

TURNER:

Hello and welcome back to Wisconsin Law in Action, a podcast where we discuss new and forthcoming scholarship of University of Wisconsin Law School professors. I'm your host Kris Turner. My guests today are Voss-Bascom Professor of law David Trubek from the university of Wisconsin law school, distinguished professor of law Emeritus Richard Abel from the UCLA school of law. Professors Trubek and Abel are here today to discuss the recently published symposium issue that they co-edited entitled The Short Happy Life of the Yale Program in Law and Modernization from the Cold War to Comparative Legal Sociology and Critical Legal Studies. The issue was published in the Brazilian Journal of Institutional Studies, features essays from Bryant Garth, Afroditi Giovanopoulou, Duncan Kennedy, Boaventura de Sousa Santos and both Professor Trubek and Professor Abel. Thank you for joining the podcast today Professor Trubek and Professor Abel.

PROF. ABEL:

Thank you for having us.

PROF. TRUBEK:

Glad to be here.

TURNER:

Let's just dive right into this article and talk about what you were writing about in the symposium issue. So in a nutshell, what was the Yale Program in Law and Modernization?

PROF. TRUBEK:

It was a multi-year program supported by the US foreign aid agency, USAID to try to understand how law played a role in development in the, what was then called the third world and how programs might be created to improve laws role in the development process and it involved both lawyers and also social scientists and people from the United States and from many other parts of the world. It went on for about seven years and was terminated after that. It was operated out of the Yale law school and by a team of professors of which Rick Abel and I were the major people managing the program.

TURNER:

How did it come about?

PROF. TRUBEK:

I had been an AID lawyer for four years and I had worked in both Washington and in Brazil and I kept asking myself, "Why doesn't AID have a field of development?" They had everything else. They had business development, agricultural development, educational development, all these were all well-established specialties with elaborate staffs and big budgets and I said, "Why isn't there a law one?" I kept asking that question and when I got into academic life shortly after I joined the law school faculty, I saw an announcement for a new program at AID to look at non economic aspects of development and they had a lot of money and so I got together with another former AID lawyer who was an associate Dean of the law school and we put together a proposal, seven double-spaced pages and a budget of \$1 million for a five-year program. \$1 million in today's dollars would be \$8 million. This was sort of a miraculous thing and it was.

PROF. ABEL:

I'm going to add an autobiographical note and maybe Dave will then want to do the same. I met Dave when I came to interview at Yale in May or June 1967 and we must've talked about this but it was still very much in the early stages. I then went to do fieldwork in Kenya and I was in Nairobi late that fall and I got a letter from Dave ecstatic that he had gotten this money and very energized and eager to go forward with it and I in my innocence and political naivete wrote back saying, "I'm delighted for you Dave but I wouldn't take a penny from USAID." I in the end took many pennies from USAID. My initial reaction was that of someone who had been abroad by then for two and a half years, very much alienated from the United States, very much disaffected about the Vietnam war and uncertain about what my future role would be.

PROF. TRUBEK:

To make a point that I think it's very important, we were all concerned, Rick more so than I but all of us about the possibility of the AID would want to shape and influence our work in the program. This never happened. In fact, sometimes we began to worry that they weren't paying any attention to us. There really was absolutely no pressure of any kind. They let us do what we wanted to do and indeed it kind of slipped off their agenda. By the time we were up and running there wasn't anybody there who really cared very much about it which was fine for us and helps explain how the program evolved in directions very much different than those which were originally articulated and which AID would've supported.

TURNER:

Right, it kind of worked to your advantage a bit to have slipped off the radar to allow you to grow maybe as you saw more fit than they would have.

PROF. TRUBEK:

Exactly. We sent them a short annual report. I do not believe anyone from AID ever came to Yale. I think I went there once to talk to them in the four years that I was the co-director.

TURNER:

So what were the original goals?

