

Rules with Lorraine Daston

[music: Blue Dot Sessions, Gin Boheme]

Christiane Wisehart, host and producer: I'm Christiane Wisehart, and this is Examining Ethics, brought to you by The Janet Prindle Institute for Ethics at DePauw University.

My guest today is Lorraine Daston, Director Emeritus at the Max Planck Institute for the History of Science. We're discussing her new book *Rules: A Short History of What We Live By*. She explains that regulations that seem to have little to do with morality—like spelling rules—are often tied to deep-seated values in a society.

Lorraine Daston: In the book I mentioned reforms, very modest reforms that would've affected less than 1% of the German language that were proposed for the sake of making the life of school children easier in the 1990s. You would have thought that children were being massacred in plain view from the vociferous protests about this form of spelling. Every year that the national spelling bee is held in Washington DC, there are protestors outside. But I think the spelling bee gives us a clue as to why this is such a deeply felt norm and it's about belonging. It's not an accident that in the period of the first attempts to standardize spelling are the moments of the formation of the nation state.

Christiane: Stay tuned for our discussion on today's episode of Examining Ethics.

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[interview begins]

Christiane: Lorraine Daston, welcome to the show.

Lorraine Daston: Thank you. It's very good to be with you.

Christiane: So we're here to discuss your book *Rules: A Short History of What We Live By*. So as I was reading your book, which is fascinating by the way, I was particularly struck by the relationship between rules and actual physical objects in the world. So I wondered if we could start out our conversation by talking about something called the giant cane plant in Greece and its relationship to rules.

Lorraine Daston: The giant cane plant grows throughout actually the Mediterranean region in parts of Asia. And I'm sure we've all seen pictures of this giant arrow-straight plant which was used in ancient times throughout the ancient Middle East and Mediterranean to make balances or to make measuring rods, anything that required a very straight standard. And the word for rule and ancient Greek "kanon" is a loan word. It comes from the Semitic languages, it comes

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from Kana, which refers to this giant cane plant. And there are references in the Hebrew Bible, for example, to instruments for example, balances which are made from this plant.

And in a figurative sense, this cane plant symbolized the rule as a guide, as a straight standard by which to regulate very concrete actions. For example, measuring a piece of land or getting the walls of a building perfectly aligned with one another, but also in a figurative sense, all that keeps us on the straight and narrow, all that keeps our lives, as it were, regulated.

Christiane: Can you give us just a brief overview of your book in general and why you decided to tackle the topic of rules?

Lorraine Daston: The book began I think on a beach on the Baltic Sea in northern Germany where I noticed that every entrance to the beach not only had its neat address, a certain number, but a set of rules as to which people and indeed animals were allowed on this part of the beach. So there were parts of the beach for humans and parts of the beach for humans with their dogs. There were parts of the beach for people wearing bathing suits and there were parts of the beach for people without bathing suits. There were parts of the beach for people who just wanted to lie on the sand and parts of the beach for people who wanted to take part in sports like beach volleyball. And quite aside from the whimsicality of this neatly divided stretch of beach into these various addresses, I was struck by the fact that most people obeyed the rules.

And I began to think about when a society decides it needs rules like that. So this is the first time I've ever encountered a beach that was, as it were, so well regulated, much less so tidily obeyed the regulations and also what areas a society decides to leave to the free discretion of its members to come to some kind of agreement or not as the case might be. And to give you a very concrete example, we now consider it in many western societies, at least, to be a matter of personal discretion as to what we put on in the morning. If you decide that you do not want your socks to match, if you decide you don't want to wear socks, that is now considered up to you. That was not the case for a great deal of the historical period from let us say the High Middle Ages to about the end of the 18th century in much of Europe. And we are witnessing, as we speak, a fiery protest in Iran about an article of clothing, the hijab for women.

So the book took shape from those kinds of everyday meditations. And to give a very brief overview of the book, it traces three principle meanings of rule in the western tradition, which is the only one that I'm really competent to write about. The rule as a straight edge, and this goes back to the giant cane plant, something with which to measure and in an easily transferred sense, something with which to calculate. This becomes the sense of our algorithm, which originally referred to the four fundamental operations of arithmetic, addition, subtraction, multiplication, division. The rule as law, something again that we can readily recognize this kind of rule is much more general in its jurisdiction than the kinds of rules I just gave examples of of the beach divided into sections or what to wear in the morning.

And third, a meaning that we have at least officially if not unofficially, lost, the rule as model. Originally a literal model, again going back to a concrete object, a small architectural model of a

building to be built, but then in the extended sense of model as a pattern or perhaps even an ideal, an example which to follow. That sense of rule as model was in fact dominant until the end of the 18th century. And one might argue that although it no longer figures in the official dictionary definitions (except as an archaic usage) in a subterranean clandestine fashion, it's still very much at work in our world today.

