duplicate a national law. This proclamation made painfully clear that the nuances of Dutch drug policy had not been understood –

[8] Their number has been dropping for years, in 1999 there were 846, and in 2009 there were 666 (see Mennes *et al.* 2019).

marvellously misunderstood even- by this highest court. Multiple annotations have been written on this verdict (Blom and Büller 2011, Brouwer and Schilder 2011), and the public prosecution has initiated several test cases to mitigate the possible impact of this questionable verdict.[9] Most interesting for the narrative of this article, is that a formal regulation had been declared nugatory in proceedings initiated by citizens aiming to have that regulation installed. The verdict moreover declared all municipal bans on using cannabis in public space void, including a ban that had been in effect elsewhere in Amsterdam since 2006.

The ban on the playground: Sociological context

Though the request for a ban on smoking cannabis cigarettes on the playground had been denied, the municipality of Amsterdam did have such a ban in place on another location. In 2006, such a ban had been installed on Mercatorplein, a square in the western quarter of Amsterdam. It was not the first ban of its kind,[10] but it did receive extensive media coverage –both nationally and internationally. 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. The sign has become the dominant imagery used by the media whenever a ban on using soft drugs in public space is written about. The municipal bylaw had been altered to make this ban possible, and the ban on Mercatorplein had been firmly and successfully positioned by the municipality as a resolute measure to combat problems of post-migrant youths exhibiting drug-related misbehaviour in shared urban public space. When the residents formulated their request for a similar ban on "their" playground, they appealed for a known measure and tapped into an established discourse.

IMAGE 1

Image 1. Municipal sign indicating that a ban on using soft drugs in public is in place, designed for Mercatorplein, Amsterdam.

In the direct vicinity of the playground under scrutiny here there are – additional to the coffeeshop directly adjacent to it – four coffeeshops to be found. Specifically one of these enterprises was considered in the summer of 2008 to attract considerable nuisance for its

[9] For a full discussion on the legal details and ramifications, see Chevalier 2015a and 2015b.

[10] The first ban on smoking cannabis in public space I have been able to trace was implemented in 1999 in Venlo, a border town to Germany in the south of the Netherlands.

surroundings. A popular Dutch television program had identified this coffeeshop as offering the best deal in town: good produce for competing prices and in an enticing setting. As happens after an excellent review, the clientele picked up considerably. The route to and from the nearest subway station to this coffeeshop came past the playground of our case. Not only did individuals and groups on their way to and from the coffeeshop pass through the playground, they would also often enough settle on the playground. After all, the playground had been set up as an inviting space to leisure and spend time in. It had multiple benches situated to catch the sun and an enormous swing in the shape of a large round disc in which one could lie very comfortably.

The neighbourhood the playground is located in was traditionally a blue-collar working-class area. It came about in the 19th century as an expansion south of the city centre, and it is known for its hastily and badly built housing stock. The district had a name for being rough and difficult to govern, the realm of "squatters and libertines". In the words of the district safety coordinator, this gave room for a free-living style: "[Y]ou know, a lot is possible in this area. There is freedom for everything and everybody. As long as you more or less leave each other alone, there is room for experiment and the like."[11] When my mother-in-law lived in the area in the early 1970s, right around the corner of the current playground as it happens, banks would not give out mortgages for houses to be bought in that area. However, times change, the district is close to the city centre and eventually the area started to gentrify. The resistance on part of the squatter movement to the process of gentrification has been substantial, but the process proved irrevocable. Social housing has been sold off or demolished and replaced by expensive privately owned property. And, as the district safety coordinator puts it: "the tolerance of the new residents deviates from that of the old residents".

Also in the street hosting the playground, long-term low-end social housing became alternated with newly acquired high end owner-occupied housing for which top dollar had been paid. The lead applicant of the request for a ban, who pursued up onto the Raad van State, had moved into his privately-owned property in the spring of 2008, together with his wife and young twins.

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 centre, neighbourhood living room, and vendor of scrumptious home-made whole-wheat 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 neighbourhood 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, and apart from Yo-Yo, it 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. Neighbourhood activists fulminate that such rents would be

[11] Interview with the researcher.

affordable only for expats who would not contribute to the neighbourhood, whilst the sitting tenants have lived there for many years and many are actively engaged in the neighbourhood. The housing corporation claims that the necessary overhaul of the building is only financially viable if rents can subsequently be adjusted.

