Abe Chayes: A Man Without Boundaries

A Man Without Boundaries

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Abe Chayes had an abiding skepticism about boundaries—as odd a statement as that may be to make about someone who was so prominent an international lawyer and so devoted to such bounded entities as his country and university. As evidenced in his writing, his public service, his place at the Harvard Law School, and more generally, Abe respected boundaries only to the extent that they genuinely warranted respect, freely moving beyond them when principle dictated that he do so. Indeed, he may have been most inclined to breech borders in service of the very principles that such demarcations were intended to advance.

Abe's unwillingness to be constrained by conventional boundaries was perhaps most evident in his scholarship, whether focused on the American legal system or international law. Consider his seminal 1976 article on the role of the judge in public law litigation.[1] In it, he argued that the imperative of racial justice and other great social issues of the day posed such profound challenges that we, in effect, needed to be imaginative regarding the allocation of responsibilities between courts, legislative bodies, and administrative agencies if we were to realize the ideals that their delineation as distinct public institutions had been designed to foster. With a quarter century's hindsight, this seems so obvious that it is at times hard to convince students of the extent to which Abe's oft-cited piece captured and advanced a major transformation in the ways in which we think of the boundaries separating the branches of our government.

Much the same phenomenon marks Abe's writing about international law. Relatively early in his career, Abe joined with Andreas Lowenfeld and Thomas Ehrlich to produce *International Legal Process.*[2] Although taking the form of a textbook, this volume had a far more substantial impact on the way we think about international law, cutting as it did across established academic borders to provide a new, less formalistic and appreciably more hopeful understanding of this fledgling field and how it might further develop. Years later, Abe, this time working with his wife, Antonia Handler Chayes, once again re-oriented thinking in public international law through *The New*

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1 *See* Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 HARV. L. REV. 1281 (1976).

2. *See* ABRAM CHAYES ET AL., INTERNATIONAL LEGAL PROCESS; MATERIALS FOR AN INTRODUCTORY COURSE (1968-69).

Sovereignty, nimbly escaping disciplinary confines by drawing on a variety of fields to make the argument that the traditional ways in which we understood and sought to enforce sovereignty no longer were adequate.[3] Toward the end of his life, Abe, through collaborative work with scientists, economists, area studies specialists, and others here and abroad, was yet again moving between fields and countries on what promised to be a path-breaking study of interaction between China and the United States with respect to climate change.[4] (Indeed, it was during one of the early meetings of this group, when we were informed that the social scientists among us should convene separately that Abe, with his characteristic disregard for unnecessary boundaries, turned with a quizzical look on his face to ask, "Bill, are we social scientists?")

Abe's more practical work in the international area evidenced this same healthy disregard for boundaries. Appointed Legal Advisor to the Department of State while still in his late thirties, Abe was, to say the least, inventive with regard to traditional notions of a boycott and, some might suggest, the sovereignty of certain foreign states itself. In his justly celebrated representation years later of the Nicaraguan Government in its attempts to bring the United States' support for the Contras and mining of that nation's harbors before the International Court of Justice, Abe again manifested a refusal to be bound by the most obvious of borders, his own nationality. This, ironically, displayed the very highest degree of patriotism even as he helped preserve the borders of another state. And in his little publicized efforts during the 1990s to broker interactions between the very distinct worlds of trade diplomats and international environmental activists, Abe again displayed the indifference to boundaries and the prescience that marked so much of his life's work.

At Harvard, Abe's refusal to be hemmed in by conventional parameters was a defining characteristic. Even at the height of the "Beirut on the Charles" ideological battles that divided the Law School faculty for many years, Abe maintained warm friendships and earned respect across the political divide. He recognized that for all the problems they evidenced, these struggles also revealed an intellectual diversity and strength unmatched at any other American law school. Nor did age and other artificial boundaries fare any better in the face of this wonderfully gregarious man who could be counted upon to greet the newest of faculty recruits with genuine ebullience, curiosity, and good-will. And, as evidenced by the extraordinary representation of scholars from throughout the University (and beyond) at his

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3. *See* ABRAM CHAYES & ANTONIA HANDLER CHAYES, THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS (1995).

4. This work did result in a highly insightful paper by Abe and his former student Charlotte Kim. *See* Abram Chayes & Charlotte J. Kim, *China and the United Nations Framework Convention on Climate Change*, *in* ENERGIZING CHINA: RECONCILING ENVIRONMENTAL PROTECTION AND ECONOMIC GROWTH 503–40 (Michael B. McElroy et al. eds., 1998).

recent memorial service, he was as vibrant an intellectual force across the Harvard campus as any member of the law faculty in recent memory.

Abe was so adept at crossing boundaries because he was endowed with a singular confluence of brilliance, confidence, zest for life, and faith in his fellow man. What might otherwise possibly have seemed on occasion an excessive self-assurance was tempered both by a piercing intellect that led to his actually being correct a wildly disproportionate number of times and by his instinctive tendency to view the actions of others in their most favorable light. This helps explain his great faith in the prospects not only for public international law, but, within it, for the possibility of replacing traditional military and economic sanctions with those of reputational capital and peer pressure. And it was this inclination to assume that others shared his abundant good faith and good intentions that may have led him, perhaps unwittingly, to assume that federal judges would be wise and decent enough not to abuse the enhanced powers suggested in his 1976 article discussed above. There are, no doubt, many among us gifted with intellect and quite a few generous of spirit, but, Abe was rare, if not unique, in the acuity with which he could discern an argument's most fundamental vulnerability and the disarming conviviality with which he would in exposing it avoid embarrassing its advocate—unless, of course, he thought that person to be acting in an unprincipled manner. We may no longer be greeted with that booming, life affirming gravelly voice in the morning, but Abe Chayes's indomitable spirit surely lives on, reminding us to have a healthy skepticism about the boundaries that separate us.