

Honors Seminar
LAW and ENVIRONMENT:
Historical and Contemporary Perspectives
Legal Studies/Env. Studies/History 430, Spring 2018

Social Sciences 4308, 11:00 am – 12:15 pm, Tuesday and Thursday

Prof. Richard Keyser, rkeyser@wisc.edu

Office Hours: 2:30 –4:00 pm, Tues. and Thur., Social Sciences 7131, and by appointment.

Description: This class explores environmental studies through a focus on law and legal history. Although its main concentration is on U.S. environmental law, the course will begin and end with broader historical and global perspectives. The first of the two main units of the class explore English, European, and early American legal approaches to land use, natural resources, and pollution to the twentieth century. A second, longer unit examines the development and practice of contemporary U.S. environmental law. We will close by considering the recent emergence of international environmental law.

This is a 3-Credit-Hour Course. It meets for two 75-minute sessions per week throughout the Spring semester and carries the expectation that students will work on course learning activities (reading, writing, problem sets, studying, etc.) for about 3 hours out of classroom for every class period (or 6 hours per week).

Grades: will be calculated on the standard UW scale: A=93-100%, AB=88-92%, B=83-87%, BC=78-82%, C=70-77%, D=60-69%, F=0-59%. Grades will be determined as follows:

<u>Item</u>	<u>% of grade</u>	<u>Course points</u>
Participation	20	100
Quizzes	5	25
Short Essay	10	50
Midterm Essay	20	100
Research Paper	40	200
Final Presentation	5	25
Total	100	500

Note: Students must complete all of the above writing assignments and the final presentation in order to pass the class.

Student Learning Goals

1. Introduce students to the social, political, economic, and cultural determinants of law.
2. Introduce students to the dynamics of legal ideas and ideologies. Students will accomplish both of these interrelated Legal Studies learning goals throughout the class, and in particular by: a) writing a midterm essay about how the industrial revolution and romantic ideas about nature led by about 1900 to the rise of the Conservation Movement and new natural resource regulations; and b) learning about how postwar growth and new understandings of ecology led to the emergence in about 1970 of both modern U.S. and international environmental law. Students will consolidate their understanding of modern environmental law by answering factual questions on quizzes and on the final exam, and by writing a research paper on a contemporary topic of their choosing.
3. Introduce students to the social, political, and economic impacts of law at the macro-level. Students

will work on this Legal Studies learning goal throughout the class, and in particular by considering in their midterm essays how the Conservation Movement impacted the lives of local people who used natural resources.

4. Introduce students to the practical skills needed to analyze legal phenomena and to access legal resources, broadly defined. Students will develop these skills by writing a 10-12-page research paper on a topic of their choice within environmental governance. Students are required to gather, read, and analyze the interaction among laws, regulations, and court cases on their topics, using both primary source materials and the secondary scholarly literature.
5. Introduce students to the functioning of legal institutions, and how those institutions differ from other social institutions. This class accomplishes this goal by paying careful attention throughout the class to the key role of state and federal courts and agencies in environmental law, and in particular the students' research papers require analysis of their roles.
6. Introduce students to the cross-cultural and international valences of law in distinctive social orders. The first and last few weeks of the class study environmental governance in broad, international contexts. The first two weeks focus on preindustrial Europe, and students write a short essay assessing how sustainable preindustrial resource regulation was. At various times over the last several weeks of class we will examine aspects of global environmental governance.
7. Graduate students share in all of the above learning goals, but in addition will be expected to become familiar with and demonstrate an advanced understanding of the historiography or other scholarly debates that have shaped the study of conservation and environmental law.

Attendance & Participation Assessment: Success in this class, as in most, is greatly favored by regular attendance and participation, and therefore I will keep track of them. However, I do not count points for each class meeting. Instead, I assess attendance and participation qualitatively by assigning a grade-level (i.e., A, AB, etc.) and a corresponding number of course points at the end of the semester. For more information, see the "Guidelines and Rubrics for Participation in Smaller Classes" document on my [Teaching Policies](#) web page.

Attendance Guidelines: 1) you do not earn credit just for attending class, which is expected; 2) any more than THREE unexcused absences is excessive, because missing this much class usually leads to misunderstanding of course materials and assignments; 3) missing more than SIX classes without valid excuses may be grounds for failing the class; and 4) valid excuses are limited to: university-recognized religious observances and athletic participation (but in both of these cases you must inform me of your planned absences by the end of the second week of classes); and for well-documented major illnesses or emergencies in the immediate family. 5) In cases of absence for quizzes, paper due-dates, and exams, you should inform me of your absence in advance if at all possible. Missing class on such days without prior notice to me may result in a failing grade for that assessment.

Participation Guidelines: You should try to speak up often, and I will also try to call on students. (*Please let us know as soon as possible if you object to being called upon!) But quality of contribution counts more than quantity. Quality contributions reflect your familiarity with the readings and your effort to ask good critical questions about them, such as: What are the main questions the author tries to answer? What is the author's main argument? What specific arguments, assumptions, or evidence are used in support? What is left out? Good participation also means that you listen to others and try to engage seriously but respectfully with what others say.

