



*Playing it by the Rules. Local Bans on the Public Use of Soft Drugs and the
Production of Shared Spaces of Everyday Life*

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Summary

Research Topic, Research Questions, and Research Design

The study was triggered by the proliferation of local bans on the use of soft drugs in public space in the Netherlands in the first decade of the twenty-first century. The sudden appearance and increase of these bans cannot easily be accounted for by self-evident explanations. The research consequently focuses on legal interventions in public space, and this topic is researched at the concrete empirical level as well as at a more abstract and theoretical level. The empirical investigation regards concretely local bans on the public use of soft drugs, while the theoretical exploration pertains to the relationship between the legal and the spatial.

This combined empirical and a related theoretical inquiry translates into two connected but different question sets that are expounded upon below. The overall research question jumpstarting the study was:

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

To answer this question a national survey was organized to find out *which municipalities in the Netherlands have a local ban on the public use of soft drugs, or have such a ban under consideration*. Subsequently three case studies were selected and researched in a qualitative manner to answer the following sub-questions: *How, why, and by whom was the ban instigated? How is the ban juridically shaped? How does the ban function?*

Following the empirical exploration of the case studies a more general and theoretical investigation came about, which can be summarized in the question:

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

This question was explored using the data emanating from the empirical investigation. The overall question was divided into three parts, each focusing on a different process of the larger whole. Translated into questions, these ran as follows: *How does space come to be? Why and how is a social norm codified? What are the workings of a legal intervention?*

As indicated, the research design is two-tiered. The starting point was a national survey. From this survey three case studies were selected and subsequently researched in a qualitative fashion. Data collection consisted first of all of fieldwork, in the form of observations and street interviews, secondly of arranged interviews, and thirdly of written materials. From the data analysis emerged initially the answers to the more empirical question set, and these subsequently fed into the queries of and then articulated the answers to the second more abstract question set.

Findings in Response to the Empirical Questions

The national survey executed in the first trimester of 2009 brought to light that eighty-one of the then 441 municipalities in the Netherlands had a local ban in play, and in another thirteen municipalities such a ban was under discussion. The majority of the bans can be found in the smaller municipalities, without a coffeeshop on their territory. More surprisingly, over half of the largest municipalities explicitly did not carry a local byelaw banning the use of soft drugs in public space. Also noteworthy was the fact that a large majority of the existing bans could already be denominated juridically incorrect at the time of the inventory, either because they were formulated to apply to the entire municipality, or because the authority to designate a certain area for the ban had been wrongly accorded. In the course of the research all municipal bans were declared nugatory in 2011 by a ruling of the *Raad van State*. This ruling brought about quite a ruffle in the juridical field, as it—wrongly—stated that the use of drugs is prohibited by the Opium Act and moreover negated the doctrine of motive.

Surveying the various motivations expressed for the existing bans, the reasons for establishing a ban can roughly be divided into three categories, namely nuisance experienced in a specific space, often connected to the presence of a coffeeshop; nuisance experienced as deriving from a specific individuals, whose behavior is connected to the use of drugs; and nuisance experienced by the use of soft drugs in itself, as offensive behavior. Following the inventory three case studies were selected, each case study representing one of the categories named above.

In all three cases the initiative for the ban originated in the setting for which the ban was endeavoured. The common characteristic in the three cases is that the ban was not imposed from above, but morally entrepreneured from within. All three bans are based on the municipal authority to regulate public order and formally address nuisance experienced in public space. The content of the nuisance experienced

however varies. The functioning of the bans in the respective sites is not uniform, but dependant on context-specific variables such as the degree to which the ban is advertised, how much the behaviour targeted by the ban actually occurs, the measure in which a ban is enforced, and last but not least, what the ban is considered to represent to the different users of a space. The question on the effects of the bans at first glance leads to ostensibly different answers. Common ground is the reciprocity between the legal and the spatial.

Conclusions in Response to the Theoretical Questions

To understand how a legal regulation relates to the space in which it figures, first the spatial angle is considered. The spaces under scrutiny are defined as shared spaces of everyday life, holding significance for their users at a practical, and more importantly, at an emotional level. From the emotional attachment arises the feeling that one has both a duty to care for and a right to control a certain space over which one does not hold legal private ownership. The duties and rights felt are felt in relation to others also staking a claim on that space. To denote this dynamic the concept 'emotional ownership' is introduced. Emotional ownership correlates to the extent to which individuals participate in a space and consequently partake in how is space is formed. How space comes to be is unraveled with Lefebvre's framework on the production of space: space is produced through the continuous interaction of the lived and experienced dimension of space, the perceived and imagined dimension of space, and the planned and organized dimension of space. People will always try to line up these three dimensions in accordance with each other and their needs and urges. In cases where the three dimensions do not reconcile, disorientation—or worse—ensues. When different people use a space, different modes of production come into play and possibly conflict. Where the one wins, another loses.

From a juridical perspective the codification of a social norm is a form of juridification: the codification of hitherto informally regulated social matters into legal regulations. The consensus is that contemporary society is increasingly juridifying, but opinions vary on whether this constitutes a positive or a negative development. The one view regards juridification as the colonization of the lifeworld, corrupting the informal negotiation mechanisms on which society is founded. The other view perceives law as a viable replacement of disappearing pillars of societal cohesion such as church or political ideologies. In the cases under

scrutiny the codification of the social norm not to use soft drugs in that public space is striven for by people who attempt to anchor their deep felt conviction in a legal frame. Practices of some people bring to light previously unconsciously held and hence undiscussed opinions, i.e. doxic norms, of others. The bans then are an intentional intervention in the planned dimension of space, by those whose doxa has been disrupted by confrontations in the lived dimension of space. The bans illustrate dissension in the perceived dimension of space and are an attempt to secure a formerly doxal belief into a status of orthodoxy. As such, they reflect the power constellations in a given space, though they do not necessarily express 'who is boss' in the lived reality of that space.

In action the bans have varied effect. Enforcers view the bans as an instrument to keep public order, and their actual implementation as context dependent. Advocates of the bans on the other hand become frustrated by the lack of consistent enforcement. Compliance with the bans occurs either out of conviction or pragmatic considerations. Non-compliance can take on different forms, and is linked with the appraisal of the authority from which the rules emanate. On the ground, the juridical valuation of the bans is determined by what they contain and (are thought to) represent, rather than their procedural legitimacy. The degree to which the bans play a part in the lived dimension of everyday experiences holds together with the degree in which a ban is broadcasted in a space and the degree in which the targeted behavior occurs. As a consequence the effect of the bans in the lived dimension of the everyday is context-dependent, as to place, time, and individual. In the perceived dimension the bans both propound and presuppose the spaces to be a certain way. The bans are considered to be induced by the circumstances of the space, and the way space is considered is formed by the knowledge that it contains a ban.

In the concluding chapter the different lines running throughout the study are reiterated and brought together, and three themes come to the fore: the dynamic of a sub-group in a shared space of everyday life securing its perception of applicable norms and coherent behavior as the shared understanding; the concept of emotional ownership, explaining why people come into action over a certain space; and the question of when law functions as a frame for conflict, and when law is itself the cause of conflict. The title of the thesis, 'playing it by the rules', is linked to the game or contest of the production of space, resulting in winners and losers. It furthermore refers to the rules by which this game is played, rules that are in part positioned in the legal domain. Finally it refers to the circumstance in which the rules played by—and the authority that emanates them—are contested. The measure of the affiliation

to the regulatory system of all those involved in the negotiation of society then determines whether law is viewed as part of the problem, or part of the solution.