

THE UW LAW SCHOOL AND THE GLOBAL SOUTH: 60 YEARS OF ENGAGEMENT AND INNOVATIVE SCHOLARSHIP

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Among the unique aspects of the University of Wisconsin (UW) Law School is a deep engagement with law and legal institutions in the “Global South,” broadly defined to include the former Soviet Union. Few law schools in the U.S., or, indeed, in the world, have invested so heavily in efforts to understand legal developments in Asia, Africa, Latin America, and the former USSR and to communicate their knowledge to students, the academic world, and beyond. This panel, which included presentations on China, Russia, Africa, South Asia, and Latin America by six UW scholars, with mention of similar work by others, reflects the depth of this engagement.

In the early years, this Global South scholarship focused on national economic development and emphasized ways that developing countries could learn from the United States. Development was seen as an internal process controlled by national law and policy; transmission of knowledge was a one-way street from the U.S. to the developing world; and the way to “legal development” was to import U.S. legal institutions.¹ Gradually, this changed as scholars began to see that development was affected by exogenous global forces, that transplants of law from advanced countries often failed, and that developing countries could develop innovative solutions of their own.² This forced UW scholars to broaden their horizons: they began to pay attention to how global forces affected law in developing countries and abandon their early paternalism. While this move started with law and economic issues, it soon broadened out to embrace governance issues like human rights. As Heinz Klug and Alexandra Huneus pointed out, this led to the creation of the Global Legal Studies Program.

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1. See 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, 222–23 (2007).

2. *Id.* at 235–39.

I. THE PANEL

The panel offered a sample of the work being done today. There were presentations about law in Africa (Heinz Klug), Latin America (Alexandra Huneus), Asia (John Ohnesorge, Mitra Sharafi, and Sumudu Atapattu), and the former USSR (Kathryn Hendley). Not only did they show the geographic range of faculty interest, but each presentation also illustrated one or more facets of UW's special contribution to global and regional legal studies.

A. *Building on the Hurstian Tradition—John Ohnesorge*

Acknowledging the impact of J. Willard Hurst's work on global and legal studies at Wisconsin, John Ohnesorge outlined his approach and applied it to the study of law and economic development in contemporary China. Ohnesorge explained that, by "law," Hurst meant a wide range of state activity defined pragmatically by what that activity did in the world.³ Looking at the functions of law in nineteenth-century America, Hurst stressed the way law released entrepreneurial energy.⁴

In his piece written for this symposium, *Development Is Not a Dinner Party: A Hurstian Perspective on Law and Growth in China*, Ohnesorge applies this approach to recent Chinese developments by looking at three cases in which, in Hurstian terms, the Chinese law/government complex released entrepreneurial energy: freeing agricultural communes to operate by market principles, decentralizing economic regulation, and allowing labor mobility by non-enforcement of controls on internal movement.⁵ While noting the importance of these moves for Chinese growth, Ohnesorge worries that recent moves by the state and Communist Party to exercise more control over the economy may undermine the very Hurstian features through which Chinese law initially fostered development.⁶

3. John K. Ohnesorge, Dir. for E. Asian Legal Stud. & George Young Bascom Professor of L., Univ. of Wis. L. Sch., Panel Discussion at the *Wisconsin Law Review* Symposium: Wisconsin's Intellectual History and Traditions (Oct. 23, 2020) (transcript on file with *Wisconsin Law Review*), <https://youtu.be/zglMf7buopQ> [<https://perma.cc/VC2A-G4MS>].

4. JAMES WILLARD HURST, LAW AND THE CONDITIONS OF FREEDOM IN THE NINETEENTH-CENTURY UNITED STATES 6 (1956) ("The legal order should protect and promote the release of individual creative energy to the greatest extent compatible with the broad sharing of opportunity for such expression.")

