

BABLER:

Hello, and welcome back to Wisconsin Law in Action, a podcast where we discuss new and forthcoming scholarship with the University of Wisconsin Law School professors. I'm your host, Emma Babler. And my guest today is professor Sumudu Atapattu. Professor Atapattu is here today to discuss the book she edited and contributed to, the Cambridge Handbook of Environmental Justice and Sustainable Development, and it's first chapter, intersections of environmental justice and sustainable development, framing the issues, coauthored with Carmen G. Gonzalez and Sara L. Seck. The book was published by Cambridge University Press. Thank you for joining the podcast professor Atapattu.

PROF. ATAPATTU:

Thank you for having me.

BABLER:

Before we jump into your recent publication, we always start the podcast by learning more about our guests background, specifically your research and scholarly writing interests. How did you become interested in the law? Tell me about the path that took you here to your position at UW Law School.

PROF. ATAPATTU:

Well, I have always had a very strong sense of right and wrong, and my siblings will tell you more about that, and I always wanted to be a teacher. I didn't think I'd become a law teacher when I was five years old, but teaching was my passion. So I came to be interested in law later. So after law school, and law is an undergraduate degree in Sri Lanka and in many parts of the world actually, I decided to pursue a master's degree in law. And I was thrilled when I got a scholarship to go to Cambridge University in England. And it was around this time that the Chernobyl nuclear accident took place. And that really got me thinking about the role of international law and environmental issues. And I was wondering why nobody sued the USSR, for example, because there was a clear link between what they didn't and the disaster.

PROF. ATAPATTU:

So that was the time that I really started thinking about those issues. Of course, I'm dating myself now, this was at a time when no law school was even teaching environmental law as a subject, no textbooks had even a chapter on environmental law. So this was at the very beginning of environmental law globally really. Although I know in the US there have been many developments and the US was the first country actually to adopt environmental laws. So after I returned to Sri Lanka, I worked for an environmental NGO and this was the turning point for me.

PROF. ATAPATTU:

I really enjoyed working on environmental issues. Again, this was a very new field, so not a lot of people knew about it. And so I was learning as I was walking and I was [inaudible 00:03:23] by all the issues that were coming up, all the problems that people were facing, we used to go on field visits to inspect these polluting factories and things like that. It was fascinating. And I knew then that I wanted to dedicate my career to teaching environmental law. And I went back to Cambridge to do a PhD in international environmental law and actually I was the first person in Sri Lanka to do a PhD in environmental law.

BABLER:

That's so cool. I did not realize that it was such a relatively recent field.

PROF. ATAPATTU:

It is a relatively new field compared to other areas of law like contracts and property, we have had them for hundreds of years. As to how I came to UWC Law School. I accompanied my husband who came to UW-Madison to do his PhD. So, that's how we ended up in Madison. And I had been associated with the law school in various capacities since 2002, first as a visiting scholar and then I started teaching as an adjunct in 2003. In 2006, I started working as the associate director for the Global Legal Studies Center, which was just established maybe a couple of years before that. And then my latest position is running the research centers at the law school. And I have continued to teach since 2003. One thing led to another and we ended up staying in Madison, despite the winters, I should say.

BABLER:

It's a great place to be, even in the cold.

PROF. ATAPATTU:

Yeah, we love it here.

BABLER:

So I know you touched on this a little bit in the last answer, but how did you become interested in the topic of environmental justice as it pertains to the Global South? I know your article and the book touched on that a lot.

PROF. ATAPATTU:

So as I said, I always had a very strong sense of justice and growing up in Sri Lanka and working there, I saw firsthand the negative effects of environmental issues and development activities on people. And I have also traveled quite a bit and have seen the negative effects of poverty, particularly in South Asia region and the need to raise the living standards of people. And I realized that one cannot separate economic development and environmental issues from people. And it's always the poor and marginalized who are disproportionately affected, whether it's a proposed coal power plant, station or pollution from factories, it's always the poor people or minorities who are affected. And they also lack any political clout. They don't have a way of organizing. They don't have a voice. So giving them a voice at the table is very important and they don't know what their rights are. So giving them an idea of what they're entitled to, what they can do is very important.

