

# Biopolitics and Disciplinarity in the Legislation of Conduct in Public Spaces of Vilnius<sup>1</sup>

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**Abstract.** This article presents the specific rhetoric of social control present in the sections of national and municipal legislation pertaining to conduct in public spaces of Vilnius, Lithuania.

Theoretically, the paper utilises M. Foucault's framework of power modalities both because of Foucault's engaged questioning of power and the applicability of his insights to the spatial dimensions of the city. The paper bases its interpretive scheme on two premises: a) that law reveals biopolitical and disciplinary aspects of social control; and b) that urban public space presents a valuable case for the analysis of these aspects.

A qualitative content analysis of national and municipal legislation has revealed that national legislation is driven by biopolitical objectives and municipal legislation by disciplinary ones. The national legislation focuses the regulation of public space on public order, public calm, and public dignity – public mores that must be upheld in the interest of the population and expanding beyond strictly public space. Disciplinarity is evident in municipal legislation insofar as it breaks space up into governable fragments, imposing painstakingly detailed prohibitions and obligations, and building a hierarchy inside the population between the desired and subnormal subject.

**Keywords:** Foucault, discipline, biopolitics, legal geography, public space, Vilnius

<sup>1</sup> The paper is based on data I have collected as part of my doctoral dissertation.

## Biopolitika ir disciplinavimas Vilniaus miesto viešąsias erdves reglamentuojančiuose teisiniuose dokumentuose

**Santrauka.** Straipsnyje analizuojama specifinė socialinės kontrolės retorika, randama įstatymuose ir savivaldybės teisės aktuose, kurie reglamentuoja elgesį Vilniaus miesto viešosiose erdvėse.

Tyrimo teorinis pagrindas – M. Foucault galios modalumų koncepcija, taikoma dėl kritinio autoriaus požiūrio į galios problematiką ir jo įžvalgų apie miestų erdves. Šiuo pagrindu sukonstruojama interpretacinė schema, kuri remiasi dviem prielaidomis: a) teisinių dokumentų retorika atskleidžia biopolitinius ir disciplinuojančius socialinės kontrolės aspektus miesto erdvėse, ir b) miesto viešosios erdvės yra vertingas objektas, tiriant šiuos aspektus.

Kokybinė nacionalinio lygmens ir savivaldos teisinių dokumentų analizė atskleidė, kad nacionalinių įstatymų formuluotės atspindi biopolitinę dimensiją. Jie yra sutelkti į viešosios tvarkos, viešosios rimties, orumo palaikymą – taip apibrėžiant populiacijos interesus ir peržengiant erdviškumo ribas. Disciplinavimo dimensiją atspindi savivaldybės teisės aktai, kuriuose viešosios erdvės yra dalinamos į valdomus fragmentus, suformuluojami detalūs draudimų ir įpareigojimų sąrašai, apibrėžiamos pageidaujamų ir nepageidaujamų, abnormalių populiacijos individų hierarchijos.

**Pagrindiniai žodžiai:** Foucault, disciplina, biopolitika, teisinė geografija, viešosios erdvės, Vilnius

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### Introduction

The aim of this article is to reveal the specific rhetoric of social control present in the national and municipal legislation of conduct in public space in Vilnius, the capital of Lithuania. The relevance of this topic is evident in broader discussions about the rise of both actuarial justice and punitivity as the main trends of contemporary social control and governance of everyday life (Garland 2001; Cohen 1985).

Theoretically this work utilises M. Foucault's framework of power modalities both because of Foucault's engaged questioning of power and the applicability of his insights to the spatial dimensions of the city. The paper bases its interpretive scheme on two premises: a) that law reveals biopolitical and disciplinary aspects of social control; and b) that urban public space presents a valuable case for the analysis of these aspects.

The interpretive scheme underlies an exploratory qualitative content analysis of national and municipal legislation: the Administrative and the Penal

codes of the Republic of Lithuania and a number of municipal rule sets that are granted administrative legal power. The results show that the national legislation is preoccupied with biopolitical goals, while the municipal legislation provides it with disciplinary support.

## Towards a Foucauldian legal geography

Throughout the corpus of his works, M. Foucault delineated three modalities of power: sovereignty, disciplinarity and biopolitics. He has linked each of them with a distinct historical period (pre-modern, modern and late modern) and form of discourse (right, discipline and security)<sup>2</sup> (Foucault 2007). Rather than superseding each other, these continue coexisting in varying proportions of importance.

