
SPECIAL REPORT

It's all relative: Social movements and law

Lacey Craven, B.A.

Negotiation and Conflict Resolution Program, Creighton University,
laceycraven@creighton.edu

Abstract In *Rules for a Flat World*, Hadfield focuses on law as created by and comprised of primarily centralized legal institutions. Current insights into law, however, highlight a complexity behind the social movements that cause disruption and lead to real legal change, which creates a new, broader definition of law. Taking Hadfield's view that law needs to be understood and designed by economists, policymakers, entrepreneurs, business leaders and ordinary people, not just lawyers (Hadfield, 2017), a little further, this paper considers the complexity of social movements in combination with law as part of a more robust definition of law.

Keywords: law, social movements, complex adaptive systems

Gillian Hadfield's *Rules for a Flat World* and in particular her discussion of the need for changes in our current legal system and infrastructure arise from her diagnosis of a need to better meet the growing diversity in our communities and economy. Hadfield begins *Rules for a Flat World* by drawing on a definition of law from Harvard Law Professor Lon Fuller: Law is the enterprise of subjecting human conduct to the governance of rules (Hadfield, 2017, p.19). She describes how, over the course of the last 100 years, law has been a centralized institution that carried us a long way but isn't workable today due to the complexity of the globalized world. In Hadfield's view, the legal and regulatory systems in place are not up to the task of meeting the demands of the new complex norms, rules, and diversity. And although she does offer a solid review of the market complexities and monopoly of law, Hadfield does not touch on the complexity of social movements that serve as the source of said norms, rules, and diversity. For the purposes of this essay, instead of focusing on how our legal infrastructure isn't up to snuff, I focus on social movements *and* law as interconnected, complex adaptive systems.

Introduction

In her book, *Rules for a Flat World*, Hadfield's top-down hierarchical view of law misses the mark on what law truly is - a civic, complex adaptive system (CAS). Her top-down view of law is that it is managed by state supreme courts and bar associations with exclusive deciding power on what law is and on who can and cannot practice it (2017). Hadfield's suggestion for legal infrastructure improvement lies with the power of market expansion and the ability of markets to deliver fresh ideas and incentives to structure new legal rules and practices.

Hadfield's view of current law does not take into consideration the influence other individuals or organizations are already having on the elected or appointed officials that make up her idea of law. By considering the contributions of other key players through civic engagement and applying the framework of complex adaptive systems, I propose a foundation to better understand how law is not just what Hadfield describes as a government product. Rather, law is also the combined product of social movements, citizen interactions, civic connections, and engagements (Strand, 2011). I first discuss complex adaptive systems, their internal characteristics and where CASs can be found. Next, I illustrate how social

movements, as complex adaptive systems, emerge in response to complex situations of inequality, oppression and/or unmet social, political, economic or cultural demands (Horn, 2013), using the example of the #MeToo social movement. I then assess our legal infrastructure itself, the aggregate of an outcome of civic engagement, framing it as a complex adaptive system using the example of Nebraska Protective Orders. By discussing both law and social movements as CASs, showing their interdependence, I offer a view of law and legal infrastructure that questions Hadfield's constrained definitions.

What is a Complex Adaptive System?

Complexity or complex adaptive systems theory originated for the most part in the physical and natural sciences (Eidelson, 1997), but it applies to many other systems including economics, social sciences, and technology. Murray Gell-Mann, an American physicist who received the 1969 Nobel Prize in physics for his work on the theory of elementary particles saw the potential for CASs to apply far beyond the physical and natural sciences: "Even more exciting is the possibility of useful contributions to the life sciences, the social and behavioral sciences, and even matters of policy for human society" (Gell-Mann, 1995, p. 322).