PROF. TRUBEK:

I sort of explained it, we articulated the goals, they agreed, they had not asked for anything. In other words, there was no call for proposals that defined a program like this. There was a very broad program on non economic aspects of development and it was very open-ended even then with that broad definition it was open-ended so we could shape it the way we wanted. The goals were to create a body of literature on the role of law and economic development of which there was very little at the time and secondly to train a group of people who could contribute to this literature and then train a group of people who could be actors carrying out development policies in various parts of the world. It was a development studies development training kind of concept with a very strong emphasis on the need for in-depth theoretical work because of the paucity of available materials at the time.

PROF. ABEL:

I'm going to give my different perspective because Dave came out of USAID, I did not. So I'll tell you where I was coming from and what I was doing in the program during the years it was active. I had

graduated from law school and gone to London to study at the school of Oriental and African Studies to do a PhD in African Law. That turned out to be basically two years of enjoying London and reading voraciously almost entirely on my own. Because of that I discovered that there was this emerging body of literature by legal anthropologists who had just begun to publish posts in the US and in the UK and that for me an eye-opener. I found it very attractive. I then went off to Kenya for a year of field work and looked at the ways in which primary courts had been changing and tried to develop a perspective that would allow me to make use of the materials that I was collecting.

PROF. ABEL:

So when I came to Yale in January '69 after that a year of field work, I was really trying to find my footing in a field that was just beginning to emerge and try to figure out a framework that I could use to make sense of what I'd learned about how law was operating in Africa. My focus was not development at all really, it was trying to see what was happening on the ground, how it was changing and how you could analyze that sociologically.

PROF. TRUBEK:

And both of those outcomes seem to have a long tail like this law and modernization group has seen a lot of developments since then because of this. I'm sorry, David go ahead.

PROF. ABEL:

No, I wanted to say that given the flexibility and the open-endedness of the way we ran the program there were many people who came to us without any particular commitment to development as such but whose work we thought would cast light on the issues we were trying to understand and so from the very beginning it was not tied to an immediate programmatic or practical agenda of development projects.

TURNER:

Why did you call it law and modernization?

PROF. TRUBEK:

Yeah, why didn't we use modernization not development? That's an interesting question because it reflects the time and the sort of ideology of American foreign aid policy at the time. Modernization theory had been developed in American universities by people many of whom then went into the Kennedy administration and were influential in shaping the foreign aid program that came out of the Kennedy administration which was a major change in expansion of US foreign aid at the time. Modernization theory had been adopted by the US foreign policy establishment as the sort of guiding light, the source of guidance for development and it was very conducive to American influence because it portrayed the process of development as a unilinear process leading from tradition to modernity and ending up with advanced capitalism and the United States was the highest embodiment of modernity.

PROF. TRUBEK:

Therefore, if you try to transform these countries into American style countries, you were modernizing them. You didn't have to call it Americanization, you could call it modernization. This was a kind of ideology of foreign influence that was very powerful and it was accepted in the social sciences of the time as a legitimate theory subsequently has come under tremendous criticism and there's a whole

literature I could show you if this was a virtual my bookshelf of books attacking and critiquing modernization theory. I got like nine of them over there so it was a very problematic formulation but of course it was a necessary formulation to get money from the government that was using it as its main ideological symbol for the foreign aid enterprise.

TURNER:

Just to add this really compliments Dave here that as he said, there was a significant and actually quite well-established social scientific literature that used the dichotomy of tradition and modernity. It goes back into the 19th century, you can see it in Durkheim and Weber even in Marx and then the early 20th century anthropologists Malinowski [inaudible 00:13:02] so that counter position was essential. In some ways I was doing the same thing but almost in a mirror image, I was using modernity as a foil to try to understand tradition whereas to some extent the government was more interested in ways of transforming tradition into modernity. Anthropologists and I think I was infected by this we're interested in trying to preserve tradition.