Pre-modern sovereignty is described by Foucault as the heyday of law, subsequently eclipsed by disciplinarity and biopolitics, in which uncodified norms, covert forms of power and soft ideologies of control take over as the preferred form of rule-making. Power 'transgresses the rules of right' (Foucault 2004, 27) and therefore becomes 'less and less judicial' (Foucault 2004, 28). What is the role of law then, from a Foucauldian point of view, if neither a demise nor an innovative disruption of law is apparent in contemporary societies? Foucault proposes that law is henceforth colonised by disciplinarity and biopolitics and represents a hybrid rather than purely right-based discourse of power (Foucault 2007, 8–9).

The rhetoric of law gives voice to ideologies of social control and carries them onto subjective realities of individuals in their everyday life. Thus, it is one of the links between the state and its subjects. As an object of research it fulfills this piece of methodological advice by Foucault: '[...] I think we should orient our analysis of power toward material operations, forms of subjugation, and the connections among and the uses made of the local systems of subjugation on the one hand, and apparatuses of knowledge on the other' (Foucault 2004, 34).

Thus the first theoretical premise which serves as the basis for the interpretive scheme of this research is that law is instrumental in partially revealing

<sup>2</sup> M. Foucault. *Security, territory, population: Lectures at the Collège de France 1977-1978*. New York: Picador, 2007 [1978].

disciplinary and biopolitical rhetoric in the unique forms in which it is applied in a specific jurisdiction.

While Foucault did not develop a comprehensive urban theory, in his works the city looms through the surfaces of knowledge, power and subjectivity. Urban spaces and structures, in fact, are often sites where contemporary power relations develop (Foucault 2007, 63–64), a stance congruent with Foucault's early conviction that space, rather than time, is the centerpiece of social relations (Foucault 1984, 46–49). Specific practices of social control are prone to change over time, but always remain within spatial dimensions and constraints.

From a practical point of view, the relevance of this premise has been recently repeatedly brought forth by the advocates of spatially-aware criminology. They acknowledge that space has always been a criminological concern in both quantitative and qualitative approaches. Notable examples include studies by Quetelet and Guerry, contributions of the Chicago school, environmental criminology, and left realism (Hayward 2004, 87–109). More recently, the quantitative spatial research has refocused on crime mapping, and the qualitative on cultural criminology (Hayward 2004, 110–111). Tensions between quantitative and qualitative approaches to space in criminology have not been reconciled during the past decade. However, researchers have commenced to analysing specific types of spaces rather than urban space in general or space as an abstract category, and new (re)conceptualisations of urban spatial experiences have been brought forth (Hayward 2016, 208–209). The ongoing challenges for spatial criminology lie within the political dimensions and social repercussions of crime, culture, and urban space (Hayward 2016): contestation of spatial governance, the power relations behind norm-setting and norm-breaking, and the future of public space. The practices of social control upon public space, an executive form of spatial politics, are, therefore, a research object with continuing relevance in the foreseeable future.

Another field of study, legal geography, has drawn attention to the specific relations of law and space. In legal geography 'space is foregrounded and serves as an organizing principle' (Braverman 2014, 1–2), shaping the course of social interactions. Individual laws enforce spatial limits through confinement, exclusion, or enhanced mobility, and structure spaces by setting borders, regulating spatial conduct, accessibility and aesthetics (for a condensed

overview of the legal geographic research agenda, see Delaney 2015). From this perspective, law constitutes the spaces and spatial components of interpersonal relationships (Delaney 2015, 99).

There are distinct means by which biopolitics and disciplinarity are enacted in physical space. The distinctions reflect the general difference in the workings of the two modalities of power (see Foucault 2004, 20–29), which often present opposing strategical poles. The two power modalities differ in the subjects they target: disciplinarity acts on individual bodies, while biopolitics is focused on the population (Foucault 2004, 44–49). Disciplinary power acts on artificial spaces created with a specific function in mind, relies on enclosure and isolation to amplify the effects of power, and focuses on the present – all in order to discipline individuals. Meanwhile biopolitical strategies aim to preserve biological life and enhance the quality of the population. They operate on natural, generic, pre-existing spaces to promote circulation in constantly expanding circuits of subjects and goods, and center on future-proof tools of risk aversion. Space is the direct and tangible means of approaching individual bodies and populations, because it is ultimately unescapable, unlike many other, more abstract and knowledge-based loci of power.

Therefore, the second theoretical premise in this work is that space, in particular urban space, is vital for understanding how social control is applied.