Components of a Complex Adaptive System

Complex adaptive systems in all realms have the following characteristics in common:

Interdependent agents: interacting individuals create system-level phenomena (Ackoff, 1999)

Non-linearity: small changes can make a big difference (Augustinsson, 2006)

Adaptability: systems are able to respond and adapt to new conditions in the environment (Zimmerman et al., 1998)

Emergent capacity: systems develop capacity that is more than the sum of the capacity of the parts (Lissack, 1999; Gharajedaghi, 1999)

Self-organization: order is created out of chaos (Augustinsson, 2006)

Distributed control: order arises without central control (Zimmerman et al., 1998)

Co-evolution: individual agents act and react in cooperation and in competition with other agents (Kelly & Allison, 1999)

The complicated, interconnected, and interrelated parts are not predictable or easy to understand. There are observable structures and patterns (Senge, 1990), however. Moreover, the internal, individual parts are less important than the connections between and among them (Jones, 2003). In complex adaptive systems, there is no hierarchy in command, constant new patterns of order emerge through self-organization, and small changes may but do not always affect the group as a whole.

The Connections within Complex Adaptive Systems

CASs are generally identified in physical and natural sciences. Examples include the human body and ecosystems. Jones (2003) uses the example of a flock of birds as a CAS and highlights how the individual birds interact to make graceful, coordinated yet complex movements while in flight.

"There is no script distributed to each bird prescribing the actions of the flock" (Jones, 2003). However, this collective behavior can be modeled in a straightforward fashion. Birds have a certain amount of decision-making capacity, but in a flock all flight decisions follow these guidelines. Each bird:

- Avoids hitting neighbors or obstacles
- Aligns flight to match the neighbors
- Flies an average distance from the neighbors

Complex adaptive systems show that connections and relationships are the key to system behavior. The individual agents or birds in this scenario do not have such an important role. If one bird were to fall out of the sky, the flock as a CAS would continue on out of reliance on the connectivity and relationship among the other birds.

Social Movements as Complex Adaptive Systems

Humans may also be individual agents in self-organizing complex adaptive systems that rely on their connections and/or relationships. Acting on our own autonomy but interacting with other agents through connections, humans are also capable of change via thoughtful deliberations about the worlds they inhabit (Miller, 2007).

Human interactions with shared values can lead to social movements, which are “conscious, concerted and sustained efforts by ordinary people to change some aspect of their society by using extra-institutional means” (Goodwin and Jasper, 2003, p.3). Hadfield touches on the complexity of human interactions during the California Gold Rush, in which there was a deliberate effort to establish common-knowledge rules and procedures to combat the instability and breakdown of the environment as rules became ambiguous. Although Hadfield characterizes this example as markets building better law, Hadfield overlooks the CAS essence of the relationships, interactions, and shared collective identity that comprise social movements, including the emergence of legal rules.

Schneider & Sommers (2006) describe social movements as a collective identity, within networks, performing collective actions oriented to social change. Strand (2011) further suggests that when citizens have a voice and when that voice resonates with members of the society, a civic-law story emerges. “Relationship, identity, and relevance are characteristics of voice and resonance...The more widespread the group of citizens who have voice, and the deeper and wider the resonance of that voice, the more civic the law-story becomes (p. 118).”

#Metoo Social Movement

The #Metoo movement, a movement based on the voices and stories of those who no longer chose to stay silenced, was established and embraced worldwide a little over a year ago. It brought about a heightened, more transparent awareness to the widespread problem of sexual harassment and assault. #Metoo is a fitting example that reflects the importance of Strand’s connection of *relationships*, *identity* and *relevance* to voice and resonance. In her article, *Law as a Story: A Civic Concept of Law (2009)*, Strand describes the value of voice through storytelling as the basis for creating meaning. “Story takes the raw material of our experience, enables us to navigate the world we encounter, and helps us discover the deeper meaning of our lives” (Strand, 2009, p. 604). Storytelling can provide a vehicle of collectedness formed by individuals and association. Storytelling is the individual interaction that fuels social change in a CAS human society.

