

John Robinson Wilkins and the Resources of the Law: Testing the Limits of Race, Law and Development, and the American Legal Profession

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In the fall of 1964, my uncle John Robinson Wilkins joined the Berkeley Law School faculty. He was the first black professor in the school's illustrious history and only the second in the entire UC Berkeley system. Tragically, my uncle's time on the Berkeley faculty would be short. In 1970, he was diagnosed with an inoperable brain tumor. After a courageous struggle—in which he re-taught himself how to speak and walk with the unwavering love and support of his indomitable wife, Constance, and his two young children, John and Mariah—my uncle died on December 12, 1976. He was just fifty-one years old.

Although his days on earth were few, his contributions to both the practice and theory of law were many. He pioneered the nascent field of law and development and, along the way, shattered countless assumptions about the limits of race, legal careers, and ultimately the law itself. Unfortunately, outside of my family and a handful of my uncle's remaining colleagues on the Berkeley faculty, few scholars or practitioners are aware of my uncle's work. This is a loss not only for those of us who loved my uncle, but for the field of law he loved so dearly. For, as I attempt to document below, my uncle's approach to mobilizing the full "resources of the law" to tackle "hard" problems of development remains as relevant today as it was when he put forward those ideas half a century ago.

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I.

THE FAMILY BUSINESS

John Robinson Wilkins was born in 1925 in Chicago, Illinois. As the second of his parents' three sons, much of my uncle's life and career was preordained. His father was J. Ernest Wilkins Sr., one of Chicago's most prominent black lawyers, who graduated from the University of Chicago Law School in 1922. His mother was Lucile Robinson Wilkins, an educator who held a master's degree from the University of Chicago. My uncle's early life was shaped by the confluence of his parents' careers. From his mother, my uncle developed a passionate commitment to education, albeit a commitment enforced perhaps more enthusiastically than a small boy would have liked. My grandmother mandated that all three Wilkins boys go to school year-round, propelling my uncle to graduate from high school at the tender age of fourteen. This would have been a significant accomplishment in any other family, black or white. But for my uncle, it was simply expected. His older brother, J. Ernest Jr., had already graduated from the same school at twelve, while my father, Julian, born just eleven months after my uncle, managed to squeak out of high school at a "late" fifteen.

My grandfather had a hand in the career paths of all his sons, guiding his eldest to pursue what he had been told was impossible: mathematics. As a student at the University of Illinois, my grandfather had excelled in the field, eventually graduating with an honors degree. But when he confided in his professors that he hoped to pursue a graduate degree, his mentors politely but firmly informed him that unfortunately there was "no such thing" as a black mathematician in early twentieth century America. Instead, they counseled him to go to law school, where he could earn a respectable living serving "his people." That is exactly what he did. But my grandfather never forgot the opportunity that America's racial code denied him. When it became clear that his eldest son had inherited his facility with numbers, my grandfather pushed J. Ernest Jr. to realize the dream my grandfather had been forced to abandon. And achieve it he did. In 1942, J. Ernest Jr. graduated from the University of Chicago with a degree in theoretical mathematics at the age of nineteen, the second youngest Ph.D. in the school's history. Over the next seven decades, J. Ernest Jr. went on to build a distinguished career that included working on the atomic bomb with Enrico Fermi, managing a nuclear reactor, becoming a distinguished professor at Clark College in Atlanta, and inventing a mathematical proof that still bears his name.

Having ensured that his eldest son would follow the dream he was not able to pursue, my grandfather felt free to guide his two remaining sons into the career that *had* become his life's work. After graduating from the University of Wisconsin, Madison, where they spent four years as roommates and mutual support structure, the younger two Wilkins brothers both enrolled at Harvard Law School in the fall of 1944. They were nineteen and twenty years old, respectively.

II.

THE LIFE OF THE LAW IS NOT LOGIC BUT EXPERIENCE

My uncle loved law school. Letters he wrote to his parents show that he threw himself into his studies. The effort paid off, and at the end of his first year my uncle was selected to serve on the *Harvard Law Review*, becoming only the fourth black student in history to achieve that distinction.

Each of my uncle's three black predecessors on the *Review* had an important impact on his life. William T. Coleman Jr., with whom my uncle served as an editor before Coleman's graduation in 1946, would go on to become the first black law clerk to a justice on the United States Supreme Court, the first black associate hired by a major New York law firm, and a string of other "firsts" throughout a long and distinguished career in both public and private practice.¹ Through Coleman, my uncle glimpsed that it was possible for a black lawyer to integrate even the highest echelons of America's all-white legal establishment.

The impact of the two black students who preceded my uncle and Coleman on the *Review*—Charles Hamilton Houston and William Henry Hastie—was even more consequential. By the time my uncle entered Harvard Law School in the early 1940s, Houston and Hastie had already embarked on building the step-by-step litigation campaign that would eventually culminate in the landmark decision of *Brown v. Board of Education*,² outlawing *de jure* segregation in public schools and eventually in the rest of American society. These towering figures stood as a constant reminder to my uncle of both the capacity to achieve social justice through law and the responsibility of black lawyers to be social engineers of that justice.

Imbued with these examples of black excellence and commitment, my uncle was hungry to experience all of the possibilities of the life of the law, to paraphrase Justice Holmes' famous passage from his iconic book, *The Common Law*.³ Unlike his older brother, J. Ernest Jr., my uncle wanted more than what Holmes (perhaps too) disparagingly called "the axioms and corollaries of a book of mathematics."⁴ He wanted instead to place himself firmly within what Holmes called the "story of [this] nation's development,"⁵ a story that my uncle's

1. See WILLIAM T. COLEMAN, JR. & DONALD T. BLISS, *COUNSEL FOR THE SITUATION: SHAPING THE LAW TO REALIZE AMERICA'S PROMISE* (2010).

2. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954). For a history of Houston's step-by-step litigation campaign, see RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND AMERICA'S STRUGGLE FOR EQUALITY* (1975).

3. See OLIVER WENDELL HOMES, JR., *THE COMMON LAW* 3 (1881) ("The life of the law has not been logic; it has been experience.").

4. *Id.* at 3 ("The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.").

5. *Id.*

heroes—Coleman, Houston, and Hastie—were attempting to “bend toward justice.”⁶

But the arc of the moral universe was still a long way from reaching this hoped-for destination. And so, the traditional rules of American Apartheid—and the expected norms of familial duty—exerted their powerful gravitational pull. Following graduation, my uncle reluctantly returned to Chicago to join his father’s law practice representing black individuals and small black businesses. He would serve the same clientele that my grandfather’s well-meaning professors had urged him to choose four decades before, the only viable clients in what was still little more than a “starvation profession” for black lawyers.⁷

III.

A CHANGE IS GONNA COME⁸

Even when my uncle returned to his father’s traditional law practice, however, he could not help but feel that change was in the air. In 1948, President Harry Truman issued an executive order officially ending discrimination in the armed services.⁹ Propelled perhaps by hope created by Truman’s initiative, that same fall, my uncle applied for the prestigious and highly competitive Bigelow Fellowship at the University of Chicago Law School.¹⁰ The program serves as a training ground for bright young law graduates interested in a career teaching law. My uncle’s acceptance there would be yet another critical step in his quest to escape the limited horizons ordained for him by America’s racial code.

Although I have no evidence to prove it, I have always suspected that my uncle was able to become the first black Bigelow Fellow because the University of Chicago Law School had cracked an even more important racial barrier the

6. The phrase is attributed to Dr. Martin Luther King, although King probably borrowed it from a sermon given by the abolitionist minister Theodore Parker. See Mychal Denzel Smith, *The Truth About ‘The Arc of the Moral Universe,’* HUFFINGTON POST (Jan. 18, 2018), https://www.huffpost.com/entry/opinion-smith-obama-king_n_5a5903e0e4b04f3c55a252a4. [<https://perma.cc/6YD2-7K3P>].