5. John Ohnesorge, *Development Is Not a Dinner Party: A Hurstian Perspective on Law and Growth in China*, 2021 WIS. L. REV. FORWARD (forthcoming 2021). While noting the positive role of law in the 19th Century, Hurst also was aware of its negative face as revealed by the law's toleration of environmental degradation. *Id.*

6. *Id.*

B. Studying the Realities of Law and Legal Practice in the Global South—Kathryn Hendley

Wisconsin scholars want to know how legal systems actually work. Many scholars studying law in “developing countries” employ preconceived notions of legal “underdevelopment.”⁷ But Wisconsin faculty saw the need to study these systems in action. Asking “*Do Lawyers Matter in Russia?*,”⁸ Kathryn Hendley continues this tradition. She draws on empirical work, survey data, and memoirs to explain how the Russian legal profession has changed since the breakup of the Soviet Union and to show how Russians now view the legal profession.⁹ Informed by her work in Russia over decades, the Essay breaks new ground in the study of law and society in Russia today.¹⁰

The Russian legal profession includes advocates, judges, prosecutors, notaries, government lawyers, firm lawyers, and investigators.¹¹ In Russia, unlike many countries where the profession is seen as a single entity,¹² these specialties are distinct and perceived separately by the public.¹³ Spanning two periods in Russian legal history, Hendley looks at popular views of the different legal specialties before and then after the fall of the Soviet Union, when a new constitution was enacted, market forces were unleashed, and state-owned enterprises were privatized.¹⁴

In the Soviet period, lawyers were generally held in low regard, with some differences among the specialties.¹⁵ Prosecutors were more highly regarded while defense lawyers (“advokaty”) were looked down upon.¹⁶ Moreover, the profession was stratified by gender with women disproportionately represented in the least popular jobs.¹⁷ All this changed with the end of the USSR. Lawyers in Russia became more popular, new roles—like that of corporate lawyer and in-house counsel for private businesses—emerged, and public views of the several specialties diverged from Soviet times.¹⁸

7. For a critique of this tendency, see Jorge L. Esquirol, *The Failed Law of Latin America*, 56 AM. J. COMP. L. 75 (2008).

8. Kathryn Hendley, *Do Lawyers Matter in Russia?*, 2021 WIS. L. REV. 301.

9. *Id.*

10. *Id.*

11. *Id.* at 304.

12. *See id.*

13. *See id.* at 312–15, 328–29.

14. *See id.* at 308–24.

15. *See id.* at 308–09.

16. *Id.* at 309–10.

17. *Id.* at 313.

18. *Id.* at 315–16.

In 2018, a national poll put lawyers among the top three professions.¹⁹ Using data from several surveys, Hendley shows that in post-Soviet Russia, public respect for defense lawyers soared, with *advokaty* ranked among the most respected.²⁰ The reputation of judges, who in Soviet times were seen as mere instruments of the Party,²¹ has also improved as a result of conscious government efforts to improve their status.²² Judges are better regarded today than in Stalin’s time,²³ although doubts still linger concerning their independence on some issues.²⁴

Summing up, Hendley concludes that “[t]he breakup of the Soviet Union created the conditions that allowed for a rebirth of the Russian legal profession.”²⁵ Efforts were made to create a rule-of-law-governed state, but she worries that the “creep of authoritarianism” under Putin threatens to undermine some of these gains.²⁶

*C. Show How the United States Can Learn from Innovations in the
Global South—Alexandra Huneus*

Alexandra Huneus’s remarks suggested that we view the Global South not as a mere recipient of legal ideas from the North but as a source of important legal innovation.²⁷ She began with the story of Toledo, Ohio, where residents adopted the Lake Erie Bill of Rights, “transform[ing] one of North America’s Great Lakes into a legal subject with a right to ‘exist, flourish, and naturally evolve.’”²⁸ Ohio is not alone: over fifty other U.S. jurisdictions have sought to create rights-bearing natural entities.²⁹

For Huneus, what is important is not whether U.S. courts will honor this legislation—so far, they have not.³⁰ The real significance is that the idea of giving natural objects legal rights *originated* in the Global South and was subsequently taken up in the U.S.,³¹ reversing the direction of a

19. *Id.* at 316.

