Abstract

With the developments and in some cases the hype about Blockchain technology and “Smart Contracts”, there is increasing interest in business and academia about the functioning, the potential impact as well as further developments and implications of this technology.

However, a meaningful discourse is often difficult, as not only does meaningful and comprehensive evaluation and research in this area require some background knowledge, but entry to newcomers and outside investigators (such as from academia) is made more difficult by use of particularly confusing jargon and deliberate use of language. A prime example here is the term “smart contract” where this is often by leaders and even more so by 2nd and 3rd party sources conflated with legal terms and legal language. Whether this is or was done to be misleading on purpose or not does not really matter at this point, though likely it was primarily born from a desire to introduce a usable name that sounds good and somewhat describes the idea of the technology.

It is held, that legal researchers and legal professionals especially in the field of contract law should build their own instruments to describe, evaluate and work with Blockchain technology and “smart contracts”. First, to some part, this can build on work on legal reasoning and legal argumentation (Sartor, Governatori, etc) and previous research conducted on agreement technologies and artificial intelligence and law. This research was conducted independent of the jargon used in the Blockchain and startup ecosystem, and thus it can provide a valuable counterbalance against the jargon otherwise often used, to go a first step towards the lifting of this artificial veil of language.

Then, to bring “Smart Contracts” home into contract law/private law, the concepts of “connected contracts” (Vertragsverbund, Grundmann) and transnational law (Calliess/Zumbansen) are used to establish an even better, more comprehensive, although still abstract understanding of “Smart Contracts” in the field of contract law, or private law generally. These two parts should go a long
way towards providing law and technology in the field of “smart contracts” with a better framework and language to communicate.

This should lead to the conclusion that it is possible to mediate between healthy skepticism of codification of legal instruments and anarchic and utopian cryptolaw, as well as stressing that contract law has all the parts needed to tackle any new developments smart contracts” might throw at it; it just has to use them.

Outline

1. Definitions
2. Introduction
3. Blockchain and „Smart Contracts“ Primer
4. SC in the context of existing research, lifting the veil, part 1
5. SC embedded into connected contracts and transnational law, lifting the veil, part 2
6. Improvisation on a living subject (describing a real SC with the tools presented)
7. Conclusion