7. See GERALDINE R. SEGAL, *BLACKS IN THE LAW: PHILADELPHIA AND THE NATION* 4 (1983) (noting that the law was often called a “starvation profession” for black practitioners during this period).

8. I borrow the phrase from Sam Cooke’s famous civil rights anthem recorded in 1964. See David Cantwell, *The Unlikely Story of “A Change is Gonna Come”*, NEW YORKER (Mar. 17, 2015), <https://www.newyorker.com/culture/culture-desk/the-unlikely-story-of-a-change-is-gonna-come> [<https://perma.cc/D65V-A436>] (describing the song as coming “to symbolize the ways in which American popular music intersected with and helped sustain the civil-rights movement”).

9. See DeNeen L. Brown, *How Harry S. Truman Went from Being a Racist to Desegregating the Military*, WASH. POST (July 26, 2018), <https://www.washingtonpost.com/news/retropolis/wp/2018/07/26/how-harry-s-truman-went-from-being-a-racist-to-desegregating-the-military> [<https://perma.cc/FM34-9QSW>].

10. See Robin I. Mordfin, *The Evolution of the Bigelow Program*, U. CHI. L. SCH. (Apr. 6, 2011), <https://www.law.uchicago.edu/news/evolution-bigelow-program> [<https://perma.cc/BHF5-8S2Y>] (noting that “[f]rom the beginning, the writing and research tutorial program was taught by graduates of the world’s best law schools” and that “the Bigelow program has always afforded the Fellows a tremendous academic opportunity”).

year before. In 1947, Chicago hired Robert W. Ming, the first black law professor at any historically white law school in the United States.¹¹ When he was appointed, Ming was already a distinguished civil rights lawyer who had worked with Houston and Hastie on a number of important cases, including *Shelley v. Kraemer*, which outlawed state judicial enforcement of the racially restrictive covenants that effectively prevented blacks from living in white neighborhoods.¹² Given his deep commitment to integration, it seems plausible that Ming would have worked to ensure that his new employer's previously all-white Bigelow program would be open to hiring a black lawyer, particularly one whose *Harvard Law Review* pedigree was at least as good as that of the typical Fellow accepted into the program. At a minimum, Ming's presence on the faculty must have made it easier to bring my uncle into the Bigelow program. And as so often was the case for my uncle, this opportunity opened the door to an experience that would play an important role in shaping his career.

In October 1949, fresh off his executive order desegregating the armed services, President Truman turned his attention to integrating another all-white sector of American society: the federal judiciary. Taking advantage of a newly created position, President Truman selected William Henry Hastie to fill a recess appointment to the United States Court of Appeals for the Third Circuit, making Hastie the first black lawyer to serve on a federal appellate court. Hastie's stellar academic credentials and prior service as judge on the United States District Court for the Virgin Islands from 1937 to 1939—where he was the first black judge in the entire federal system—made him an unassailable choice for this position. To support him in this historic role, Judge Hastie selected my uncle—whose Bigelow Fellowship, when added to his own stellar academic record, rendered him similarly unimpeachable—to be his first law clerk.

Clerking profoundly shaped the rest of my uncle's career. By spending a year working closely with Judge Hastie, my uncle realized that alongside becoming a full-time civil rights lawyer like Charles Hamilton Houston, or breaking barriers in the private sector like William Coleman, there was a new way for a black lawyer to demonstrate excellence and serve the cause of racial justice: public service, particularly in the federal government. Once again, however, he discovered that he would have to wait for the federal government—and others—to welcome his service.

IV.

WHAT YOU CAN DO FOR YOUR COUNTRY

Normally, lawyers who serve as law clerks for a federal appellate judge have no shortage of job opportunities with prestigious law firms waiting for them

11. See Derrick Bell, *Foreword: The Civil Rights Chronicles*, 99 HARV. L. REV. 4, 14 n.34 (1985).

12. See Shelley Ross Saxer, *Shelley v. Kramer's Fiftieth Anniversary: A Time for Keeping; a Time for Throwing Away*, 47 U. KAN. L. REV. 61, 61–64 (1998).

at the completion of their term. But as William Coleman discovered after completing his clerkship with Justice Felix Frankfurter in 1947, this typical pattern did not apply to a black law clerk. Notwithstanding Coleman's credentials, not a single law firm in his native Philadelphia would hire Coleman.¹³ My uncle had no reason to think that things would be any different for him, either in the City of Brotherly Love, where Judge Hastie sat, or in my uncle's native Chicago. So, after completing his clerkship with Judge Hastie, my uncle returned to practice law with his father and my father, who graduated from Harvard Law School in 1949 after serving in the army. Together they formed Wilkins, Wilkins & Wilkins, arguably the first black "law firm" in Chicago.¹⁴

But this was not the kind of history my uncle was interested in making, particularly as history continued to be made all around him in the field of civil rights. By the time my uncle returned home to Chicago in 1951, the cases that would eventually culminate in *Brown v. Board of Education* were working their way through the federal courts. As the Supreme Court prepared to hear oral argument in 1952, President Truman's Department of Justice (DOJ) shocked many observers by filing a brief in favor of desegregation.¹⁵ That same year, my uncle decided to test the DOJ's willingness to desegregate its own ranks and applied for a position in the Department's Appellate Section. Much to his surprise and delight, his application was accepted, and he moved to Washington, beginning a career in public service that defined the rest of his life.

After two years in the Appellate Section, my uncle accepted a new position at DOJ that proved even more consequential. In 1954, he agreed to become the legal advisor to the newly created International Cooperation Agency, a program designed to use foreign aid to expand U.S. influence in new nations emerging from the shadows of colonialism. Once again I do not have direct evidence but, as with his acceptance into the Bigelow program, neither the destination nor the timing of my uncle's transfer appear coincidental. As the DOJ's brief in *Brown* made abundantly clear, the country's continued adherence to Jim Crow was

13. See Chris Mondics, *Bill Coleman's Autobiography Tells of Obstacles and Opportunities*, PHILADELPHIA INQUIRER, (June 15, 2010), at A1, https://www.inquirer.com/philly/news/homepage/20100615_Bill_Coleman_s_autobiography_tells_of_obstacles_and_opportunities.html [<https://perma.cc/EQ2Y-ZDB7>]. As Coleman recounts, it was only after Justice Frankfurter directly intervened that the New York law firm of Paul, Weiss, Rifkind, Wharton & Garrison—a firm self-consciously composed of Jewish and Catholic lawyers located on Park Avenue as opposed to Wall Street—agreed to hire Coleman as an associate.

14. See David B. Wilkins, "If You Can't Join 'Em, Beat 'Em!": *The Rise and Fall of the Black Corporate Law Firm*, 60 STAN. L. REV. 1733, 1740 (2008) (reporting that black lawyers were overwhelmingly solo practitioners until "well into the 1970s"). As a sign of how proud my father was of this accomplishment, my father continued to use the name Wilkins, Wilkins & Wilkins long after he was the only Wilkins—and the only lawyer—at the firm.

