

Opinion Article

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A Case for 'Open Source' Law?

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If society were a vehicle, its institutions would be its 'engine'; they are the basic means by which society strives to reach prosperity and to protect itself against the fickle vagaries of the global capitalist system. Institutional failure is often viewed as a coordination failure within society. Greece represents a glaring such example of a country that attracted the 'unwanted' attention of capital market investors and speculators in the aftermath of the global financial crisis, giving way to an unprecedented debt crisis in this part of the European periphery. The decline in the quality of its institutions (political, economic, judicial, social, etc.) came as a result of the shakiness of their foundations; Greek institutions have for the most part been externally imposed and implanted into an arid soil of low social capital, trust, and state capacity. The gradual erosion of the social contract has generated deep mistrust of the 'top-down' institutions of representative democracy and, therefore, weakened the elites' capacity to reform them.

Clearly, as the country is on the path of adjustment to the economic realities of the new era, this type of 'institutional deficit' has to be addressed along the same lines as other economic imbalances. These 'engines' of prosperity should no longer be entirely 'imported', but rather redesigned and redeveloped domestically. People feel helpless in the face of the inexorable forces of globalization, disenchanted about the capacity of domestic representative institutions to harness them, and altogether alienated from the distant loci of decision-making power (e.g., Brussels or Berlin). As a result, there is increasing popular demand for more participatory, decentralized, and 'organic' modes of governance within an enlarged economic space.

In the context of the institutional reengineering underway in Greece, we believe that the advent of the Internet can allow citizens to take direct ownership of and to coordinate over the design and construction of more inclusive 'bottom-up' institutions. An 'open source' approach to institutional design can render the process more transparent, legitimate, and inclusive. It can also provide an openly accessible platform for a structured and evidence-based public discourse on the design and implementation of policies and institutions.

In this article, we focus on a particular institution occupying a central position in the institutional structure, namely, the rule of law and its design, enforcement, and implementation. The importance for society of a well-functioning legal system cannot be stressed enough; however, properly designing laws that can achieve their desired objectives has been a major conundrum for regulators and lawmakers ever since the concept was

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invented.

Here, we take a 'first-principles' approach toward creating and maintaining a healthier legal system by identifying a fundamental limitation of the system and proposing a particular means by which to address it. We should note that our proposal is not specific to Greece but rather global in scope.

Nomopedia

The law applies universally, and, therefore, has to be 'executed' by all members of society; however, it is written in a language ('code') that is understood only by experts. Lawmakers have difficulty in processing input on the performance of these laws from those for whom they legislate. Moreover, in many jurisdictions the law has grown into a construction too complex for even lawyers to easily grapple with. We believe that this discrepancy is problematic.

To address these problems, we advocate the creation of Nomopedia, a knowledge system based on the peer-production paradigm that allows laws to be explained in plain language and feedback about them to be gathered in a coherent and well-structured manner. Nomopedia has three main goals:

- To lower the barriers of access to legal information.
- To provide feedback to lawmakers on how laws are performing in society at large.
- To simplify the legal system through the experience gained by its operation.

Lowering the barriers to understanding the law

Within the current system individuals and organizations typically have to consult with lawyers to obtain legal advice before venturing in an enterprise. Although we believe that lawyers are and will remain essential to the proper functioning of institutions, surely all individuals and organizations should have the capability to do independent research in the legal matters that are of importance to them without having to obtain either a law degree or the financial capital to hire a lawyer. In other words, the barriers of access to legal information should be much lower than what they are today.

Providing feedback to lawmaking authorities

What's more, providing easy access to legal information is bound to increase the participation of ordinary citizens in the public sphere. How can then lawmakers receive input from citizens on how laws are performing in practice? There are two main challenges in answering this question. The first is that citizens should have a good understanding of the letter and spirit of the laws and the original intentions of lawmakers. The second is that citizens should be able to provide feedback to the authorities about the laws' impact on their lives at a low cost. The straw man answer to the latter challenge is for each citizen to write an independent piece of input. However, the sheer volume of the input is prohibitive for lawmakers to process thoroughly using current technology.

A system like Nomopedia would answer these challenges by providing an infrastructure that citizens can leverage not only to read and write about the law, but also to provide concise feedback to lawmakers in a

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single piece of text that is widely accessible. Such an infrastructure could be based on the Internet, which would provide the networking capabilities required for such an endeavor, and a Wiki, a collaborative editing tool that large groups of citizens may use to coordinate their editing activities (similar to that used in Wikipedia).

Simplifying the law

Simplicity is a highly valued principle in engineering; for example, simpler software systems are generally found to have fewer bugs (and, therefore, a lower chance of failing) than more complex systems and, in fact, perform better in practice than their more complex counterparts. One of the ultimate goals of Nomopedia is to facilitate a simplification of the legal system. Such simplification can be achieved, for example, by enabling users to gauge the social impact of laws and regulations.

The design principles of Nomopedia

Having set our high-level goals in proposing a knowledge and feedback system about the law, we now briefly present the fundamental design principles of such a system.

Global

Nomopedia is intended to be a global system allowing different legal systems to cross-pollinate. By providing a rich global knowledge base, Nomopedia will not only enable ordinary citizens to understand and express their views on the legal matters that concern them, but it will also allow experts to form a better and more comprehensive view of the legal systems in other countries and jurisdictions to the benefit of all societies globally. In the initial stages of our research in the feasibility of Nomopedia, we plan to focus our effort on European law and the European legal system.

Decentralized

We envision that communities will self-organize around Nomopedia in a decentralized fashion, choosing their own management system for content editing. We do expect, however, two types of articles to emerge, namely, articles explaining the letter of the law and articles providing feedback on the social efficiency and functionality of the law.

Free

In principle, all citizens should have access to Nomopedia irrespective of their income. In practice, this is not possible since access to Nomopedia presupposes access to the Internet. Our goal is, therefore, to make Nomopedia accessible to a wider section of society.

Concluding remarks

The ongoing socioeconomic crisis in Greece and Europe has reinforced our belief in the need for novel ideas, untried recipes, and new approaches to public policy. The emergence and expansion of the Internet has brought unprecedented opportunities for global collaboration and coordination to everyone's benefit. In regard to the law, our article responds to a school of Internet thinkers (cf., Clay Shirky) who favor the 'crowdsourcing'

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of new laws. At the time of writing, Nomopedia remains just an idea, which we put forward with the goal of instigating a wider debate on the feasibility and value of 'open source' institutions for society at large, both in Greece, Europe, and across the world.

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