20. *Id.* at 318.

21. *See id.* at 313.

22. *Id.*

23. *See id.* at 313–14, 122 (showing the difference in the public’s opinion of judges in the Soviet Union and the public’s opinion of judges in post-Soviet Russia).

24. *See id.* at 322–23.

25. *Id.* at 327.

26. *Id.* at 328–29.

27. Alexandra Huneus, Professor of L. & Dir. of Glob. Legal Stud. Ctr., Univ. of Wis. L. Sch., Panel Discussion at the *Wisconsin Law Review* Symposium: Wisconsin’s Intellectual History and Traditions (Oct. 23, 2020) (transcript on file with *Wisconsin Law Review*), <https://youtu.be/zglMf7buopQ> [<https://perma.cc/VC2A-G4MS>].

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

transmission belt for ideas commonly perceived to flow only from North to South.

“Over the past 15 years Earth beings, ecosystems, and nature itself have been granted legal rights and have begun to litigate in court in countries as diverse as Colombia, Mexico, India, New Zealand, and Uganda.”³² Rivers feature prominently, but the list includes forests, mountains, lakes, glaciers, and even wild rice.³³ At the international level, the United Nations General Assembly has taken notice of such “right of nature” laws and called for a dialogue with this “Earth jurisprudence.”³⁴

The U.S. movement to give natural objects rights draws sustenance from these legal developments from the Global South. They offer useful ideas and precedents: success in other countries has helped sustain hope in the U.S. movement as it encounters resistance and setbacks in court.

D. Exploring How Global Issues, Forces, and Institutions Interact with Local Conditions—Sumudu Atapattu & Heinz Klug

Another form of scholarship at UW takes a global issue, such as climate change or economic and political restructuring, and analyzes its impact on law in the Global South. Sumudu Atapattu’s presentation illustrates this, looking at how climate change is affecting the Maldives, an island nation of 1,200 separate islands, most of which are less than two meters above sea level.³⁵

Small island states are particularly vulnerable to consequences of climate change, with rising sea levels and severe weather events threatening to inundate their territory, making them uninhabitable.³⁶ Since territory is one of the necessary criteria of statehood, if territory disappears, what happens to these small islands and their populations? Climate change thus raises legal questions relating to the “statehood, nationality, and self-determination” of people, as well as addressing social issues, such as poverty alleviation.³⁷

Moreover, people will start moving long before the territory disappears.³⁸ The plight of these climate refugees is already coming to the attention of human rights bodies, which have recognized that climate

32. *Id.*

33. *Id.*

34. *Id.*

35. Sumudu Atapattu, Dir. of Rsch. Ctrs. & Senior Lecturer, Univ. of Wis. L. Sch., Panel Discussion at the *Wisconsin Law Review* Symposium: Wisconsin’s Intellectual History and Traditions (Oct. 23, 2020) (transcript on file with *Wisconsin Law Review*), <https://youtu.be/zglMf7buopQ> [<https://perma.cc/VC2A-G4MS>].

36. *Id.*

37. *Id.*

38. *Id.*

change could trigger the non-refoulement principle, making refugees fleeing climate-related devastation able to challenge their deportation.³⁹

Heinz Klug also stressed the need to focus on the interrelationship between the global and the local. Klug was looking at the transition to democracy in South Africa when he first encountered the literature on globalization.⁴⁰ This exposure, he said:

[G]ave me an understanding of how [the transition] was actually embedded in a global context, that it wasn't just a local development or struggle for freedom in South Africa, but . . . the legal developments that follow the process of the transition [are] in fact embedded in a . . . global process, and particularly at that point, the end of the Cold War.⁴¹

In addition to charting the move from a local focus to one which embraces both the global and the local, Klug noted that he and other Wisconsin scholars have moved beyond law and economic development to look at social development and human rights.⁴²

