Insecure tenure

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CHAPTER 2
NON-ENFORCEMENT AS A TECHNIQUE OF GOVERNANCE
THE CASE OF RENTAL HOUSING IN THE NETHERLANDS*

When governments systematically fail to ensure that a policy is implemented, while at the same time keeping that policy in place, this can result in a reality where certain regulations are simultaneously officially present but informally absent. In this chapter, I derive from the case of rental housing in the Netherlands that such non-enforcement can be understood as a technique of governance. Here, rules on security of tenure, rent ceilings and maintenance are in theory strong, but in practice knowledge of these regulations is almost non-existent, and enforcement is so weak that the rules have become largely meaningless. Through analysing political and bureaucratic documents, and drawing on my previous ethnographic research, I argue that keeping regulations in place that are largely unknown to citizens and unenforced by authorities can function as a policy mechanism in its own right, as a method to secure and transmit the objectives of government in a more subtle way than explicit, top-down exertion of power. I conclude that non-enforcement as a technique of governance, previously overlooked by most research, deserves our attention, not just because of its effects on policy processes but also because of its impact on citizens.

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If men define situations as real, they are real in their consequences.

Thomas & Thomas, 1928:572.

2.1 Introduction

Non-enforcement concerns the situation when, implicitly, existing policy is not executed. This is particularly relevant in discussions around the introduction of new policies, or the modification of existing ones, because existing policies are usually taken as starting points, and the default assumption seems to be that these are enforced. But what if this is not the case? For example, what if politicians, civil servants, interest groups and academics are engaged in debate about modifying a policy which, in practice, is not enforced anyway? This raises a number of closely intertwined questions. First, how does a situation arise whereby, at the level of policy recipients (usually civil society), regulation is mostly ineffective? Second, why does this reality on the ground not manifest itself in the abstract discourse surrounding the policy? Third, how does this situation differ from outright deregulation, and who benefits from this paradoxical situation whereby policy simultaneously seems to exist and not exist?

In this chapter, I attempt to answer these questions by studying the case of rental housing in the Netherlands. Here, rules on security of tenure, rent ceilings and maintenance are in theory strong. Contrary to the situation in Anglo-Saxon countries, leases run in principle indefinitely and full rent controls usually apply. However, a largely unnoticed yet relevant aspect of the neoliberal shift in this country has been the de facto movement of government away from active enforcement of most regulations around rental housing. Rather than the state actively intervening to ensure enforcement, the current modus operandi is that, while a policy of strong state intervention remains intact in theory, and is assumed to function, concerned parties are at the same time supposed *and presumed* to take action themselves. However, such do-it-yourself enforcement is highly problematic. When the onus for securing their rights falls on the shoulders of individual tenants, they are forced to engage in possible conflict with their landlords, a risky and scary step most tenants, be they rich or poor, usually try to avoid as much as possible. Beyond this major obstacle, differences in knowledge and power

greatly influence whether citizens utilise these elective enforcement procedures. Furthermore, the housing rules and procedures are often perceived as complex and technocratic, and the government has made only marginal attempts to inform citizens about the laws, the reasons for their existence, and how people can claim their rights. As a result, both landlords and tenants are often unaware of the regulations that apply. Moreover, the mechanisms themselves are often ineffective, even when citizens do manage to access them. In the end, despite the fact that on paper regulation and enforcement is comprehensive, the rules *in practice* are hardly enforced at all. At the same time, proponents of deregulation argue that the current policy (as it exists on paper) is too strict, while this does not reflect the situation in reality at all.

So far, little sociological attention has been paid to non-enforcement, and certainly the specific angle of studying how failing to ensure compliance can be understood not just as a rational, technical problem of efficient goal attainment, but as a social phenomenon in its own right has been hitherto largely overlooked. I follow Lascoumes and Le Galès (2007:3), who argue that instruments for policy implementation should be regarded as autonomous subjects for analysis in political sociology, because they are 'not neutral devices: they produce specific effects, independently of the objective pursued (the aims ascribed to them), which structure public policy according to their own logic.' Indeed, non-enforcement should not be considered simply as a consequence of the unavoidably finite resources of government, but rather as a technique of governance in its own right. This is relevant, because like many things, the effects of not ensuring that rules are adhered to are not homogeneously distributed over the population, but patterned. Specifically, lack of enforcement of laws instituted exactly to protect citizens when they find themselves in a weaker position, will affect those very groups. Given the potentially far-reaching consequences of the underlying mechanisms, both on policy recipients and for wider political debates, non-enforcement is well worth our attention.

In the next section I explain how I came to and conducted the research that forms the basis of this chapter. After this, I define, discuss and link the different theoretical elements that underpin my analysis. Then, equipped with this theoretical framework, I move to the empirical part, my case study of non-enforcement of rules concerning

rental housing in the Netherlands. From this analysis of the empirical evidence flows the theoretical statement that non-enforcement can function as a technique of governance, and that this has consequences beyond administrative choices. I argue that this finding potentially applies beyond the case of regulation of rental housing in the Netherlands, to other domains, and expound on which conditions might exacerbate non-enforcement.

2.2 Method: Negotiating the hall of mirrors

This research emerges from observations made during my earlier investigations on such related but different topics as the legitimation of the displacement of tenants caused by state-led gentrification (Huisman, 2014) and the precarisation of the Dutch rental housing market (Huisman, 2016a, 2016b). My interest in the practical application of Dutch housing regulations was, however, raised much earlier. Twenty years ago, I was asked by an acquaintance to volunteer at my local neighbourhood centre. After receiving some training, I became part of a small team of volunteers that offered advice and assistance at the weekly consultation hours for renters experiencing problems with their tenancies. Over the years, I continued my assistance of tenants in different roles, such as a member of the board of the local tenants' association. My volunteering brought me in contact with many tenants experiencing issues with their landlords: tenants threatened with unlawful evictions, tenants charged rent levels and increases significantly higher than legally allowed, and tenants experiencing a severe lack of maintenance, while their landlords refused to address these matters. It is important to note that, while housing associations seldom resort to physical intimidation, the majority of complaints concern houses they own. Since housing associations possess most of the Dutch rental stock, this is in itself not surprising, but reminds us that having not-for-profit, social aims, does not equate to perfect behaviour. Of course, many Dutch landlords treat their tenants well, and consultation hours attract exactly those tenants with bad experiences. Sharing these experiences with acquaintances, however, all renters themselves, brought out that lack of knowledge about one's basic rights as a Dutch tenant, which I observed *en masse* among the tenants I encountered at the neighbourhood centre, seemed to be a phe-

nomenon much more widely spread. Also, many of them thought it too tedious or dangerous to address the issues they experienced.

When some ten years later I became a researcher, I broadened my interest in tenants' experiences. A rift between the reality experienced by policy-makers and policy-receivers manifested itself time and time again in my ethnographic research. This included participant observation and interviews with tenants, civil servants and politicians as well as conversations with researchers. On the policy side, respondents were mostly surprised at my questions concerning the enforcement of rules. They usually equated the existence of regulations with their execution. On the receiving end of policies, most respondents showed a lack of knowledge of existing regulations and certainly a lack of belief in their enforcement. At the same time, most research and white papers seemed to take enforcement at face value.

This puzzling situation provided the starting point for the current research. Put as a question of political sociology, it reads: why are these regulations abandoned in practice but not cancelled, while at the same time it is maintained that they function? I also had to determine whether my problem was specific and limited to this particular case of current Dutch policy concerning regulations and enforcement of rental housing, or whether the conundrum had broader meaning. To answer these questions, I re-examined the materials I had collected in previous research projects and accumulated new information, specifically through collecting and analysing documents on the bureaucratic and political level. Adopting an iterative approach, I turned to possibly relevant literatures and so investigated several possible causal mechanisms. And so, in a constant back-and forth between theory and data, developed the central ideas of this chapter. After a long analysis of the theory and practice of responsive regulation, I concluded I had reached a certain degree of theoretical saturation: nothing could be gained – in the context of this research project – from entering new paths or revisiting old ones any more (Glaser & Strauss, 1967/2006).