PROF. ATAPATTU:

And I also worked for a human rights NGO in Sri Lanka many years ago, of course, and I realized that these two groups rarely work together, although they have similar issues, and they could have done so much by pooling resources and fighting for issues together, but they rarely did. And human rights NGOs felt that their issues are more tangible and more immediate and more important in some ways, whereas environmental NGOs struggled to show that their work was important. And particularly because I think it was a new field and also some of the consequences take longer to materialize.

PROF. ATAPATTU:

So it's harder to show that these issues are important when you see immediate consequences of human rights violations. And as you may know, Sri Lanka went through a 30 year civil war. So they have daily human rights violations that people saw, whereas the negative consequences of environmental issues, they're less visible. So, that was something that I observed. And later I saw at the global level too, the way human rights activists and NGOs and environmental NGOs didn't really work together until quite recently, actually. When I say recently, maybe 10, 15 years ago they started working together on climate change because it's a huge issue and climate change has negative consequences on human rights. Two camps came together to work together, climate change and human rights, but people still have this human rights versus environmental mentality, but people are part of the environment and you cannot speak of one without speaking of the other. So these issues are intertwined and you need a holistic approach, but you still see this compartmentalization taking place.

BABLER:

That's really interesting and reminds me of what I read in the chapter, it was that those two things are so intrinsically linked that I guess I didn't realize that it hadn't been treated as one issue until more recently, but I think it's a very American point of view to push it off and say, "In the future, we'll deal with it." And it's not as visible to those of us in the Global North because those things are happening elsewhere.

PROF. ATAPATTU:

Yeah. And I remember many years ago when I was walking for the environmental NGO, they came one day from court, they had filed an action against in relation to a national park where there had been some people, the word they used was squatting in the national park. And I wasn't sure whether these were indigenous people or not, but the lawyers were very elated saying they managed to evict these squatters from the national park. And I asked them, "So, where did the people go?" And they looked very surprised. They hadn't even thought about it. And that's how I really got interested in this link because sure, you got a victory to protect the national park, but you didn't think about the people who were being evicted, where did they go, they depend on the forest for their daily subsystems and medicine and things like that. But if you don't think about the people, then what is a use of your victory?

BABLER:

I agree.

PROF. ATAPATTU:

So, that compartmentalization was very troubling to me. It's when I first started thinking about the link between the two.

BABLER:

Very interesting. So this leads into our next question. So I feel like as someone who lives in the Global North and is interested in environmental issues, I feel like I so often hear that as individuals we are not able to do much on our own to help the environment because so much pollution comes from these giant corporations. And so it can feel really frustrating and helpless as an individual who wants to do something but isn't sure how one person can do anything. So is there anything that we can do as individuals, especially legally educated individuals?

PROF. ATAPATTU:

Absolutely. We all have a role to play, especially in relation to global issues like climate change, where every little bit helps, right?

BABLER:

Mm-hmm (affirmative).

PROF. ATAPATTU:

We are over 7 billion people and by living we are contributing to climate change. Of course, need big bold action at the federal level, at the global level that involves corporations, but we all have a role to play, especially legal educators. And as we know, there's a lot of misinformation that's going on about climate change particularly in this country, there's a lot of misinformation about a lot of things, right?

BABLER:

Yes.

PROF. ATAPATTU:

And as educators we need to put the record straight. I think it's very important let the public know because make decisions based on the information they get. Information can range from denying the existence of climate change to doom and gloom where nothing can be done. So it's very important to give the correct information to the people and also tell them what they can do. Start by doing little things like changing the light bulbs to LED bulbs or walking shorter distances rather than driving. And I think there are lots of little things that we can do. And if all of us do that then it'll add up to a lot of good things. But as legal educators, we have a responsibility to train future lawyers to address climate change, whether it comes to contract law, property law, insurance law, ad law, or international law, all these areas will be affected by climate change.