The two premises form the basis of the research problem in this article. Space is closely tied to the practices of social control, whose workings are made apparent in law. Therefore, an analysis of the spatial concerns in law reveals the shape of biopolitical and disciplinary dimensions of power. This leads to the main research question: what disciplinary and biopolitical aspects of regulating public space are revealed by legislation? The answer to this question provides insights complimentary to contemporary critical studies of social control which focus on institutions, para-legal means and cultural frameworks of social control (see Garland 2001; Cohen 1985; Ferrell, Hayward, Young 2008).

## Research approach

This research is based on a qualitative content analysis of legislation regulating urban public space. Specifically, it focuses on the rhetoric and framing of conduct in public space, paying special attention to the terms in which pub-

lic space and the state-subject relation is described. Legislation encompasses many spatial activities: territory planning, construction works, conduct in specific types of places, such as the generic workplace, or specific institutions, such as the prison. This study concentrated on just one instance, conduct in public space. Public space reflects the mundane and everyday aspects of existing urban structures, rather than more exceptional states such as demolition, construction or management of emergencies and environmental disasters. It is also a type of space which is nominally accessible to all members of the population rather than specific subgroups.

Two types of legislation were purposively sampled: national legal codes and municipal legislation<sup>3</sup>. Initially, at the national level, the Administrative<sup>4</sup> and Penal<sup>5</sup> codes were scanned and sections concerning conduct in public space were singled out for analysis. These are: Section XXIV of the Administrative code, 'Administrative offenses against public order', and Section XL of the Penal code, 'Crimes and criminal offenses against public order'. For municipal legislation, all municipal rule sets in force in the city of Vilnius, Lithuania were scanned to determine the ones pertaining directly to conduct within

<sup>3</sup> While I conducted the initial research on this topic in 2015, this paper and the legislative acts cited reflect the situation as of 2019. I have reviewed and updated the data according to legislation currently in force. Few significant changes have occurred during the period. While a new Administrative offense code came into force until January 1, 2017, only superficial changes were made to the section dedicated to public order. Some seemingly unrelated clauses have been removed (such as, for instance, violation of children's rights). However, the general rhetoric, lack of definitions and framing of space-related offenses discussed in this article have remained unchanged. Several sets of municipal rulings (e.g. Usage of residential and communal premises rules and Appropriate building care rules) have been repealed and with them some of the norms regulating minute details of everyday life such as the prohibition of 'hanging laundry in open (windowless) balconies and recessed balconies above the railings' (Rules for usage of residential and communal premises, Article 6.14, repealed in May 2017). Some of the clauses from the repealed rules were restructured and included in the General sanitation and hygiene rules. All of the clauses discussed in this paper either have not changed at all or a minor rewording has occurred.

<sup>4</sup> Lietuvos Respublikos administracinių nusižengimų kodeksas – <https://www.e-tar.lt/portal/lt/legalAct/4ebe66c0262311e5bf92d6af3f6a2e8b/VUILxUGRir> (in Lithuanian).

<sup>5</sup> Lietuvos Respublikos baudžiamasis kodeksas – <https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/umHbsiAfDE> (in Lithuanian).

publicly accessible urban spaces: General sanitation and hygiene<sup>6</sup>, Prevention of noise in public places<sup>7</sup>, Ordering and cleanliness<sup>8</sup>, Retail in public places<sup>9</sup>. Rule sets pertaining to municipal employees, service providers or administrative documentation were omitted.

Disciplinary and biopolitical social control were conceptualised in accordance with M. Foucault's work, the key distinction being between the focus on individuals, including practices of segregation and prescription of obligatory conduct, and the focus on ensuring the well-being of the population and encouraging its circulation (for a more detailed explanation of the conceptualisation of Foucault's discipline and biopolitics for urban research, see Šupa 2015). Based on the theoretical framework and key research problem, the analysis was driven by the following questions:

1. How is public space defined and represented in legislation?
2. What disciplinary aspects of social control are present?
3. What biopolitical aspects of social control are present?

The qualitative analysis of legal documents was carried out using the *RQDA* software package. The procedure included several rounds of coding. Initial coding was conducted from the bottom up, focusing on how and where the documents defined the subjects of social control, the forms of conduct that they included, the precise norms (and exceptions to them), the prohibitions, obligations, and limitations on the use of public space by various social groups. In addition to the purely spatial regulation of conduct (acts allowed or prohibited in specified places), temporal (variation in regulation depending on the time of day or year) and subject-specific (the focus of regulation on specific social groups) aspects were also compared across documents. Following the initial coding, codes were revised to ensure a uniform analytical framework has been applied throughout all data sources. After the codes were sorted,

<sup>6</sup> Vilniaus miesto Sanitarijos ir higienos taisyklės – <https://vilnius.lt/vaktai/Default.aspx?Id=3&DocId=30309481> (in Lithuanian)

<sup>7</sup> Vilniaus miesto Triukšmo prevencijos viešosiose vietose taisyklės – <http://www.vilnius.lt/vaktai/Default.aspx?Id=3&DocId=30149657> (in Lithuanian).