Upon reflection, I concluded that my field of investigation (the population of cases) is the non-enforcement of policies. The literature explaining why certain regulations are not enforced typically attributes the phenomenon to, variously, a focus on the aims of policy rather than on the means, uneven application due to discrimination, imperfectly functioning state apparatuses (lack of resources or skills) and other practical difficulties of execution, or an explicit decision by government to moderate, or even withdraw, from enforcement. I will elaborate on this in the theoretical framework. None of these, however, apply in the current case. The analysis concerns non-enforcement of rental housing policy in the Netherlands. I believe that exactly because this country is both nationally and internationally perceived as affording its renters strong protection, particularly in comparison with Anglo-Saxon countries (Hulse & Milligan, 2014; Toussaint, Tegeder, Elsinga, & Helbrecht, 2007), while at the same time the regulations are largely abandoned in practice, it can be seen as a *deviant* case (Gerring, 2006). Such cases are chosen for research because they deviate from the expected outcomes in an unexpected manner according to existing theory or knowledge. 'The deviant-case method selects the case(s) that, by reference to some general understanding of a topic (either a specific theory or common sense), demonstrates a surprising value' (Gerring, 2006:107). Through analysing deviant cases, hitherto unknown causal mechanisms might be discovered, and so bolster our insight into social phenomena:

> The purpose of a deviant-case analysis is usually to probe for new – but as yet unspecified – explanations. [...] The researcher hopes that causal processes within the deviant case will illustrate some causal factor that is applicable to other (deviant) cases. This means that a deviant-case study usually culminates in a general proposition – one that may be applied to other cases in the population.
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> Gerring, 2006:108.

By analysing the deviant case of non-enforcement of rental regulations in the Netherlands, potentially a new, generalisable causal factor for explaining why regulations sometimes are not enforced, might be identified. An in-depth, hypothesis-generating analysis of a single case is a necessary precursor to future comparative and/or quantitative analysis of non-enforcement; it is an essential first step in which the complex, dualistic inner workings of non-enforcement are identified, analysed and assessed for generalisability. In this regard, it is the appropriate and definitive methodology for studying

this phenomenon, laying the foundations for subsequent research.

I limit the period under investigation to approximately the last ten years, that is between 2006–2016. This time-frame allows for some discernment of developments over the years, while providing enough focus not to become overwhelmed by historical detail. Further research might look into how the mechanism of non-enforcement develops in different instances of time and space.

Concerning my practical ventures, non-enforcement is usually not openly published as such in policy documents and government websites. Seldom are surveys commissioned to research in how far citizens are aware of their rights and responsibilities, or to investigate whether executive agencies actually enforce regulations. As a result, hardly any data are available. Nevertheless, by combining data from various sources, a picture of an almost complete lack of knowledge of existing regulations of virtually all involved parties combined with extensive non-enforcement of rules emerges.

With regard to bureaucratic mechanisms open to tenants I consulted yearly reports and policy documents produced by the Dutch renting tribunal (2006–2016) and Dutch renting teams. Also particularly relevant were lists of complaints made by tenants about their houses/landlords to these organisations, which are sometimes appended to the reports. Additionally, I studied technical documentation used by renting professionals to compute rent levels and assess maintenance problems, and yearly circulars issued by national government in which the practicalities of that year's policy are specified, such as maximum permitted rent increases for that year. To understand the efficacy of the Dutch renting tribunal, reports by the National Ombudsman were also consulted. I studied the formal information made available to tenants (concerning their rights) on the websites of the renting tribunal and the national government. I also included less formalised information made available to tenants via local tenant advocacy organisations and student organisations. I furthermore compared this to the information made available by real estate agents and landlords on their websites, including for instance various model contracts.

At the level of national government I accumulated white papers and other parliamentary documents: letters from ministers to parliament, formal discussions in parliament on changing laws, reactions

to questions by members of parliament to ministers (usually a result of media attention). As an adjunct to this I gathered the formal reactions submitted by various stakeholders in a parliamentary inquiry into proposed changes of the law on temporary rent. At the level of the municipalities and city district councils I consulted a wide range of policy documents touching on housing and enforcement. I studied law books and legal academic papers, and also academic papers discussing the Dutch housing sector from both Dutch and international journals. I collected data on (experiences with) housing from Statistics Netherlands, newspaper cuttings (from both national and local newspapers), campaign material and retrospective reports of mobilisations by tenants, and reports by various federations: the Dutch association of municipalities, the Dutch association of owner-occupiers, the Dutch association of real estate brokers and the Dutch association of landlords. I analysed all these sources carefully by reading and re-reading them, noting recurring themes and ideas.

For previous ethnographic research I had conducted extensive fieldwork at several sites in Amsterdam. I then took part in closed meetings and email discussions among tenants attempting to address a lack of maintenance in their houses or to resist displacement. I observed the interaction between such tenants and both local politicians and tenants' advocacy specialists in political fora and neighbourhood meetings, and observed the discussions between municipal politicians of different parties in debates about tenants' rights. I paid particular attention to the discourse of bureaucrats and politicians when attempting to relate national housing policy to local realities. Lastly, I used data from sixteen interviews with tenants and officials, which were all transcribed and analysed. I now turn to the theory I applied to the insights gained from these investigations.

2.3 Theoretical framework: Policy in practice

Policies arise, are executed, evaluated and modified in an ongoing cycle. Interest groups and other stakeholders vie with each other to put issues on the political agenda. Policy is an output of the resulting political debates. Laws and regulations can be viewed as the translation of policy into a concrete, legal framework suitable for implementation. Once they are implemented, policies are received by citizens, and the resulting

responses feed into new cycles of policy formation. Policies take many forms, but at their core they can be viewed as an expression of the state's will to influence citizens' behaviour through encouragement (stimulating certain actions), entitlement (bestowing certain rights), command (demanding certain actions) and/or prohibition (forbidding certain actions). Especially the last two cases, that focus on securing compliance to rules, are in the last instance reliant on the monopoly of the state on the legitimate use of violence (Weber, 1918/1946), and a plethora of instruments ranging from fines to confiscation of goods are employed. I define *enforcement* as all the active interventions governments undertake to ensure adherence of citizens to laws and regulations. A clear example is law enforcement by the police, expressed in their power to arrest and detain citizens suspected of breaking the law.

Of course, an exact, one-on-one correspondence between what is written in laws and regulations, and what happens in reality, is usually not only illusory but also undesirable. This often-observed difference between 'law in books and law in action' (Pound, 1910) stems partly from the fact that the benefits of complete enforcement resulting in total compliance are in most cases considered to be outweighed by the disproportionate social and economic costs incurred. Specifically, laws can be viewed as the formal translations of societal goals, and it is often considered more important that the aims of the law are achieved, rather than that the literal formulation of the law is strictly observed (in legal terms, the spirit of the law rather than the letter of the law). For instance, traffic rules are usually considered to aim for safety by decreasing the chance of accidents. Ensuring that no pedestrian ever crosses a red light, even when no other traffic is present, through intensive police monitoring and fining, might be consistent with the letter of the law, but not with its presumed aims. To complicate matters, as observed above, laws are the outcome of earlier political contestations and compromises between parties with different views and interests. As a result, the aims of policies are not always so clearly decipherable from the resulting laws, and this is compounded by the fact that the context changes over time.