15. See Aryeh Neier, *Brown v. Board of Ed: Key Cold War Weapon*, REUTERS (May 14, 2014), <http://blogs.reuters.com/great-debate/2014/05/14/brown-v-board-of-ed-key-cold-war-weapon> [<https://perma.cc/AU9P-T8JR>] (noting that the Truman administration filed a Friend of the Court brief calling for an end to *de jure* segregation in public schools and, by extension, in public accommodations as well).

becoming a major issue in American foreign policy. “The existence of discrimination against minority groups in the United States has an adverse effect upon our relations with other countries,”¹⁶ the government warned, bluntly concluding that “[r]acial discrimination furnishes grist for the Communist propaganda mills.”¹⁷

The government’s concern that racial discrimination in the U.S. was undermining America’s standing in new nations—of what was then commonly called the Third World—was no passing fancy. As Mary Dudziak documents in her brilliant book, *Cold War Civil Rights*, America and the Soviet Union were jockeying to win the hearts and minds of post-colonial nations in Asia, Africa, and Latin America, and “efforts to promote civil rights within the United States were consistent with and important to the more central U.S. mission of fighting world communism.”¹⁸ In light of this linkage, what could better convey the sincerity of America’s commitment to racial justice than assigning a black lawyer to support the country’s new aid initiative for developing countries? The fact that my uncle was appointed to this position the same year that *Brown* was decided only reinforces my hypothesis.

Indeed, that very same year, my grandfather, J. Ernest Wilkins Sr., was also swept into public service. In 1954, President Eisenhower appointed the senior Wilkins to serve as Assistant Secretary of Labor, making him, according to numerous press reports, the first black sub-cabinet level official in the nation’s history.¹⁹ Significantly, my grandfather’s portfolio was “international labor affairs.” He routinely represented the United States at the United Nation’s International Labor Organization (ILO), where the United States and the Soviet Union clashed over labor issues. As press accounts from the day underscore, the fact that my grandfather was a “prominent Negro lawyer” was viewed by both the administration and the public as a significant advantage to the United States in pursuing its objectives.²⁰

For most black Americans, American foreign policy was relevant primarily for the effect it had on civil rights—an effect, as Dudziak argues, that both

16. *Id.*

17. *Id.*

18. MARY L. DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* 12 (2000).

19. See CAROLYN MARIE WILKINS, *DAMN NEAR WHITE: AN AFRICAN AMERICAN FAMILY’S RISE FROM SLAVERY TO BITTERSWEET SUCCESS* 16–17 (2010). [hereinafter WILKINS, *DAMN NEAR WHITE*]. As Wilkins goes on to point out, these press accounts may not have been “strictly accurate” given that “William F. Lewis, an African American, had served as assistant secretary general during the Taft administration.” *Id.* at 115. However, my grandfather was the first black person to ever participate in a cabinet meeting. *Id.* at 120–21. In the interest of full disclosure, Carolyn Wilkins is my beloved older sister.

20. See *id.* at 119 (describing my grandfather’s work at the ILO and reporting that “[a]dministration officials were happy to display an African American to the world as an antidote to communist propaganda”).

promoted, but also limited, progress on racial equality.²¹ That was certainly true for my grandfather. Despite his eloquent advocacy at the ILO, J. Ernest Wilkins Sr. resigned in November 1958, to be replaced by Henry Cabot Lodge's thirty-one-year-old son, who had been my grandfather's deputy. Although the reasons for my grandfather's resignation remain unclear, many speculated that he was pressured to leave because of his frequent clashes with administration officials and other prominent political and business leaders over civil rights, including with his boss, Secretary of Labor James P. Mitchell.²² Nevertheless President Eisenhower asked my grandfather to stay involved with federal service as a member of the President's newly established domestic Civil Rights Commission, where his stature as a prominent Negro lawyer remained valuable.²³

For my uncle, the long-term impact of Cold War Civil Rights tended in the opposite direction. Rather than viewing the Third World as a bargaining chip to be deployed as a means for achieving domestic civil rights, my uncle found himself increasingly drawn to the fate of newly emerging nations as an independent moral concern. So much so that, just as his father was withdrawing from the world stage, my uncle plunged headfirst into America's new development policy, accepting a position as the International Cooperation Agency's Regional Legal Advisor for India, Nepal, Afghanistan, and Pakistan. Based in New Delhi, he spent the next two years flying around South Asia in small planes checking on the status of U.S. development projects in the region.

By the time he returned to Washington in 1960, my uncle had found his life's calling. And unlike those times before when he emerged from life-altering experiences at Harvard Law School, the Bigelow Fellowship, and his clerkship with Judge Hastie, this time, the country was finally ready to give him the opportunity to pursue his ambitions. Many factors undoubtedly contributed to this new welcoming climate, but John F. Kennedy's election in November 1960 certainly played an important role. In his inaugural address, President Kennedy famously challenged every American to "ask not what your country can do for you – ask what you can do for your country."²⁴

21. See DUDZIAK, *supra* note 18, at 13 (noting that "the Cold War would frame *and thereby limit* the nation's civil rights commitment") (emphasis added).

22. See WILKINS, DAMN NEAR WHITE, *supra* note 19, at 137 ("[I]nsiders speculated that the labor secretary's dismissal of J. Ernest was a way of indicating that he had 'had enough' of the civil rights issue.").

23. See *Lodge's Son Succeeds Wilkins in Labor Post*, N.Y. TIMES (Nov. 9, 1958), at 72 (noting that "Mr. Wilkins, a Chicago Negro lawyer, will continue to serve as a member of the President's Civil Rights Commission"). A few months later, my grandfather, Ernest Wilkins Sr., died of a massive heart attack. Although there was no formal connection to his forced resignation, as my sister concludes, "the traumatizing events of the past year" were undoubtedly a contributing factor. See WILKINS, DAMN NEAR WHITE, *supra* note 19, at 152.

24. John F. Kennedy, U.S. President, Inaugural Address (Jan. 20, 1961) (transcript available in the John F. Kennedy Presidential Library and Museum), <https://www.jfklibrary.org/learn/about-jfk/historic-speeches/inaugural-address> [<https://perma.cc/H6BR-XANV>].

When President Kennedy created the Agency for International Development (AID) in 1961, my uncle leapt at the opportunity to serve. Over the next two years, he rose in the ranks at AID, becoming the Agency's Acting General Counsel in 1962, and its permanent General Counsel in 1963. That same year, my uncle received the Arthur S. Flemming Award as one of the "ten outstanding young men in government."²⁵ After many years of searching for a way to unite his "avocation with [his] vocation"—in the words of Robert Frost, one of my uncle's and my father's favorite poets—my uncle's path now seemed clear: his "two eyes [could] make one in sight" as the general counsel to an agency whose mission was to champion a new form of civil rights on the global stage.²⁶

Then President Kennedy was assassinated. For my uncle, it must have seemed as though the unified life in the law that he had worked so hard to attain since his days at Harvard Law School would be denied to him yet again. Instead, this tragedy turned out to be the catalyst for a life he had long since stopped believing possible.

V.

BERKELEY CALLS

The door to this new life was opened by Frank Newman, the fifth Dean of the University of California, Berkeley, School of Law. Shortly after President Kennedy's assassination, Dean Newman called my uncle to see whether he would be interested in joining the Berkeley faculty. My uncle was thrilled, and after a few conversations and meetings, in the summer of 1964, John Robinson Wilkins became the first black tenure-track professor on the Berkeley Law School faculty, and only the second black professor at any historically white law school since Robert W. Ming.²⁷

25. See Richard M. Buxbaum et al., *John Robinson Wilkins, Law: Berkeley*, U. OF CAL.: IN MEMORIAM (Sept. 1978), [http://texts.cdlib.org/view?docId=hb4q2nb2nd&doc.view=frames&chunk.id=div00072&toc.depth=1&toc.id=\[https://perma.cc/52US-VXV9\]](http://texts.cdlib.org/view?docId=hb4q2nb2nd&doc.view=frames&chunk.id=div00072&toc.depth=1&toc.id=[https://perma.cc/52US-VXV9]).