<sup>8</sup> Vilniaus miesto Tvarkymo ir švaros taisyklės – <http://www.vilnius.lt/vaktai/Default.aspx?Id=3&DocId=30203480&KlasId=10> (in Lithuanian).

<sup>9</sup> Vilniaus miesto Prekybos viešosiose vietose taisyklės – <https://vilnius.lt/vaktai/Default.aspx?Id=3&DocId=30226986> (in Lithuanian).

emerging categories were assigned to the three key themes: representations of public space and its norms, disciplinarity, biopolitics. The document contents and codes were then revised once again in order to assess their relevance to the key themes and analytic validity. Notably, the legal documents did not follow a similar structure, and their rhetoric also had significant differences, especially across national and municipal legislation. Therefore, the chosen approach (starting with bottom-up coding and only applying a thematical framework at a later stage), has facilitated tracing the variety of forms through which the key themes were expressed.

### Conduct in public space: national legislation

At the national level, each of the two codes has a section dedicated to offenses and crimes *against public order*. Despite this title, they cover a range of diverse activities, not all of which are related to public space. There is a total of fifteen articles in the corresponding section in the Administrative code and three in the Penal code.

In the Administrative code three clauses prescribe punishment for potentially life-threatening activities carried out in public space: illegal use of firearms<sup>10</sup>, improper acquisition and use of civil pyrotechnics<sup>11</sup>, and violation of swimming and ice-walking safety<sup>12</sup>.

Four clauses in the Administrative code concern non-life-threatening public conduct. First, it is an offense to publicly commit petty nuisances, defined as ‘obscene words or gestures in public places, insultingly picking on people or other similar actions breaching public order and people’s [sic] calm’<sup>13</sup>. Neither public order nor calm are defined anywhere in the code, although the terms are further used in several other clauses.

Second, a clause pertains to violations of public calm, that is ‘shouting, whistling, loud singing or playing music instruments and other sound technology [sic] or other noise-making actions in streets, squares, parks, beaches, public transport and other public spaces, and in the evening and at night at

<sup>10</sup> Administrative Code of the Republic of Lithuania, Article 482.

<sup>11</sup> Administrative Code of the Republic of Lithuania, Article 483.

<sup>12</sup> Administrative Code of the Republic of Lithuania, Article 491.

<sup>13</sup> Administrative Code of the Republic of Lithuania, Article 481.



residential and commercial premises if it violates public calm<sup>14</sup>. Note how there seems to be no suitable time for being loud in public, although noise is acceptable during at homes and offices during the daytime.

Third, a clause defines a specific space-related offense, 'keeping dens', specifically 'gambling, lewdness [sic] or alcohol consumption dens'<sup>15</sup>. The 'den', a word laden with stigmatising meaning, is a special type of space, nevertheless it is never clarified what these spaces are. They are defined by actions which by themselves are not prohibited, such as private consumption of alcohol.

Finally, another administrative offense is gambling and fortune-telling in public places<sup>16</sup>. In this case, one clause punishes two activities very differently from the economical point of view. Gambling is frequently an activity targeting groups, with specific legal restrictions and taxation policy. Meanwhile, fortune-telling is a private service, of which any willing person may become a service provider according to official nomenclature of professions<sup>17</sup>.

A portion of offenses against public order in the Administrative code pertains to the circulation and consumption of controlled substances and activities: public consumption of alcohol or appearance of a not-sober person in public<sup>18</sup>; consumption *or* possession of alcoholic drinks by minors under 20 years of age, another case of a potentially privately conducted activity classified as a breach of public order<sup>19</sup>; smoking in prohibited places and violation of tobacco sales rules<sup>20</sup>. A range of public, semi-public and private spaces are thus covered: private residences, urban public space, retail spots and businesses, introducing an ambiguity to the notion of *public* in public order.

Further ambiguity is introduced by the fact that the rest of the clauses in the public order section of the Administrative code pertain to conduct not limited to public places at all: fake reports about domestic violence<sup>21</sup>; prostitution<sup>22</sup>;

<sup>14</sup> Administrative Code of the Republic of Lithuania, Article 488.

<sup>15</sup> Administrative Code of the Republic of Lithuania, Article 486.

<sup>16</sup> Administrative Code of the Republic of Lithuania, Article 490.

<sup>17</sup> Available online at: <http://www.profesijuklasifikatorius.lt>.