PROF. TRUBEK:

I think it's important to note because Rick quite rightly traces the genealogy of this dichotomy and the idea of modernity way back to classical social theory of the 19th century but the particular version that was operational in AID and in American foreign policy at the time was a very Americanized version of it and one that was shaped in a way that made the United States seem like the pinnacle of modernization something that was not part of the classical theory necessarily.

TURNER:

That's fascinating, just the choice of words and language to get the funding to see how these things have changed over time. So how did the program change over time if that is how it started?

PROF. ABEL:

The program changed over time for me primarily in that Dave and I collaborated on creating a course and teaching it twice, he actually taught it a third time which was called comparative legal sociology in which we tried to merge our quite different backgrounds, Dave's in modernization theory and economics and mine in legal anthropology and that forced each of us to read widely in the other's field and to develop again a theoretical approach which is what I am still using 50 years later. That for me was the primary transformation.

PROF. TRUBEK:

Well, of course and that also reflected the shift from immediate focus on contemporary development issues and the pragmatic tasks of reforming legal institutions in particular countries which is the way I had started my way of thinking about this just drawing on my own personal experience as an AID lawyer which is recounted in my own chapter and moving away from that to much broader questions about law in society and the role of law in various forms of social and political and economic transformation. We moved from the immediate and pragmatic to the broader theoretical and then back of course and that's part of the story. I think that was a big change. Of course, also the program became much larger as we attracted more people and different voices particularly bringing more people from the third world and from Europe as well as from the United States.

PROF. TRUBEK:

I think what's important is that the program became a space of its own. I don't think you can understand the history of the law of modernization program and some of the things we're going to talk about as we move ahead here unless you understand that the scale of it was sufficient to allow us to really have our own little world within this law school because we were able to support half a dozen professors at least part-time and a large number of fellows, master's students and other kinds of fellows and undergraduate students and what we now call JD students. We had a very large group and we were outside of the mainstream of American legal thinking by then and we were in a space of our own where we could pursue our ideas largely without much criticism or control from people within the law school or the rest of the world who might've thought that we were moving in the wrong direction and I think that space idea is essential to understand the rest of the history.

PROF. ABEL:

Let me elaborate on that about the space and I'm going to do so in terms of the people involved David's been referring to but I certainly put and I think David would concur with this. So we learned as much from the people who came to Yale through the program as they could possibly have learned from us especially since we didn't know anything at the time and I'd mention Francis Snyder and Tom Heller. Francis had been doing a PhD in Paris on land law in Senegal. He was deeply immersed in French anthropological theory which was very different from anything I had contact with and he had done extensive field work as well which I had not done and Tom had come from Bogota, Dave can say more about that.

PROF. ABEL:

I was also very much involved with the African graduate students who were there under Rockefeller Money not actually through our program but because I was the only person doing African studies I met them individually, I supervised their JSD thesis and I taught them in various seminars so I got to know a lot about what was happening in countries like Sudan and Ethiopia and Nigeria and Ghana, Malawi and Zambia, et cetera. When all of that was happening we invited Laura Nader and her students to come to Yale and hold a conference about the project which was a full exciting experience. So there was a great deal of intellectual ferment going on among all of these people and I would just add to that the fact that parallel to our program in law and modernization, the Russell Sage program had launched a program at Yale to bring a joint JD PhD in social sciences, usually sociology and political science students to Yale either during their doctoral work or after their doctoral work and we got to know them especially Donald Black.

TURNER:

The environments around in Yale at that time seemed especially important to creating the space and attracting the people that you're both just discussing. So what was that environment at Yale during the first five years of the program and how did that influence law and modernization?

PROF. ABEL:

Dave is right it wasn't enclave. Again from my perspective what Yale wanted was basically half my teaching time. I taught the basic Torch class three times and then I taught family law twice and that was roughly half my teaching load. As long as I did that they really weren't interested in what I did. Otherwise, there was no supervision. I can pick and choose any courses that I wanted to teach, my research was entirely self-directed and I had little or no contact with the rest of the faculty that was trying not to be disastrous from a point of view of tenure but we'll get to that later but I came across a

quote that I want to read to you and I'll explain how this happened. [inaudible 00:21:32] saw the symposium, read it thoroughly and wrote Dave and me about it very enthusiastically and that launched the correspondence between [inaudible 00:21:42] and me.