26. For Robert Frost's famous quote, see ROBERT FROST, *TWO TRAMPS IN MUD TIME* (1934). For AID's mission statement, see U.S. AID MISSION AND VALUES, <https://www.usaid.gov/who-we-are/mission-vision-values> [https://perma.cc/EX3R-RUDU] ("On behalf of the American people, we promote and demonstrate democratic values abroad, and advance a free, peaceful, and prosperous world.").

27. In my uncle's obituary, the New York Times wrongly identified him as "the first black professor at any major American law school." *John R. Wilkins, Professor of Law and Former A.I.D. Counsel, Dies*, N.Y. TIMES (Dec. 14, 1976), <https://www.nytimes.com/1976/12/14/archives/john-r-wilkins-professor-of-law-and-former-aid-counsel-dies.html> [https://perma.cc/DK7K-HWJX]. As we know already, however, that honor belongs to Robert W. Ming. Professor Derrick Bell, who sometimes also is credited with being the first black law professor at a major historically white law school, was not hired until 1970. Fred A. Bernstein, *Derrick Bell, Law Professor and Rights Advocate, Dies at 80*, N.Y. TIMES (Oct. 6, 2011), <https://www.nytimes.com/2011/10/06/us/derrick-bell-pioneering-harvard-law-professor-dies-at-80.html>. [https://perma.cc/Y4PN-3HK7].

It was not surprising that my uncle was interested in becoming a law professor. In many ways, he had been preparing for this opportunity since law school, amassing all the credentials—law review, the Bigelow Fellowship, a prestigious appellate court clerkship—typically held by aspiring law professors. More fundamentally, joining the legal academy was a chance finally to fuse his mother’s commitment to education and his father’s reverence for the law with his own passionate desire to break barriers and contribute to the cause of social justice, both nationally and globally. Moreover, having spent the prior twelve years in government—the last six at AID working to shape the role that the United States should play in the development of new post-colonial states—my uncle knew that he had something to say and that a tenure-track position at one of the country’s most prestigious law schools would give him the time and the resources to say it.

What was more surprising given the history of elite American legal education was that Berkeley was so willing to give him that platform. This welcoming tone emanated from the top. By the 1960s, Dean Newman was, in the words of a tribute later written about him by Professors David Caron, Robert Cole, and Thomas Reynolds, “a leading figure in the development of the field of human rights.”²⁸ Moreover, unlike many of the scholars of his day (or for that matter, of today), Dean Newman “was convinced that only a combined activist and academic approach [to addressing human rights issues] could be successful.”²⁹ With the support of a cadre of other distinguished faculty—including Professor Sho Sato, who joined the Berkeley faculty in 1955 as the first Japanese American law professor at any major law school,³⁰ and Professor Richard Buxbaum, who quickly became a leader in the field of international law after joining the faculty in 1961, where he still teaches to this day³¹—Dean Newman was determined to make Berkeley a law school that showed “students and practitioners enhanced possibilities for using law for social justice and reform.”³² Dean Newman found my uncle an appealing recruit, and in turn, my uncle saw a future for himself at Berkeley.

28. See David D. Caron, Robert H. Cole & Thomas H. Reynolds, *Frank C. Newman, Law: Berkeley, U. OF CAL.: IN MEMORIAM* (1996), <http://texts.cdlib.org/view?docId=hb0z09n6nn;NAAN=13030&doc.view=frames&chunk.id=div00048&toc.depth=1&toc.id=&brand=calisphere>. [<https://perma.cc/S7G3-B2JD>].

29. *Id.*

30. See *Sho Sato Biography*, SHO SATO PROGRAM IN JAPANESE & U.S. L. <https://www.law.berkeley.edu/research/institute-for-legal-research/sho-sato-program-in-japanese-and-us-law/sho-sato-biography/>. [<https://perma.cc/F6HG-XY3M>]. As a student, Professor Sato had to leave Berkeley to accompany his family to an internment camp during the war, first to Los Angeles and then to Colorado. He finished his degree at the University of Denver, before joining the army, attending Harvard Law School, and practicing law in the California Attorney General’s office. He returned to teach at Berkeley Law in 1955.

31. John Hickey, *Buxbaum Still Going Strong After Seeing Berkeley Through Years of Turmoil*, U.C. BERKELEY NEWS (Feb. 14, 2019), <https://news.berkeley.edu/2019/02/14/buxbaum-still-going-strong-after-seeing-berkeley-through-years-of-turmoil> [<https://perma.cc/E7GS-NNLH>].

32. Caron, Cole & Reynolds, *supra* note 28.

VI.

EXPLORING THE POSSIBILITIES—AND LIMITS—OF THE LAW

It didn't take my uncle long to demonstrate that Dean Newman's faith in him was well placed. Three years into his new life and role, my uncle published his first major article, entitled "Legal Norms and International Economic Development: The Case of the Cuba Shipping Restrictions in the United States Foreign Assistance Act," in the *California Law Review*.³³ The article boldly argued that the Foreign Assistance Act of 1961's condition on U.S. developmental assistance—that the recipient nation needed to take necessary steps to ensure that any flagged ship from that country would not engage in trade with Cuba—was illegal.³⁴

His argument was complex, and I will not repeat it here. Suffice it to say that in reaching this conclusion, my uncle drew on an astonishingly broad array of sources, including close textual and doctrinal analysis of the relevant statutes and major cases,³⁵ legal, political, and economic theories of development,³⁶ and a novel analogy between foreign aid and the growing welfare rights movement of the late 1960s.³⁷ Marshalling these authorities, my uncle concluded (1) that the U.S. and other developed countries have an obligation to aid the development of less developed countries, and (2) that conditioning necessary aid on supporting a political objective unconnected to the receipt of that assistance (such as supporting the economic blockade of Cuba) amounted to an "unconstitutional condition" that infringes the rights of the recipient nations.³⁸

Beyond being bold and imaginative, the argument that my uncle set out in his first article was also quite brave. As many of his colleagues were undoubtedly aware, the Cuban blockade and the resulting de-escalation of the Cuban Missile

33. John R. Wilkins, *Legal Norms and International Economic Development: The Case of the Cuba Shipping Restrictions in the United States Foreign Assistance Act*, 55 CALIF. L. REV. 977 (1967).

34. *Id.* at 978 (arguing that the international community rightly viewed the Cuba shipping restrictions as "disrupting this community's essential interests," and that "a community which agrees that certain behavior disrupts its essential interests should pronounce such behavior illegal").

35. *Id.* at 1003–10 (closely examining the meaning and significance of statutes and precedents).

36. *Id.* at 980–99 (analyzing the "facts and aid values" of development).

37. *Id.* at 1010–19 (making the analogy).

38. *Id.* As the article concludes, the shared consensus among nations in favor of development "precludes, for legal reasons, the imposition of transfer conditions which are at once irrelevant to development, unilaterally determined, and politically exacerbative." *Id.* at 1019. As I write this article in the wake of the controversy involving the impeachment of President Donald J. Trump, I cannot refrain from noting that my uncle's first article about the illegality of the Kennedy administration's decision to withhold foreign aid from countries that refused to comply with the Cuba embargo was remarkably prescient. After all, if, as my uncle argued, it is unlawful for an administration to withhold badly needed developmental assistance authorized by Congress for what the article concedes is a legitimate governmental objective—supporting American foreign policy against the spread of communism—then *ipso facto* it should be unlawful to withhold authorized military aid in order to achieve the president's private political objectives. See generally Emily Cochrane et al., *GAO Report Says Trump Administration Broke Law in Withholding Ukraine Aid*, N.Y. TIMES (Jan. 17, 2020), <https://www.nytimes.com/2020/01/16/us/politics/gao-trump-ukraine.html> [https://perma.cc/3J84-R28B].