<sup>18</sup> Available online at: <http://www.profesijuklasifikatorius.lt>.

<sup>19</sup> Administrative Code of the Republic of Lithuania, Article 485.

<sup>20</sup> Administrative Code of the Republic of Lithuania, Article 492.

<sup>21</sup> Administrative Code of the Republic of Lithuania, Article 489.

<sup>22</sup> Administrative Code of the Republic of Lithuania, Article 487.

deceitful emergency service calls<sup>23</sup>. These offenses contribute to the conceptual ambiguity of what public order is. Logically, these offenses would belong to other sections of the code or a different legislative document altogether.

The Penal code section concerning public order contains only three articles, two of which are directly linked to public space. The first one punishes the organisation of riots, provoking ‘public violence, destruction of property, or other grave violations of public order’, and taking part in riots<sup>24</sup>. The second one concerns general ‘violations of public order’ and describes offenders as those who ‘by insolent behaviour, threats, bullying or vandalism demonstrated a disrespect for surrounding people or the environment and breached public calm or order’<sup>25</sup>. In a manner identical to the Administrative code, this formulation defines neither public order nor public calm. The third clause deals with any ‘deceitful report of a societal danger or calamity’ resulting in mass panic, material damage or the arrival of emergency services<sup>26</sup>. It is therefore geared at averting the risk of false alarms about dangers to the population, reserved for exceptional cases.

## Conduct in public space: municipal legislation

While the concern with public order on the whole occupies a rather small part in the Administrative and Penal codes, where it is already ambiguous, in municipal documents it expands from public order to a simpler, all-encompassing notion of order, culminating in detailed instructions about creating and maintaining ideal conditions of cleanliness and order.

The Ordering and cleanliness rules are the longest of all municipal rule sets and provide the greatest volume of both obligations and prohibitions about everyday life. In contrast to other municipal documents, they open with a moral preamble obliging private and corporate persons to ‘conduct themselves honestly, observe prudence, good morals and responsibility’ and ‘not infringe on societal and state interests, or other persons’ rights and freedoms’<sup>27</sup>. While

<sup>23</sup> Administrative Code of the Republic of Lithuania, Article 493.

<sup>24</sup> Penal Code of the Republic of Lithuania, Article 283.

<sup>25</sup> Penal Code of the Republic of Lithuania, Article 284.

<sup>26</sup> Penal Code of the Republic of Lithuania, Article 285.

<sup>27</sup> Ordering and cleanliness rules, Article 1.

the second part of the obligation refers to the liberal social contract between subjects, and the subject and the state, the first part presents a disciplinary reminder of the normative moral dimension. It links the subject matter of maintaining order and cleanliness to abstract character traits, drawing a correspondence between a subject's moral character and physical and aesthetic order: a moral population is an orderly population, they imply.

The preamble also states the aim of the document: to provide 'general and special rules for ordering and cleaning roads, streets, ground lots and other territories, and requirements for organising and ensuring order during public events'<sup>28</sup>. Thus, even though procedures for obtaining permits and ensuring the safety of public events are not directly related to the maintenance of a specific territory, their inclusion in this particular set of rules adds them as yet another object of order.

The rules define the notion of ordered territories – territories owned privately or by contract, or assigned to an owner or proprietor, thus linking ownership of a space to the obligation of ordering it<sup>29</sup>. Obligations of residents in the ordered territories<sup>30</sup> include: removing trash, emptying waste containers and cleaning the surrounding territory, cutting grass, cleaning backyards and ground lots, sweeping leaves in the autumn, removing posted notices, 'removing, demolishing or dismantling illegal outdoor advertising without remitting the owner'<sup>31</sup>, removing graffiti and 'ensuring an aesthetic view of the facade'<sup>32</sup>, cleaning territories after 'end of work hours, public event, retail or service provision'<sup>33</sup>, cleaning snow and ice in wintertime (with detailed instructions on precisely how this must be carried out)<sup>34</sup>. Companies and individual retailers are obliged to 'ensure the surrounding environment is orderly and clean'<sup>35</sup>.

Prohibitions<sup>36</sup>, on the other hand, include: littering, leaving 'unused or broken things' and glass shards (in unspecified spaces), posting private notices 'on

<sup>28</sup> Ordering and cleanliness rules, Article 2.

<sup>29</sup> Ordering and cleanliness rules, Article 5.8.

<sup>30</sup> Ordering and cleanliness rules, Article 7.

<sup>31</sup> Ordering and cleanliness rules, Article 7.7.

<sup>32</sup> Ordering and cleanliness rules, Article 7–1.3.