PROF. ABEL:

I had known [inaudible 00:21:43] before I came to Yale in which she mentioned that Underhill Moore had had an anthropologist that he worked with and that had been the way in which she entered into the field of law and social science, this is all before I came. I never met Moore but I'm going to quote you something by of all people Justice Douglas who had been a mentee of Moore and this is what he wrote in memory of Moore in 1950, "The so-called legal lights ridicule my project. They do not understand it and it would be futile to try to make them understand. I am writing for them, I am writing for the small select group who are looking for ways of applying the scientific method to the social sciences. Perhaps the present effort will fail but someday it may succeed. A hundred or five hundred years from now a kindred soul may find in my crude researches some clue to the solution. He is the audience for whom I write."

PROF. ABEL:

I like to think it didn't take a hundred years but I felt that Yale was largely indifferent and then it turned out actually quite unsympathetic to what we were trying to do, not hostile because they didn't pay any attention to it but there was little or no engagement.

PROF. TRUBEK:

The other side of the story, there's the story of the indifference of the faculty but there's the story of the students in that period and I think we've already mentioned that but the students that is the JD students and the fellows who tended to be most of them about the same age or roughly the same age doing master's degrees a couple of years out of law school or doing social science work, Yale was a center of a lot of protests and political ferment and that obviously was going on and had an influence on what was happening within our enclave as Rick described it, probably more influence than on the law school as a whole because we were heavily represented. The makeup of the group was more sympathetic to these new radical ideas and critiques than the law school faculty.

PROF. ABEL:

Let me just add to that just to give you a sense of the cultural ambiance of Yale in that period roughly the late sixties to the mid seventies. First of all, the number of women law students started to increase substantially. Dave can talk about that because his wife Louise was one of very few women in her class several years before that. There was the beginning of an affirmative action program and a very small beginning of minority students who had been entirely absent until that point and then there was the political turmoil. There was a bombing of Cambodia leading to large-scale protests and tanks with [inaudible 00:25:17] running down the streets of New Haven and the national guard mobilized and standing in the streets and tear gas being sprayed. There was a Black Panther trial and then there was a cultural dimension, the heart form, a hippie collective set up a tent in the courtyard and did their thing. It was a time of enormous ferment and we were somewhat marginal to that but we were certainly influenced by it and it certainly shaped Yale law school.

PROF. TRUBEK:

A number of the students who were active in those protests were students who as JD students connected to the program of which Duncan Kennedy is the most well-known example but there were several.

TURNER:

This really helps place for me the environments and the time that you were dealing with at Yale that really helped shape and develop this program. However out of all this tumult, there came a lot of major accomplishments of course. I want to go through this and see what came out of the program. To begin, what were some of the major accomplishments in legal studies?

PROF. TRUBEK:

CLS, the program directly led to Critical Legal Studies. The initial discussions took place within the program with me and Duncan and Mark Tushnet and Randall Rosenblatt all of whom were in my seminar. Shortly after that when Duncan had returned from the Supreme court and was an assistant professor at Harvard, I visited with him and we planned the call to begin the conference on critical legal studies with ideas that had come out of our debates at Yale and of the nine people who signed that original invitation to come to Madison, Wisconsin to found the conference on critical legal studies, six had been involved in one way or another with the program in law and modernization. So I would say that the creation of critical legal studies was the most significant outcome in the world of law itself.

TURNER:

If that was the sole accomplishment that came out of this that would be enough but that is not it of course. What other areas did it accomplish in say law and society?

