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DOI

[10.1080/27706869.2024.2316460](https://doi.org/10.1080/27706869.2024.2316460)

Publication date

2024

Document Version

Final published version

Published in

Legal Pluralism and Critical Social Analysis

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[Link to publication](#)

Citation for published version (APA):

Hagemans, I. W., Spierings, B., Weltevreden, J., & Hooimeijer, P. (2024). “I refer to it as *throwing wads*”: strategic use of multiple normative orders to manage touristification of consumption spaces in Amsterdam. *Legal Pluralism and Critical Social Analysis*, 56(1), 128-148. <https://doi.org/10.1080/27706869.2024.2316460>



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To cite this article: Iris W. Hagemans, Bas Spierings, Jesse Weltevreden & Pieter Hooimeijer (2024) “I refer to it as *throwing wads*”: strategic use of multiple normative orders to manage touristification of consumption spaces in Amsterdam, *Legal Pluralism and Critical Social Analysis*, 56:1, 128-148, DOI: [10.1080/27706869.2024.2316460](https://doi.org/10.1080/27706869.2024.2316460)

To link to this article: <https://doi.org/10.1080/27706869.2024.2316460>



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Published online: 21 Feb 2024.



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“I refer to it as *throwing wads*”: strategic use of multiple normative orders to manage touristification of consumption spaces in Amsterdam

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ABSTRACT

As multifunctional places that combine shopping and hospitality with public space and residential functions, urban consumption spaces are sites where different normative orders surface and sometimes clash. In Amsterdam, such a clash emerged over touristification of consumption spaces, eroding place attachment for local residents and urging the city government to take action. Based on policy analysis and interviews with entrepreneurs and key informants, we demonstrate how Amsterdam’s city government is responding to this issue, using legal pluralism that exists within formal state law. Specifically, the city government combines four instruments to manage touristification of consumption spaces, targeting so-called tourist shops with the aim to drive them out of the inner city. This strategic combination of policy instruments designed on various scales and for different publics to pursue a local political goal jeopardizes entrepreneurs’ rights to legal certainty. Moreover, implicitly based on class-based tastes and distrust towards particular minority groups of entrepreneurs, this policy strategy results in institutional discrimination that has far-reaching consequences for entrepreneurs in itself, but also affects trust relations among local stakeholders.

ARTICLE HISTORY


Received 2 May 2023
Accepted 6 February 2024

KEYWORDS

Touristification;
consumption spaces;
entrepreneurship; legal
certainty; institutional
discrimination

Introduction

Urban spaces, characterized as they are by multifunctionality and a diversity of users, often form the backdrop where larger societal transformations become visible and cause tension, issues and conflicts. With this diversity and multifunctionality comes a variety of normative orders, both external to and within formal state law. Within formal state law, city governments have an increasing amount of local, national and international laws at their disposal. Especially in the field of migration and human rights, city governments are demonstrated to actively interpret, adapt and strategically select aspects of national and international laws (Davis 2019;

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Heirwegh and Van de Graaf 2019; Oomen and Durmus 2019; Oomen et al. 2021). With that, city governments are increasingly seen as co-creators rather than mere executors of national and international laws (Marcenko 2019). However, taking national and international laws as a starting point, these studies only partially expose the discretionary space for local governments as a consequence of legal pluralism within formal state law. Viewed from the perspective of a city government faced with a pressing local issue, legal pluralism enables a strategic selection from multiple normative orders, each with their own policy instruments and law-enforcement options, to pursue local political goals. Our case study demonstrates how this can deteriorate legal certainty for local stakeholders and result in institutional discrimination.

This paper analyses a case in Amsterdam, where touristification of consumption spaces has become a prime concern over the past decade. Consumption spaces are places where shopping and hospitality coincide with public space and residential functions. While tourism can provide a significant boost to retail and hospitality businesses, too many visitors can lead to crowding and associated nuisance, which in turn can cause avoidance behavior among local residents (Jacobsen, Iversen, and Hem 2019). The changing consumer base may cause shops, services and hospitality to adapt to the tourist demand (Guimarães 2021), eroding feelings of place attachment among local residents. This touristification of consumption spaces has received a lot of local (Boutkan 2017), national (Bolderen 2016) and even international (Zee 2017) media attention, urging the city government to take action (Groenlinks et al. 2018). The city government responded to this issue using an assembly of policy instruments (City of Amsterdam 2017). In their street-level implementation, these instruments are combined and targeted towards so-called tourist shops, but in practice disproportionately affect particular socioeconomic groups of entrepreneurs. Due to this disproportional effect, we argue that the strategic application of multiple normative orders within formal policy results in institutional discrimination. Moreover, the increased scrutiny towards particular entrepreneurs reverberates in trust relations among local stakeholders.

The next sections conceptualize legal pluralism within formal state law, outline the pluralistic legal landscape around urban tourism, and explain how legal pluralism can affect legal certainty, result in institutional discrimination and deteriorate trust relations between local stakeholders. This is followed with a description of our methodological approach and the findings in the context of Amsterdam. These focus firstly on the different instruments combined to manage touristification of consumption spaces. We conclude with a section on how the strategic combination of these instruments not only jeopardizes legal certainty for entrepreneurs, but also results in institutional discrimination that reverberates in a business climate of distrust.

Legal pluralism within formal state law

Traditionally, legal pluralism focuses on forms of law that exist outside of formal state law, these include customary laws, religious laws, laws and customs related to particular ethnic or social groups (Benda-Beckmann and Turner 2020). However,

formal state law is increasingly considered as pluralist in itself. Within formal state law, plurality exists between laws and policy instruments designed at different scales and targeted at different publics (Tamanaha 2007). While there is some disagreement about whether this plurality within formal state law should be considered a case of legal pluralism, it is increasingly clear that “the state is not a distinct, well-defined entity that can be clearly distinguished from society” (Sani 2020, 102), but an arena in which different normative orders exist and compete. This is especially true at the lowest levels of government, in towns, cities or neighborhoods. Here, hyper-regulation, decentralization and privatization have intensified legal pluralism by increasing the scope of responsibilities; the number of stakeholders involved; and the multiplicity of normative orders (Benda-Beckmann and Turner 2020; Oomen and Durmus 2019).

