A grammar of institutions for complex legal topics: Resolving statutory multiplicity and scaling up to jurisdiction-level legal institutions

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This article presents a method for using the Institutional Grammar to describe jurisdiction-level legal institutions by coding institutional statements across multiple laws. The author presents the IG as a solution to the issue of statutory multiplicity: i.e., that legal institutions often consist of numerous laws with interrelated and sometimes conflicting provisions. Statutory multiplicity is quite common across many legal domains, including election laws, data privacy and protection regulation, mis- and disinformation statutes, and civil society laws. By leveraging the IG, scholars can understand both the characteristics of legal institutions and how they change over time. After detailing the methodology, the author applies it to laws regulating civil society organizations (CSOs) in Kenya.

KEY FINDINGS

- The Institutional Grammar can be used to aggregate provisions from separate laws into a single legal institution.
- The Institutional Grammar can offer clarity when jurisdictions are governed by multiple overlapping laws.

"Scaling Up" to Legal Institutions Using the IG

The method outlined in the paper has three steps. First, laws are coded using IG syntax. Each coded statement is assigned a numerical value based on whether the rule is permissive (+1) or restrictive (-1). Second, jurisdiction values are calculated by averaging the values of provisions across laws applicable to a specific jurisdiction. This captures whether the provisions are consistently permissive or restrictive across laws, or if provisions are contradictory. Finally, those jurisdictional values are themselves aggregated (using either simple summation or factor analysis) to determine a value for the jurisdiction-level legal institution as a whole. This technique makes it possible to capture discrete legal changes, such as when governments engage in "restriction through subtraction" (i.e., eliminating permissive rules).

The Case of Kenya

The author applies this technique to four CSO laws in Kenya passed in 1968, 1973, 1991, and 2013. The author measures the jurisdiction-level legal institutions in two ways: "net permissiveness" (which involves simple summation) and "latent permissiveness" (which uses factor analysis). Each method has its advantages; factor analysis assigns provisions unique weights, making it possible to measure changes in legal institutions according to changes in specific provisions, while simple summation benefits from being straightforward.

For more information, please see DeMattee, A.J. (2023). A grammar of institutions for complex legal topics: Resolving statutory multiplicity and scaling up to jurisdiction-level legal institutions. *Policy Studies Journal, 51*(3), 529-550*.* https://doi.org/10.1111/psj.12488.

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