PROF. ABEL:

As I said that field was just beginning to emerge during these years. So the first national meeting of law and society association didn't take place until after David and I had both left Yale but we were fully influenced by the people who became central figures in law and society. Mark Galanter in many ways is even more important. Mark came and spent a year in the program, David had already known him. I got to know him more very well. Mark then became an editor of the law and society review and at the end of his editorship, I took that journal on and that for me was my introduction into law and society studies. So the field blossomed from that moment and many of the people who were active in the field again, Boaventura de Sousa Santos centrally became leading figures in law and society.

TURNER:

Just the names that you have mentioned in the past 20 minutes are an astounding list of impactful law and academic faculty and staff and lawyers. It's really impressive to hear the number of people that have been involved in this in some way or the other but the one last area I want to talk about the major accomplishments is development studies in policy. So how did law and modernization impact development studies?

PROF. TRUBEK:

It messed it up, it broke the hold of modernization theory and simplistic legal transplant ideas and brought into that more critical thinking, a better understanding of the embeddedness of third world economies in the global economy and that issue as a question of both power and distribution of

resources. I think it opened up and complexified what was at the time a relatively simple narrative of one unilinear growth along the tradition to modernity scale and America standing at its peak and American law being the obvious go for law in development. We did a much better job of unraveling the old than we did in terms of creating a whole new vision but maybe that was a good thing because there was really no real single vision that was possible or desirable.

PROF. ABEL:

I would add to that again from my experience in perspective, the kind of legal anthropology that I had been reading and that I was trying to produce myself tended towards the micro, it tended to look at disputing in very small-scale settings especially in villages and to understand specific events, it was a very internal perspective. A larger external perspective was developing, was occurring at the time, was emerging at the time which I only began to learn about later.

PROF. ABEL:

So again for instance, there was a book written by Colin Leys about Underdevelopment in Kenya which came out again after this period which transformed my thinking in the direction of macro economic and more global perspectives. I think the same thing happened to Boaventura de Sousa Santos who went to Brazil, studied disputing within a particular favela and then developed a macro perspective which has become enormously influential subsequently but we were at a moment of ferment in which the macro perspective was only beginning to be constructed.

TURNER:

We mostly discussed the happy aspects of the law and modernization program with the last question. So let's pivot to the short part, why was the program terminated?

PROF. TRUBEK:

There were two things that were terminated. Me and Rick were terminated and the program were terminated. We were terminated first and then the program was terminated so there are two really different although related issues. I think that Rick has already suggested that we were quite distant from the core of the Yale law school faculty in a time when they were under siege by radical students with whom we were somewhat associated particularly Duncan Kennedy being the most visible of those who overlap with us and the radical movement of the students. We also had ventured out into new scholarly fields that weren't well understood and perhaps we were feeling our way, certainly in my case I was feeling my way. There were few precedents to follow, I was trying to build an interdisciplinary approach without being trained in any other discipline and so it was time-consuming but also perhaps mistakes made and they were unsympathetic.

PROF. TRUBEK:

The faculty was unsympathetic to the full enterprise. I think the core of the faculty was unsympathetic to our enterprise as a purely intellectual matter and then they were concerned about the potential radicalism of all the junior faculty. We were not the only junior faculty. In fact, I don't have the exact numbers but I would say of the seven or eight assistant professors who were there when I started only one of us got tenure and everybody else was terminated. So we were part of kind of a slaughter of the innocent that had nothing necessarily to do with the law and modernization program so it was a triple thing that's I believe why we were terminated and of course it showed that they didn't care about the

program because without us, the program lost its main engine and main driving force and main intellectual leadership at the faculty level.

PROF. TRUBEK:

So then you move on to the termination two years later. It was taken over by two people on the faculty who moved it back in more conventional directions of training foreign lawyers in the American legal system and how to transplant it. I think that was pretty much what happened to it. AID lost interest in the program. I think that had more to do with shifts within AID than anything particular about our program but I've never gone back and tried to understand that. There was a general decline of interest in law and development. The Ford foundation which had put a lot of money into that field had stopped supporting it. I think though that it was a combination of they lost the leadership, there was no energy left at the Yale side and the AID was no longer interested in law and maybe had not been particularly interested in it for a while and this just took a little bit of time to get realized.