Even if one focuses on the aims of laws (for the moment assuming they are transparent and unitary), a gap between policy and practice can still be observed.[1] Lipsky's study of street-level bureaucrats (1969)

is a famous example in the long tradition of scholars looking at why – when a given regulation is presumed to apply to all people in the same manner – certain segments of the population nevertheless receive different treatment than others. Such studies often focus on disadvantaged groups that are structurally overexposed to punitive policies. Enforcement is then patterned and unbalanced and falls more heavily on some shoulders than others. Social phenomena such as discrimination, sexism and other prejudices also exist and exert influence inside state apparatuses, and correspondingly cause unequal treatment before the law. Furthermore, enforcement might be hindered by practical problems such as the elusiveness of transgressors or lack of organisational skills and resources. Indeed, there exist many reasons for the gap between the law and the reality of enforcement, including cultural, moral and historical factors.

On the political level, in some cases, 'rule-makers may prefer that rules *not* be enforced' (Gilbert, 2015:2191, emphasis in original). A well-known example of such an explicit political decision not to enforce certain regulations, is the policy of the Dutch government to avoid enforcement of certain laws pertaining to the possession of soft drugs, while keeping the laws in place because of international agreements with other governments (Spapens, 2012). Also, if the present government has inherited certain unwanted regulations from its predecessor, given the long time-horizon associated with changing laws, it might be easier to not enforce the law rather than to try to change it. Policies 'implemented' in this way are potentially volatile, since a future government of a different persuasion can simply start vigorously enforcing again. However, over time, citizens might come to feel they have gained customary rights, and it might become both morally and legally difficult to reinstate the old rules. In this fashion, not enforcing regulations can purposely be used as a shortcut for changing policy pragmatically, a process dubbed 'deregulation through non-enforcement' by Deacon (2010).

In this chapter, however, I am concerned with more subtle and implicit occurrences, where regulations stay lastingly in place; very specific instances of a gap between policy and enforcement. I focus on cases where this gap is significantly large and caused primarily by the state itself, because it (at some point in time) structurally refrains

from interfering to secure compliance in a specific area of policy, not so much as the result of a conscious plan, but more as the outcome of a blind process, a theme developed more fully below. Because I concentrate on the gap between policy and actual enforcement, only cases in which the official policies and the resulting laws and regulations stay in place are relevant, so outright deregulation is excluded. To be clear, I also do not include cases when the state fails to enforce for external or secondary reasons, such as the difficulty of practical implementation. Finally, I direct my attention solely to those situations in which a policy as a whole is not enforced, as opposed to the phenomenon of uneven application amongst subgroups of the population, which will not be considered in this chapter. This motivates my confined, formal definition of non-enforcement as employed in the remainder of this chapter: *the tendency for governing bodies to implicitly shy away from active intervention to ensure rules are adhered to, and in this way to implicitly place the onus for securing enforcement in practice on individual citizens, while at the same time the policy stays legally intact.* It bears emphasising that under this limiting definition the literature reviewed earlier in this section should, strictly speaking, not be regarded as non-enforcement, but rather as various facets of incomplete, imperfect or unbalanced enforcement or explicit withdrawal from enforcement. Indeed, my definition is designed to capture the explanatory gap that exists in the literature concerning suboptimal enforcement.

The core idea of this chapter is that non-enforcement, thus defined and understood, can function as a technique of governance. This necessitates determining now what a technique of governance is. To start with, although in this chapter there is extensive attention to the (non-) functioning of administrative machinery, which might lead the reader to think that I employ a narrow, public administration approach to how governments govern, my analysis rests on a more abstract, multi-faceted interpretation. I use the term *governance* to emphasise that states manifest themselves in the space beyond government; in particular in interaction with civil society and the market (cf. Jessop, 1995). Next and relatedly, states as well as non-state actors employ *techniques* through which to achieve their goals beyond top-down, hierarchical impositions of power. In the work of Foucault, a technology of power is a mechanism shaping people's thoughts and behaviour that comes into being

at a certain point in time and space, which turns out to be politically and economically useful, and thus its use becomes more widespread and institutionalised.[2] Some well-known examples of such technologies of power, that are not introduced on purpose, but *emerge* (Foucault, 2003:242) in Foucault's work are the exclusion of madness (1964/1988) and the introduction of disciplinary power through the penal system (1975/1991).

This emergent property of technologies of power is a rearticulation of the above-mentioned notion of the blind process; there is no master plan. A blind process can be summarised as an accumulation of assumptions, decisions and ideas which in isolation do not carry the full logic, direction or intent of the overall outcome, but when taken as a whole do exhibit a clear, persistent tendency towards that outcome (Elias, 1997; Foucault,1976/1980). Similarly, studies of governmentality (Foucault, 1978/2006) utilise the term 'regimes of practices', and focus on how thought operates within such 'organized practices through which we are governed and through which we govern ourselves' (Dean, 2010:28), and their ambitions and effects. Governmentality is governing through influencing people's mentalities, 'ruling at arms length' (Rose, 1996/2006), by shaping the way people see themselves and how they decide what should be done. An important element is how thought becomes linked to and embedded in technical means for the shaping and reshaping of conduct. The internal logic or strategy of regimes of practices are indeliberate but still result in a certain direction; they 'possess a logic that is irreducible to the explicit intentions of any one actor but yet evinces an orientation toward a particular matrix of ends and purposes' (Dean, 2010:32). A similar idea is evident in the work of Bourdieu (1972/1995), who stresses that the meaningfulness of the (re) production of social norms derives partly from people's unawareness of it.[3] He theorises that because people are born into and brought up in an already existing social environment, they will learn and internalise the existing social norms, and reproduce them. This reproduction of the existing social norms is not static though, but always changing, given the dynamism of the world; the agency of people. Bourdieu postulates that while people are perfectly aware of what they are doing in a concrete or narrow sense of the word, they are not aware of the effects of their actions in a broader sense, how they are reproducing (but at the same

time altering) the social norms of their time and place (more precisely, their subsection/ field) and exactly this unawareness makes this reproduction of social norms more meaningful.

I have elaborated on the emergent and unaware characteristics of techniques of governance because I want to stress that they emerge without a deliberate plan. This links to the observation in the introduction that instruments for policy implementation should be regarded as autonomous subjects for analysis in political sociology, because they are 'not neutral devices: they produce specific effects, independently of the objective pursued (the aims ascribed to them), which structure public policy according to their own logic' (Lascoumes & Le Galès, 2007:3). In summary, then, a technique of governance is a mechanism not instituted but emerging, through which governments achieve their aims indirectly by shaping people's thoughts and behaviour.

The last element still missing for our analysis is how ideas about citizens' rights and duties have changed in the last decennia. From the end of the 1970s, a shift in most modern Western states from Fordist Keynesian welfare states towards post-Fordist, Schumpeterian regimes can be observed (Jessop, 2002). Part of this transformation was a change in the dominant ideology in Europe and the United States. Rose (1996/2006) employs a Foucauldian framework to elaborate on the ideology of this shift towards what is commonly termed neoliberalism (see for the Netherlands Schinkel & van Houdt, 2010). He states that in the welfare state citizens were governed through social society by the solidarity of collective insurance. With the rise of neoliberalism, this system was deemed oldfashioned, dependency-inducing and inflexible; instead of seeing the citizen as a social creature, the role of government becomes to help people to assume their own individual responsibility. This becomes conditional to entitlement to certain rights (Raco & Imrie, 2000); a discursive shift from expectations towards aspirations (Raco, 2009). The whole responsibility for the outcomes and experiences of life is put onto individuals who do or do not take the opportunities that life gives them. This normative moral framework disciplines the behaviour of citizens, and includes a punitive element. The emphasis on people's own responsibility, and its accompanying tendency towards deregulation (or re-regulation via market mechanisms) is often critiqued

from the perspective that, due to differences in power and knowledge, some citizens are far better equipped than others to prosper when the social state retreats.