Firstly, legal landscapes occur on an increasing number of scales, ranging from the local to the trans- and international (Michaels 2009). This causes overlapping juridical systems, embedded in separate institutions, often without a clear hierarchy (Tamanaha 2007). Secondly, laws are designed for different publics, fragmented across different interests. This can lead to conflicting aims or contradictory implications. This type of pluralism is growing as an increasing share of social life is regulated, a development that is particularly visible in public spaces (Brown 2017). A final fragmentation of the legal landscape, which has received less attention in literature on legal pluralism but turned out of crucial importance to our case study, consists of the distinction between administrative, criminal and private law. This distinction is especially important because these areas of law come with specific authorizations and procedures (Crijns 2014).

Legal fragmentation creates discretionary space for local policymakers to strategically use policies at different scales and for different publics to regulate issues that are important and urgent at the local level (Oomen et al. 2021). Heirwegh and Van de Graaf (2019) identify discretionary space at the initiation, decision-making and implementation phase. In the initiation phase, the local government and other stakeholders can strategically frame an issue, for instance to navigate it away from the local and into a national or international arena, or to fit within a particular discourse. These strategic framing efforts leave a high degree of autonomy to policymakers in the decision-making phase. Exposed to a variety of interpretations, they have a wide variety of policy approaches at their disposal and make a decision based on factors ranging from their personal bias, pragmatism and external pressure from different stakeholder groups (Heirwegh and Van de Graaf 2019). Finally, the implementation phase leaves discretionary space for street-level bureaucrats to decide when to actually enforce laws or when to allow exceptions. This means that legal pluralism allows considerable discretionary space for city governments to choose the instruments with which to intervene and where and how to implement them.

Legal pluralism within formal state law is thus becoming more and more relevant in urban settings, since “the legal landscape today consists of ever more spaces that are regulated at different scale with general or specialized legal regimes, each aiming at different goals and different publics” (Benda-Beckmann and Turner 2020, 39). Moreover, globalization of the legal landscape obviously goes hand in hand with

globalization of the issues city governments are required to address. The urban scale often forms the stage where global issues play out. Tourism is a typical example where causes, benefits and externalities are unevenly distributed over local, national and global scales (Russo 2002). This leaves city governments with the challenging task to manage local effects of tourism without being able to address its global causes.

Managing touristification of consumption spaces

A worldwide increase in the number of travelers has made tourism an important economic sector for many cities, but also increased its spatial impact by introducing new ways of using space, changing economic flows and power relations between local stakeholders and causing transformations of the landscape (Ojeda and Kieffer 2020). Managing the effects of tourism, however, is far from easy for city governments. It often entails a considerable policy shift after decades of promoting tourism and in pursuit of economic benefits (Milano, Novelli, and Cheer 2019). For those city governments that want to curtail tourism, policy instruments to do so are often limited. As a global phenomenon with highly localized and concentrated impact, tourism is notoriously difficult to regulate at the local scale where the impacts are felt most prominently (Goodwin 2017; Koens, Postma, and Papp 2019; Milano, Novelli, and Cheer 2019; Peeters et al. 2018; Santolli 2017), particularly in urban settings where tourist and residents share the use of many urban features (Ashworth and Stephen 2011).

Tourism policies therefore address a wide range of different issues (Goodwin 2017), such as short term rentals (Aguilera, Francesca, and Claire 2021), cruise ship tourism (Vianello 2016) or nightlife (Nofre 2013; Olt et al. 2019), which are often part of a separate policy arena with its own agenda. This has two important implications. Firstly, important decisions affecting the future of urban tourism might be made by policymakers with highly different goals in mind. Secondly, policymakers have a wide range of instruments from different policy arenas at their disposal to manage the effects of tourism. This regulation is then “recycled, stretched, or adapted” (Aguilera, Francesca, and Claire 2021, 17) to respond to new challenges. Urban tourism policies are therefore inherently situated in a pluralist legal landscape, drawing on “multiple uncoordinated, coexisting or overlapping bodies of law” (Tamanaha 2007, 1). This pluralist legal landscape encourages strategic policy choices, applying legal instruments designed at different spatial scales and with different goals in mind to address a pressing local issue.

Institutional discrimination, legal certainty and trust

Strategically applying different types of regulation can have crucial implications for legal certainty and trust relations, both among local stakeholders and between local stakeholders and the city government. Legal certainty refers to understandability and predictability in the way law is applied. It is considered a fundamental principle of European and Human Rights law (Fenwick 2016) and plays an important role in “shaping the relations between institutions, people and other legal entities” (Oomen et al. 2021, 3609). It implies that laws are sufficiently clear to enable those who are

subject to them to foresee legal consequences of their actions and protect them from arbitrary application of state power (Fenwick 2016). This arbitrariness is exactly what is at stake when policy instruments disproportionately affect some stakeholders over others, based on political reasons unrelated to the policy instrument's intentions.