PROF. ATAPATTU:

I think almost every area of law will have to factor in climate change and we'll be doing a disservice if we don't incorporate climate change into our teachings and prepare them for a legal career in a climate change effected world. And, in addition, new areas of law emerging and states have committed to reducing their greenhouse gas emissions and this requires them to adjusting to a low carbon economy. How do we do that? There are a new standards to come up with, we have to make sure that everybody's complying with this, and in addition, of course, we have locked in a certain amount of climate change. So we will see and we are already seeing the negative consequences in terms of extreme weather events, sea level rise and things like that. So people have to adapt to climate change consequences and issues like migration, displacement, and relocating entire communities to less vulnerable areas are also giving rise to many legal issues. So we need to train students to address this issues, not just areas of existing law that would be affected by climate change, but also to address these emerging laws.

PROF. ATAPATTU:

And climate law has developed to such an extent that there are sub areas of law like carbon trading, for example, that requires lawyers. So there are lots of new areas that have emerged that our students really need to be trained. And myself, I've been teaching a seminar course on climate change on human rights looking at the link between the two for several years now and we are one of the few law schools in the country that's actually teaching a course on climate change and human rights.

BABLER:

Oh, wow. I'm glad to see UW being at the forefront of that, that's really good for Law in Action here.

PROF. ATAPATTU:

All right.

BABLER:

And as you said, I think it's so important because if environmental law is going to touch all of the areas of law, we really have to teach our students that so that they are prepared.

PROF. ATAPATTU:

Exactly. I mean, if your property is getting affected by sea level rise, these prime properties in Florida and North Carolina, California, what do you do? There will be new floodplain areas, new insurance. Many states are now requiring insurance for a lot of new things that did not exist before. So there are lots of new areas for students to think about, for us to think about as legal educators.

BABLER:

That's great. And I think I like seeing that change too, because I went to law school here and graduated in 2015. And I don't think we talked a whole ton about environmental law in 2012 to 2015, but I definitely see that change now. So I'm happy to see that.

PROF. ATAPATTU:

And even 10 years ago we were not talking about things like cybersecurity, now it's a huge area. So we have to keep up with the changing times. And as a preeminent law school, I think we have a responsibility to change with the times.

BABLER:

I completely agree. Do you see the countries of the quote unquote global elite, the Global North, meeting the goals of the 2030 agenda for sustainable development that you mentioned in the chapter? I know that 2030 sounds really far away, but I thought about it and it's only nine years. So what do you think would have to change for them to meet these goals?

PROF. ATAPATTU:

Well, that's a really large conversation. Despite the adoption of the 2030 agenda and the sustainable development goals, which the entire global community supported, nothing much has really changed by way of reducing consumption in the Global North or the consumerist lifestyle we all have. And also the capitalist neoliberal economic model that has contributed to all of these environmental issues, especially climate change. So, as I said, it's a much a larger conversation to have and not many countries are actually going to meet these goals. And I think the pandemic has also contributed to it. In a way actually the pandemic has contributed to less pollution because there was less driving, the countries were shot down and things like that, but it also contributed to more poverty. So, there are pros and cons when it comes to... And the health aspects were also affected.

PROF. ATAPATTU:

So we know that sustainable development emerged as an overarching model for sustainability [inaudible 00:20:29]. And that requires us economic development, environmental protection and social development. So these are considered as three dimensions of sustainable development, but we know that [inaudible 00:20:42] is still given to economic development, despite the tools that we have developed like environmental impact assessments, licensing, and some countries like Canada, for example, require sustainable development assessments as well.

PROF. ATAPATTU:

Our main goal is still economic development and environmental protection and social development comes second and third, if at all, unfortunately. And I'm not saying economic development is not important because, as I said, poverty is a big problem in many parts of the world and we really need to raise the living standards of people, but there's a way to do it. Unfortunately, the Global South is emulating the Global North in their activities, and we know that it's totally unsustainable, and we need to change the mindset that we should develop now and clean up later, which is essentially what the Global North did, but we cannot follow the same path. We can no longer externalize pollution and hope everything will be okay in the future. Climate change has taught us that everything won't be okay in the future. And it will also force us to change our ways sooner rather than later, whether we like it or not.

PROF. ATAPATTU:

And the longer we wait, our options will be limited. So I think it will be important for us to actually start paying more and more attention to climate change. And I'm glad President Biden has really focused on climate change. And as the biggest contributor of greenhouse gases in the world, since the industrial revolution, I think US leadership is very, very important.

BABLER:

I agree. And I think it's a way that we can show how to be proactive rather than solely reactive.