Christiane: In keeping with the physical nature of some rules or connections between physicality and rules, you have this beautiful distinction between what you call thick rules and thin rules. So can you help us understand what these concepts are, and maybe just an example of a thick rule and an example of a thin rule.

Lorraine Daston: So thick rules are rules which assume that the rule is going to encounter all manner of unforeseen cases to which it has to be applied. So this is a rule which is cocooned in its articulation with examples, even with exceptions, in order to buffer it against the kinds of shocks it's going to encounter in the real messy complicated world. An example perhaps of a thick rule (or a rule that was a thin rule that became thick) is how we greet people. So until very recently, this was quite standardized. If you were an American, you might greet, depending on your degree of intimacy with the person you were meeting, with a firm handshake. Or a hug if you were French, a kiss on the cheek or both cheeks. If you were Swiss, three kisses on the cheek, if you were Indian by bowing, saying "namaste." All manner of rules which were quite standardized by culture.

Come the pandemic, suddenly we were thrown into a situation in which it seemed rather unsafe to continue our normal thin rule of greeting. And suddenly the thin rule became thick as we adjusted almost hour by hour as to whether or not we should wave at a distance to one another, an elbow bump, a fist bump, perhaps a blown kiss from behind a mask. So that's an example of not only thin vs thick rules, but how any rule at any moment can cross the boundary and become either thick or thin if suddenly the stable conditions of everyday life are thrown into disarray.

Christiane: Listeners of the podcast might at this point be wondering, okay, so this is a podcast about ethics and philosophy. What's the connection here with the history of rules? So could you kind of help us understand the ways in which history and philosophy sort of approach the idea of rules in a similar way?

Lorraine Daston: So I think there are two ways of answering that question. One of them is rather parochial because I'm a historian of science and therefore it's the philosophy of science, which is the foreign philosophy which lies closest to my domain. And my departure point philosophically in thinking about this book was Thomas Kuhn's *Structure of Scientific Revolutions*, a very influential book in the history of philosophy and sociology of science first published in 1962, which contrasted strict rule following of the sort that's often taught in school textbooks about the scientific method, versus what scientists actually do, which is to follow as he called it, a paradigm or a model so that they are taught a kind of prototypical case of how to solve a problem, let us say in hydrodynamics or rational mechanics. And that serves not as a set of guiding rules, but as a model that they emulate at least when they are within the realm of

what he called normal science. This unleashed a furore which is still not settled in the philosophy of science, which is how can there be systematic knowledge which is not clearly articulated in rules.

And it's related to the Wittgensteinian discussion, part of Kuhn's inspiration of how difficult it is even for a machine to follow rules. So the provincial history and philosophy of science part of the connection. But there's a broader connection in ethics which is probably more interesting to you and to your listeners, which returns us to the difference between thick and thin rules. A Kantian rule like the categorical imperative is one which is both universal in its jurisdiction and which admits of no exceptions, notoriously admits of no exceptions. Everyone will remember the example of the axe murderer who turns up at your door looking crazed, asking for the friend who you are hiding in your basement and whether or not you are permitted to lie or not in such a situation. And Kant's granite-faced answer is no, you're not permitted to lie. But most of our lives are regulated by much more complicated decisions of that kind. And there's a form of reasoning which has fallen since the 17th century into disrepute, although we use it all the time, which is called casuistry, which is not unprincipled reasoning, but reasoning case-by-case.

And what's typical about casuistry is that you don't know which rules apply in this case. In fact, it's often the case that there are competing sets of rules which might apply and you've got to weigh them to figure out what is the truly moral course of action. Anyone who reads "The Ethicist" column in the New York Times will be familiar with this kind of reasoning. For example, a parent writing in as to whether or not she should inform her daughter that she's not really her biological daughter, many other dilemmas in which we could easily see that there are good reasons on both sides of the question and that it's a delicate matter of weighting the instances—not only principle against principle, but in this particular case with this particular child in this particular situation, what is the right way forward? And that kind of reasoning, which is sometimes confused with being totally unprincipled, with being anarchic, with being arbitrary, is in fact a form of rule-based reasoning or let's say rules-based reasoning in the plural, which performs this delicate balancing act between competing principles in adjudicating a specific case.

Christiane: That brings me to thinking about something that I found really fascinating and that I had never thought about when I first thought about rules in this way, which is the idea of discretion or the importance of discretion when we're thinking about rules and the history of rules. So what is discretion when we're thinking about rules and why is that so important?