Crisis was widely considered President Kennedy's greatest foreign policy achievement.³⁹ The fact that my uncle, a former member of the Kennedy administration, was declaring illegal an aspect of the enforcement mechanism meant to preserve the blockade could not have been lost on his readers. By putting forward this argument—especially as an untenured assistant professor in his first published article—my uncle made clear his intention to mobilize the resources of the law to benefit the cause of economic development around the world that he had championed at AID, even if it meant challenging some of the established orthodoxies of the friends who had supported him.

My uncle's next scholarly project underscores just how far he was willing to take this commitment. In the summer of 1969, my uncle received a grant from Berkeley Law's International Studies Program to spend the summer at the Secretariat of the United Nations Conference on Trade and Development (UNCTAD) in Geneva, Switzerland. In addition to working closely with the staff of the Secretariat and visiting delegations, his main goal for the summer was to complete a draft of a new article that would build on *Legal Norms* to develop a general theory about the responsibility of what he preferred to call "rich" nations to assist in the development of "poor" ones.⁴⁰ The explicit objective of this new project, entitled *UNCTAD Preferences and the Resources of the Law*, was to justify UNCTAD's mission of persuading rich countries to open their markets to goods from poor countries as a crucial form of development assistance, without requiring that poor nations reciprocate by allowing rich countries similar access to their markets.⁴¹ As my uncle made clear in the first few pages of his draft, the issue had taken on "additional significance," given the "apparent uncertainties within the Nixon Administration with respect to following through" on its prior commitment to support this policy.⁴²

The real purpose of the project, however, was even more ambitious than justifying why the United States should honor its commitment to UNCTAD.⁴³ Instead, my uncle aimed to use this specific debate to make a much broader point

39. See, e.g., ROBERT F. KENNEDY, THIRTEEN DAYS: A MEMOIR OF THE CUBAN MISSILE CRISIS (1999).

40. See John R. Wilkins, UNCTAD Preferences and the Resources of the Law, 1 n.1 (1970) [hereinafter Wilkins, Resources] (unpublished manuscript) (on file with the author) (exploring the difficulty of terminology in this area, and arguing that a "rich-poor dichotomy, though unsatisfactory, is the least value laden" way to characterize the two groups of states that he is addressing, and preferable to the developed-underdeveloped dichotomy used by other scholars). As indicated below, in my own work I prefer terms such as "emerging economies" and "rising powers" to refer to countries such as India, Brazil, and China, and "North-South" or "established-emerging" to refer to the contrast between these states and countries such as the United States and the United Kingdom. Still the danger of value judgments identified by my uncle persists for law and development scholars today.

41. See *Id.* at 2 (noting that "[b]y the time of the second Conference (UNCTAD-II) in 1968, there had been 'unanimous agreement in favour of the early establishment of a mutually acceptable system of generalized nonreciprocal and nondiscriminatory preferences which would be beneficial to [poor] . . . countries'") (references omitted).

42. *Id.* at 3.

43. *Id.*

about law and legal theory. His ultimate goal was “to examine the usefulness of law in relation to a development problem”—or, as he put it even more bluntly later in the same paragraph, just in case anyone missed the true import of what they were about to read: “I will state now and repeat from time to time that my central purpose is above all to determine whether or not understanding of a difficult problem is promoted by law talk.”⁴⁴

Tragically, we will never know my uncle’s final answer to this trenchant question. In 1970, before he was able to submit the article for publication, he was stricken with a brain tumor. His handwritten notes indicate that he was revising the article up until his illness. The extensive draft he left behind provides a rich account of the “resources” in the law that my uncle believed could be deployed to evaluate “the resource-sharing component of the problem of economic development.”⁴⁵ As scholars and lawyers know, this is a question that continues to hang over the field of law and development to this day. It is therefore worth taking a moment to explore the answer my uncle was developing in *UNCTAD and the Resources of the Law*, and its relevance for contemporary debates.

One way to evaluate the continuing importance of my uncle’s argument is to compare it to the most famous critique of the usefulness of “law talk” to the field of development, written by the socio-legal scholars David Trubek and Marc Galanter in 1974. In their celebrated article, entitled *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*,⁴⁶ Trubek and Galanter argued that the legal development assistance projects funded by U.S. government entities—most notably AID—to improve legal education and the legal profession in developing countries were fundamentally flawed because they assumed that the U.S. model of “liberal legalism” could and should be exported to the “Third World.”⁴⁷ Experience in developing countries, Trubek and Galanter argued, demonstrates that these concepts not only often cannot be exported but shouldn’t be because liberal legalism in the United States has not been nearly as successful as its proponents claim.⁴⁸ This realization, the authors argued, has led scholars into a profound

44. *Id.* at 1 (insert A-1). Because the draft was written on a typewriter, my uncle often used “inserts” to add new material while editing. From his notation, it is clear that the quoted material was intended to be part of the article’s first paragraph.

45. *Id.* at 3.

46. David M. Trubek & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 1974 WIS. L. REV. 1062 (1974).

47. *See id.* at 1073–74. As the authors note, Trubek was personally familiar with AID’s efforts to fund legal education reform projects in Brazil, having overseen an ambitious project funded by AID and the Ford Foundation to “teach Brazilian lawyers with the use of such U.S. teaching techniques as the ‘Socratic’ discussion of cases, texts and legislative materials, the problem method, and study of the social sciences.” *Id.* at 1066 n.13. Ironically, Trubek was in a position to oversee this project because my uncle had hired him as an Attorney-Advisor at AID when my uncle was general counsel in 1962. As I indicate below, this is not the last of the ironic coincidences involving David Trubek and my uncle’s legacy.

48. *Id.* at 1080–83.

sense of “estrangement” from their prior support of law as a tool for development.⁴⁹ *Scholars in Self-Estrangement* continues to be one of the most influential articles ever written on law and development.⁵⁰

UNCTAD and the Resources of the Law was written four years before Trubek and Galanter’s important paper. Yet the argument my uncle advanced in this unpublished manuscript anticipates their critique and partially answers it. As my uncle conceded, “law talk” might indeed be impotent or counterproductive if what we mean by law is solely “logic of legal argumentation.”⁵¹ Although my uncle did not eschew this kind of close legal analysis—for example, the draft contains an extensive discussion of the relevance of the doctrine of “estoppel” in international law⁵²—he also insisted that the boundaries of what should constitute “law talk” are far more capacious than the kind of liberal legalism that Trubek and Galanter critiqued in *Scholars and Self-Estrangement*.

To prove this point, my uncle cited an array of sources even more breathtakingly inter-disciplinary than those in *Legal Norms*, including:

- The Swedish sociologist Gunnar Myrdal, whose then recent book *Asian Drama: An Inquiry Into the Poverty of Nations*⁵³ provides, as my uncle argued, “an important resource . . . in our evaluation of the trade preferences claim” by focusing attention on “the goals which at once underlie the UNCTAD claims and characterize its claimants;”⁵⁴
- The French anti-colonialist theorist Frantz Fanon, whose 1961 book *The Wretched of the Earth*⁵⁵ exposes what my uncle characterized as the “‘facts’ particularly relevant in ‘describing’ aspects of the ‘real’ forces motivating the UNCTAD petitioners” in their request for trade preferences;⁵⁶
- The legal scholar Edward Levy, whose argument in his

49. *Id.* at 1064 (arguing that this criticism has “led these scholars truly into estrangement from themselves” and believing that “[i]f they are to be true to their ideals and values, they feel they must express skepticism about, if not condemnation of, the assistance programs; but in doing so they must condemn the results of their own actions, past and present, and attack the very agencies they must turn to for individual funding and the major support needed if the field [of law and development] is to become institutionalized”).