<sup>33</sup> Ordering and cleanliness rules, Article 8.

<sup>34</sup> Ordering and cleanliness rules, Article 10.

<sup>35</sup> Ordering and cleanliness rules, Article 12; Article 13.

<sup>36</sup> Ordering and cleanliness rules, Article 15.

trees, bushes, traffic signs, traffic lights, information signs, sculptures, monuments, memorials and related elements, electric poles, buildings and structures and other places not specifically serving this purpose, attaching posters at memorial places, 'writing, scribbling, drawing, polluting [sic], or otherwise soiling sculptures, monuments, memorials, buildings, fences, and other structures or their parts (walls, doors, windows etc.);' contaminating water bodies, 'bringing flowers, wreaths and / or candles to spots of death, damaging the natural environment, enabling the spread of 'parasites and rodents', polluting the water circulation system, 'improper' or 'impeding' storage of construction 'or other' material, improper traffic control, leaving 'technically disorderly' vehicles in traffic zones. Waste management is thus discussed side by side with means of small-scale public communication, memory-making, management of objects in public space. The management of both nature and everyday life leaves little space for individual agency.

Several activities in the prohibition list have no apparent relation to the aesthetic aspects of order or cleanliness. These are: 'playing sports and games in unfit places if it endangers persons or property'<sup>37</sup>, begging and giving alms except at religious sites and 'public events with an approved license'<sup>38</sup>, 'roller-skating, skateboarding and bicycling while jumping over (unto) benches, railings, pavement edges, or other engineering or decoration elements, except in specially adapted spots'<sup>39</sup>, 'actively (verbally or by other means) picking on passers-by, loudly shouting or using obscene words, approaching passers-by for alms, also other insolent activities to procure donations for playing music or other performances in streets and squares'<sup>40</sup>, 'arranging permanent or temporary places for leisure, rest or residence under the balconies of residential buildings'<sup>41</sup>.

Such and other similarly minute prohibitions reflect a general attitude of the city about its subjects: unruly and unordered, as if without such rules, waste and inconsiderate neighbours would prevail. The Ordering and cleanliness rules are supported by further restrictions on public conduct in several much smaller sets of rules.

<sup>37</sup> Ordering and cleanliness rules, Article 15.21.

<sup>38</sup> Ordering and cleanliness rules, Article 15.22.

<sup>39</sup> Ordering and cleanliness rules, Article 15.25.

<sup>40</sup> Ordering and cleanliness rules, Article 15.23.

<sup>41</sup> Ordering and cleanliness rules, Article 15.24.

The General sanitation and hygiene rules, one of the most recent (2018) additions to the municipal regulation of space, contain two general articles, one obliging ‘parents, guardians, adult children or assigned social workers’ to supervise individuals who are unable to take care of themselves<sup>42</sup>, and another one listing requirements for garbage chute surfaces to be ‘hermetic, easily washed and disinfectant-resistant’<sup>43</sup>. These two clauses establish discursively the disciplining of (un)fit individuals as well as the disciplining of conduct via the minute requirements for a minor element of a residential building as a means of disciplinary power over space. They are followed by a list of prohibited actions including, among others<sup>44</sup>: littering in communal spaces, ‘conduct any activities which result in or have the chance of resulting in the pollution of communal spaces or encourage the breeding of parasites, rodents’, leaving bulky junk in communal spaces, using ‘balconies or open windows’ for cleaning clothes and a range of other objects (e.g. carpets), ‘watering or fertilising flowers growing in balconies, near balconies or windows in such a manner that water or other fluids flow onto other persons’ balconies, windows, building walls or other elements of the building’. Finally, a separate section is dedicated to ‘actions decreasing incidence of human disease’, which include timely reactions to outbreaks of infectious disease, and proper insect and rodent control<sup>45</sup>. Control over life – both of the subjects and of non-human animals adds a biopolitical streak to the disciplinary normalisation of (mostly) private and communal spaces over which the municipality establishes a greater right of power than the communities themselves.

*Public calm* reemerges as the object of Rules for prevention of noise in public space, ensuring that industrial, construction, residential, and leisure noise sources do not exceed set limits. While there are set requirements for the determining the amount of industrial noise, an exception is made for residential, leisure and construction-related noise, stating that no measurement is required for persecuting the offense. ‘Witness evidence, recordings or similar [sic]<sup>46</sup> is enough to prove a breach in such cases.

<sup>42</sup> General sanitation and hygiene rules, Article 5.

<sup>43</sup> General sanitation and hygiene rules, Article 6.

<sup>44</sup> General sanitation and hygiene rules, Article 7.