In summary, in this section I have examined the concept of non-enforcement and reasons why it occurs, outlined the notion of techniques of governance and stressed their emergent properties, as well as elaborated on the shift in dominant discourse. Let us now look at how this works out in practice.

2.4 The case of Dutch rental housing

The freedom of two people to engage in any contract is the starting point of Dutch law. However, government judged that in some specific cases the inherent power imbalance between the parties involved will lead to undesirable situations (Houweling & Langedijk, 2011). For instance, rental agreements, labour contracts and consumer purchases of goods and services usually take place between single individuals on the one hand, and more powerful actors, often larger organisations, on the other hand. To prevent exploitation of the weaker party, these types of contract are subject to peremptory law. Such legislation forces certain regulations upon people from which they cannot deviate; it is a 'legal provision which, in contrast to discretionary law, is not transactionable, i.e. parties [...] cannot agree between themselves to set it aside' (Eurofound, 2015). The legally determined minimum wage that applies in most states of the European Union, the United States and the United Kingdom (Dolado *et al*., 1996; International Labour Office, 2014) is a well-known example: it does not matter if employer and employee contractually agree to lower wages; the worker will always be entitled to the minimum put down in law.

Not only has rental housing in the Netherlands already been in short supply for more than 100 years, it also continues to be so.[4] This enduring shortage creates a significant power imbalance between tenant and landlord, as for instance acknowledged in 2012 by the then Dutch Minister of Housing:

> The market position of tenant and landlord is unequal: in many places [in the Netherlands] there still exist a scarcity of (affordable) rental housing which causes the negotiating position of a tenant

> when entering into a rental contract to be unfavourable compared to that of a landlord.
>
> Minister Spies in a letter to parliament, translation mine.

This explains why, since the beginning of the twentieth century, all Dutch rental contracts are subject to peremptory law. Save for a small number of explicitly defined exceptions, housing legislation specifies that all contracts run for an unlimited period of time and are easy to terminate for the tenant, but difficult to end for the landlord (Dutch Civil Law Book 7, 271–282). For the large majority of all Dutch rental housing, namely 84% in 2015 (calculated from the database Woon; Dutch Ministry of Internal Affairs and Affairs of the Royal Empire & Statistics Netherlands, 2016, hereafter referred to as Dutch Ministry), starting rent levels as well as yearly increases are restricted to upper limits set by the state (Dutch Civil Law Book 7, 246–257). The Dutch Housing Law regulates the maintenance of housing, obliging landlords to keep their houses in a reasonable state of repair (for example, no leaking roofs, mouldy walls or rotten windowsills). In theory, then, the protection of Dutch renters against unlawful eviction, unreasonable starting rent levels or rent increases and badly maintained housing is excellent.

To understand how this functions in practice, it is necessary to first describe the regulatory mechanisms through which the protection of renters is presumed to be enforced. I begin with the regulation of *rent levels*. The legally-allowed maximum starting level of the rent is determined through a points system that objectively associates points with the size of the dwelling and its amenities. The rent is a function of the number of points and the maximum level can be easily computed online. Similarly, the maximum percentage for yearly rent increases is annually determined by the government. If a landlord charges too much rent according to this scheme, or proposes too high a rent increase, and refuses a formal request from the tenant for reduction, the tenant can summon the landlord to the renting tribunal (in Dutch *huurcommissie*). This national administrative body, with local branches, functions as a court: it can make legally binding decisions on disputes between landlords and their tenants (Dutch Civil Law Book 7:4). If the panel of experts that form the renting tribunal rules in favour of the renter, the rent then must be lowered to the correct level. Additionally, in several larger cities tenants can turn to renting teams (*huurteams*) for free or low-cost legal help.

The rent-lowering power of the renting tribunal also applies in disputes over *maintenance*. In case of serious disrepair, the tribunal is endowed with the power to reduce the amount of rent the tenant must pay significantly, from 40% to even 20% of the original level, in order to exert economic pressure on the landlord to address the defect. For maintenance problems the tenant can also appeal to the municipal building and housing inspection department. As the name implies, the task of these local agencies is to ensure all buildings in their district are well maintained, by pro-active inspections. When home-owners fail to keep to the minimum legal standards, the building inspection department can apply fines of increasing severity, or opt for direct intervention, such as hiring a contractor to fix the problem and then billing the landlord. Finally, tenants can also turn to the civil courts and ask a judge to rule that the home-owner needs to repair the house. Indeed, given the wider mandate of the civil courts this option is in theory available for any dispute between tenant and landlord.

Arguably however a tenant is most likely to encounter the civil courts in disputes about *termination* of tenancy. Tenants who dispute a termination notice are advised to refuse the notice until the landlord seeks eviction through the courts, at which point the case is tested by the judge. Under peremptory law the tenure is presumed to continue unless the landlord can argue that an exceptional situation applies, and that s/he has received a court order. (This assumes that the renter fulfils normal contractual obligations, such as paying the rent every month.) Simply writing in the contract that the contract has a fixed end date for instance does not, in itself, constitute grounds for exception.

Taken together this sounds like a formidable level of protection, especially compared to the situation in Anglo-Saxon countries. Why, then, do I speak of non-enforcement? A first reason is *lack of knowledge*. Many tenants are simply not aware of their rights. A common misconception, for example, is that regulation of rent levels and/or permanency of tenure only applies in the case of social housing, which is, in turn, often presumed to constitute of those houses rented out by hous-

ing associations (who indeed were the main vector in the realisation of affordable rental housing in the twentieth century). Yet this distinction is simply not visible in the law, which is in most cases owner-neutral. As stated above, rent regulations apply for 84% of *all* Dutch rental housing. Another problem is that in the last two decades the peremptory core of Dutch renting law has been complicated by an accumulation of technocratic adjustments, mostly describing exceptions from the norm (Huisman, 2016b). Even experts find the precise boundaries of the law increasingly difficult to understand, and for tenants the complexity is often intimidating. This is exacerbated by the fact that the Dutch government makes no serious attempt to emphasise the spirit of renting law, so there is no road map to help tenants distinguish technical details from core aspects.[5] Lack of knowledge also concerns unawareness of the mechanisms tenants can resort to, such as the renting tribunals. In 2008, the Dutch parliament commissioned the consultancy company Companen to investigate the effectiveness and societal output of the renting tribunal (in the context of wider public service reorganisations). The resulting report drew little attention in the media or the political arena. However, the document makes for revealing reading. The researchers conducted surveys with tenants who had engaged with the renting tribunal as well as with a representative sample of Dutch renters. According to the report, for instance, almost half of all renters are not even aware of the renting tribunal's function (2008, 17–19).

A second issue is that many tenants struggle to (or choose not to) *access* the regulatory mechanisms. As mentioned, modern renting legislation is perceived as highly complex, which is already intimidating for many tenants. However, a more fundamental problem is that the tenant is always presumed to activate the conflict by challenging the landlord in writing. If this does not yield the desired effect, the conflict has to be further escalated by the tenant, by applying to the renting tribunal or the housing inspection department, by starting a court case, or by resisting eviction until the landlord summons the tenant to court. These are always difficult steps, because many tenants are afraid of upsetting their landlord. The renting teams present in a limited number of Dutch cities can act as a buffer between tenants and landlords but this does not alter the fact that the tenant must bear the

responsibility for, and consequences of, activating the conflict. Indeed, the acknowledged asymmetry in power between tenants and landlords (itself the justification for peremptory renting law) manifests itself in many ways, ranging from a general erosion of ontological security to more extreme measures. In Amsterdam, for example, the Hotline Undesirable Landlord Behaviour (*Meldpunt Ongewenst Verhuurgedrag*) collects reports of the worst complaints made by renters about inappropriate behaviour of landlords. The two quotations below come from two different cases, and they are certainly not isolated examples (Hotline Undesirable Landlord Behaviour, 2009, translation mine, see for yearly overviews annual reports 2007–2015).