PROF. ABEL:

I would just add to that because Dave has given a very thorough account of the termination from the perspective of both Yale and especially AID. Again some personal anecdotes, your listeners should know that Laura Kalman has written a book about what happened at Yale during this period. It's a superb history and it details all of this for far more than we can do here. I'm going to give you three anecdotes very briefly. When I came up for tenure, I made a point of going and knocking on the doors and talking to the members of the appointments committee some of them I probably had never talked to in the previous five years which of course was my fatal mistake.

PROF. ABEL:

So I went to Joe Goldstein because I had been teaching family law and I basically inherited that class from him. I had used his casebook the first time around and then developed my own materials the second time around and I wanted to talk to them about what I was doing in developing the course and I said among other things, I thought it was a very exciting time to be teaching family law because this was the second wave of feminism and I thought that that had the potential to transform the family in ways that we couldn't yet envisage to which Joe said, "I don't think so." And that was the end of that interview.

PROF. ABEL:

I went to see Ralph winter subsequently a federal judge and explained to him that I took a social science perspective which he might be unfamiliar and I want to tell him something about my social science perspective and he said, "That's not my objection." And that was the end of that interview. In my last year, the year after Dave had left when I was directing the program by myself, USAID came up to do a site visit the only time they did so in order to determine whether they wanted to renew the program. Yale was very eager to get more money and indeed God, Dave can tell you, I think several hundred thousand dollars for a couple more years.

PROF. ABEL:

So USAID came up, they obviously wanted to talk to me as the director of the program and Yale put a minder on me so that I never talked to the USAID people without another faculty member present to make sure that I didn't say anything that would be antipathetic to Yale's purpose. So it was clear that

Yale wanted us out and wanted to take over the program and remake it in ways that had literally nothing to do with what we had been doing in the previous five or six years.

TURNER:

Interesting, it definitely sounds like the leash was shortened and tightened and then as you mentioned Professor Trubek that the intellectual engine was removed and Yale kind of pulled it back in a more traditional way. So the symposium issue itself was published in a Brazilian journal. How did that come about?

PROF. TRUBEK:

Rick and I decided to have a round table on the program at the law and society meeting this earlier this year and it was virtual so we were able to get all these people easily to participate they didn't have to go someplace. We picked the four of us who were among the best known of the people who were in the program and then we reached out to people who were observers of the program, Bryant Garth who's written extensively on the history of legal education, legal reform, global legal development and Afroditi Giovanopoulou who is doing a graduate degree on the history of the use of law in American foreign policy and had worked with Duncan and knew quite a bit about the program from Duncan. We reached out to them and they just gave oral presentations of 15 minutes. It was a round table, there were no papers.

PROF. TRUBEK:

Two days later after they ended we get a message from this Brazilian [inaudible 00:40:27]. A number of the editors had listened to this online presentation and they offered to publish the papers if we could get them within two months. There were no papers but people were so excited about the idea of publishing and publishing in a Brazilian journal which was itself a great signal because here is a very sophisticated journal quite aware of global developments in a Brazilian law school assign that the academic project that law and modernization program had sought to promote that is to build up the capacity to study law in society in the developing world had been accomplished not necessarily by us but we had an influence and in Brazil particularly I had an influence because I devoted my life for this.

PROF. TRUBEK:

We were excited, it was a great symbolic thing to publish in the Brazilian journal and we made it, we put it together and then thanks to Wisconsin we managed to get it on SSRN with the encouragement of the Brazilian journal and so it has a nice symbolic as well as practical result and just to top it off two minutes before we started this podcast discussion, Rick and I got a message from the editors of the Brazilian journal who are teaching a course in the university in Rio and they want us to do a reprise of the event or some followup for their students in January. So here we are sort of moving around the world with this story.