Arbitrariness in the application of law becomes a case of institutional discrimination when it disproportionately affects minority groups (Pincus 2019). Institutional discrimination refers to “differential treatment (...) that is either perpetrated by organizations or codified into law” (Small and Pager 2020, 52). This differential treatment is often unconscious, based on institutional practices that are in theory neutral, but affect different social groups in different ways often because “it is applied in a context with a preexisting (...) difference, gradient, or level of segregation” (Small and Pager 2020, 54). In the case of touristification of consumption spaces in Amsterdam, the group of entrepreneurs that are disproportionately affected are defined by their business concepts targeted towards tourists. However, behind these considerations are often ideas about desirable and undesirable businesses, businesses that are seen to add to elusive qualities such as diversity of the retail offer and businesses that are seen as monotonous (Eck, Hagemans, and Rath 2020). These evaluations are often implicitly based on cultural capital, class-based tastes and preferences employed to distinguish oneself from lower socioeconomic classes (Bourdieu 1984). Another factor that comes into play is distrust towards particular types of entrepreneurs, such as ethnic entrepreneurs or entrepreneurs from lower socioeconomic backgrounds (Eck, Hagemans, and Rath 2020; Hall 2021). Social and cultural class based dislike and distrust moves beyond arbitrariness as it systemic and can lead to institutional discrimination in practice. The distrust from government officials towards particular types of entrepreneurs can also create ripple effects on trust relations between stakeholders on the ground and with that on the local business climate.

Trust relations are highly important for entrepreneurs, whose success largely depends on interpersonal relations with regular customers, competitors, other entrepreneurs in the area, property owners, banks, suppliers and law enforcers (Kloosterman and Rath 2018; Sorenson 2018; Zukin, Kasinitz, and Chen 2015). These relations thrive on presumed shared interests, for instance to provide customers with honest and safe products; to remain in business and pay bills to property owners, banks and suppliers; to contribute to a favorable consumption landscape; and to compete on a level playing field. Such expectations are crucial to trust, which can be defined as “a more or less stable perception of actors about the intentions of other actors, that is, that they refrain from opportunistic behavior” (Edelenbos and Klijn 2007, 4). It is exactly this perception of the entrepreneur's intentions, which is at stake when suspicions are raised about criminal activities, especially when these suspicions are confirmed by an authoritative institution such as the city government. The distrust from the city government can ultimately lead to loss of regular customers, deteriorating support from entrepreneurs in the area or entrepreneurs associations, difficulty in finding property, securing loans or getting deliveries. In this way, distrust from the city government can be both a reflection of and a catalyst for a local business climate of distrust.

Methods

Our analysis of the legal landscape around touristification of consumption spaces combines three approaches: Critical discourse analysis of policy and media documents, sampled interviews with entrepreneurs in the inner city and interviews with key informants, which include policymakers and law-enforcers as well as local stakeholders affected by strategies to manage touristification of consumption spaces.

A first starting point consisted of a critical discourse analysis of Amsterdam's tourism policy and official policy strategies to manage touristification of consumption spaces in particular. The analysis focused on four key documents (Table 1) as well as communications surrounding them, such as research reports used to legitimize policies or to monitor their effects and from court cases that appealed to decisions based on these policies. The first key policy document is the "Balanced City" policy, introduced in 2016. Responding to an upsurge in residents' resistance to tourism since 2014, this was the first strategic document specifically focused on the negative impacts of tourism. It aimed to "find renewed balance between growth and livability" (City of Amsterdam 2016, 2). In 2020, the "Balanced City" program was followed up with the program "Inner City Approach." This came with a shift in ideology. While the "Balanced City" program focused on balancing the economic benefits of the tourism industry with the negative externalities for local residents, the "Inner City Approach" overtly sides with local residents. The program's aim is formulated as "restoring the inner city into a place residents from all over Amsterdam like to visit and where local residents feel at home" (City of Amsterdam 2020, 6).

Effects of tourism on consumption landscapes were one of the issues addressed in the "Balanced City" program, but did not immediately lead to interventions. In 2017, a report titled "Steering towards a diverse offer of shops" explored the instruments to intervene in the composition of consumption landscapes. This report was extremely insightful for our study, because it compared both formal and informal instruments for interventions. One of the results of this exploration was an updated zoning plan for the inner city, which includes a ban on tourist shops. The ban aims to freeze the process of touristification by tolerating the already existing tourist shops but rejecting any new establishments of tourist shops in the inner city.

To shed light on the more informal strategies, a second point of departure for this study consisted of interviews with entrepreneurs in the inner city. We used

Table 1. Overview of key policy documents.

Balanced city (<i>Stad in Balans</i>)	2016	Tourism policy program aimed to "find renewed balance between growth and livability" (City of Amsterdam 2016, 2)
Steering towards a diverse offer of shops (<i>Sturen op een divers winkelgebied</i>)	2017	Exploration of the different instruments that can be used to protect diversity of the consumption landscape despite of increasing tourism
Shopping diversity in the city center (<i>Winkeldiversiteit Centrum</i>)	2018	Zoning plan for the inner city, including a ban on tourist shops
Inner city approach (<i>Aanpak Binnenstad</i>)	2020	Updated tourism policy program aimed to "restore the inner city into a place residents from all over Amsterdam like to visit and where local residents feel at home" (City of Amsterdam 2020, 6)

material from semi-structured interviews with 31 business owners, co-owners or store managers of independent businesses, local chain stores and franchise businesses in the inner city of Amsterdam. These interviews discussed a broad range of topics revolving around the changes in local demand and business climate the entrepreneurs noticed as a consequence of increasing tourism. Changing experiences with law-enforcement and local policies were one of the topics that were probed for and provided an entrepreneur perspective on strategies used to manage touristification of consumption spaces. We used interviews with key informants to triangulate the experiences mentioned by entrepreneurs that were not directly congruent with what is mentioned in policy documents. The respondents included local policymakers, representatives of law enforcement and a special monitoring taskforce, representatives of social corporations who own commercial property in the inner city, entrepreneurs who have been involved in conflicts with the municipality and a lawyer who represented entrepreneurs in several of these conflicts.

Our analysis compared the input from policy documents, entrepreneur experiences and key informants to see where the different perspectives line up. Out of this comparison, we identified four instruments that played an important role in Amsterdam's approach to manage touristification of consumption spaces (Table 2). These are combinations of direct and indirect interventions, by the city government or by other stakeholders. For each of these instruments we first analyzed the formal goals with which they have been introduced and legal context that enabled them to be applied to touristification of consumption spaces. We then considered how the instruments were implemented on a street level. The interviews with entrepreneurs and key informants provided insights into the effects of these policy strategies on legal certainty and trust relations. Finally, comparing the different accounts, we were able to identify and explain the diverging experiences of different types of entrepreneurs that make this a case of institutional discrimination.