> When renter starts a procedure to have the rent checked, landlord reacts aggressively and in an intimidating way, announces that he will evict the renter himself. When rent is lowered by renting tribunal from € 650,to € 150,-, landlord intensifies threats: "*We pray upon the renter and his kid. We will butcher them like beasts. He will never live there in peace.*"

> Last Friday the landlord of the [address removed] visited his building and made very clear to the ground floor tenant what his opinions are on the procedure of the renting tribunal [the tenant started]. He also asked the renter to sign a statement that he would vacate the house. When the renter declined, he was physically attacked, by which violence he was injured. Eventually, the police intervened. The renter was treated by a doctor and has pressed charges against the landlord.

Against this backdrop, it is not surprising that most tenants will not pursue the defence of their rights. But even if they are willing to engage in open confrontation with their landlord, tenants differ widely in the extent to which they are able to do so. In particular, those with less social, economic, cultural and/ or economic capital are at a disadvantage, and are more likely to regard starting administrative/legal procedures as (variously) excessively complex, expensive, risky, exhausting and time consuming. More advantaged tenants have more options, for instance of just putting up with too-high rents or alternatively opting out by relocating to other rental or owner-occupied housing.

A third issue concerns the (inherently) *limited efficacy* of the enforcement mechanisms. Maintenance is a striking example of this. The following excerpt from an interview with a tenant (Amsterdam, 2010, translation mine) shows that tenants can have serious maintenance complaints, and that landlords (in this case a housing association) do not always respond optimally:

> And in my daughter's room, over there by the hallway, I once fell through the floor because it was completely rotted through. Then you call the landlord and say: "Hey, I fell through the floor." Yes, it happened several times in fact. My neighbour, who rents from the same landlord and has the same problem, she once fell so badly that an ambulance had to come. So it is actually really dangerous. And then, the landlord, they say: "We will send someone around to repair it." And then it takes a few weeks. And then somebody comes round and measures it, and just sticks a piece of wood over it, which does not solve the problem at all.

Such lack of repairs illustrates that a significant part of the stock is structurally in a poor state. Indeed, the proportion of Dutch renting households who regard their dwelling as being badly maintained has been remarkably stable for the last 18 years, and this contrasts sharply with owner-occupiers, at 18.6% vs 3.7% (Table 2.1).

Despite this sustained level of dissatisfaction, two thirds of all renters who suffer from neglect of maintenance state they will *not* start a procedure with the renting tribunal (Companen, 2008:5). Of these, more than 33% feel that starting a procedure has no point, because they think this will not yield any results.[6] This feeling is grounded in reality. In more than half of all cases of the small minority of tenants who did file a complaint at the renting tribunal (only about 2,250 each year, according to the yearly reports of the renting tribunal) and whose rents were lowered because of maintenance complaints, the complaints were not solved afterwards (Companen, 2008:49). The economic sanction wielded by the renting tribunal is in many cases ineffective, as a landlord can simply choose to absorb the loss.

Table 2.1

Proportion of Dutch households that find their houses badly maintained (calculated from Dutch Ministry, 2016)

Year	Rental	Owner-occupied
1998	18.9	4.2
2002	18.5	3.7
2006	18.7	3.4
2009	18.8	3.1
2012	18.3	3.9
2015	18.4	3.6
Average 1998–2015	**18.6**	**3.7**

"In how far do you agree with the following statement: 'My dwelling is badly maintained'"; proportion of households that answered 'agree' or 'completely agree'. Percentage whereby total number of rental households is 100% and total of owner-occupied as well.

Additionally, starting a procedure at the renting tribunal is tedious and time-consuming, as can be gleaned from this rendition of social workers' experiences:

> In particular the capacity/power of the renting tribunal to (significantly) lower the rent temporarily in case of serious disrepairs in itself is good, but this option does not work as a means of putting pressure when the handling time is two years. Social workers sometimes doubt whether to advise tenants to start a procedure at the renting tribunal. The handling times are so long – one to two years – that in practice nothing remains of the positive effects. Additionally, a procedure that drags on for years creates a lot of frustration with their – mainly elderly – clients. […] These days, it frequently happens that tenants who are completely by rights do not start a procedure, solely because the renting tribunals do not function well.

2004b:158–160, translation mine.

This quotation comes from a report from the Dutch Ombudsman, who in 2004 admonished the tribunal for 'neglecting their legal duties' by a 'tradition' of 'exceeding unacceptably' the period of four months within which a verdict should be reached by, on average, one to one-and-a-half years. Six years later, by 2010, the Ombudsman ascertained that things had not improved at all and that extreme tardiness was a structural problem of the tribunal (National Ombudsman 2004a, 2004b, 2010). Indeed, in their year report for 2015, the tribunal acknowledges that they still have not reached the goal of attaining the legal maximum period in most cases, and that they will not succeed in 2016 either (Renting Tribunal, 2016).

In practice, the municipal housing inspection department also has limited efficacy. Although it will intervene in the most acute cases, when there is a risk of imminent structural failure, in practice its role in addressing maintenance problems is marginal. It does not actively engage in monitoring the quality of rental housing and neither functions, nor views its role, as a contact point for tenants dissatisfied with maintenance. Tenants who call the department are often advised to address the issue with their landlord, and failing that to take recourse to the renting tribunal (who in some cases will refer the tenant back to the inspection department). Municipal housing inspection departments often also have their own enforcement priorities, especially overseeing the construction of new buildings, and this further limits their role.[7] The limited efficacy of the Dutch renting tribunal and the municipal housing inspection department cannot simply be attributed to bureaucratic incompetence. The Dutch state is renowned for its administrative efficiency and, while incompetent individuals inevitably exist, this cannot explain the recurring, structural failure of these institutions specifically to ensure compliance with rental regulations.

So far I have thus observed that due to lack of knowledge (enhanced by the invisibility of the state), the complexities involved in accessing indirect enforcement mechanisms and their perceived and actual shortcomings, enforcement of rental law is often limited. If this was generally acknowledged by politicians, academics and other experts, then discussions could proceed on whether and how to address these problems. Yet a striking feature of the political-academic discourse around renting law in the Netherlands is the presumption that the enforcement mechanisms function well and that the law is enforced. When asked about the challenges of enforcing rental laws, politicians and policy-makers will typically declare that renters are well-protected because their rights are enshrined in law but, if engagement with the landlord does not work, they can always seek support from (variously) the renting tribunal, the municipal housing inspection department and the civil courts. Take for example the recent statement of the then Dutch Minister of Housing, in response to acute cases of mould infestation in a large number of rental houses in the city of The Hague:

> At this moment, if it becomes apparent that a tenant lives unnecessarily [*sic*] in a damp house, the existing instruments suffice. In case of health problems, the municipal health service can be called in, and in case of technical faults, the municipal housing inspection department, as well as the renting tribunal in case the landlord does not keep his house in a good state of repair and the tenant is thus paying too much rent. It also stands to reason to deal with complaints about dwellings on the local level. I have also not received any signals that the above-mentioned services do not function well. Therefore, I see no reason for myself to assume a larger role.
>
> Blok, 2016, translation mine.

