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Annelise Riles

Cornell Law School, ar254@cornell.edu

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Hope in the Law



Professor Riles

by ANNELISE RILES

“While we breathe, we will hope.” When President Barack Obama took office earlier this year, many were suggesting that the new president would put words like this behind him as he turned to the hard-nosed issues of policy making. “You campaign in poetry and you govern in prose,” they say. But research suggests this view fundamentally underestimates the nature and the power of hope as an instrument of day-to-day regulation and policy making.

Government leaders in Japan, a country that faced its own financial crisis ten years ago, understand that hope is the engine of the financial markets: all the stimulus packages in the world are useful only as a tool for giving consumers and investors hope in the economy and will be money down the drain if investors remain hopeless. The real issue for policy makers, then, is, what will cause investors to be hopeful? Legal scholars, economists, and anthropologists have been studying the social and economic causes and consequences of hopefulness and hopelessness: whether or not people are hopeful about their future turns out to be one of the best predictors of success in life, regardless of one’s income bracket. Whether or not one has hope is not simply determined by income—there are rich people who have very little hope and poor people who are very hopeful. In Japan, the fact that some people have much less hope than others is understood to be a serious problem for uncertain times.

My research among lawyers in the financial markets in Japan and the United States focuses on what lawyers find “fun” about legal problems—what makes legal analysis exciting or interesting to engage in. In a forthcoming book, *Legal Amateurism*, I argue that, like the heroes of the television series *Mad Men* whose genius lies in their ability to put their finger on a trend and capture the moment in a phrase, lawyers’ skill lies in being able to “play” with a range of concepts, to relate to a range of social actors, to mix and match concepts and solutions from different areas of law to create new innovations. Although the stereotypical view is that



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lawyers maintain their hope in their professional work because of the *ends* it serves—from furthering their view of social justice to earning profit for their clients—I suggest that these ends are actually less important than one might think in maintaining hope in one’s work, day in and day out. I suggest that lawyers’ hope resides just as much in the *means*, that is, in the intrigue of the “play” with a diversity of questions and approaches. Conversely, legal work that does not allow for or demand much play of this kind is the most likely to result in burnout.

Since 2007, the Cornell Law School’s Clarke Program in East Asian Law and Culture has been an active partner in a Cornell University consortium with the University of Tokyo’s Institute of Social Science aimed at better understanding how laws and policies can promote hopefulness in diverse cultural and economic contexts.

TO DATE, OUR RESEARCH SHOWS THAT HOPE IS:

- A particular orientation toward adversity, and toward the unfamiliar or unknown
- A particular ability to claim the present (as in Obama’s famous statement that “our moment is now”)
- Both a cause and a consequence of an openness to change—from a willingness to try a different approach to an everyday problem or see things from another point of view to a commitment to widespread social change (as in Obama’s calls to “change the world”)

So where does hope come from? First, our research shows that hope is a *social good* rather than a personal state or emotion: one person’s hope is deeply dependent upon another’s. For example, one of the best indicators of whether a person is hopeful about their own future is whether *other people* have expressed hope in that person, or whether that person is hopeful for and about *others*. Research also shows something surprising: hope is actually *strengthened* by experiences of adversity. People who have never faced serious setbacks in their life are ironically less hopeful than people who have faced, and overcome, such setbacks. Hope is best fostered in conditions in which there is social space for creativity, free-play, and even wastefulness in daily life. Finally, and most importantly, hope is contagious—experiencing hope in someone else is the best path to hopefulness.

The question of where hope comes from is also a good lens for thinking about the relationship between lawyers and their clients. A member of our research team has been studying ordinary Japanese citizens’ experience of daily life conflicts to see whether the opportunity to consult with a lawyer correlates with a greater degree of hopefulness about their life. His research suggests that the opportunity to be heard by a legal professional, and to have one’s views and grievances translated into the expert language of law, significantly impacts on one’s hopefulness in conditions of adversity, even if legal consultation does not actually result in a successful outcome for the client.

These insights have profound implications for law and policy making, from labor law to educational policy to the regulation of the legal profession to financial market regulation. Our research shows that certain legal projects and policies can actually generate hope in the markets and in society at large by encouraging actors to take on those projects as their own. For example, in the regulatory arena, financial policies can aim to encourage investors to think in new and creative ways about investment decisions. Or, in the policy arena, politicians who display hope that their actions can bring about real change, as opposed to an ethic of self-doubt or cynicism, can foster a spirit of hopefulness among citizens that their own contributions toward the common good can make a difference.

But regulating and governing through hope is very different from the usual forms of government policy—in fact it defies many of the traditional views of the strengths and weaknesses of government on both the right and the left. First, a government that aims to foster hope does not just have “constituencies”—rather it has individuals and communities as *partners*. Again, this must be more than mere rhetoric: this requires giving those partners real power. Hopeful



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policy is orchestrated by politicians, but government can't ultimately control the outcomes because they are ultimately directed and executed by citizens themselves. When the U.S. financial markets improve, it will ultimately be because individual investors become hopeful and thereby collectively change the direction of the economy, not because of the power of government intervention (although government intervention can help generate hope). Giving citizens hope, then, means giving them real power and control, including the power to unleash dramatic social change. When hope is the tool and the objective of government policy, power in private citizens' hands is not just a conservative cause but the source of real social change, and government-led social policy is not the enemy of individual freedom but the source of individual empowerment.

Those who think that hope is just rhetorical fluff still have not come to terms with the power of hope at work in the presidential election of 2008. Imagine what else this power could achieve, in the United States and around the world, if hope were harnessed as a tool of law and policy. What research shows is that hope is not just a matter of election year rhetoric but a quotidian thing—the stuff of ordinary decisions and routine day-to-day work that collectively add up to large-scale consequences, from market movements to improvements in local and global peace and security. ■

Annelise Riles is the Jack G. Clarke Chair in Far East Legal Studies and director of the Clarke Program in East Asian Law and Culture at Cornell Law School. She is also a professor of anthropology at Cornell University.

The Clarke Program's Partnership with Tokyo

The partnership of Cornell Law School's Clarke Program in East Asian Law and Culture with the University of Tokyo is an example of a new kind of project in the field of East Asian legal studies. The partnership goes beyond studying the content of Asian law: we are developing new ways of thinking about cross-cutting and transnational problems that can be usefully illuminated by comparative research and cross-cultural dialogue.

To date, the partnership has sponsored three international conferences attended by academics, students, journalists, and policy makers, and have completed seven books aimed at policy makers and scholars in both countries. On November 4, Professor Yuji Genda, a labor economist and the director of the Hope Studies Project at the University of Tokyo, will deliver the Clarke Lecture in East Asian Law and Culture at Cornell Law School.

A final book aimed at lawyers and financial professionals who find themselves caught in the crosscurrents of changing markets is due for publication in April 2010, and a global forum on this subject will be convened in spring 2010 with financial support from the Center for Global Partnership. For more information about the Clarke Program and these initiatives, go to www.lawschool.cornell.edu/international/clarke_program/index.cfm.