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Book-Smart, Not Street-Smart: Blockchain-Based Smart Contracts and The Social Workings of Law

Karen E. C. Levy

Abstract

This paper critiques blockchain-based "smart contracts," which aim to automatically and securely execute obligations without reliance on a centralized enforcement authority. Though smart contracts do have some features that might serve the goals of social justice and fairness, I suggest that they are based on a thin conception of what law does, and how it does it. Smart contracts focus on the technical form of contract to the exclusion of the social contexts within which contracts operate, and the complex ways in which people use them. In the real world, contractual obligations are enforced through all kinds of social mechanisms other than formal adjudication—and contracts serve many functions that are not explicitly legal in nature, or even designed to be formally enforced. I describe three categories of contracting practices in which people engage (the inclusion of facially unenforceable terms, the inclusion of purposefully underspecified terms, and willful nonenforcement of enforceable terms) to illustrate how contracts actually "work." The technology of smart contracts neglects the fact that people use contracts as social resources to manage their relations. The inflexibility that they introduce, by design, might short-circuit a number of social uses to which law is routinely put. Therefore, I suggest that attention to the social and relational contexts of contracting are essential considerations for the discussion, development, and deployment of smart contracts.

Keywords

law; contracts; blockchain; sociolegal studies

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Book-Smart, Not Street-Smart: Blockchain-Based Smart Contracts And The Social Workings Of Law. 2017. Michèle Finck. Blockchain Regulation. 2017. Carla L. Reyes. Conceptualizing Cryptolaw. VBlockchain-Based Token Sales, Initial Coin Offerings, and the Democratization of Public Capital Markets. 2017. Kevin Werbach. Trust, But Verify: Why the Blockchain Needs the Law. 2016. Kevin D. Werbach. Trustless Trust. 1 Blockchain-based smart

contracts—self-executing code on a blockchain that automatically implements the terms of an agreement between parties—are a critical step forward, streamlining processes that are currently spread across multiple databases and ERP systems. For evidence of the growing spread of smart contracts, consider the following: Smart contract venture capital-related deals totaled \$116 million in Q1 of 2016, more than twice as much as the prior three-quarters combined and accounting for 86 percent of total blockchain venture funding; An Ethereum-based organization has raised more t 3 Contracts vs Smart Contracts 3.1 Contract Law and the Interpretation of Smart Contracts 3.2 Legal Acts, Declarations of Intent and Contracts 3.3 Smart Contracts 3.4 Mechanisms for Concluding Contracts 3.5 Conclusion of a Smart Contract 3.6 Three Examples of Smart Contracts. 4 Can Smart Contracts Be Used to Perform Legal Acts? Smart Contracts – How will Blockchain Technology Affect Contractual Practices? Abstract Unlike conventional

contracts established through speech, written words, or actions, smart contracts are algorithmic, self-executing and self-enforcing computer programs. An open organisation based on smart contracts may solve the problem of bad leadership or issues with the transparency of the organisation.



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