Essentially, the fact that these mechanisms exist is presumed – in fact, asserted – to be synonymous with enforcement, and used as justification for sustaining them, and not undertaking further action. Compare this with the excerpt from an interview below (Amsterdam, 2010, translation mine), where Jane, a tenant, and her husband Daniel, discuss the option of taking their complaint about their roof that has been leaking for years (the landlord's attempt to fix it resulted in the leaks increasing) to the municipal building inspection department:

> Jane: 'Yes, but what I'm also afraid of, if I went and did that [report to the municipal building inspection department], is that they'll say, "Oh madam your roof is going to cave in. That's not safe any more, we're going to completely board up the house."'
> Daniel: 'And then they might say: "And you have to leave."'

Daniel and Jane decided not to take their complaint to the municipal building inspection department, because they were afraid that the department would say their house was uninhabitable, and that, in turn, they would lose their home.

A further example of this tendency to equate the existence of regulation with enforcement concerns the phenomenon of temporary tenure. Although very recently legalised, there are signals that in the last decade temporary contracts (of various kinds, ranging from time-limited contracts to highly precarious house guarding or anti-squat) were already emerging as a standard feature of day-to-day renting culture (Hochstenbach & Boterman, 2015; Huisman, 2016a; Huisman, 2016b; Sakizlioglu & Uitermark, 2014). Attempts to address this phenomenon were typically met with responses stating (in essence) that temporary contracts by definition cannot exist (because of their exclusion from the law), that abuses are incidental and that tenants can always, if need be, verify the permanence of the contract through the civil courts. Predictably, no action was subsequently undertaken by the state to investigate (or address) the tendency away from the permanent norm (Priemus, 2015); in fact, regulatory steps of recent years have been in the opposite direction. This discursive invisibility, combined with the absence of enforcement, has created exactly the conditions for the temporary sector to thrive. Indeed, this normalisation on the ground of the growing Dutch irregular renting sector has sustained an increasingly successful lobby for everdeeper liberalisation of the rental sector, citing precisely the excessive protection afforded to renters. For instance, *Vastgoed Belang* (Real Estate Interest), the Dutch association of private property landlords, self-identifies as 'a great defender of more flexibility of Dutch rental law in general' and proposes a 'far-reaching liberalisation of the rental market', going on to argue that Dutch rental law for housing and shops is currently 'so constricting that the [market] sectors cannot function well' (Vastgoed Belang, 2014, my translation from the Dutch).

This gives some clues as to why non-enforcement perpetuates. Clearly, although no one actor can be held responsible for the emergence of the situation in which regulations do not work in practice – but which are presumed/asserted to work in the accompanying political discourse – certain actors do benefit from this situation. Successive Dutch governments have been ideologically retreating from renting for many years now (Musterd, 2014). Maintaining just the idea rather than the practice of strong regulation and enforcement tends to be significantly less controversial than explicit deregulation. At the same time, the elective enforcement mechanisms used in renting law allow the implicit transfer of responsibility for enforcement to the citizen. Enforcement is, then, by definition, complete in the sense that tenants are presumed to have all the tools available to them to protect their rights and that if they fail to do this, then they only have themselves to blame; it is their own fault. Moreover, renting in the Netherlands is increasingly discursively framed as a transient phenomenon that citizens should quickly leave behind in favour of buying a house. Regulated rental housing ('social housing'), in particular, is often framed in negative terms, as a housing form only suitable for the (un)deserving poor, neither desirable for (nor accessible to) the middle class (Musterd, 2014). Whereas the elective character of the enforcement mechanisms disciplines renters along the logic of the need to assume their own responsibility, the fact that the mechanisms often do not work further disciplines renters, along the logic that they should actually not be renting at all. Another point, often overlooked, is that for landlords who violate the rules the worst that can happen is that the legally correct situation is restored (for instance, the rent is adjusted to the correct level, or the landlord is forced to fix the leaking roof). There is no sanction against the violation per se. This means that for landlords there is very little risk associated with violating tenants' rights (irrespective of whether the landlord does this consciously or unconsciously) and this potentially reinforces a 'nothing gained, nothing lost …' culture amongst landlords. In other words, the lack of sanctions encourages landlords to try and bend the rules to their advantage. The earlier examples of landlords intimidating tenants are instances of non-compliance, but it is non-enforcement that creates the conditions in which non-compliance transcends the incidental to become structured and widespread.

How does one explain the lack of academic attention for this phenomenon? For academics based outside the Netherlands, this is fairly easy to answer. To start with, it is difficult for them to understand the details of how the specific enforcement mechanisms work in practice. Moreover, in countries such as the US and the UK the protection for renters is so poor that many academics tend to uncritically eulogise

the Dutch rental sector (see for a comparable argument Uitermark, 2009). Within the Netherlands, ethnographic studies of the housing market are comparatively scarce. Relatedly, many academics, as with middle-class professionals more generally, might sympathise with the goals of strong rental laws, but will simultaneously distance themselves from the rights and responsibilities attached to them in as far as they impact on their own personal lives: this is for someone else.

2.5 Conclusion: Non-enforcement as a technique of governance

In this chapter, I derive from my case-study of rental housing policy in the Netherlands that non-enforcement of policy can be utilised as a technique of governance. Not intervening to ensure rules are adhered to can have advantages over abolishing rules beyond a quick-and-dirty way of deregulation, exactly because the policy officially stays in place. While rental regulations in the Netherlands in theory are peremptory, the shift towards citizen responsibility in practice means that rights more and more become favours bestowed by benevolent landlords or abstract concepts that can only be claimed by the advantaged. This is a remarkable departure from the starting-point of guaranteed rights for tenants to shield them from adverse effects of the inherent power imbalance between tenant and landlord. Moreover, politicians, policy-makers and academics seem to be unable or unwilling to recognise the reality on the ground, to the point that many continue to argue that current regulations are too strict. I argue that keeping regulations in place that are largely unknown to citizens and unenforced by authorities, can function as a policy mechanism in its own right, as a method to secure and transmit the objectives of government in a more subtle way than explicit, topdown exertion of power.

The question arises: in how far can this non-enforcement phenomenon be generalised beyond the (Dutch) rental sector, for example to labour regulation? Labour in any case seems to function differently, because although in recent decades many Western countries have increasingly flexibilised their labour sectors (Esping-Andersen & Regini, 2000; ILO, 2016), there often remains societal consensus about the desirability of enforcing minimum-wage regulations and upholding basic working conditions. States will still intervene to enforce such laws, and there is a moral discourse in

which citizens are actively discouraged by both the state – and their fellow citizens – from accepting substandard pay and conditions. Firm, visible enforcement helps to sustain this discourse, and it is further strengthened by the input and activism of labour unions.

The Dutch rental sector functions rather differently. Unlike in the 1970s and 1980s there is a high degree of fragmentation and alienation amongst tenants, even though the sector is, with a proportion of 41% of all housing stock (Dutch Ministry 2016), in an absolute sense still large. The institutions defending the rights of tenants are politically weak and defensive, often adopting technocratic, rearguard actions against a steady sequence of deregulatory changes pursued by successive governments. Indeed, successive Dutch governments have strongly promoted home-ownership above renting, and for reasons touched upon earlier, renting is increasingly framed in a negative light; at best as a transitory phase in the housing career. If tenants want protection, which they are implicitly discouraged from wanting or needing, they should first negotiate with their landlord. If that fails it is entirely their own responsibility to seek enforcement of these rights; the risks are also for them to bear, and if or when they fail it is their own fault.