TURNER:

That's amazing. I'm glad that worked out so well, two months to turn this around and publish a whole symposium issue is really impressive and amazing. Speaking of the symposium has six articles in it. You've alluded to most of them but can you tell us a little bit about each one of those? Let's dig in and see what these articles are all about.

PROF. TRUBEK:

Sure, I'm going to talk about three of the stories, mine, Dr. Kennedy's and Bryant Garth. I think that it's important to note that we've got here three generations. I graduated from college in '57 and law school in '61, Duncan graduated from college in '64 and from the law school in '70 and Bryant Garth graduated from college in '72 and from law school in '75. So we've got three generations and it fits very neatly in the evolving story because in my story which is about how I came to write the article scholars and self-restraints which was what I really got out of this whole experience and was an inspiration for critical legal studies and other critical work.

PROF. TRUBEK:

My story I started without any background in any of this and as a lawyer in USAID I said, trying to figure out why AID didn't have a lawyer in law and development program. Then the story goes through this whole Yale experience and concludes with an explanation of how we develop the critique of modernization theory and the role that Duncan Kennedy particularly played in changing my whole way of thinking and how that played out over time with interaction with other students like Boa Santos who was also there and was summarized in that article. So that's my story and it's a story of somebody who starts with really no critical background and ends up with a very strong critical vision.

PROF. TRUBEK:

Duncan's story is somewhat different because he came to Yale already exposed to critical theories of development which he learned not at Harvard where he was an undergraduate but in France where he had spent a year or two and had followed a French theory and also French politics which were at a particular turbulent period. He had real-world experience in development work and hands-on development work in Africa. So by the time Duncan had gotten to the Yale school before we had any encounters, he was already developing what he calls an anti-imperialist left approach that understood the situation of third world countries as one of economic dominance exercise through the rules of economic life and of course foreign countries playing an important role in that dominance. I think that for Duncan the Yale program created a space to develop an approach that he already was sort of nurturing even before he came to Yale law school and to be able to develop that and apply it to the particular aspects of law and that of course led to CLS so that's Duncan's.

PROF. TRUBEK:

Our stories are the stories of participants Brian's is the story of an observer. He notes that he was exposed to modernization theory itself when he was in college. So you see we're going through three different generations of engagement with this whole material and he came across scholars and self-estrangement when he was in law school thanks to a visiting professor. He doesn't quite say it but there was obviously no critical thought or anything like that at Stanford law school at the time that's in the mid seventies although there was a beginning of law and society discussions there. He tries to put this whole thing in a broader context in which he tries to show that the law and modernization program itself with its original [inaudible 00:47:01] American oriented approach was part of a turn in the American legal liberal establishment that led to things like public interest law and other domestic moves.

PROF. TRUBEK:

He tries to situate that that is the law and modernization program originally in that kind of frame obviously which he describes it and here's a quote, "The reform programs all embrace a moderate and moderately idealistic third way between capitalism and communism but they all fizzled out and that led

to the fragmentation of scholarship." I just want to read you this quote because I think it really captures the whole story, "The law and modernization program helped to kill the antiquated scholarship and politics of the liberal legalist welfare state and the program of reform abroad through modernization. The theories and ideas produced by that challenge did not find winning political sponsors but they played a crucial role in developing critical approaches that helped upgrade legal scholarship and they continue to inspire new generations seeking alternatives to today's complacent establishment theories." I'm happy to have that as the epitaph on the program.

TURNER:

What a legacy! Professor Abel, can you talk about the other three articles?

PROF. ABEL:

I've already talked about my article in a sense because my article is very much a memoir, an intellectual autobiography of the kinds of literature I was reading, the impact that my fieldwork in Kenya had on me and then the courses I was teaching and the articles I was writing when I was in Yale. I was trying to develop a social science cyclical framework that I could use to make sense out of the changes that I was seeing in the primary courts in Kenya that was my field research itself. That's what most of what I did while I was at Yale I wrote about that and then when I left Yale I came to UCLA where I spent the rest of my academic career and the connection between those two experiences was largely the fact that I inherited the law and society review which I edited.