Table 2. Instruments used to manage touristification of consumption spaces.

	Goal with which the policy instrument was introduced	Way in which the policy instrument is applied to tourist shops
Zoning plans	Protect a good living environment (Ministerie van Volkshuisvesting Ruimtelijke Ordening en Milieubeheer n.d. Art 3.1)	Prevent the establishment of new tourist shops in the inner city
General laws and regulations for shops and hospitality businesses	Protect the health and safety of neighboring residents, customers and employees	Conduct integrated check-ups specifically targeted at businesses that are considered touristy
BIBOB Act	Prohibit that the government unintentionally cooperates in facilitating criminal behavior and laundering of money generated by criminal activities (Kuin, Verbeek, and Homburg 2020, 1)	Require additional screening in targeted inner city streets and withdraw or refuse hospitality permits
Property purchases	Use properties for municipal services, protect monumental buildings or to rent out properties at affordable rates to important societal functions, such as education and cultural institutions	Prevent vacant properties in the inner city from becoming tourist shops

Four instruments to manage touristification of consumption spaces

Table 2 lists the four instruments used to manage touristification of consumption spaces in Amsterdam, the goals with which these instruments have been introduced and the way they have been implemented to manage touristification of consumption spaces. The first and most important instrument is the inner city zoning plan, which bans tourist shops. A second instrument used to address existing tourist-oriented businesses consists of more general laws and regulations around shops and hospitality businesses. This regulation is used to manage touristification of consumption spaces by means of targeted law enforcement actions. Thirdly, the Public Administration Probity Screening Act (abbreviated as BIBOB in Dutch), designed to prevent the government from inadvertently facilitating criminal activities, is used to screen businesses that are considered touristy. This screening potentially leads to refusal or revoking of business licenses. A fourth instrument consists of property purchases, often at arm's length through social corporations.

Zoning plans: banning tourist shops from the inner city

The most direct measure used to manage touristification of consumption spaces in Amsterdam is a ban on tourist shops, which was introduced in 2017. Traditionally, zoning plans can allocate certain areas for commercial use, but cannot specify or restrict the types of businesses that locate there. Up until 2008, exceptions to this rule were limited to strict spatial planning conditions (Ministerie van Volkshuisvesting Ruimtelijke Ordening en Milieubeheer n.d. Art. 10.1), such as limitations on businesses selling bulky or hazardous goods (City of Amsterdam 2017). These conditions broadened under the updated spatial planning law that was introduced in 2008 (Ministerie van Volkshuisvesting Ruimtelijke Ordening en Milieubeheer, n.d. Art 3.1). From then on, zoning plans could also restrict activities in order to protect a “good living environment” (Ministerie van Volkshuisvesting Ruimtelijke Ordening en Milieubeheer, n.d. Art 3.1). This update was made to enable easier implementation of sustainability goals in zoning plans (Tweede Kamer der Staten-Generaal 2003 Art 3.4) and thus had no direct relation to consumption spaces. Nevertheless, it also created opportunities to curtail retail and hospitality businesses that were argued to affect a good living environment. In Amsterdam, it soon resulted in restrictions on souvenir shops, soft drug-related businesses (grow shops, headshops, seed shops, and smart shops), money exchange offices, phone call shops, massage parlors and gambling halls (City of Amsterdam 2013).

The ban on tourist shops builds a similar case, but besides targeting a specific sector, it also includes restrictions on the offer of specific products, types of advertisement and presentation and business models that are associated with tourism. Firstly, a number of specific retail sectors are banned from the inner city. Besides the earlier mentioned businesses such as souvenir shops and gambling halls, this includes mini supermarkets and take-away food shops (City of Amsterdam 2018). Secondly, for shops that do not fall in these restricted categories, limitations are introduced around the offer of souvenirs and food and drinks to go. The souvenir offer should, for instance, comprise a maximum of 5% of the total floor space,

which should not be located at the front of the shop (City of Amsterdam 2018). Thirdly, with regard to advertisement and presentation, the zoning plan argues that tourist shops are distinguishable by their conspicuous and flashy communication, often in English or other, non-Dutch, languages. Finally, in terms of business model it is argued that customers are often assisted in English, spend relatively little time in the shop, products are often packaged in souvenir-like packaging and prices are higher than those in local shops.

Zoning plans are part of administrative law, which means that public authorities can sanction anyone who violates the law with a fine or with administrative coercion (Crijns 2014). The latter means that the public authority has the right to restore a situation that is in violation with administrative laws to a situation of compliance. Only if the defendant appeals the decision it will be evaluated in court. It is then up to the defendant to provide evidence that they did not commit the violations they have been accused of. Many cases of violations of administrative law are therefore resolved without ever being evaluated by a judge (Bröring and Naves 2010). A representative from the municipal law-enforcement department confirmed that administrative coercion is the preferred action to regulate the ban on tourist shops. This means that a business that is considered in violation with the zoning plan can be closed until it complies with the zoning plan. Closing businesses that do not comply with the zoning plan is preferred over a fine, because of its visibility. This can provide opportunities to get positive media attention, but also to demonstrate the effectiveness of the ban on tourist shops to the internal organization or even directly to the mayor. The latter happened in the case of candy shops. Candy shops were initially seen as compliant with the zoning plan, but recently gained negative media attention for being touristy.

[Candy shops] raised a lot of questions from the mayor: "How is it possible that that's just allowed?" (...) So the moment something came up, which was really a candy shop and then all kinds of other things, we were like: Then we'll close this one, so we can show that to the mayor, like: "Look, this is not allowed, this is a candy shop and a suitcase shop and it's going to sell everything and anything and we don't want that, and that's why we think this is touristy and a [regular] candy shop is not."