50. See Ruth Buchanan, *A Crisis and its Afterlife: Some Reflections on ‘Scholars in Self-Estrangement’*, in CRITICAL LEGAL PERSPECTIVES ON GLOBAL GOVERNANCE (Gráinne de Búrca et al. eds., 2014) (reporting that the article may be the most cited work in the history of the field of law and development).

51. Wilkins, Resources, *supra* note 40, at 151.

52. See *id.* at 80–105 (discussing the strengths and weaknesses of the “estoppel” argument in international law).

53. GUNNAR MYRDAL, ASIAN DRAMA: AN INQUIRY INTO THE POVERTY OF NATIONS (1968) (documenting Myrdal’s ten-year study of poverty in Asia). As my uncle noted, Myrdal’s prior masterful study of American race relations is similarly instructive. See GUNNAR MYRDAL, AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY (1944).

54. Wilkins, Resources, *supra* note 40, at 34.

55. FRANTZ FANON, THE WRETCHED OF THE EARTH (1961).

56. Wilkins, Resources, *supra* note 40, at 37.

influential text *An Introduction to Legal Reasoning*⁵⁷ that “the appeal of an analogy is not logical but ‘felt’” provides critical support for my uncle’s claim that rich nations owe the same kinds of duties to poor nations that they owe to their own citizens;⁵⁸

- Harvard Law School’s influential dean Roscoe Pound, whose theory of “sociological jurisprudence” articulated in his book *Social Control Through Law*⁵⁹ provides in my uncle’s words, a way to “move the law to perform the conflict resolving function in the way it often claims to perform it but, with respect to the frontier problems of the law [such as its role in development], it in fact does so only sporadically;”⁶⁰
- Legal theorists H.L.A. Hart and Lon Fuller, whose classic debate carried out in their respective seminal books *The Concept of Law*⁶¹ and *The Morality of Law*⁶² underscores that the law is, as my uncle insisted, a “very highly developed and disciplined ‘if-then’ process” and that a lawyer should therefore be “(a) a craftsman in dealing with formal and other evidences of *why* a particular ‘if’ should be chosen, at a particular time and place, and (b) a student of the efficacy of particular ‘thens,’ as they have worked out in practice;”⁶³
- A wide range of development economists, including John Pincus⁶⁴ and Sidney Weintraub,⁶⁵ whose work, my uncle conceded, “asked the best questions . . . and have provided the best answers” on development policy,⁶⁶ but whose analysis can also “blind us” to the fact that “the concept [of efficiency] was invented for human ends and that it is always open to us to posit values more significant than efficiency.”⁶⁷ This is particularly true in inherently political areas such as development policy, where “the resources of the law can better cope with the irrationalities of men’s behavior, in its seeing and in its doing, than can the science of economics;”⁶⁸
- Philosophers John Rawls and Ronald Dworkin, whose then

57. EDWARD H. LEVI, *AN INTRODUCTION TO LEGAL REASONING* (1948).

58. Wilkins, Resources, *supra* note 40, at 44.

59. ROSCOE POUND, *SOCIAL CONTROL THROUGH LAW* (1942).

60. Wilkins, Resources, *supra* note 40, at 60.

61. H.L.A. HART, *THE CONCEPT OF LAW* (1961).

62. LON L. FULLER, *THE MORALITY OF LAW* (1964).

63. Wilkins, Resources, *supra* note 40, at 61 (original emphasis).

64. See JOHN PINCUS, *TRADE, AID AND DEVELOPMENT: THE RICH AND POOR NATIONS* (1968).

65. See SIDNEY WEINTRAUB, *TRADE PREFERENCES FOR LESS-DEVELOPED COUNTRIES* (1968).

66. Wilkins, Resources, *supra* note 40, at 75.

67. *Id.* at 77.

68. *Id.* at 78.

recent work on “justice as fairness”⁶⁹ and “the model of rules”⁷⁰ bolstered my uncle’s core claim that the law must be understood through its underlying principles, which in the context of development means “discern[ing] in the conflicting behaviors of rich and poor nations principles different from, perhaps deeper than, those that have found expression in the ‘positive law’ but which have some of its imperative quality;”⁷¹ and

- The work of political scientists,⁷² legal realists,⁷³ and cognitive psychologists,⁷⁴ which my uncle argued highlights the importance of creating a “different conception of the role of the lawyer,”⁷⁵ one where the lawyer takes a “legislative view.”⁷⁶ This involves seeing themselves as a “social engineer”⁷⁷ and mobilizing “new rhetorics”⁷⁸ from related disciplines to assume “the role of [a] policy evaluator who has been made sensitive, by dispute resolution in adjudicatory contexts, to the possibilities and pitfalls of such evaluations.”⁷⁹

Even more remarkable than the breadth of these sources, however, is the degree to which they all anticipated arguments now common in contemporary debates about the proper understanding of the resources of the law. Indeed, a wide range of legal scholars now make arguments broadly similar to the ones that my uncle raised in *UNCTAD and the Resources of the Law*, including:

- Yves Dezalay and Bryant Garth, who build on Myrdal’s work to explain the role of law in development in their brilliant book

69. See John Rawls, *Justice as Fairness*, 67 PHIL. REV. 164 (1958). Rawls refined and expanded the ideas presented in this early article into a book, which has become one of the most influential texts in legal philosophy. See JOHN RAWLS, *A THEORY OF JUSTICE* (1971).

70. See generally Ronald M. Dworkin, *The Model of Rules*, 35 U. CHI. L. REV. 14 (1967).

71. Wilkins, Resources, *supra* note 40, at 139.

72. See Albert Broderick, *Hariou’s Institutional Theory: An Invitation to Common Law Jurisprudence*, 4 SOLICITOR QUARTERLY 281 (1965).

73. See POUND, *supra* note 59.

74. Unfortunately, the footnotes accompanying this last section of the paper have been lost, but his references in the text to the fact that “the convictions and actions of men are very much the consequence of the assembly before them of ‘seats of argument’ or organization of data and arguments so that the issue is seen in certain terms available for conviction” shows his familiarity with “confirmation bias” and “anchor theory” that have since been explored by behavioral psychologists such as Daniel Kahneman and Amos Tversky. See Wilkins, Resources, *supra* note 40, at 151. See also Daniel Kahneman & Amos Tversky, *Judgment Under Uncertainty: Heuristic and Biases*, 185 Science (New Series) 1124-1131 (1974); Daniel Kahneman & Amos Tversky, *Subjective Probability: A Judgment of Representativeness*, 3 COGNITIVE PSYCHOL. 450 (1972).

75. See *id.* at 149.

76. *Id.* at 142.

77. *Id.*

78. *Id.*

79. *Id.* at 149.