PROF. ATAPATTU:

Right. It's a little too late right now to be proactive totally because we have already caused this problem, but you're right, there's still a lot more we can do, particularly with issues like migration and forced displacement. We will be faced with a situation where the small island states will be uninhabitable places like Kiribati, Vanuatu, the Maldives, which is closer to my country, they will become uninhabitable in the future. So we have think about apart from the legal issues that will arise when whole countries disappear, we have a huge humanitarian issue at hand. So what do we do with the people? Where we will they go? Right?

BABLER:

Yeah.

PROF. ATAPATTU:

And the refugee framework does not even accommodate this situation. So, there are lots of things that we need to think about and address them now before we are forced to deal with them, like we had to deal with millions of refugees after the Second World War.

BABLER:

Exactly.

PROF. ATAPATTU:

Even in the US, so many communities are already being relocated because of climate change or some communities are waiting to be relocated. So this is not a situation that will arise in the future, we are already facing this.

BABLER:

I know. My in-laws live in Florida and I was visiting them and we were driving along the coast and there were just dozens and dozens of abandoned houses. And my father-in-law says, "You can't get insurance on these. They're just in the eye. They're just going to be hit by hurricanes over and over. So there's no point in even inhabiting them anymore."

PROF. ATAPATTU:

Yeah. It's such a sad situation. And the thing is a country like the US can afford to deal with a situation like this, but imagine poor countries that are already being faced these hurricanes and things like that, how do you bounce back when you are facing millions of dollars in damages and so many people have died and they don't have good infrastructure? It's a really sad situation when you think about it.

BABLER:

And especially like you sad about the island nations, they're so isolated. Where do you go? At least if you're in Florida you can drive somewhere else but if you're in the Maldives or Vanuatu, you're stuck. Our next question is what do you hope this book contributes to the field of environmental justice? And is there anything you want to tell me about what's discussed in some of the other chapters that particularly interested you?

PROF. ATAPATTU:

In the book we tried to shed light on environmental injustices around all the world through to a set of legal frameworks and case studies. We wanted to highlight these case studies, that these struggles are not confined to a particular region or a particular group of people and there commonalities in all these struggles. We also wanted to show that there is a south in the north that is there are marginalized communities in the Global North that are disproportionately affected. And we have so many examples here in the US. And there's a north in the south as well. There are elites in the south that contribute disproportionately to environmental problems so we wanted to give a flavor of a range of environmental struggles across the world, both in the Global South and in the Global North, and to highlight some of these commonalities. So asking whether I have favorite chapters is a bit like asking whether I have a favorite child.

PROF. ATAPATTU:

I learned so much by working in this and some of the chapters that stood out relate to environmental justice, nuclear testing in the Marshall Islands and also China cancer villages and capitalism because these chapters highlight that the underlying causes of environmental injustice. Some of them date back to the colonial leader. And we need to learn from indigenous traditional page, for example, and their world views to address some of these environmental problems we are facing. And we also wanted to highlight some success stories too. We didn't want the book to be all doom and gloom, which there is.

So public interest litigation in South Asia, for example, really contributed to highlighting some of the problems these marginalized communities are facing and gave rise to success stories. So we want to highlight those success stories as well.

BABLER:

That's good to know that it's not just a downer, we have some bright points to look towards and examples to strive for,

PROF. ATAPATTU:

Sure.

BABLER:

Because I think clearly we need to.

PROF. ATAPATTU:

Exactly. And we can learn from the strategies that these success stories used so that maybe we can adapt those strategies to our own struggles.

BABLER:

I agree. So you were talking about the other chapters in the book, and so it makes me wonder how does your approach differ in writing your own work and then in editing others work?

PROF. ATAPATTU:

It's very different when you are editing somebody else's book because different people have different writing styles. So you need to strive for consistency. You need to ensure that there's cohesion, although different people write it, you also try to give it the editors voice as well. So on the one hand it's less work when you don't have to write the entire book yourself, but it's also difficult when you have to ensure a consistency and time you don't want to change too much because you want to retain the voice of the writer as well.

PROF. ATAPATTU:

So it's still a lot of work although you don't have to write the entire thing. As the editor you're responsible for content, style and consistency. And each chapter is read by at least two editors and goes through at least two rounds of edits.