The ban on tourist shops thus seems to have a highly symbolic value in demonstrating the city government's ability to address touristification of consumption spaces.

"And that's just the door": the labyrinth of laws and regulations for shops and hospitality

A second set of instruments used to manage touristification of consumption spaces consists of laws and regulations shops and hospitality businesses have to comply with to ensure the health and safety of neighboring residents, customers and employees. These include building codes, environmental laws, fire safety laws, employment laws and food safety regulations, some of which fall under administrative and some under criminal law. Consistent with international observations that an increasing share of social life is regulated or even hyper-regulated (Brown 2017), each of these bodies of regulation have been designed with specific goals in mind, in some cases

resulting in contradictions. This makes it difficult, if not impossible to comply with all regulation, as illustrated by this hospitality lawyer:

You need an escape route for which the door must open outwards, i.e. onto the street, (...) [but] the building and housing inspection prescribes that doors should open inwards. (...) And that's just a door.

Moreover, these laws and regulations are monitored and enforced by different organizations, which transcends the level of the city government. The municipal law-enforcement department, for instance, monitors building safety and compliance with zoning plans, while food safety and hygiene are monitored by a dedicated authority and criminal laws around employment are monitored by the police or military police.

Touristification of consumption spaces started to play a role in the decision when, where and how to monitor and enforce regulation. When the ban on tourist shops required increased monitoring in the inner city, the municipal law-enforcement department decided to integrate their regular inspections into these monitoring actions. These all-encompassing check-ups were mentioned in the “Balanced City” program as a way to reduce the number of ice cream and waffle shops in the inner city (City of Amsterdam 2016, 81). A representative of the law-enforcement department, however, claims that these integrated inspections are foremostly practical:

Imagine the zoning plan does allow this type of shops, then at least you can make sure all other things are in order. And because the same inspector can do the entire check-up and you can put it all in the same enforcement notice, this is a logical way to approach it.

Regardless of the reason, the fact that monitoring the ban on tourist shops is combined with monitoring of general laws and regulations for shops and hospitality businesses means that entrepreneurs in areas and sectors that are considered touristy are more likely to be monitored. Moreover, considering the complexity and inherent contradictions in the regulation businesses have to comply with, entrepreneurs who are monitored are likely to face a sanction. A representative of the special task force concurs that it has a “100% score” and has yet to come across a business that complies with all regulation. In most cases these are violations of zoning laws and fire safety regulation.

Several entrepreneurs noticed increasing attention from law-enforcers over the past few years. This restaurant owner, for instance, felt like she was regarded with increasing scrutiny:

The queues at the door had to change, I think my outdoor seats were checked ten times every summer. I get an application for the Commodities Act twice a year, while my neighbor says: “I never get them.” And then I thought: “whatever,” it could all be coincidence, I mean... But at a certain point you think: “Well, I don't know, but I think I'm being targeted.”

She actually visited the inner city district chairman to ask whether there was a specific reason for the closer scrutiny she experienced over the years, and got her suspicions confirmed. The problem seemed to lie in her business's English name, which the chairman claimed had “a negative ring to it.”

Once inspections have brought up more serious issues that may provide grounds to revoke a license, such as violations of employment laws, entrepreneurs are – understandably – treated with increased scrutiny. However, this does not simply mean increased monitoring of the specific regulation that was violated in the past, but increased monitoring by a multidisciplinary team of all laws and regulations shops and hospitality businesses have to comply with. These checkups can become quite impactful as the inspection team and the issues they report on continue to expand every time. A hospitality lawyer has seen multiple cases where the city government seemed to be digging for criminalizing evidence with actions ranging from removing fixed items of furniture to find mouse droppings and screening neighborhood camera footage to monitor an entrepreneur’s social contacts. A representative from the municipal law-enforcement department referred to this as “throwing wads,” meaning that in the absence of evidence of the more serious offences the businesses are suspected of, the task force monitors for a wide range of smaller violations as well. Moreover, the results of these inspections can be used to build up a case against particular entrepreneurs based on the BIBOB act.

Integrity screening as part of the BIBOB Act

The Public Administration Probity Screening Act, or abbreviated in Dutch as BIBOB¹, was introduced to “prohibit that the government unintentionally cooperates in facilitating criminal behavior and laundering of money generated by criminal activities.” (Kuin, Verbeek, and Homburg 2020, 1). Private parties who are either employed by governmental organizations or receive subsidies or permits can therefore be subjected to a screening process. The screening looks into possible criminal behavior of the business owners or criminal funds used or laundered in the business. Recent research demonstrated that this law is actually applied very seldomly by larger governmental organizations or for large tenders. However, it is commonplace among city governments, especially around real estate transactions and permit requests, particularly for hospitality businesses (Kuin, Verbeek, and Homburg 2020). These permits can be either withdrawn or refused when the screening process concludes that the risk that an entrepreneur will use the permit for criminal activities is too high. The emphasis on risk makes this a somewhat controversial policy, since this means it can impose sanctions based on activities that have not taken place yet (Vorm 2014).

Integrity screenings under the BIBOB act do not only assess the *risk* of criminal activities before these have actually taken place, they also focus on a criminal *infrastructure* rather than only criminal activities. This is part of a strategy to counter *crime that undermines society*. Crime that undermines society refers to the points where criminal activities merges with legal structures, for instance in businesses that launder money or provide services to criminal organizations. Advocates argue that it is exactly at these transition points that criminal activities have the most disruptive effects on society (Tops and Pronk 2019). Despite persistent criticism that crime that undermines society is ill-defined and scarcely supported by evidence, the concept has raised increasing concern in the Netherlands over the past years (Vols 2019). This led to the introduction of a special task force that includes local and provincial governments, tax and financial inspection services, police, customs,

military police, immigration services, labor inspection and the food safety authority. While this is a national approach, as listed on the website of the Regional Centers of Information and Expertise (www.riec.nl) there are differences in the types of businesses that are targeted for such check-ups. In Amsterdam, tourist shops became one of the focus points in discussions about crime that undermines society.