Lorraine Daston: So discretion comes from the Latin word "disgratia," which means the ability to differentiate or to discriminate. And you can see how it's related to casuistry, that is, reasoning about moral decisions on a case-by-case business basis. Because you're being asked to differentiate between cases which may from an august Kantian point of view look identical: "A lie is a lie is a lie." Versus an up-close view about the particulars of this case and trying to decide which rules should apply in this case. And that requires you to make distinctions between this case and other cases, which might seem at as I say a 35,000 feet glance to be identical. And it's

come to mean also in a broader sense the faculty of judgment. So the faculty of judgment, as Kant says, is the ability to apply universals to particulars.

And in the context of rules it means first of all knowing which rule to apply to which particular. But it also means even if you found the right rule, do you have to tweak the rule a little bit in this case to make it fit, whether or not your aim is to see justice done or to make sure that a building comes out with straight walls or that the piece of music that you are composing ends on a pleasing concord or not. So discretion is a much broader faculty, which often involves a great deal of experience so that you have in mind a repertoire of cases which are not identical but are somehow similar. And perhaps the most familiar example we have of this kind of reasoning is crystallized in Anglo-American legal reasoning by precedent. In which very interestingly if somewhat mysteriously, experienced jurists, experienced lawyers and judges will be quite conversant in their judgment about which precedents are relevant to which case.

So “not all cases, not all previous precedents of manslaughter are applicable to this case.” And moreover, they will reason about which aspect of the precedent case is particularly illuminating about the case at hand. Those are examples of the faculty of discretion in action. There are no rules in the sense of mechanical rules, rules that a machine could follow or a computer could be programmed with that could make that decision for you. And that is where the faculty of discretion becomes essential if you're using rules as models, but also even for what seem to be unequivocal, cut-and-dried rules of the sort that make up the legal code.

Christiane: As we're getting into discussions about legality and the law, what's the relationship between rules and power?

Lorraine Daston: There's an obvious relationship, which is, those who have the power to make the rules and enforce them have a great deal of power. So we think of the legislature as that wing of government which has the power to make laws, but rule followers or rule scofflaws also have a great deal of power. If a rule goes too counter to existing norms, it is very unlikely to be followed. And even if the rule is enforced, even if it's enforced with draconian measures, it is unlikely to actually become the way in which people behave. And we've already mentioned one example, which are the dress codes that were very common throughout medieval Europe and parts of North America, parts of South America indeed throughout the world in one period or another, which turned out to be devilishly difficult to enforce. So starting in about the 13th century in the more prosperous parts of Europe, there started to be laws, they're called sumptuary regulations, against excessive expenditure on what were considered to be frivolities.

And this was a paternalistic law in many ways. It was a law that was meant to prevent citizens from impoverishing themselves, from spending the money that ought to be used for their daughter's dowry or their son's education, on the latest sable trim or wide satin sleeves, whatever the fashion of the moment was. These rules were enforced sometimes with really quite severe measures. So for example, in medieval Venice, a slave could be freed if he or she informed upon a mistress or a master. There were modalities for making anonymous

denunciations so that you wouldn't get into trouble with the person whom you had noticed wearing a satin-lined or crimson-lined cloak, and the like. Those citizens who apprehended a violator of a law got at least a portion of the fines that were exacted. All for naught, the rules were flaunted, resisted, protested against for hundreds of years before the government ultimately threw up its hands and gave up.

And what we're seeing again, as I say in protest, not only in Iran about the hijab, but also in 2019 I believe in South Sudan, of women who are not allowed to wear pants is when what had previously been a societal norm has clearly decayed. It is no longer normative in that society and the protests against the rules which might have been accepted for decades if not centuries before signal that the rules no longer have the power to exact compliance, even though they might be enforced as they were in Sudan with whippings.

Christiane Wisehart: I mean, I'll just say it, it seems silly to outlaw velvet trim on a cloak, even if you're trying to save the person from spending money, but sometimes these silly rules calcify into deeply held norms, like you said that women shouldn't wear pants, which seems arbitrary to us in the 21st century. So how does that happen? How do those silly rules sort of harden into these values and norms?

Lorraine Daston: It's a very good question and I'm not sure that I have a global answer to it. Why is it that, for example, to take a case of a rule which was not in existence in my childhood at least, which is non-smoking rules in enclosed spaces or in proximity to buildings. Anyone who is born in 1990 or after would've been utterly shocked, shocked at the amount of smoking that went on everywhere, including hospitals. That was a rule which initially was strongly resistant on largely libertarian grounds. And I think the turning point came, at least within the United States, through the discussion of the damage done by secondary smoke. So as long as the risks of smoking were presented as an individual decision as to whether or not to take the risk or not, there was resistance to the paternalistic legislation of trying to protect people from the harms of the toxins contained in cigarettes.

The moment it became a collective risk in which you were endangering people who had not chosen to smoke, the unpopular rule began to gather momentum and broader support and it eventually triumphed. That's one example of how a rule which is originally opposed as an infringement on individual freedom of choice can eventually establish itself as a widely-accepted norm because it involves the collective, not just the individual.