E. Building Regional Legal Studies Capacity—Mitra Sharafi

Mitra Sharafi discussed South Asian Legal Studies at UW Law, showing its history and the role Wisconsin plays in South Asian studies today.⁴³ Marc Galanter started working in India in the 1960s; his 1984 study on the caste system, *Competing Equalities: Law and the Backward Classes in India*,⁴⁴ is considered a classic. Sharafi's studies of family law in colonial India⁴⁵ and current work on the history of forensic science continue the scholarly tradition.⁴⁶ Beyond individual work, UW Law

39. *Id.*

40. Heinz Klug, Evjue-Bascom Professor of L. & Sheldon B. Lubar Distinguished Rsch. Chair, Univ. of Wis. L. Sch., Panel Discussion at the *Wisconsin Law Review* Symposium: Wisconsin's Intellectual History and Traditions (Oct. 23, 2020) (transcript on file with *Wisconsin Law Review*), <https://youtu.be/zglMf7buopQ> [<https://perma.cc/VC2A-G4MS>].

41. *Id.*

42. *Id.*

43. Mitra Sharafi, Professor of L., Univ. of Wis. L. Sch., Panel Discussion at the *Wisconsin Law Review* Symposium: Wisconsin's Intellectual History and Traditions (Oct. 23, 2020) (transcript on file with *Wisconsin Law Review*), <https://youtu.be/zglMf7buopQ> [<https://perma.cc/VC2A-G4MS>].

44. See MARC GALANTER, *COMPETING EQUALITIES: LAW AND THE BACKWARD CLASSES IN INDIA* (1984).

45. See, e.g., MITRA SHARAFI, *LAW AND IDENTITY IN COLONIAL SOUTH ASIA: PARSİ LEGAL CULTURE, 1772–1947* (2014).

46. See, e.g., Mitra Sharafi, *Abortion in South Asia: A Medico-Legal History*, 55 *MOD. ASIAN STUD.* 371 (2021).

supports institutional activities including graduate training, a Madison working group of graduate students and faculty, an annual South Asian Legal Studies Workshop bringing scholars from all over to Madison, and the South Asia Collaborative Research Network of the Law and Society Association, which Professors Sharafi and Galanter founded in 2005.⁴⁷ Professor Sharafi described initiatives over the past decade to develop UW's online South Asian legal resources.⁴⁸ She also reported on the first virtual version of the Annual South Asia Legal Studies Workshop, where scholars from South Asia and other parts of the world were able to participate without the expense, visas, and environmental damage caused by travel.⁴⁹

CONCLUSION

The panel demonstrated the richness of UW Law's work on law and the Global South. It showed that the tradition is very much alive, contributing to the understanding of a complex world that today faces new changes, including a pandemic, climate change, and democratic retreat and autocratic subversion of law.

47. For more information about Asia-related institutional activities UW Law supports, see *South Asia Legal Studies Working Group*, UNIV. OF WIS.-MADISON L. SCH., https://law.wisc.edu/gls/sa_legal_studies_working_group.html [https://perma.cc/2W56-J24J] (last visited Mar. 25, 2021) and *East Asian Legal Studies Center*, UNIV. OF WISC.-MADISON L. SCH., <https://law.wisc.edu/ealsc/> [https://perma.cc/3ZJ4-2TND] (last visited Mar. 25, 2021).

48. Mitra Sharafi, *South Asian Legal History Resources*, UNIV. OF WIS.-MADISON L. SCH., <https://salh.law.wisc.edu/> [https://perma.cc/4H2G-R2QF] (last visited Mar. 25, 2021); *Bhopal: Law, Accidents, and Disasters in India*, UNIV. OF WISC.-MADISON L. SCH., <https://repository.law.wisc.edu/s/uwlaw/page/bhopal-collection> [https://perma.cc/8CRJ-WCN8] (last visited Mar. 25, 2021).

49. Sharafi, *supra* note 43.