The #Metoo movement has been around since 2006; the term was originally coined by Tarana Burke, an advocate for Girls for Gender Equity. Burke’s “me too” originated from her own shared story, reflecting on her guilt and inability to vocalize her own #Metoo moment in support of a child who confided in her about a sexual assault. The self-disappointment she felt prompted Burke to set out to help other survivors of sexual violence, particularly black women and girls and other young women of color from low wealth communities, find pathways to healing (<https://metoomvmt.org/about/#history>). Burke’s initial goal for the movement has evolved since its origination, expanding its *identity* to a global conversation around sexual violence to speak to the needs of a broader spectrum of survivors.

In 2017, accusations of sexual assault and harassment against many influential and powerful men such as Harvey Weinstein, a Hollywood producer, Bill Cosby, a beloved American actor, and Matt Lauer, a daytime news icon, began accumulating. Alyssa Milano, an American actress and sexual assault survivor became a catalyst for the #Metoo movement by encouraging other survivors of sexual harassment and/or assault to use Twitter as a platform to tweet #Metoo in support of survivors. Milano leveraged her expansive pool of online social media followers, larger than that of Tarana Burke, exhibiting how remarkably quickly *relationships* and networks can lead to a full-blown social movement.

As Michael Gines Munsayac explains in his unpublished paper *Organizational Communication Theories Under the Cybernetic Tradition*:

[N]etwork theory allows us to observe clusters of communication relationships created by the objects communicating within a network. These clusters link together to form organizational networks...advances in online communication have increased our ability to link with others and grow our networks.

Sociologist Robert Putnam (2000) asserts that social ties and friendship networks recruit the members for social movements and that social movements create social capital by fostering new identities and extending social networks. Munsayac's and Putnam's findings reflect how Burke's "me too" became popularized into #Metoo. With the help of Milano's online platform, #Metoo became *relevant* to a much wider-cast network. Building on an *identity* of sexual assault survivors and the *relationships* among many such survivors, social change that is *relevant* to those individual survivors has emerged from personal stories of sexual assault and harassment.

Law as a Complex Adaptive System

We commonly think of law as a system comprised of rules, legislatures, courts, and legal professionals that enforce, punish, rehabilitate, develop laws, etc. – often working together for shared outcomes. But what makes up the system of law? From what interactions does it emerge? Strand (2009) emphasizes that law, to the extent that it is democratic and/or civic, is grounded in its citizens. Under these conditions, law emerges as a formalized norm from the communicative interactions of the system's individual members. According to J.B. Ruhl (2007), the collection of rules and regulations that make up law are the product of the legal system, a collection of people and institutions. Rules and regulations, that is, are an emergent property of the legal system the same way prices are an emergent property of markets. Sir David Maxwell Fyfe observed (2006):

The law is not to be compared to a venerable antique, to be taken down, dusted, admired and put back on the shelf; rather it is like an old, but still vigorous tree—firmly rooted in the history but still putting out new shoots taking new grafts and from time to time dropping dead wood. That process has been going, is going on now and will continue.

Strand's, Ruhl's, and Fyfe's descriptions of law effectively meet the properties that are reflective of a complex adaptive system; emergent, adaptive, non-predictable and non-linear.

Protection Orders

Knowing that abuse can jeopardize one's sense of dignity, protection orders are, in theory, created to help restore a sense of security and dignity that may have been lost. Law, through protection orders, works to provide victims of abuse a safe environment and to enhance the opportunity to escape a violent relationship. Until recently, the two forms of protection orders available to Nebraska residents were Harassment and Domestic Abuse Protection Orders.

Experience on the ground pointed to a gap between the 2 types of protection orders resulting in certain victims of sexual violence being covered by neither. These stories of

individual experiences trickled up through lobbying and testifying to a variety of organizations and ultimately to the Nebraska State Legislature. An additional *identity* of sexual assault victims formed and *relationships* among the survivors and ally's reinforced that identity and connected them. Eventually, a third type of protection order – *relevant* to this group – became law.