Asian Legal Revivals: Lawyers in the Shadow of Empire;⁸⁰

- Alpana Roy, whose *Postcolonial Theory and Law: A Critical Introduction*,⁸¹ summarizes the work of dozens of legal theorists who build on the work of Frantz Fanon, Homi Bhabha, and other scholars of postcolonialism;
- Kitty Calavita (*An Invitation to Law and Society*),⁸² Malcolm Feely (*Fates of Political Liberalism in the British Post-Colony*),⁸³ and Yong-Shik Lee (*General Theory of Law and Development*),⁸⁴ who employ socio-legal arguments to explain the role of law in legal, political, and economic developments around the world;
- Peter Kane, whose edited volume *The Hart-Fuller Debate in the Twenty-First Century*,⁸⁵ underscores the continuing relevance of Hart and Fuller for contemporary debates about human rights, international criminal law, transitional justice, and other topics relevant to law and development;
- Aparajita Mukherjee and Saumya Chakrabarti in *Development Economics: A Critical Perspective*,⁸⁶ and John K. M. Ohnesorge, in “Developing Development Theory: Law and Development Orthodoxies and the Northeast Asian Experience,”⁸⁷ who document both the importance and the weakness of traditional development economics orthodoxies, particularly around values other than efficiency;
- Richard Fallon⁸⁸ and countless other scholars too numerous to name who rely on John Rawls’s and Ronald Dworkin’s subsequent masterworks, *A Theory of Justice*⁸⁹ and *Law’s Empire*,⁹⁰ to argue for the importance of the principles that underlie legal rules and practices; and

80. See generally YVES DEZALAY & BRYANT GARTH, *ASIAN LEGAL REVIVALS: LAWYERS IN THE SHADOW OF EMPIRE* (2010).

81. See Alpana Roy, *Postcolonial Theory and Law: A Critical Introduction*, 29 ADEL. L. REV. 315 (2008).

82. KITTY CALAVITA, *AN INVITATION TO LAW AND SOCIETY: AN INTRODUCTION TO THE STUDY OF REAL LAW* (2010).

83. See TERENCE C. HALLIDAY ET AL., *FATES OF POLITICAL LIBERALISM IN THE BRITISH POST-COLONY: THE POLITICS OF THE LEGAL COMPLEX* (2012); see also Malcolm M. Feeley, *Three Voices of Socio-Legal Studies*, 35 ISR. L. REV. 175 (2001).

84. Yong-Shik Lee, *General Theory of Law and Development*, 50 CORNELL INT’L L.J. 415 (2017).

85. PETER KANE, *THE HART-FULLER DEBATE IN THE TWENTY-FIRST CENTURY* (2010).

86. APARAJITA MUKHERJEE & SAUMYA CHAKRABARTI, *DEVELOPMENT ECONOMICS: A CRITICAL PERSPECTIVE* (2016).

87. John K. M. Ohnesorge, *Developing Development Theory: Law and Development Orthodoxies and the Northeast Asian Experience*, 28 U. PA. J. INT’L ECON. L. 219 (2007).

88. See RICHARD H. FALLON, JR., *LAW AND LEGITIMACY IN THE SUPREME COURT* (2018).

89. RAWLS, *supra* note 69.

90. RONALD DWORKIN, *LAW’S EMPIRE* (1986).

- William Simon, whose “substantive” conception of law urges lawyers to incorporate the role of legislators and judges in deciding whether to comply with the positive law,⁹¹ Cass Sunstein, whose scholarship routinely incorporates insights from cognitive psychology and behavioral economics to describe and prescribe legal rules,⁹² and a broad range of other legal theorists who have used the idea that lawyers should be “social engineers” who employ a wide range of “new rhetorics” to craft legal arguments demonstrating the “rhetorical” as well as the “logical” character of argumentation commonplace, as my uncle insisted, “in all [legal] contexts.”⁹³

Indeed, it is precisely because of widespread acceptance of the kinds of arguments my uncle employed in *UNCTAD and the Resources of the Law* by scholars like those discussed above that the law and development movement did not die, as Trubek and Galanter glumly predicted, from the self-estrangement of the scholars who created it.⁹⁴ Instead, this new generation of scholars has rallied to Trubek and Galanter’s call to create a new “eclectic critique,” which “refuses to relinquish entirely any of the central liberal legalist assumptions” about the potential value of law and legal institutions, but also treats those assumptions only as “guiding aspirations . . . detached . . . from commitment to any institutions or policies.”⁹⁵

“Instead of evaluating single policies against the background of paradigm assumptions,” about how law and legal institutions are supposed to perform, those adopting this critique will “look for the dynamics of interaction among all the features of law and society as they are.”⁹⁶ In other words, scholars committed to “eclectic critique” will embrace the true breadth of the resources of the law to develop, as my uncle urged in the last line of his never finished draft, “a more comprehensive interdisciplinary dialogue concerning the ends and means of development.”⁹⁷

91. See William H. Simon, *Should Lawyers Obey the Law?*, 38 WM & MARY L. REV. 217, 228–36 (1996). For my own take on Simon’s argument, see David B. Wilkins, *In Defense of Law and Morality: Why Lawyers Should Have a Prima Facie Duty to Obey the Law*, 38 WM & MARY L. REV. 269 (1996).

92. See, e.g., CASS R. SUNSTEIN, *THE ETHICS OF INFLUENCE: GOVERNMENT IN THE AGE OF BEHAVIORAL SCIENCE* (2016); RICHARD H. THALER & CASS R. SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS* (2008).

93. Wilkins, *Resources*, *supra* note 40, at 142.

94. Trubek & Galanter, *supra* note 46, at 1102 (arguing that the “most likely prospect is that the nascent community in law and development studies will gradually disband and the scholars will return to the several disciplines from which they came”).

95. *Id.* at 1100.

96. *Id.*

97. Wilkins, *Resources*, *supra* note 40, at 153.

VII.

MY GLEE-FULL EMBRACE OF THE RESOURCES OF THE LAW

I like to think that my uncle would be proud to know that his nephew has spent much of the last decade grappling with these questions. Since 2010, I have been the Director of the Project on Globalization Lawyers and Emerging Economies (GLEE).⁹⁸ GLEE is designed to do just what the name implies: to understand how globalization is reshaping the market for legal services in the rising powers of the Global South, and how such changes affect economic, political, and social development in those countries and the global legal market generally. To investigate these issues, GLEE has assembled a multinational and multidisciplinary group of scholars committed to conducting original empirical research both to document what is happening on the ground and to build grounded theory about the sociology of the legal profession, the processes of globalization, law and development, and the evolving relationship between the legal profession, the state, and the market.⁹⁹

The first scholar I asked to join me on this project was David Trubek. Trubek has been a dear friend and mentor since my first year as a law professor in 1986, when he was a visiting faculty member at Harvard Law School. During that fateful year, Trubek not only revealed that my uncle had given him his first job at AID,¹⁰⁰ but he also generously shared a whole new way of understanding law and legal institutions by introducing me to socio-legal studies.¹⁰¹

When I started GLEE, I knew that Trubek's "eclectic" scholarly approach marrying rigorous empirical research with equally rigorous critique, was exactly what was needed to understand the role of lawyers as "poor" countries from the "Third World" emerged on the world stage, with increasing economic and political power.¹⁰² Moreover, with Trubek as part of the team, I knew that one of the emerging economies we would be able to study was Brazil. Trubek had worked as the Legal Advisor and Chief of the AID mission in Rio de Janeiro after two years working for my uncle in Washington.

98. For a general description of the GLEE project, see *Globalization, Lawyers, and Emerging Economies*, <https://clp.law.harvard.edu/clp-research/globalization> [<https://perma.cc/2SXV-U6Z5>]; THE HARVARD LAW SCHOOL CENTER ON THE LEGAL PROFESSION, <https://clp.law.harvard.edu/clp-research/globalization> [<https://perma.cc/WNK3-XF8N>].

99. See David B. Wilkins, David M. Trubek & Bryon Fong, *Globalization, Lawyers, and Emerging Economies: The Rise, Transformation, and Significance of the New Corporate Legal Ecosystem in India, Brazil, and China*, HARV. INT'L L.J. (forthcoming 2020).

100. As Trubek asked when we first met: "you are not related to John Wilkins, are you?!"

101. As I wrote many years later in a volume dedicated to Trubek's scholarship, if it were not for Dave Trubek, I would have just been another boring law professor. See David B. Wilkins, *Where the Action is: Globalization, Law and Development, Sociology of the Legal Profession, and the GLEE-Full Career of Dave Trubek*, in *CRITICAL LEGAL PERSPECTIVES ON GLOBAL GOVERNANCE* (Gráinne de Búrca et al. eds., 2013).