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 and used to live in the area but moved elsewhere some years ago. She holds a pivotal role in the neighbourhood 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 manoeuvres through its labyrinths and marshes to do what she can for those she sees as needing help. 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 neighbourhood. To summarize the emotions evoked by this image: the old neighbourhood 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 the ban 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 playground. Many of them do not actually use cannabis products themselves. They are defending the publicness of their space, the right for others to be there without restrictions.

The playground adjacent to YoYo's street terrace was constructed in 2006, after a long process of civic consultations. It runs the length of one block, on a stretch of the street that has been closed off for cars. It is about fifty meters long and five meters wide, and parallel to it runs a bicycle path that offers a thoroughfare for cyclists. At the time of the consultations the proprietress of YoYo and the proprietress of small toddler day care centre across the street from YoYo had campaigned to position the playground at the side of the day care centre. Their rationale had been that then the children of the day care centre would not have to traverse the bicycle path, which is also used by mopeds, to reach the play facilities. Unfortunately, this proposal did not fit the larger mobility planning of the area, the bicycle path and playground were laid out as they are now. In 2006, the fact that the playground would then be on the side of the coffeeshop did not seem to have been a consideration.

5. Discussion and conclusion

At first glance, for many a request for a ban on smoking cannabis cigarettes on a children's playground sounds more than legitimate, and the fact that such a ban was not installed seems rather puzzling. Considering the case from an angle of juridification of social relations, the relevance of public space and the power dynamics involved in rule creation, insights emerge beyond the first intuitive reaction to the case at hand. The

contested ban turns out to encompass much more than the issue of smoking a cannabis cigarette on a children's playground. The issues at stake are how to deal with contentious matters, what the publicness of public space entails and the power dynamics connected to formal law.

In general, most stakeholders acknowledged that the issue of smoking a cannabis cigarette on a children's playground is open for debate. I've interviewed a father smoking a joint on the playground with his five-year-old in the sandbox and a mother sitting with friends enjoying a joint on the street terrace, whilst her own children pottered about on skeelers and played with other children. For them, the smoking of a joint was not considered to be in a different league from smoking a tobacco cigarette and drinking a glass of wine in the vicinity of children. Many others would feel that using cannabis and children do not mix well, but pointed out that children only used the playground part time, and there was no reason why others should not use the public space for their enjoyment on other moments. As one resident offers: "It's a public square! That is the reason it is there, that's why there is a public space: to sit. They don't make it a public square just to look at (...). What's the harm if they just sit here to smoke their joint? (...) This is public space, is it not?" Again, others would feel that the use of cannabis products was unacceptable in itself, whatever the exact time or place it was used.

Analysing the case study from the angle of juridification of social relations, it quickly becomes clear that the issue at stake is how to deal with conflicting value assertions in shared space: should this be solved via formal law? Juridification refers to the creation of formal rules to order social relations. A formal rule puts a lock on the social dynamics taking place. The "old neighbourhood" considers that the different users of the shared space should socially interact and negotiate on when and under which circumstances using that space to smoke a joint is (not) desirable or acceptable. As an incumbent resident states: "If they get noisy or something, you just walk up to them and say hey guys, my kids, could you quiet down a bit or move further up?". The fact that there is nuisance at times is not debated, but the suitable solution to this nuisance is. In the perception of the incumbent residents the shift towards the legal realm is connected with the changing demography of the area. As the local policeman states: "Ten years ago this wasn't a problem (...). There is a different composition of the population nowadays, the incomes are increasing, the level of education is rising". Level of education is definitely a factor: the lead applicant pursued the case through the juridical steps himself and was at the time also a law student.

Moreover, besides understanding how the system works, it also helps to know how to mobilize the system. The partner of the lead applicant was a journalist, and the case was successfully broadcasted through the media on several occasions. The headline 'municipality refuses to install a ban on smoking a joint in a children's playground' played out well in creating political pressure. The legal and media tactics however created resentment in the social space of the playground. It was felt outside forces were being brought into play, in a situation that should have been dealt with informally and in consultation with everyone frequenting the playground. One resident countered in a letter-to-the-editor:

> Mister X [*i.e reference to lead applicant*] 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 X writes 'in name of all the children in the neighbourhood'.