Unlike a Harassment Protection Order, which requires multiple events to get protection, and a Domestic Abuse Protection Order, which required only one event of sexual violence but requires a specific relationship, victims of a single incident of sexual violence were unable to obtain protections if they didn't fall within the definition of family or household member. Because of this loophole, The Nebraska Coalition to End Sexual and Domestic Violence, in partnership with Senator Bolz, introduced bill LB 178 into legislation. The bill specifically recognized sexual assaults that might happen in a campus setting by someone who knew the victim through a class, party, or event. The individuals would not fall within the family or household member definition, eliminating the Domestic Assault Protection Order as an option. And, since the incident may be a single incident, the victim would not qualify for a Harassment Protection Order. The Sexual Assault Protection Orders bill was passed in 2017 and provided the mechanism to cover this overlooked population.

The passing of the Sexual Assault Protection Order (LB178) exhibits how law is an adaptive and emergent property of the legal system. The #Metoo movement served as an *identity* that developed from the *relationships* built between survivors. According to Meredith Lierk, Director of Intervention and Prevention at Creighton University, "the need for Sexual Assault Protection Orders isn't necessarily a direct outcome from the #Metoo movement but it has invoked new social norms and gained traction for legislators to push for policy reform." The outpouring of #Metoo stories shows how inadequate our laws have been and how a more *relevant* protection order was needed to serve as a guideline as to what is accepted in society.

The Integration of Social Movements and Law

Brenda Zimmerman painted a picture of the interconnectedness of complex adaptive systems in *A Complexity Science Primer* (1998):

CAS are embedded or nested in other CAS. Each individual agent in a CAS is itself a CAS. In an ecosystem, a tree in a forest is a CAS and is also an agent in the CAS of the forest which is an agent in the larger ecosystem of the island and so forth. In health care, a doctor is a CAS and also an agent in the department which is a CAS and an agent in the hospital which is a CAS and an agent in health care which is a CAS and an agent in society. The agents co-evolve with the CAS of which they are a part. The cause and effect is mutual rather than one-way.

Strand (2011) applied this interconnectedness of law as grounded in social norms to assert that legal change goes hand-in-hand with social change. Social norms, in contrast to law, are generated and sustained by ordinary people, yet those social norms are the root of law: Law that does not reflect and resonate with social norms is unstable. In *The Evolution of Social Norms*, Robert Ellickson also conveys that law and social norms are complexly intertwined entities' (1999).

Even though Hadfield relies heavily on the development of markets and specialization in *Rules for a Flat World* to facilitate the evolution of the current legal infrastructure, she acknowledges that rules (law) of humans emerge from social process, from what a group will deem okay or not okay, Strand (2009) highlights a similar thought process, though in greater detail. She presents a sociological view of law as a complex adaptive social system in which a principle emerges from collaborative communicative interactions among many members of a society. Networking by social movements potentially affect local, regional or global organizations through the broader systems to which they are linked.

By applying a theory of norms, developed through and spread by communication, which leads to rules, which in the end lead to law, the cause-and-effect nature of both law and social movements as mutual complex adaptive systems is exposed. The ways in which social movements interpret the world and connect to existing frames (Meyer et al., 2002) introduce persuasive new ways of viewing the world and place new issues onto the policy agenda. CAS social movements lead to CAS legal change; law emerges.

Conclusion

Law, as a complex adaptive system, can be influenced by the relationships and interactions within social movements. Social movements embody an emergent, bottom-up civic structure that undeniably transforms law. Although Hadfield puts her trust in the promising ability that markets have to incentivize and transmit information for the development of a new legal infrastructure model, her “all eggs in the markets basket” approach disregards similar self-organizing social dynamics of law and social movements.

Reframing our understanding of human organizations as CAS rather than machines, tracing the initial conditions and history of an organization, and examining the qualities of relationships that individuals within the organization share, can allow us to better understand how organizational growth, learning, and innovation take place, and how organizational successes (and failures) may be replicated (Schneider and Somers, 2006).

Growth, learning, and innovation are also the hallmarks of human social CAS beyond defined organizations (CAS such as law and social movements!). Because of this, it’s important to focus on the value in relationships rather than exclusively on markets.