102. See David M. Trubek, *Where the Action is: Critical Legal Studies and Empiricism*, 36 STAN. L. REV. 575 (1984).

I was also convinced that, even before starting work in Brazil, we should launch GLEE in the country where my uncle had begun his own journey to understand the importance of new countries emerging on the world stage half a century before: India. I therefore enlisted Vikramaditya Khanna, a distinguished professor at the University of Michigan Law School with deep knowledge about India's history and current reality, to help us put together a group of talented academics across a variety of disciplines from India, Asia, the United States, and Europe. Together, we launched the first comprehensive empirical investigation into how globalization is reshaping the Indian legal profession.

In 2017, we published the results of our research in an edited volume, entitled *The Indian Legal Profession in the Age of Globalization: The Rise of the Corporate Legal Sector and its Impact on Lawyers and Society*.¹⁰³ The book contains twenty-two chapters employing a mix of empirical and theoretical methodologies from law, sociology, economics, political science, anthropology, and international relations to document the rise of a new corporate legal ecosystem in India, which consists of increasingly large and sophisticated corporate law firms and in-house legal departments. The issues we discuss include:

- Legal education and professional regulation;
- Gender and prestige hierarchies in the bar;
- Commitments to pro bono and public service;
- Legislation and the role of courts;
- Privatization and foreign investment; and
- India's ability to participate in the institutions and mechanism of global governance and exchange, including the World Trade Organization, international arbitration, and cross-border mergers and acquisitions.

In other words, the book deploys the full resources of the law to understand the role of "law talk" in the form of India's important new corporate legal sector, in how the country is responding to the multitude of hard problems resulting from its movement from the relatively "closed" economic model of Indian socialism that the country was pursuing when my uncle was stationed there in the late 1950s to the more "open" and market-oriented, although still state-led, development model that India has adopted since the early 1990s. In 2018, we published a similar book on Brazil,¹⁰⁴ and we are in the process of publishing a

103. DAVID B. WILKINS, VIKRAMADITYA S. KHANNA & DAVID M. TRUBEK, *THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION: THE RISE OF THE CORPORATE LEGAL SECTOR AND ITS IMPACT ON LAWYERS AND SOCIETY* (2017).

104. *THE BRAZILIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION: THE RISE OF THE CORPORATE LEGAL SECTOR AND ITS IMPACT ON LAWYERS AND SOCIETY* (Luciana Gross Cunha et al. eds., 2018).

comparable book about the evolution of the Chinese legal profession.¹⁰⁵ In 2019, the GLEE project launched new research initiatives on these issues in Africa and Southeast Asia.

But GLEE is not the only way in which I have tried to heed my uncle's injunction to study and teach about the full resources of the law. In 2014, I published an article with Ben Heineman, the former general counsel of General Electric, and William Lee, the former Managing Partner of Wilmer Hale, entitled "Lawyers as Professionals and as Citizens: Key Roles and Responsibilities in the 21st Century."¹⁰⁶ In that article, we argue that to confront the critical problems facing society today—problems such as environmental sustainability, human trafficking, data privacy and cyber security, safety and catastrophic risk, anti-bribery and corruption—lawyers must be more than just "technical experts" with a mastery of formal legal rules and process.¹⁰⁷ Lawyers must also learn to be "wise counselors," able to advise their clients not just whether a course of action is "legal" but whether it is "right." They must also learn to be "leaders" who are capable of occupying positions of accountability and responsibility, in which they often will not just advise but decide.¹⁰⁸

To play these roles effectively, in addition to honing "core competencies" of legal analysis and understanding legal institutions, lawyers must develop what we call "complimentary competencies"—the ability to understand and use data, work in and lead teams, cross-cultural fluency, and a basic understanding of, and ability to deploy, technology—in order to tackle problems that are increasingly at the intersection of law, economics, politics, and morality.¹⁰⁹ In other words, as my uncle would say if he were alive today, lawyers must be able to deploy the full resources of the law if they are to play a worthwhile role in addressing the "hard" problems of development in the twenty-first century – problems, as the current coronavirus pandemic underscores, that will be even "harder" than those my uncle wrote about half a century ago.¹¹⁰

105. THE CHINESE LEGAL PROFESSION IN THE AGE OF GLOBALIZATION: THE RISE OF THE CORPORATE LEGAL SECTOR AND ITS IMPACT ON LAWYERS AND SOCIETY (Sida Liu & David B. Wilkins eds., forthcoming 2020).

106. See BEN W. HEINEMAN, JR., WILLIAM F. LEE & DAVID B. WILKINS, LAWYERS AS PROFESSIONALS AND AS CITIZENS: KEY ROLES AND RESPONSIBILITIES IN THE 21ST CENTURY (2014), https://clp.law.harvard.edu/assets/Professionalism-Project-Essay_11.20.14.pdf. [<https://perma.cc/8VEQ-NMPE>].

107. See *id.* at 9–11.

108. See *id.*

109. See *id.* at 13–16.

110. For a thoughtful preliminary discussion about the impact of the COVID-19 pandemic on globalization, see Richard Fontaine, *Globalization Will Look Very Different After the Coronavirus Pandemic*, FOREIGN POLICY (Apr. 17, 2020), <https://foreignpolicy.com/2020/04/17/globalization-trade-war-after-coronavirus-pandemic> [<https://perma.cc/JL5Z-3N5C>] (arguing that "[t]he pandemic will accelerate not the demise of globalization but its transformation"). Many of the transformations Fontaine describes seem likely to increase the demand for lawyers—particularly those capable of identifying and deploying the full resources of the law. See, e.g., Dan Packel, LAW.COM & AM. LAWYER, *For Some Practices, Coronavirus Uncertainty Is Bringing a Spike in Demand*, LAW.COM (Mar. 13, 2020),

Great law schools like Berkeley and Harvard have an obligation to prepare students to be a part of this new world.¹¹¹ In this respect, Berkeley is ahead of the game. Berkeley has always been among the world's most interdisciplinary law schools, with a rich tradition of embracing a broad understanding of the resources of the law and the role of lawyers. That history dates back at least to Dean Newman and is in very good hands today with Dean Chemerinsky. It was this tradition that made my uncle so excited to join this institution in 1964 and that nurtured his development as a scholar during his brief but brilliant tenure on the faculty. I hope that by reclaiming my uncle's keen insights about the importance of understanding the full resources of the law that I will inspire Berkeley's faculty, alumni, and most of all, its students, to continue this eclectic inquiry and critique in their own lives and careers. I can think of no better way to honor my uncle's legacy.

<https://www.law.com/americanlawyer/2020/03/13/for-some-practices-coronavirus-uncertainty-is-bringing-a-spike-in-demand> [<https://perma.cc/8XPP-HLSD>] (predicting increased demand for lawyers working in areas such as employment, cybersecurity, health care, and insurance, as well as private equity, restructuring, and tax). The fact that lawyers are likely to be needed more than ever in a post-COVID world does not mean, however, that the way legal services are delivered will remain the same, or that there will not be painful dislocations and readjustments in the short, medium, and long-term. *See* Mark A. Cohen, *COVID-19 will Turbocharge Legal Industry Transformation*, FORBES (Mar. 24, 2020), <https://www.forbes.com/sites/markcohen/2020/03/24/covid-19-will-turbocharge-legal-industry-transformation/#230ad8831195> [<https://perma.cc/XW9L-WNXL>] (speculating about how the global pandemic is likely to change the dynamics of the market for corporate legal services).

111. *See* HEINEMAN, LEE & WILKINS, *supra* note 106, at 49–64 (discussing the responsibilities of law schools).