The query for a formal regulation was seen as an attack on the open atmosphere that welcomes everybody, including, perhaps especially, those not fitting into the ideal picture of the petty bourgeoisie.

Whether or not formal law is the right solution to secure social relations connects to the appreciation of space, and ideas of public space. As a long-term resident of the neighbourhood contemplates: "[I]f 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". Concurrently, the request i.e. demand for a ban on the playground is perceived as evidence of the neighbourhood being taken over by arrogant and intolerant yuppies. The following is extracted from a letter to the editor by a former resident of the neighbourhood. It is titled: *I fled from the yuppies*.

> In 1977, when I came to live in the (-)-street, 'Y' was still a working-class neighbourhood. 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 'Y'. You recognize them immediately from their trendy bicycles and arrogant airs of 'look at me being a real Amsterdammer'. The coffeeshop YoYo 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.

The discussion here is no longer whether a ban is or is not an effective or desirable measure against nuisance – nuisance that is in part acknowledged to exist. The ban is discussed as an example of the gentrification process taking place, and the concurring repression of the inclusive and tolerant character of the old neighbourhood. The material space of the playground and the communal centre annex coffeeshop YoYo adjacent to it embodies the character of the old neighbourhood and the kind of society it wishes to accommodate. The ban is then no longer about smoking a cannabis cigarette on a playground, it is about whose value system becomes the dominant modifier in that space. The contention over the legal norm represents the power relations taking place in that space.

To repeat Becker: "[R]ules are the product of someone's initiative" (Becker 1963/1997, p. 147). The legal proceedings show a stakeholder in a social context, i.e. the playground, moving out of that context into the juridical realm in pursuit of a legal ruling that will redefine social dynamics taking place in that space. This was not a limited undertaking, the juridical proceedings comprised of multiple steps over a period of almost three years. Originally a group of six households, all but one desisted the pursuit of the ban after the municipal denial had been procedurally and substantively reiterated, respectively in the administrative grievance and in the administrative appeal. The lead applicant continued on to the Raad van State, an enterprise that requires considerable time and effort. All that time he lived next to the playground, and his children played on that playground. The chosen route however was to address the issues playing out in the playground in a

removed legal setting, and attempting to evoke the legislative powers of the governing administration to determine the social setting.

The juridifcation of social relations in combination with the moral entrepreneuring of a value into a formal rule demonstrates how administrative law is employed as a strategy in power struggles between citizens over the accessibility of public space. Vice versa: investigating the setting in which formal law is entrepreneured offers a vista on the power dynamics at play in a convivial neighbourhood playground. Law is not a neutral force from above and beyond. Law and processes of law represents social power dynamics. Studying law as it comes about and the social context in which it figures offers a very clear lens on the contestations for power that go on. These power dynamics do not necessarily only take place vertically, between citizens and governing authorities. At times, the brunt of the contestation takes place horizontally, between citizens. In those instances, it matters which faction is able to ensure the backing of the formal authority. The case study investigated here shows how the higher-educated and economically better positioned faction attempts to recruit the power of the municipal legislative authority, and fails in this attempt despite a long juridical journey. Studying public space through the lens of legal dynamics such as juridification and moral entrepreneuring lays bare the power struggles that go on in public space. It offers a wider perspective on issues that in first instance might intuitively call up incomplete considerations: What could possibly be against implementing a ban on the smoking of a joint on a children's playground?

References

Becker, H.S., 1997. *Outsiders: Studies in the Sociology of Deviance.* New York: The Free Press. (Originally published in 1963).

Blichner, L.C., and Molander, A., 2008. Mapping juridification. *European Law Journal,* 14(1), 36–54.

Blokland, T.V., 2008. *Oog voor elkaar: Veiligheidsbeleving en sociale controle in de grote stad*. Amsterdam University Press.

Blokland, T.V., 2009. Het belang van publieke familiariteit in de openbare ruimte. *Tijdschrift voor beleid, politiek en maatschappij*, 36(3), 183–191.

Blom, T., and Büller, N., 2011. Gebruik is niet strafbaar gesteld in de Opiumwet. *Nederlands Juristenblad* [online], 86(37), 2511–2514. Available from: https://hdl.handle.net/11245/1.407522 [Accessed 2 December 2020].