When we traced it back to its origin, the association between tourist shops and crime that undermines society seemed puzzling, since the most widely quoted report on crime that undermines society in Amsterdam actually debunks this association. It concerns a report on the impact of the drug economy, which claims that "hundreds of millions, if not billions" (Tops and Pronk 2019, 4) of criminal earnings in Amsterdam need to find their way into legal monetary flows. Interestingly, although this report has been criticized for grossly overestimating the size and impacts of the drug economy (Koning 2019), it concludes that evidence for systematic money laundering in (tourist) shops in the inner city is lacking:

The Tax Office is doubtful, to say the least (...). The department has tested and came to the conclusion: those ice cream shops are simply busy, there are high turnovers and corresponding profits. The department says it has made serious calculations on costs and revenues (...) "and our conclusion is: those high turnovers are realistic."

Information about who prioritized tourist shops in the inner city of Amsterdam and for what reason is not publicly available. However, some indicators of crime that undermines society are published in an online dashboard at zichtopondermijning.nl. With regard to sector-specific indicators, it seems that overrepresentation plays an important role. This is measured by the number of business and their turnover compared to the local catchment area. By these standards, cafes, restaurants, snack bars and the confectionary industry are overrepresented in Amsterdam's inner city. The importance of this overrepresentation is confirmed by a representative of the taskforce crime that undermines society, who argues:

When you look at the inner city – if you open your eyes you can actually see it. There is an overrepresentation of certain industries. Look at the souvenir shops for example, the tourist shops, how many – yes, there are a lot of tourists in Amsterdam, but how many ashtrays and how many T-shirts can you sell?

For the taskforce, this overrepresentation provides sufficient evidence to target tourist shops in the inner city. After all, because the different administrative bodies in the partnership have authorization to conduct inspections, motivation or evidence is not necessarily required, as explained by a representative:

Everyone has to comply with applicable laws or regulations, and if we decide to start [here] and we continue up to [there] (...) then that's what we're going to do. (...) With administrative law, you can just control anyone who is eligible. And yes, that is everyone.

These combined issues are then used to build a case against the entrepreneur that may lead to revoking the business' hospitality license. Appealing to the BIBOB act, the city government then claims an entrepreneur to be continuously at fault, leading to the conclusion that the entrepreneur uses the license to for criminal purposes. Such a decision can be made without any court intervention, leaving

entrepreneurs with the choice to either appeal to the decision or sell their business. Selling the business without a license, however, has tremendous implications. Firstly, without a hospitality license, the business would sell at a much lower price. Secondly, selling a business that was flagged in a BIBOB screening will make it very difficult to get a license for a new hospitality business in the future. The stakes are thus incredibly high for entrepreneurs in this position, as they face the loss of not only their assets and income, but also their future as a business owner.

The ongoing inspections also impact the entrepreneurs' local network. The inspections tend to take place during the workday and are therefore highly visible to customers, local residents and other entrepreneurs in the area. Especially since the inspections are conducted by an increasingly large team that includes police and military police, the entrepreneur fears that this raises suspicions. Moreover, the city government often informs the property owner of its intention to revoke the hospitality license before the entrepreneur has had a chance to appeal, causing tension between the property owner and tenant. The entrepreneur therefore experiences increasing distrust, not only from the city government, but throughout the interpersonal networks that are so important to small business owners (Zukin, Kasinitz, and Chen 2015). Interviews with entrepreneurs confirm that negative media attention, as well as visible law enforcement actions can create distrust. Entrepreneurs frequently mention suspicions that other businesses in the street are not playing a fair game.

I know that you can't pay this rent just by repairing phones. And also not by selling ice cream and waffles or Nutella, sandwiches. (...) Across the street is a liquor shop, (...) that's so obviously not their main income.

Targeting tourist shops, these inspections also disproportionately affect particular socioeconomic and ethnic groups that are overrepresented in these types of businesses. One of these are Coptic entrepreneurs, a group about which local media has raised suspicions (Vugts 2019). Such suspicions towards particular ethnic groups of entrepreneurs also came to the fore in our interview with the representative from the law enforcement department. She emphasizes how differences in normative orders play a role, making it harder for her to work with entrepreneurs with different backgrounds.

There are a lot of Pakistanis and Egyptians [in that street] and they work in a different way. (...) When someone else has opened a candy shop, for example, and it is doing well [they copy the formula] and suddenly you have five candy shops. (...) We try to make clear to such an entrepreneur, like: "A candy shop is allowed in itself, but it is not desirable because, (...) there are already five candy shops," so to speak. But they also think in a different way, (...) they won't even hear the second part. They don't think that's important at all, because they just want to make money and open a candy shop.

The taskforce for crime that undermines society particularly targets entrepreneurs who have violated regulation in the past. This is more common among entrepreneurs that start with a relative lack of experience, which makes them less aware of regulation, as confirmed by this hospitality lawyer:

The older generation takes it a bit too easy sometimes. They do work very hard, are in the business a lot, all that, but have not always taken the rules very seriously. The younger generation has a very different mindset. But that is actually a change that the

younger generation of hospitality entrepreneurs of native Dutch origin also had to make, compared to the old pub owner with his drawer of cash and "I'll see what the tax office finds out."

Starting a business with a relative lack of experience and knowledge about the local legal context is more common among first generation migrants. This makes these entrepreneurs more likely to violate rules and therefore raise suspicion among policymakers and law-enforcers.

