The World of Rules

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Preface

We have long taken the view that jurisprudence is a discipline that ought to develop into a yet to be delineated science of regulation. Were our proposal to address the fundamental issues of a modern science of regulation to find favour, (legal) norms would of course continue to be the subject of attention, but not the primary one: the focus would shift to ‘rules.’ This is the concern of Lorraine Daston, a permanent fellow at the Berlin Institute for Advanced Study, in a research project for the academic year 2015/2016 examining “Rules: The Prehistory of an Indispensable and Impossible Genre.” She explains: “Rules – in the form of everything from traffic regulations and government directives to etiquette manuals and parliamentary procedures – structure almost every human interaction. … Drawing upon diverse genres – astronomical tables, traffic regulations, law codes, game manuals, handbooks of parliamentary procedures, cookbooks – I would like to reconstruct the history of the premodern rule as both a concept and a practice in order to better understand our own modern ambivalence about rules.” (Daston 2015, pp. 28 f.)

Our lens is not as wide as that of Lorraine Daston: our focus covers neither cookbooks nor astronomical tables, although it does include rules of the game and the law of thieves. This exploration of the universe of the rules governing human and institutional behaviour – the ‘World of Rules’¹ – is a middle-range venture. We investigate the multitude of normative orders, the plurality of norm producers and norm enforcement regimes. We shall not eschew the question, always hovering in the background, of what all this means for the concept of law.

We embark on the project in the conviction that the world of law needs to be resurveyed. Old certainties reflected in the equation law = state are out of true: the state and the law are gradually decoupling from one another.

¹ By now (autumn 2017), because of our beneficial readings of Ralf Seinecke’s fruitful ventures on “The Law of Legal Pluralism” (“Das Recht des Rechtspluralismus”, 2015), we would have chosen a slightly differing title for our opus: “The Worlds of Rules”. Adding this “s” visibly acknowledges a plurality of legal worlds.
The pace of this process has differed from one field of regulation to another. If this is indeed the case, simply attaching a conservatory to the classical mansion of law with its reception rooms statute, ordinance, and bye-law will not suffice. Far more imperative is to replace the old house of law by a new edifice in which all regulatory regimes involved in exercising control find their place, whatever name they go by: standard, code of conduct, and so forth. A television series on the subject could perhaps bear the title ‘House of Rules.’ To avoid inapt associations, we prefer to describe our necessarily ambitious project as ‘Measuring the World of Rules,’ in the hope that the reader will forgive any cartographic imprecisions in this first attempt.

This enterprise has benefited greatly from the stimulating intellectual ambience at the Max Planck Institute for European Legal History, where I had the privilege of spending two months as fellow in 2014 and again in 2015. But this book has developed not only in dialogue with the history of law; it is my hope that the reflections and proposals it offers will also prove useful to this discipline. Such hopes are perhaps not quite unfounded: such cross-disciplinarily minded (legal) historians as Stefan Esders and Christoph Lundgreen have expressed gratifying appreciation of the governance perspective I have repeatedly brought into play.\(^2\) This is reason enough for me to continue my exchanges with legal history.

Prazo (Trentino) and Charlottenburg, spring 2015

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\(^2\) Esders 2015; Lundgreen 2014.