Brouwer, J.G., and Schilder, A.E., 2011. Noot bij: Afdeling bestuursrechtspraak. (2011, Juli 13). *AB*, 2011-, 250, 1483–1485.

Chevalier, D.A.M., 2015a. *Playing it by the rules: Local bans on the public use of soft drugs and the production of shared spaces of everyday life*. PhD, University of Amsterdam.

Chevalier, D.A.M., 2015b. "You Are Not From Around Here, Are You": Getting Othered In Participant Observations. *Contributions From European Symbolic Interactionists: Reflections On Methods* [online], 44, 1-17. Available from: https://doi.org/10.1108/S0163-239620150000044002 [Accessed 2 December 2020].

Chevalier, D.A.M., 2017. Truth or tale? The production, selection and interpretation of "evidence" informing municipal policy on public use of soft drugs. *In*: A. O'Gorman *et al*., eds., *Evidence in Social Drug Research and Drug Policy*. Lengerich: Pabst Science, 85-98.

Deflem, M., 1996. Introduction: Law in Habermas' theory of communicative action. *In:* M. Deflem, ed., *Habermas, Modernity and Law*. London/Thousand Oaks/New Delhi: Sage.

Fisher, C., 1982. *To dwell among friends: personal networks in town and city*. Chicago: Chicago University Press

Flyvberg, B., 2004. Five misunderstandings about case-study research. *In:* C. Seale *et al.*, eds., *Qualitative Research Practice*. London/Thousand Oaks: Sage, 420–434.

Goffman, E., 1959. *The Presentation of Self in Everyday Life.* University of Edinburgh Social Sciences Research Centre.

Goffman, E., 1966. *Behavior in Public Places: Notes on Social Organization of Gatherings.* New York: The Free Press. (Originally published in 1963).

Habermas, J., 1987. *The Theory of Communicative Action. Volume 2. Lifeworld and System: A Critique of Functionalist Reason.* Trans.: T. McCarthy. Boston: Beacon Press.

Lefebvre, H., 1991. *The Production of Space.* Trans.: D. Nicholson-Smith. Malden/Oxford/Carlton: Blackwell Publishing.

Lofland, L.H., 1985. *A world of strangers: order and action in urban public space.* Reprint ed. Prospect Heights: Waveland Press. (Originally published in 1973).

Lofland, L.H., 1998. *The Public Realm: Exploring the City's Quintessential Social Territory.* New York: Aldine de Gruyter.

Madanipour, A., 2005. *Public and Private Spaces of the City.* London/New York: Routledge.

Magnussen, A.M., and Banasiak, A., 2013. Juridification: Disrupting the relationship between law and politics? *European Law Journal* [online], 19(3), 325–339. Available from: https://doi.org/10.1111/eulj.12026 [Accessed 2 December 2020].

Mennes, R., *et al*., 2019. *Coffeeshops in Nederland 2018: Aantallen coffeeshops en gemeentelijk beleid 1999-2018* [online]. Report. The Hague: WODC, Ministerie van Justitie en Veiligheid. July. Available from: https://www.breuerintraval.nl/wp-content/uploads/2019/09/3060A_volledige-tekst_tcm28-405061.pdf [Accessed 2 December 2020].

Milgram, S. (with T. Blass, ed.,) 1977. *The Individual in a Social World: Essays and Experiments*. Reading/ Menlo Park: Addison-Wesley.

Molotch, H., 1993. The space of Lefebvre. *Theory and Society* [online], 22(6), 887–895. Available from: https://doi.org/10.1007/BF00993685 [Accessed 2 December 2020].

Schuyt, C.J.M., 1997. Bronnen van juridisering en hun confluentie. *Nederlands Juristenblad. Special: Juridisering*, 2, 925–930.

Sennett, R., 1992. *The Fall of Public Man*. New York/London: W.W. Norton.

Tellegen, E., 2008. *Het utopisme van de drugsbestrijding*. Amsterdam: Mets & Schilt.

Teubner, G., ed., 1987. *Juridification of Social Spheres: A Comparative Analysis in the Areas of Labor, Corporate, Antitrust and Social Welfare Law.* Berlin/New York: De Gruyter.