PROF. ABEL:

I also [inaudible 00:49:43] something called African law studies which was a more area studies focused and then I moved on into other fields but always with a law in social science perspective and I was active in critical studies both as a member of the organizing committee and as a participant in virtually all of its meetings. Let me go on to Boa I want to talk about at some length and Afroditi I'll say less about because I know her less well. Boa came to Yale to do a JSD and he came from a very conventional and I believe he would agree, constricted European doctrinal perspective. He had done his legal training in Portugal and then he had gone to Berlin where he had spent a year or two and absorbed and even in more rigid, more narrowly doctrinal approach.

PROF. ABEL:

He came to Yale to actually study with Joe Goldstein and Abe Goldstein to do work on the general part of criminal law, the law of intent, the insanity defense, those kinds of very abstract and largely doctrinal issues. I'm not sure exactly how he moved from there to affiliate with us but he certainly did that and he did also strongly connect with the undergraduate students who are coming from around the world. I should add that Boa came to Yale as not only a Marxist but probably an anti Marxist. He had seen a Marxist regime in east Germany because he had an east German girlfriend and was quite repelled by it and although he had started to read Marx on his own, he certainly did not see himself as a radical. He was very attracted to Brazil as many people in Portugal or in particular because one and maybe both of his grandfathers had lived there and he had very much wanted to see it.

PROF. ABEL:

So he prepared himself for the research by devouring the anthropological literature by connecting with Laura Nader with whom he became quite close and then went off to Brazil and had this transformative experience of living and working in a favela and seeing poverty from the inside and the ways in which a

desperately poor community had created its own legal system outside of the formal legal system and in many ways in opposition to it and the rest is history. That's the base on which Boa built. He went back to Portugal. He ended up in a social science department rather than in the law school. Portugal was in turmoil, both Mozambique and Angola became independent and the dictatorship ended so this was for Boa a transformative experience and I think it's the experience that shaped him for the rest of his life.

PROF. ABEL:

Afroditi I know less about, she is a masterful historian. Like all historians she has read everything that's ever been written and she has this perspective from 30,000 feet of what was happening in American foreign policy and the ways in which law and lawyers were involved in that. I'm not going to try to summarize or encapsulate her article but it is masterful and she will undoubtedly shape her dissertation into a book which will include some of her reflections on the law and modernization program as an instance of the ways in which American law and lawyers interacted with the rest of the world.

TURNER:

You used the word masterful, that is the word I was actually going to use to describe her article and the entire symposium issue. It's really a great gamut of articles that explain what happened from the beginning for the people that were there to the impact it has. So really thank you for going over each one of those articles individually. To wrap up where can people find more of your works?

PROF. ABEL:

Apparently there's a Wikipedia article about me which I never heard about which I think it may be somewhat misleading and then of course my CV and all my publications are on the UCLA law school website. You would be well advised not to try to read through those from beginning to end.

PROF. TRUBEK:

The easiest thing is also the Wisconsin repository under my name on the Wisconsin website is the most comprehensive source.

TURNER:

We'll link to both the UCLA school of law's Professor Able and to the Wisconsin repository for Professor Trubek and we'll also link out to the SSRN page for this article so everyone can find it quickly, download it and read the entire issue which is really wonderful. So Professor Trubek and Professor Abel, thank you both for joining us today. We've been discussing The Short, Happy Life of the Yale Program in Law and Modernization from the Cold War to Comparative Legal Sociology and Critical Legal Studies published in the May-August issue of the Journal of Institutional Studies.

TURNER:

Thanks to everyone for listening. I hope that by now you're subscribed to the Wisconsin Law in Action podcast but if you aren't, you can find us in the Apple iTunes store or on Stitcher or listen to our full archive at [wilawinaction.law.wisc.edu](http://wilawinaction.law.wisc.edu) where we discuss a wide range of legal topics from intellectual property, environmental law. See you next time and happy research.

New Speaker:

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