References

- Ackoff, R. L. (1999). *Re-creating the corporation: A design of organizations for the 21st century*. New York: Oxford University Press.
- Augustinsson, S. (2006). *Om organiserad komplexitet: Integration av organisering, lärande och kunnande*. [About organized complexity: Integration of organizing, learning and knowing, in Swedish] Doctorial thesis 2006:46, Department of Industrial Production Environment. Luleå: Luleå University of Technology.
- Eidelson, R. J. (1997). Complex adaptive systems in the behavioral and social sciences. *Review of General Psychology*, 1(1), 42-71.
- Ellickson, Robert C., *The Evolution of Social Norms: A Perspective from the Legal Academy* (July 1999). Yale Law School, Program for Studies in Law, Economics and Public Policy, Working Paper No. 230. Available at SSRN: <https://ssrn.com/abstract=191392> or <http://dx.doi.org/10.2139/ssrn.191392>.
- Gell-Mann, M. (1995). Plectics. In J. Brockman (Ed.), *The third culture: Beyond the scientific revolution* (pp. 316-332). New York: Simon & Schuster.
- Goodwin, J. & Jasper, J. 2003. *The Social Movements Reader: cases and concepts*. Malden: Blackwell Publishing.
- Hadfield, G. K. (2017). *Rules for a flat world: Why Humans Invented Law and How to Reinvent It for a Complex Global Economy*. New York, NY: Oxford University Press.
- Horn J. (2013). *Gender and social movements overview report*. Brighton, UK: Institute of Development Studies.
- Jones, W. (2003). *Complex Adaptive Systems. Beyond Intractability*. Retrieved from beyondintractability.org/essay/complex_adaptive_systems
- Kelly, S., & Allison, M. (1999). *The complexity advantage: How the science of complexity can help your business achieve peak performance*. New York: McGraw-Hill.
- Lierk, M., personal communication, January 17, 2019.
- Lissack, M. (1999). Complexity: the science, its vocabulary, and its relation to organizations. *Emergence*, 1 (1), 110-126.
- Meyer, David S, Nancy Whittier & Belinda Robnett (2002). *Social Movements: Identity, Culture and the State*. Oxford University Press.
- Miller, J. H., & Page, S. E. (2007). *Complex Adaptive Systems: An Introduction to Computational Models of Social Life*. Princeton, N.J.: Princeton University Press. Retrieved from <https://login.cuhsl.creighton.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=329674&site=ehost-live>
- Munsayac, M. G. *Organizational Communication Theories Under the Cybernetic Tradition*. Unpublished manuscript.

- Putnam R. D. (2000). *Bowling Alone: The Collapse and Revival of American Community*. New York: Simon & Schuster.
- Ruhl, J. B. and Salzman, James E., The Law and Policy Beginnings of Ecosystem Services. *Journal of Land Use & Environmental Law*, Vol. 22, No. 2, 2007; FSU College of Law, Public Law Research Paper No. 290. Available at SSRN: <https://ssrn.com/abstract=1028759>.
- Schneider, M. & Somers, M. (2006). Organizations as complex adaptive systems: Implications of Complexity Theory for leadership research. *The Leadership Quarterly*, 17(4), 351-365. Retrieved from <https://www-sciencedirect-com.cuhsl.creighton.edu/science/article/pii/S1048984306000373>
- Senge, P. (1990). *The fifth discipline: The art and practice of the learning organization*. London: Century Business.
- Strand, Palma Joy, The Civic Underpinnings of Legal Change: Gay Rights, Abortion, and Gun Control (August 1, 2011). *Temple Political & Civil Rights Law Review*, Vol. 21, p. 117, 2011. Available at SSRN: <https://ssrn.com/abstract=1919019>.
- Strand, Palma Joy, Law as Story: A Civic Concept of Law (November 18, 2009). *Southern California Interdisciplinary Law Journal*, Vol. 18, pp. 603-650, 2009. Available at SSRN: <https://ssrn.com/abstract=1508619>.
- Zimmerman, B., Lindberg, C. and Plsek, P. (1998). A Complexity Science Primer. In *Edgware: Insights from Complexity Science for Health Care Leaders* (pg. 3–20). Irving, Tex.: VHA Inc.