Managing touristification by purchasing property

A final way to manage touristification of consumption spaces is by means of property purchases. The municipality of Amsterdam owns a substantial amount of real estate, either property that is in use for municipal services, protected for its monument status or that is rented out at affordable rates to important societal functions, such as education and cultural institutions. A report commissioned by the city government to evaluate the costs of this property in 2010 recommended to sell part of this real estate, especially the properties that were not used for municipal or societal functions (Rekenkamer Amsterdam Centrum 2010). Over the past decade, the general tendency for Amsterdam's city government has thus been to sell rather than purchase real estate. Creating an attractive consumption landscape was not seen as something that should be accomplished by property purchases. In fact, questions were raised about the need for the municipality to own property in consumption spaces in the first place (Boonstra 2012).

Ironically, property ownership in consumption spaces is at the same time seen as an important strategy to counter crime that undermines society. Rather than the municipality itself being the property owner, this tends to be in cooperation with a private social corporation, causing the entire transaction to fall under private law. This approach started with the foundation of the *NV Zeedijk* in 1985. The *Zeedijk* is a narrow street that runs directly from Amsterdam's central train station into the Red Light District. In the 1980s, it became the epicenter of the drug trade and heroin epidemic, a place avoided by "people of sound mind" according to a former police detective quoted on *NV Zeedijk's* website. The city government aimed to reverse this process of deterioration by funding a social corporation, *NV Zeedijk*, to buy properties and rent them out to trustworthy entrepreneurs. The corporation still exists today with the city government as its main investor and shareholder and this strategy has been repeated in different inner city areas, most ambitiously around Amsterdam's Red Light District. Property ownership was seen as a way to make sure that at least a considerable share of the businesses would be owned by *bona fide* entrepreneurs (City of Amsterdam and Central city district 2008).

As concerns about touristification of consumption spaces increased, so did renewed calls for property purchases to stimulate desirable businesses and prevent further touristification. These investments are subsidized by the city government, which has reserved financial support to acquire *beeldbepalende panden*, visually dominant properties (City of Amsterdam 2020). The idea is still that these purchases avoid properties ending up "in the wrong hands." However, the wrong hands now not

only include criminal organizations, but also functions that are considered to be overrepresented and cause a monoculture of businesses (City of Amsterdam 2020). While commercial property owners are likely to seek out entrepreneurs that can pay the highest rent prices, the government-sponsored social corporations base their selection of renters on the effects the entrepreneurs have on the attractiveness of the consumption landscape and livability for local residents. In the past years, avoiding businesses that cater to tourists has become an important goal. A representative from one of the corporations explains the current most important challenges as:

[Maintaining] the livability of the inner city. Because we have a beautiful city center, but due to tourism the diversity of retail is decreasing and you get all these monotonous functions, whose profitability is questionable and that are very much focused on the tourist.

In deciding what is an addition to the inner city and what is considered more monotonous, socioeconomic background plays an important role. Among some entrepreneurs it seems perfectly acceptable to motivate the decision to start a business or choose for a particular concept with the claim that it was a good business opportunity. This motivation is perceived very negatively by other stakeholders, including by city government representatives (Boutkan 2017). These would rather have entrepreneurs motivate this decision to start a business based on their passion for a particular business concept or the desire to contribute to the neighborhood. The representatives from social corporations who rent property to entrepreneurs emphasized that they specifically look for entrepreneurs with a very clear narrative about the business they want to start. This excludes entrepreneurs who start their business in a more open ended way. For social corporations, such inquiries are seen as a red flag:

We often get calls saying: “I see a property for rent, (...) I want to start a mini-supermarket there.” And then I say: no, that’s not allowed and we don’t see the point at that location and that doesn’t fit, isn’t allowed et cetera. “Oh well then I want to start a greengrocer’s or then I would also like to sell this and that” (...) they actually want all sorts of things.

The normative order that particular types of businesses are undesirable, erode livability and diversity of the consumption landscape and are more likely to be associated with criminal activities is also adopted by the social corporations that rent out property below market prices to desirable entrepreneurs. A representative from one of these corporations, for instance, admitted to be careful to accept entrepreneurs in particular branches because they have been associated with crime that undermines society. This means that the same types of entrepreneurs that are more likely to encounter increased inspections by the special task force, are also more likely to be excluded from particular properties.

Institutional discrimination: how the combination of four legal instruments disproportionately affects entrepreneurs from minority groups

While all four instruments disproportionately affect some entrepreneurs over others, it is in their concerted implementation that the impacts of the four instruments become particularly harmful. Using an implicit categorization of desirable and

undesirable entrepreneurs, the four instruments are used in specific areas and targeted at specific types of businesses. This concerted implementation of the four instruments causes wide discrepancies in entrepreneurs' experiences with regulation around touristification of consumption spaces. While some benefit from more favorable rent prices of social housing corporations and rarely encounter law-enforcers unless they come by for a friendly chitchat, others are regularly subjected to extensive check-ups and receive far-reaching sanctions that may even force them to close their business. The inequality in these experiences, however, largely remains hidden. Entrepreneurs are often not aware that their experiences differ so vastly. Moreover, even if they suspect that they are treated with a higher degree of scrutiny than their peers, they do not know why.

What types of businesses are seen as touristy and targeted for extra monitoring and law enforcement depends in the first place on their business concept and presentation. In accordance with the ban on tourist shops, businesses with non-Dutch shop names, flashy presentation, souvenir products or take-away formulas attract increasing scrutiny. Among the interviewed entrepreneurs who had experienced a higher degree of scrutiny from the city government, were entrepreneurs with different backgrounds in terms of education, former employment and migration background. However, looking at the entrepreneurs for whom this approach has been most impactful, it seems to affect entrepreneurs with non-Dutch backgrounds and in lower socioeconomic positions disproportionately. This disproportional effect seems to have three main causes. Firstly, it stems from negative attitudes towards particular ethnic groups of entrepreneurs. Secondly, it is caused by a larger cultural distance between these entrepreneurs and the city government. Thirdly, it occurs because entrepreneurs who start a business with relatively little experience are more likely to have violated laws in the past.