<sup>45</sup> General sanitation and hygiene rules, Article 8, Article 9, Article 10.

<sup>46</sup> Rules for prevention of noise in public space, Article 16.

Rules for retail in public places distinguish retail in private commercial premises and retail taking place in public space including kiosks, outdoor food catering, temporary structures, and vehicles, to which the rules specifically pertain. Thus public retail is singled out as a special form of commerce to which an additional set of constraints is applied compared to indoor retail. Public retail is prohibited at nighttime<sup>47</sup>. It is also against the rules ‘to conduct sales from boxes, railings, supports, pavement, ground, or improper equipment’<sup>48</sup>. Several clauses require cleanliness of the operation and its provider: ‘The person conducting sales and providing services must ensure that temporary retail equipment, kiosks, pavilions, vehicles, outdoor cafes are clean, orderly and aesthetically pleasing’<sup>49</sup>, they must ensure the order and cleanliness after retail activities end<sup>50</sup>, and wear ‘orderly and clean clothes’<sup>51</sup>.

## National biopolitics, municipal disciplinarity

Rhetorical differences between national and municipal legislation are evident in the formal structure and linguistic forms used in the clauses of the codes and the rule sets. The Administrative and Penal codes are presented as lists of (offensive) actions followed by punishments. Meanwhile, most of the municipal documents are worded as lists of *obligatory* conduct and *prohibited* conduct. Thus, national legislation maintains a chain of cause and effect, leaving it up to the subjects to decide rationally whether or not an offense is worthwhile. This approach is in line with a biopolitical strategy, based on probability and risk inherent in each offense and expressing it quantitatively as monetary fines or duration of arrest. The municipal language of obligations and prohibitions meanwhile produces an image of ideal behaviour, a roadmap for normalising subjects conductive of the disciplinary approach.

There is also a direct link between the two levels of legislation. The Administrative code contains clauses that ensure the enforcement of municipal rule sets, for example, article 161 sets down punishments for breaching municipal

<sup>47</sup> Rules for retail in public places, Article 20.

<sup>48</sup> Rules for retail in public places, Article 33.1.

<sup>49</sup> Rules for retail in public places, Article 13.

<sup>50</sup> Rules for retail in public places, Article 27.

<sup>51</sup> Rules for retail in public places, Article 37.2.

Ordering and cleanliness rules; article 167 does the same for Rules for retail in public places. National law thus legitimates municipal rules unanimously without any regard for their contents.

Public space is defined in both national and municipal legislation by linking certain activities to notions of public calm, public order, ordering and cleanliness. All of these notions, although used for the non-trivial goal of separating desirable and undesirable social conduct, are left ambiguously undefined, an ideological construct without any at least nominal attempt at rationalisation. They do, however, outline the motives behind a vision of desirable or perfect public space.

In the national legislation, clauses about ensuring people's [sic] calm or public calm sets public space apart from residential or organisational space, suggesting it is a place where perpetual calm is obligatory at both nighttime and daytime. *People's calm* suggests a direct, albeit still abstract victim, 'the people', while public calm is put forward as a public good protected by the law. In both cases it is the population that is the supposed victim of abuse. The clause barring public consumption of alcohol equates the activity to an 'insult of human dignity and societal mores', another abstract and threatened public good.

This is reflective of a biopolitical approach: a justifying power on the basis of the 'general interest of the population' (Foucault 2007, 70–74). It depends upon a scrutiny of multifaceted regularities, a 'whole field of new realities' (Foucault 2007, 75) fluctuating between two conceptual definitions of the population: *the human species* as a strict biological category and *the public*, a socially enacted category of public opinions and mores (Foucault 2007, 75). It is through this duality that biopolitics expands its influence from the biological into the social sphere and seeps into social relationships at the micro level. Appeals to public calm, dignity and mores thus do not need any explanation or definition. They are simply part of the fabric of the biopolitical status quo.

An intrusion of the public into private spaces is also apparent in clauses which bring activities taking place on private premises, such as brewing moonshine, keeping dens, or violating children's rights under the guise of public order. Private space is both criminalised and publicised, reflecting another biopolitical relation to space: in contrast to disciplinary isolation and limitation, it is 'centrifugal', constantly expanding its reach, incorporating new spaces into

the organisation of circuits, and promoting seamless circulation of subjects and goods through a variety of spaces (Foucault 2007, 44–49).