I argue that the Dutch rental sector has been susceptible to non-enforcement for the following reasons, which I phrase in generic terms to seek an abstract characterisation of the conditions under which it emerges. It is a large sector that has won and discursively sustained strong protection for citizens, with direct support from the state, arguing that the protection should be a right rather than an aspiration. As the state began to retreat both ideologically and in practice from the sector, it was easier to leave the (elective) enforcement mechanisms in place, to avoid political controversies resulting from a too-rapid withdrawal and to emphasise the new primacy of citizens' own responsibility. Although these mechanisms always had their limits, the sharp discursive shift against the sector, the resulting fragmentation of citizens and the almost total invisibility of the state in enforcement issues meant that their enforcement in practice was greatly diminished. The *idea* of enforcement that remains is useful to many political actors – in particular, by virtue of the fact that it is there and not there at the same time – which, I contend, is exactly why it is sustained.

Given the tendency to welfare-state restructuring in many Western democracies it is conceivable that non-enforcement can and will emerge in other sectors and in other countries. Vulnerable sectors are arguably exactly those which were once unquestionably considered public goods, accumulating a strong regulatory framework; which still concern a very large segment of the population (meaning deregulatory changes cannot be rapid); do not have life-and-death immediacy (meaning that citizens who fail to secure their rights do not suffer irreversible consequences, at least in most cases); and which have experienced a sustained period of reframing as aspirational goods (and/or as safety nets). Future work could explore these hypotheses. The complex interaction between non-enforcement and non-compliance also merits further attention through a deeper analysis of their interface.

The critique of old welfare states may have been that citizens were seen as passive, consuming victims rather than creators of their own destinies. More ownership of their surroundings can indeed help people assert themselves. For people to thrive, however, they need security, articulated via minimum standards and basic rights. Enforcement is an important part of (discursively) sustaining those standards and rights. Lack of enforcement feeds lack of knowledge and creates a situation whereby the violation of these standards and rights is increasingly normalised both discursively and in practice. *After all, if the government does not intervene, it must surely be legal?* Non-enforcement is thus far more important than a simple question of administrative efficiency. It is a process through which acquired rights fade away, while on paper all is well, creating a reality in which the consequences of, and responsibility for, non-enforcement can be offloaded onto the citizen. At some point, this makes it essentially impossible for people to claim their rights, which undermines the ontological security of citizens and disciplines and re-aligns their behaviour. As the case-study of Dutch renting points out, this is not just an issue for the 'other', or for disadvantaged citizens. Irrespective of income or societal status, it is extremely unsettling and difficult for tenants to confront their landlords, due to the inherent asymmetries of power involved. Do you engage in the defence of your rights, initiating a long and probably unsuccessful process and inviting the enmity of your landlord … or do you accept that it is easier (and, in fact, the socially *reasonable* course of action) to simply give up on those rights?

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References

Ayres, I., & J. Braithwaite (1992) *Responsive regulation – transcending the deregulation debate*. Oxford: Oxford University Press.

Blok, S. (2016) *Letter to the Lower Chamber: Reply to the parliamentary questions of MP Bashir (SP) concerning domestic damp and fungus problems*. [Brief aan de Tweede Kamer: Beantwoording Kamervragen van het lid Bashir (SP) inzake vochten schimmelproblemen in huis]. Den Haag: Dutch Ministry of Internal Affairs and Affairs of the Royal Kingdom.

Bourdieu, P. (1972/1995) *Outline of a theory of practice*. Cambridge: Cambridge University Press.

Braithwaite, J. (2011) The essence of responsive regulation. *UBC Law Review* 44(3) 475-520.

Companen (2008) *Consecutive measurement societal output of the settlement of rental disputes* [Vervolgmeting maatschappelijk rendement van de huurgeschillen-beslechting]. Arnhem: Companen.

Deacon, D. (2010) 'Deregulation through nonenforcement'. *New York University Law Review* 85(3) 795-828.

Dean, M. (2010) *Governmentality: Power and rule in modern society* (2nd ed.). London: Sage.

Dolado, J., F. Kramarz, S. Machin, A. Manning, D. Margolis & C. Teulings (1996) 'The economic impact of minimum wages in Europe'. *Economic Policy* 11(23) 317- 372.

Dreyfus, H., & P. Rabinow (1983) *Michel Foucault: Beyond structuralism and hermeneutics*. Chicago, IL: The University of Chicago Press.

Dutch Ministry of Internal Affairs and Affairs of the Royal Empire & Statistics Netherlands (2016) *Woon* [Online database]. Available from: www. woononderzoek.nl.

Elias, N. (1997) Towards a theory of social processes: A translation (R. van Krieken & E. Dunning Trans.). *The British Journal of Sociology*, *48*(3), 355–383.

Esping-Andersen, G., & M. Regini (eds.) (2000) *Why deregulate labour markets?* Oxford: Oxford University Press.

Eurofound; European Foundation for the Improvement of Living and Working Conditions. (2015) *Efemire dictionary*. Retrieved from www. eurofound.europa.eu/efemiredictionary/peremptory-law.

Foucault, M. (2003) "*Society must be defended*": *lectures at the Collège de France, 1975–1976*. New York: Picador.

Foucault, M. (1964/1988) *Madness and civilization*. New York: Random House.

Foucault, M. (1975/1991). *Discipline and punish The birth of the Prison*. London: Penguin Books.

Foucault, M. (1976/1980) *Power/knowledge*. New York: Vintage Books.

Foucault, M. (1978/2006) Governmentality. In: A. Sharma, & A. Gupta (eds.), *The anthropology of the state: A reader,* 131-143. Malden: Blackwell.

Gerring, J. (2006) *Case study research*. Cambridge: Cambridge University Press.

Gilbert, M. (2015) Insincere rules. *Virginia Law Review*, *101*(8), 2185–2223.

Glaser, B., & A. Strauss (eds.) (1967/2006) *The discovery of grounded theory strategies for qualitative research*. Piscataway: Aldine Transaction.

Gould, J., & Barclay, S. (2012) Mind the gap: The place of gap studies in sociolegal scholarship. *Annual Review of Law and Social Science*, *8*, 323–335.

Hochstenbach, C., & W. Boterman (2015) Navigating the field of housing: Housing pathways of young people in Amsterdam. *Journal of Housing and the Built Environment*, *30*(2), 257–274.

Hotline Undesirable Landlord Behaviour [Meldpunt Ongewenst Verhuurgedrag]. (2009) *All accounts, supplement to annual report 2009* [Alle meldingen, bijlage bij Jaarverslag 2009]. Amsterdam: Meldpunt Ongewenst Verhuurgedrag. Retrieved from: www.cyas. nl/Uploaded_Files/446_aa_Jaarverslag_Meldpunt2008_bijlage_meldingen.pdf.

Houweling, A., & L. Langedijk (2011) Peremptory law in labour contract law: From one size fits all to tailor-made [Dwingend recht in het arbeidsovereenkomstenrecht: van confectie naar couture]. *Arbeidsrechtelijke Annotaties*, *1*, 9–32.

Huisman, C. J. (2014) Displacement through participation. *TESG*, *105*(2), 161–174.

Huisman, C. J. (2016a) A silent shift? The precarisation of the Dutch rental housing market. *Journal of Housing and the Built Environment*, *31*(1), 93–106.

Huisman, C. J. (2016b) Temporary tenancies in the Netherlands: From pragmatic policy instrument to structural housing market reform. *International Journal of Housing Policy*, *16*(3), 409–422.