The role of social corporations completes the integration of the four instruments. The inspections by a special task force are motivated by a narrative of tourist shops as a breeding ground of crime that undermines society. These inspections are very likely to bring up issues and may even lead to businesses having their license revoked under the BIBOB Act. Such outcomes are widely communicated, as they are considered important for the visibility of the city government's approach to manage touristification of consumption spaces. As such, they reinforce narratives that associate tourist shops with criminal activities. This narrative inflates the urgency to purchase properties and prevent more businesses ending up in the wrong hands. The social corporations that purchase these properties with government subsidies then exclude the same types of entrepreneurs that are targeted by the inspections. Negative media attention for particular socioeconomic and ethnic groups plays a role in this exclusion, but it is also based on cultural capital. Finding the right narrative about your business, which resonates with policymakers and property owners, requires a degree of cultural capital. This creates privileges for entrepreneurs with a higher socioeconomic position, while excluding those who do not meet these criteria. Especially first generation migrant entrepreneurs experience this exclusion. They tend to start businesses in what Hall (2021) refers to as a makeshift way; starting small, flexibly responding to changes in demand and supply and learning on the job.

Conclusions

This paper analyzed Amsterdam's policy approach to manage touristification of consumption spaces with a combination of different policy instruments from different scales and areas, using legal pluralism within formal state law as an analytical lens. In Amsterdam, touristification of consumption spaces resulted in a clash, primarily between a subset of entrepreneurs who benefit from the increasing flow of tourists and a group of local residents who experienced a loss of place. In this conflict, Amsterdam's City government openly sided with the local residents, promising to restore Amsterdam as a place for "Amsterdammers" and to curtail the perceived monoculture in the consumption landscape (Groenlinks, D66, PVDA, and SP 2018). However, faced with a paucity of instruments to intervene in the composition of businesses, strategies to manage touristification of consumption spaces ended up combining various instruments that were designed with different policy goals in mind. The four most important instruments are zoning plans, general regulation for shops and hospitality businesses, the BIBOB act to screen for criminal activities and property purchases by state-sponsored social housing corporations.

Amsterdam's city government was able to draw from these different normative orders because tourist shops have been portrayed as both a threat to livability for local residents and a breeding ground of crime that undermines society. Accusations of crime that undermines society in particular played a pivotal role, as they motivate integrated law-enforcement actions by a special task force. This integrated law-enforcement actions took place even though crime that undermines society itself is loosely defined and accusations towards tourist shops hardly seem substantiated with evidence other than their perceived overrepresentation. This superficial evidence suffices to motivate law-enforcement actions by the special task force, which primarily monitors administrative law rather than criminal law. This does not only mean that everyone can be monitored at any place and any time, but also that sanctions do not require court evaluation unless the defendant decides to appeal (Crijns 2014). Once entrepreneurs have been targeted for closer inspection, overlap and contradictions within the formal state laws that shops and hospitality businesses have to comply with creates a high degree of discretionary space in the implementation phase for street-level bureaucrats. This often results in sanctions being imposed – a chance that is described by a representative of the special task force itself as "a 100% score." The highly visible inspections also raise suspicion among local stakeholders, such as other entrepreneurs, customers, local residents and property owners, resulting in a business climate of distrust.

Together, the ambiguous definition of crime that undermines society; the far-reaching authority in applying administrative law; and the contradictions within general laws and regulations around shops and hospitality businesses enabled a strategic application of law by the city government that has had tremendous impact on the legal certainty of entrepreneurs. It led to an arbitrary implementation of different policy instruments, driven by the local political goal to get rid of tourist shops. For some, it made continuing their businesses practically impossible. The targeting of tourist shops with administrative and criminal law is complemented with a property purchasing strategy in which private law is used to exclude prospective entrepreneurs. These property purchases are subsidized by the city

government as part of the strategy to prevent touristification of consumption spaces, but executed by private social corporations. With their intention to ensure a livable neighborhood for local residents, these social corporations seem partial to middle class values regarding consumption and entrepreneurship.

The strategic combination of different forms of law to regulate touristification of consumption spaces moves beyond arbitrariness and becomes a case of institutional discrimination as it disproportionately affects lower socioeconomic class and migrant entrepreneurs based on class-based tastes and distrust. This is partly because these entrepreneurs are perceived with a higher degree of suspicion by both the municipal law-enforcement department as well as the social corporations that rent out commercial properties (as observed in earlier studies in Amsterdam, such as Eck 2022; Eck, Hagemans, and Rath 2020). On top of that, these entrepreneurs do not possess the cultural capital to present their business with a narrative that resonates with law enforcers or social corporations who own property. Finally, the more makeshift businesses that are typical of first generation migrants (Hall 2021) are more likely to have violated rules in the past, as these entrepreneurs tend to start with less experience with and knowledge about regulation.

Touristification of consumption spaces is only one example of local problems that invite city governments to use an assemblage of instruments, each of which designed with a different purpose in mind. We argue that legal pluralism within formal state law is inherent to many issues faced by city governments, which are often global in scale. This leaves city governments unable to address issues at their root cause. At the same time, city governments have an increasing number of instruments at their disposal to address their local effects. Strategically combining different instruments throughout the initiation, decision-making and implementation of policies therefore seems like a pragmatic and effective approach to deal with local issues (Heirwegh and Van de Graaf 2019). This underlines the importance of critical perspectives on legal pluralism within formal state law, especially at the local scale, where multifunctionality coincides with a diversity of stakeholders and normative orders. Our results demonstrate how the strategic application of different normative orders not only affects legal certainty for local stakeholders, but also risks institutional discrimination and can deteriorate trust relations between among local stakeholders.

Note

1. Wet bevordering integriteitsbeoordelingen door het openbaar bestuur.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Funding

This work was supported by Nationaal Regieorgaan Praktijkgericht Onderzoek SIA. The grant number is RAAK.PRO02.149.

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