BABLER:

Wow.

PROF. ATAPATTU:

And then of course you have to go through the copy edits and the final proves of the entire manuscript to ensure that are no errors and I hope there are no errors.

BABLER:

I didn't notice any in the part I read.

PROF. ATAPATTU:

Good. So it's still a lot of work. So there are pros and cons of writing it all yourself, a monograph as opposed to an edited volume. And of course you have to chase after 30 different authors with deadlines and things like that, whereas if it is just you, you have to chase after yourself, find time to actually do the writing, but it's also very enjoyable because you learn quite a lot from others.

BABLER:

Because if you're writing your own thing, it's something that you already know you're an expert in, but when you are getting the work from other people, you can learn something new. I like that.

PROF. ATAPATTU:

Yep.

BABLER:

So what do you hope researchers take away from your work?

PROF. ATAPATTU:

Well, the thing is it's impossible to cover all regions of the world and all aspects of environmental justice struggles in a single volume. You're limited by space. You're limited by the contributors you can find. You're limited by time. So I hope that scholars and activists will supplement our work and continue to document their struggles. And I think it's very important to bring the struggles to the attention of people to show that for one thing there are commonalities. And the other thing is you can learn from others. And if there are strategies that are successful, you may be able to adapt them to your situation as well. So there are several lessons from the book I hope the others would take away. One of them is that these struggles have root causes elsewhere. And as I said, some of these date back to the colonial leader, and unless you address these root causes, you cannot really address these environmental injustice. And we saw these in relation to, say, Hurricane Katrina, for example, the disproportionately minorities were affected.

PROF. ATAPATTU:

And that's a theme that comes out so much in the book. And these environmental injustice and other forms of injustices are intertwined with one another and therefore adopting a holistic approach is very necessary. But what we do is we have a very silo mentality and that's not really helping the cause. It's [inaudible 00:34:33] to addressing these issues. And as I said, by highlighting the commonalities in these struggles, these communities engaged in the struggles can learn from one another. And we also wanted to highlight how the human rights framework has given a voice to these marginalized communities. And also those who are already marginalized or in a vulnerable situation are more likely to be disproportionately affected by environmental degradation and these vulnerabilities intersect with one another to form even greater vulnerability. So intersectionality is another lens that we should adopt when we are addressing these injustices.

BABLER:

I agree. And I hope that the fact that UW Law School has a course in this and is putting an emphasis on this, can maybe help other law schools to decide to include that as a course or within their teachings as

well. Because as you said, we're teaching future lawyers who will have to deal with this in their practice regardless of what area of law they're working in.

PROF. ATAPATTU:

Absolutely.

BABLER:

So it's our duty as legal educators to not drop them into the water and say, "Hey, I hope you can swim."

PROF. ATAPATTU:

Yeah.

BABLER:

And where can people find more of your work? I know you are an extremely prolific author and editor.

PROF. ATAPATTU:

Thank you. Well, the UW Law School website I think is a good resource. As well as Google Scholar and legal databases for articles I have written. It's a little harder to find book chapters, but I know the library has been doing a good job posting at least the references to these articles. So I would say the law school website is a good source.

BABLER:

Yeah. I know we have a lot of your stuff in our repository, so I will link to that. So as always, we'll link to your scholarship, like I just said, so I'll put links to that on our podcast page. Thank you so much for joining us today professor Sumudu Atapattu.

PROF. ATAPATTU:

Thank you for having me.

BABLER:

Of course. We have been discussing a book that you recently edited and contributed to, The Cambridge Handbook of Environmental Justice and Sustainable Development, and its introduction on framing the issues surrounding this topic. Thank you so much to everyone for listening. To find a list of professor Sumudu Atapattu's scholarship, visit either her SSRN page or the University of Wisconsin Law School repository. As I mentioned earlier, links to both of these resources are posted along with this podcast episode at wilawinaction.law.wisc.edu. I hope that by now you are subscribed to our Wisconsin Law in Action Podcast, but if you aren't, you can find us in the Apple iTunes store, Stitcher or Google Play, or listen to our full archive at wilawinaction.law.wisc.edu. Thank you for listening, and happy researching.