In a similar manner, the preoccupation of municipal rule sets with the notions of maintaining cleanliness and order establish it in the disciplinary domain. Public and semi-public space (such as communal spaces in residential buildings) is fragmented into a multitude of isolated micro-territories: land plots situated a specific distance from buildings or waste containers, balconies, stairwells, retail spots, fountains and other small-scale elements of urban space. In these fragmented territories the municipality extends the realm of cleaning and ordering (themselves quite disciplinary objectives) far beyond the practical sphere of waste removal. They include the regulation of local urban micro-communication (such as posted notices), everyday social coexistence, and the aesthetic realm. Normativity is ensured by regulating spatialised conduct in very minute detail, revealing the disciplinary aspiration towards unlimited power in isolated spaces. The municipal rules also encourage subjects not only to internalise disciplinary behaviour but also to carry it out onto others, evident from rules about barring access to built structures or removing illegal outdoor advertising.

Some clauses in the municipal rule sets, especially the Ordering and cleanliness rules are aimed not at specific conditions or actions, but, rather at certain types of populations: beggars, children, stray cats.

They are singled out in a covert manner, not by naming, but by limiting or prohibiting certain activities characteristic of these groups, such as giving alms, playing in undesignated spaces, or feeding outdoor animals. While such activities cannot be logically judged as clean or unclean, their inclusion in the particular sets of rules (rather than at least in some other list) implicitly links them to uncleanliness or disorder. This subtle singling out of unclean, unorderly members of the population establishes a social hierarchy in which their position is subnormal and thus undesirable. Retail, an activity directly contributing to the circulation of goods and money is also linked to cleanliness and order in the municipal Public retail rules. Thus the biopolitical concern with forms of life and circulation are reinforced in the municipal legislation by specific techniques of disciplining them, establishing the interplay between biopolitical and disciplinary forms of power.



## Conclusion

The results suggest a tentative conclusion that national legislation is driven by biopolitical objectives, while municipal legislation reveals a prevailing spirit of disciplinarity. In the national legislation, this is accomplished by focusing the regulation of conduct in public space on the protection of public order, public calm, and public dignity – all of which are public mores that must be upheld in the interest of the population. It is of secondary importance whether the regulated activities actually take place in a public space or the grey areas beyond it, into which biopolitical power expands. In the municipal legislation, disciplinarity is evident in the breakup of space into governable fragments, imposing painstakingly detailed prohibitions and obligations, and building a hierarchy of desired and undesirable subjects inside the population. There is a reinforcing interplay between these two legal expressions of power modalities: national legislation punishes disobedience to municipal legislation, while municipal legislation serves as a disciplinary support for interests from the biopolitical agenda.

While more extensive research is needed to ensure this division of legislative interests indeed exists, there are several implications behind such realisation of power relations.

First, two kinds of power relationships emerge side by side: the state and the population on the one hand, and the city and its subjects on the other. The task of disciplining is delegated to smaller-scale and strongly localised political structures, which have the potential to be less accountable and transparent in their regulatory practices than national legislators. The rules may also be enforced by less accountable actors, such as the municipal safety department rather than regular police officers. This makes many forms of urban spatial discipline invisible and may hinder or discount any efforts of contemporary social movements towards open governance and open cities.

Second, many offenses discussed in the current analysis may be classified as victimless crimes. In reality, many of them, especially those enlisted in the municipal rules, are not enforced or enforced inconsistently depending on the time of the day, city district and social characteristics of the offender. An offense such as public consumption of alcohol may be diligently punished if it occurs in the central district, but may not merit as much attention in periph-

eral districts. This peculiarity illustrates the relative thickness of law, as it is called by legal geographers (Bennet, Layard 2015, 408): rather than being an objective reality, the intensity of legal enforcement depends on geographical location. This thickness reflects a general truism about social control in urban space: even in a relatively small city such as Vilnius (circa 600000 inhabitants) it is impossible to control and enforce all the rules, especially ones pertaining to quick and simple activities. Therefore, there are also geographical dimensions to possibilities of subversion or resistance.

The foremost purpose of legal documents in these cases is to vocalise a specific form of normative truth. Despite inconsistent enforcement or redundancy, the laws regulating public space are scarcely updated. If one imagines the reality they propose, wherein each rule is flawlessly carried out, everyday life in public space and common residential areas would be tightly regulated and would offer little chance of improvisation, favouring top-down control rather than communal decisions about the everyday spaces of the city.

Rather than being a road map of negotiated day-to-day norms, the legislative reality reveals a vision of a disciplined biopolitical society. If one reads legislation as a vision of life in which each rule is flawlessly enforced, the regulation of public space and common residential areas would leave little place for improvisation in everyday life and favour top-down control over urban space. The legislative documents are an institutional utopia with a classical focus on calm, cleanliness and order over other economically or socially beneficial traits such as community, creativity, and heterogeneity.

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