Disrupting Law, Reclaiming Justice: A conversation at Creighton on Gillian Hadfield’s Rules for a Flat World

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Gillian Hadfield’s remarkable book Rules for a Flat World: Why Humans Invented Law and How to Reinvent It for a Complex Global Economy (2017) opens the door to a quantum leap in regulation and cooperation by going back to law’s purpose and first principles. Law’s purpose is to “make it easier for people to work together and make life for all better, not worse.” (Hadfield, 2017, p. 3) Historically, law has helped to create social order by “managing conflicts, facilitating cooperation, and basically making life relatively predictable.” (Hadfield, 2017, p. 5)

Today, however, Hadfield dismisses our current legal infrastructure as boxy, monopolistic, and incapable of adapting to our “rapidly changing world.” (Hadfield, 2017, p. 9) In the face of a fast-paced and interconnected global economy, “we rely too much on centralized planning and not enough on markets to build the components of our legal infrastructure.” (Hadfield, 2017, p. 99) Markets, she asserts, are the vehicle for “[g]etting to smarter regulation.” (Hadfield, 2017, p. 248)

Yet at the same time that sophisticated global business lacks effective regulation, the support that law provides is absent from many local spaces. “Nowhere is innovation in how we think about law more urgent than in the poor and developing countries that are home to over half of the people on the planet.” (Hadfield, 2017, p. 282) While legal infrastructure today is too rigid for some, it is simply unavailable to most of the people who make up the “bottom of the pyramid.”

Hadfield’s conclusion is that our current legal infrastructure doesn’t have what it takes. Moreover, “there’s little incentive for anyone to invest either brains or money in the terrifically challenging task of figuring out how to build better legal infrastructure.” (Hadfield, 2017, p. 8) Lawyers, who have a monopoly on legal infrastructure, pay little attention to legal R&D. “We need to do what we humans have done every time we’ve hit the max on what our existing rule systems can handle in terms of complexity: invent new ways of doing rules.” (Hadfield, 2017, p. 9)

Disrupting Law, Reclaiming Justice

Legal infrastructure is a key component of the universe of human institutions and ways of channeling interactions to manage conflict and facilitate cooperation. Beyond legal infrastructure, however, lies a diverse and vibrant system of other processes for resolving, managing, or living with conflict. These conflict processes often touch or are interwoven with the legal infrastructure, but they are by no means contained within it. Restorative justice, negotiated agreements, facilitated decision-making, collaborative governance, family and community mediation, dialogue processes, peacebuilding, arbitration, appreciative inquiry within organizations, narrative and story construction, community and civic organizing, deliberative democracy – these are only a few of the conflict processes that are continually
evolving as they contribute to the creation of self-organizing order within the vast social system that is the Earth’s human population.

Unlike legal infrastructure, which is generally top-down and mechanistic, many conflict processes are bottom-up and organic. People in the conflict field view the social world in terms of complexity, systems, and relationships. In the human sphere, the framework of complex adaptive systems connects the bottom-up interactions of millions or billions of people to social networks and patterns that emerge at the system level, including law and legal infrastructure.

Markets are indeed one example of complex systems, and order emerges from them under certain conditions – of scarcity and of individuals acting generally according to self-interest. Adam Smith’s “invisible hand” metaphorically describes their self-organizing behavior. But markets do not solve all problems of cooperation, and the underproduction of public goods and the overproduction of negative externalities evidence the need for other institutional arrangements to elicit collective behavior that furthers the common good. Nor do market transactions meet the human need for relationship.

Unlike markets, conflict involves cooperation and competition – bonding and autonomy – operating in a creative tension. (Clark, 2002, pp. 233-237) In addition, conflict’s person-to-person operation creates possibilities for diverse interests being transformed as well as integrated. The relational focus of conflict also reaffirms the importance of individual dignity and respect in the face of difference, which allows us to reclaim the practice and experience of justice. Justice in the sense of genuine respect for and fair treatment of all is too often a casualty in law and legal infrastructure today, and it is a value that markets do not serve.

Disrupting Law, Reclaiming Justice: A Conversation at Creighton – October 8, 2018

The organizers invited featured participants with a range of disciplinary backgrounds and on-the-group experiences to consider the following questions:

- What problems do you see with today’s legal infrastructure, viewed from the perspective of your disciplinary domain and your own experience?
- How does Rules for a Flat World help frame those problems?
- What perspectives do you see as promising in addressing those problems?

Danielle Conway, J.D., LL.M., drew on her experience as the Dean of the Maine Law School to describe how legal infrastructure today has evolved in ways that fail to meet the needs of rural – as well as other marginalized – communities. Ed Stringham, Ph.D., highlighted the value of markets as a mode of regulation not only in the future but as a vibrant past and current practice. Sean Carroll, SJ, M.A., M.Div., M.B.A., described how migrants at the U.S.-Mexico border lack legal infrastructure to ground safety and prosperity in their home countries yet are prohibited from the protections of legal infrastructure in the U.S. The first three articles in this collection, along with a brief Q&A video of each speaker, capture the essence of each of these presentations.

Gillian Hadfield, J.D., Ph.D., then had the opportunity to respond. Four videos capture various aspects of her contribution to the discussion. The first video highlights themes from Rules for a Flat World that had surfaced in the remarks of the prior speakers. The second video, in which is embedded a video that Hadfield played as part of her presentation, offers an Africa-based example of “bottom up” rules. In the third video, Hadfield responds to questions generated by the entire group of conversation attendees. The fourth and final video, a summary Q&A, offers her important takeaways from the book and conversation.

In the next set of articles, organizers and attendees offer additional perspectives on the challenge of Disrupting Law, Reclaiming Justice. Palma Strand, J.D., LL.M., emphasizes that justice and equity should be touchstones in any undertakings to transform legal infrastructure, and she points out that governance today is already more “flat-world friendly” than traditional
paradigms suggest. Jacqueline N. Font-Guzmán, J.D., Ph.D., observes that law has always been “for the few” – in comparison to the inclusiveness of the conflict field. Greg O’Meara, SJ, J.D., LL.M., provides a critique of how market interactions stifle relationality and value-based action, essential aspects of human behavior highlighted in Catholic Social Thought. Rachel Lee, J.D., offers a concrete and tangible example of how lack of legal infrastructure in the form of representation of potential deportees by actual lawyers renders the avowed protections of current U.S. immigration law inaccessible to many.

Three additional pieces focus on legal education’s role in the perpetuation of today’s constrained legal infrastructure. Larry Kramer, J.D., compares the school-based education of lawyers to the school and apprenticeship model used to prepare other professionals. Kathy Gonzales, J.D., LL.M., Ph.D., describes the current narrow focus of most law schools. Paul McGreal, J.D., LL.M., provides an institutional view of the possibilities of innovation in legal education.

A contribution from a Negotiation and Conflict Resolution (NCR) student rounds out the issue. Two candidates for the MS-NCR degree read and discussed Rules for a Flat World, researched the work of the featured presenters, and attended the Conversation as participants. Lacey Craven’s paper reaches into the NCR curriculum’s focus on complex adaptive systems to question Hadfield’s assumptions about the nature of law and legal infrastructure.

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References