It's interesting to think about those areas of the world in which a very similar decision about whether or not to wear a mask at times when COVID cases were spiking, was perceived as a question of individual decision, individual sometimes rather grandiosely called individual liberty, versus a decision about the collective.

Christiane Wisehart: At least from my perspective, hopefully that's something that becomes a deeply held norm rather than something that we each individually decide about.

Lorraine Daston: There's a natural experiment being going on all over the world because there are countries where it did become an established norm. So I'm speaking to you from Berlin, and although the cases fortunately are still at a relatively low level, albeit climbing, it's still a norm now in public transportation that we all wear masks.

Christiane Wisehart: One of the other things that I found fascinating about this book is that there are these rules that maybe to me don't seem to have any inherent moral value, like spelling rules. I don't care too much about spelling rules, but a lot of people actually really care about spelling rules and for them it is a deeply held value. So why do people invest so much in rules, like rules about grammar or spelling?

Lorraine Daston: I was very puzzled by this. I could hardly believe the amount of venom which has been expended in discussions about standardizing orthography since really the 16th century. And it's still going on. In the book I mentioned reforms, very modest reforms that would've affected less than 1% of the German language that were proposed for the sake of making the life of school children easier in the 1990s. You would have thought that children were being massacred in plain view from the vociferous protests about this form of spelling. And as I said, this has been going on, the spelling wars have been going on now for centuries. Every year that the national spelling bee is held in Washington DC, there are protestors outside, often dressed as big bees holding signs saying, "Enuff is enough." E-N-U-F-F is E-N-O-U-G-H to highlight the irrationalities of received English spelling and the fetishization of received English spelling in the spelling bee.

But I think the spelling bee gives us a clue as to why this is such a deeply felt norm and it's about belonging. It's not an accident that the period of the first attempts to standardize spelling are the moments of the formation of the nation state at a national consciousness and a national consciousness, which is linked to a national cultural consciousness that we all speak the same language, we all communicate in the same fashion. So you get academies like L'Académie française, established in 1635 in Paris with the sole purpose of purifying the French language, which is now considered to be of a status to take its place next to the ancient languages of Greek and Latin as a language of learning, a language of commerce, a language of diplomacy and statesmanship. You see the same thing with Noah Webster's dictionary, which begins to appear in the late 18th century, the early 19th century, which is an explicit expression of American nationhood.

Americans, now independent of Britain, are going to spell like Americans and they are going to spell Wisconsin, like Americans pronounce it. And the spelling bee is one quite movingly and almost since its inception by a child who comes from a group which is an outsider to the society. So the first spelling bee held in 1908 in the United States was won by a 14-year-old African American girl in Cleveland, much to the dismay of the New Orleans delegation which boycotted the spelling bee ever after. For the last 10 years, I believe, perhaps even longer, it's been won

by the child of immigrants. And it is a statement about citizenship, about belonging to a country. And I think that's one reason why it touches such deep emotions.

Christiane Wisehart: I'm curious to know, did learning and thinking about rules in this way change your own behavior or your own attitude towards rules?

Lorraine Daston: It did in a sense. The timing of finishing the book was fortunate in this sense but fortunate in no other sense, which is it coincided with the pandemic during which we were experiencing a kind of rule vertigo because the rules had just changed at mind spinning speed. It was a really interesting natural experiment in how quickly you can change rules before all rules begin to wobble. And I began to think about the importance of stability in allowing rules to settle. And I recalled something which had puzzled me in Germany. Germany's smoking bans came much later than the American smoking bans. So I watched the whole sequence occur once again. And initially, instead of just banning the smoking, for example, in subway stations, there were signs saying that it is strongly suggested that you don't smoke.

And this was followed by information about the fines, but the fines were not enforced about smoking infractions. And finally it was enforced. And I thought that this was just dithering, that it was postponing the inevitable. A rule is a rule, it should simply be declared and enforced. But I began in retrospect, after the pandemic experience, to realize the wisdom of this strategy, which was to accustom people first in their conduct and then to start bringing in the rule with all of its full mouthful of the teeth of enforcement, once it had been stabilized in our daily conduct after we had calibrated ourselves to smoke-free subway stations. And I began to think that a great deal of the disorientation and perhaps also the resistance during the pandemic had to do with the fact that the rules had no time to sediment, to crystallize, to root themselves in our everyday behavior, not to become norms in any deep sense, but simply to become normalized in the sense of this is just what one does. So yes, both writing the book and writing the book under those conditions did change my mind about rules.

[Interview ends]

[music: Latché Swing, Songe d'Automne]

Christiane: If you want to find more about Lorraine Daston's other work, download a transcript of the show or learn about some of the things we mentioned in today's episode visit prindleinstitute.org/examining-ethics.

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