Hulse, K., & V. Milligan (2014) Secure occupancy: A new framework for analysing security in rental housing. *Housing Studies*, *29*(5), 638–656.
International Labour Office (2014) *Minimum wage systems*. Geneva: International Labour Office.
International Labour Office (2016) *Non-standard employment around the world*. Geneva: International Labour Office.
Jessop, B. (1995) The regulation approach, governance, and post-Fordism: Alternative perspectives on economic and political change? *Economy and Society*, *24*(3), 307–333.
Jessop, B. (2002) Liberalism, neoliberalism, and urban governance: A state theoretical perspective. *Antipode*, *34*(3), 452–472.
Lascoumes, P., & P. Le Galès (2007) Introduction: Understanding public policy through its instruments – from the nature of instruments to the sociology of public policy instrumentation. *Governance*, *20*(1), 1–21.
Lipsky, M. (1969) Toward a Theory of Street-Level Bureaucracy. *The University of Wisconsin, Institute for Research on Poverty Discussion Papers*.
Musterd, S. (2014) Public housing for whom? Experiences in an era of mature neoliberalism: The Netherlands and Amsterdam. *Housing Studies*, *29*(4), 467–484.
National Ombudsman of the Netherlands (2004a) *Press release: Renting tribunals neglect their legal duties* [Huurcommissies verwaarlozen wettelijke taak]. Den Haag: Nationale Ombudsman. Retrieved from: www.nationaleombudsman.nl/nieuws/2004/nationale-ombudsman-bekritiseert-huurcommissies-en-ministerie- van-vrom.
National Ombudsman of the Netherlands (2004b) *Report on renting tribunals* [Rapport Huurcommissies]. Den Haag: Nationale Ombudsman.
National Ombudsman of the Netherlands (2010) *Report 345* [Rapport 345]. Den Haag: Nationale Ombudsman.
OECD (2014) *Regulatory enforcement and inspections, OECD best practice principles for regulatory policy*. Paris: OECD Publishing.
Pound, R. (1910) Law in books and law in action. *American Law Review*, *44*(1), 12–36.
Priemus, H. (2015) Squatters in the city: New occupation of vacant offices. *International Journal of Housing Policy*, *15*(1), 84–92.
Raco, M. (2009) From expectations to aspirations: State modernisation, urban policy, and the existential politics of welfare in the UK. *Political Geography*, *28*(7), 436–444.
Raco, M., & R. Imrie (2000) Governmentality and rights and responsibilities in urban policy. *Environment and Planning A*, *32*(12), 2187–2204.
Renting Tribunal [Huurcommissie] (2016) *Year report 2015* [Jaarverslag 2015]. Den Haag: Huurcommissie.
Rose, N. (1996/2006) Governing advanced liberal democracies. In: A. Sharma, & A. Gupta (eds.), *The anthropology of the state: A reader*, 144-162. Malden MA/Oxford/Carlton: Blackwell.
Sakizlioglu, N., & J. Uitermark (2014) The symbolic politics of gentrification: The restructuring of stigmatized neighborhoods in Amsterdam and Istanbul. *Environment and Planning A*, *46*, 1369–1385.
Sarat, A. (1985) Legal effectiveness and social studies of law on the unfortunate persistance of a research tradition. *Legal Studies Forum*, *9*(1), 23–31.
Schinkel, W., & van Houdt, F. (2010) The double helix of cultural assimilationism and neoliberalism: Citizenship in contemporary governmentality. *The British Journal of Sociology*, *61*(4), 696–715.
Spapens, A. (2012) The question of regulating illegal markets. The gambling and cannabis markets in the Netherlands. *GSTF Journal of Law and Social Sciences*, *2*(1), 30–37.
Spies, J. (2012) *Letter to the second chamber of Parliament: Dove-tailed renting, D66 white paper "Away with the waiting list" and Law on Vacancies* [Brief aan de Tweede Kamer: Huur op Maat, D66-nota 'Weg met de wachtlijst', tijdelijk huren en Leegstandwet]. Den Haag: Dutch Ministry of Internal Affairs and Affairs of the Royal Kingdom.
Thomas, W., & D. Thomas. (1928) *The child in America*. New York: Alfred A. Knopf.
Toussaint, J., G. Tegeder, M. Elsinga & I. Helbrecht (2007) Security and insecurity of home ownership: Germany and the Netherlands. *European Journal of Housing Policy*, *7*(2), 173–192.
Uitermark, J. (2009) 'An *in memoriam* for the just city of Amsterdam'. *City* 13(2-3) 347-361.
Vastgoed Belang (2014) *Visie op de huurwoningmarkt*. Amsterdam: Vastgoed Belang.
Weber, M. (1918/1946) 'Politics as a vocation'. In: H. Gerth, & C. Wright Mills (trans. & eds.) *Max Weber: Essays in sociology*, 77-128. New York: Oxford University Press.

Notes

1 Indeed, the now rather obsolete gap studies, a sub-discipline of the sociology of law, took exactly such gaps as its research focus (see Gould & Barclay, 2012 for an historical overview, Sarat, 1985 for a contemporary critique). Deemed somewhat naive for its belief in laws as being 'purposively rational' and a one-on-one translation of policy aims, gap studies fell out of favour some decades ago.

2 'What we have to realize is precisely that there was no such thing as a bourgeoisie that thought that madness should be excluded or that infantile sexuality should be repressed; but there were mechanisms to exclude madness and techniques to keep infantile sexuality under surveillance. At a given moment, and for reasons that have to be studied, they generated a certain economic profit, a certain political utility, and they were therefore colonized and supported by global mechanisms and, finally, by the entire system of the State. If we concentrate on the techniques of power and show the economic profit or political utility that can be derived from them, in a certain context and for certain reasons, then we can understand how these mechanisms actually and eventually became part of the whole' (Foucault, 2003:32-33). A potential pitfall of such a mode of explanation is that we merely describe occurrences, or revert to describing events as occurring because they serve a function; in other words, a teleological explanation, since it explains a phenomenon by means of a description of how it functions, and derives from this its cause.

To clarify, I use the concept technique of governance, rather than technology of power to indicate a scale level; Foucault's disciplinary power for instance occurs at a scale larger than non-enforcement. I furthermore refer to governance rather than power or governmentality because it applies specifically to the state.

3 Interestingly, while Foucault and Bourdieu are sometimes pitted against each other, in this respect they complement each other; Foucault states: 'People know what they do; they frequently know why they do what they do; but what they don't know is what what they do does' (as cited in Dreyfus & Rabinow, 1983:187), while Bourdieu expresses the following sentiment: 'It is because subjects do not, strictly speaking, know what they are doing that what they do has more meaning than they know' (Bourdieu, [1972] 1995:79). These authors might seem to be contradicting each other, in fact they show two facets of the same phenomenon. Foucault focuses on the compound effects of people's actions, that they cannot know; Bourdieu puts the impossibility of knowing what one is doing in a bigger sense to the fore.

4 While the scarcity of affordable rental housing runs across the whole country, in the largest cities the problem is most acute. Amsterdam, the Dutch capital, is the locus of the most severe pressure on the housing market.

5 This is in contrast to, for example, a sustained publicity campaign of the Dutch government to simplify citizens' yearly tax declaration, with the recurring slogan 'We can't make it any nicer, but we can make it easier!'

6 Regarding rent levels, approximately half of the tenants that suspected that they paid too much rent stated that they would not pursue this at the renting tribunal because they expect no result or are afraid to upset the landlord.

7 Relatedly, responsive regulation (Ayres & Braithwaite, 1992; Braithwaite, 2011) encapsulates the idea that states should avoid regulation and enforcement via 'command and control' and instead utilise dialogue and enticements where possible. Enforcement informed by responsive regulation is pervasive within the OECD – it is perceived as best practice (OECD, 2014) – and the Netherlands is no exception; it has become standard fare for Dutch executive agencies.