Computers, Electronic Devices, & Distracted Behavior: Due to the potential for distraction, the use of computers or electronic devices of any kind during class is strongly discouraged. For those who need or strongly prefer to take notes on a computer *and* who strictly avoid any other usage of personal devices in class, you may do so, but please sit in a location or position that will minimize distraction for other students. Engaging in any screen time unrelated to class or in any other distracted or distracting behavior, such as reading unassigned materials, noisy eating or drinking, sleeping, conversation with classmates or on the phone, etc., may result in you being asked to leave the classroom and may also negatively impact your grade.

Quizzes: There will be a few quizzes to test your knowledge of some of the objective information that you need to learn. These will be announced a week or so in advance and will consist of multiple choice, fill-in the blank, and similar short-answer questions.

Essays: The short essay and the midterm essay (of 3 and 6-7 pages respectively) focus on the assigned readings, with topics and guidelines provided one or two weeks before their due dates. Essays must be turned in both as paper copies in class, and as electronic copies to an anti-plagiarism website (www.turnitin.com). Late papers will be heavily penalized: they will be marked down one grade per class day late. For help with the essays, besides asking me after class or in office hours, see the tips on my webpage on [Teaching Guides](#). You can also get one-on-one help at both the [Writing Center](#) and the [History Lab](#).

Research Paper: With guidance from me, you will pick a topic, find appropriate sources, and write a 12-15-page research paper on some aspect of environmental law and regulation.

Final Presentation: This will be a short (15 min. or so) presentation in any format you prefer that allows you to share with the class the results of your research project.

Academic Honesty: Your written work must reflect your own ideas, and where you draw on others' words or ideas you need to indicate this clearly with proper quotations and citations. Academic dishonesty will not be tolerated, and all appropriate penalties, including failing the course, will be strictly enforced. As state law for the UW System explains, academic misconduct includes, but is not limited to "claim[ing] credit for the work or efforts of another without authorization or citation;" see UW's plain-language guidance on [academic integrity](#). Specifically on the proper ways to give credit to sources, consult the [Writing Center](#) and download their handout '[Acknowledging, Paraphrasing, and Quoting Sources](#).'

Accommodations: If you need accommodations due to any disability, please let us know within the first two weeks of class, i.e. by Feb. 1. In order to maintain confidentiality, you may do so by coming to either the professor's or the TA's office hours or by emailing one or both of us to arrange a meeting. You will need to provide documentation from the McBurney Disability Resource Center, 702 West Johnson St., Suite 2104, tel. 608-263-2741, email: mcburney@studentlife.wisc.edu.

Reading Assignments: Ideally you should read each week's assignment by time of Tuesday's lecture, so that you are better able to understand the lectures. However, if this is not possible, you may prioritize them according to the order in which they appear on the syllabus. More specifically, it is often helpful to start with the secondary sources (those written recently), and then go on to the primary sources (when assigned).

Reading Questions & Response: It is your responsibility to not just read, but master the reading assignments as much as possible. To do so, you should read each assignment carefully, take notes, and prepare a short summary of, response to, and critical questions provoked by it as a basis for class discussion. You will accomplish many of these goals by answering the reading questions on Canvas (when provided), but any such set of questions cannot address everything of interest in the readings. Your own, personal engagement with the readings remains necessary.

Graduate Students: You are welcome to take this class, but as UW policy requires, to earn graduate

credit you are required to go beyond the readings assigned to the class as a whole in order to acquire an advanced understanding of the field, and especially of scholarly debates about conservation and environmental law. How exactly you do this will vary to suit your interests, so you must meet with me just before or at the beginning of the semester to discuss possible readings and to schedule a few additional meetings over the semester. Your written work must demonstrate more in-depth analysis and advanced understanding, especially in the research paper (which will be 15-20 pages in length).

Required Course Pack (1) and Books (2): You need to acquire the course pack and books listed below, and bring them to class (especially discussion section) on the days when they are assigned. They are listed here in the order in which they will be assigned. You should get the books in the editions specified here. Please note that in many cases EBOOKS ARE NOT ACCEPTABLE, because they often leave out the page numbers or have other formatting problems. The Course Pack may be purchased at the Social Sciences Copy Center (<http://copy.ls.wisc.edu/>), and the books at the UW Bookstore: www.uwbookstore.com. All these items will also be on reserve at College Library.

Keyser, Richard. *Course Pack for LS/ES 430, Law and the Environment*. Spring 2018.

Jacoby, Karl. *Crimes Against Nature: Squatters, Poachers, Thieves, and the Hidden History of American Conservation*. Rev. Ed. with new afterword. Berkeley: University of California Press, 2014.

Layzer, Judith. *The Environmental Case: Translating Values into Policy*. 4th ed. Washington, D.C.: Sage/CQ Press, 2016.

SCHEDULE

I. Commons: Theory & History in Preindustrial England

Week 1, Jan. 23-25. Introduction: Landed Property & the Commons.

- Course Pack (& Canvas): begin Ostrom, *Governing the Commons*, ch. 1, pp. 1-8; ch. 3, pp. 58-102.
- Course Pack (& Canvas): begin discussing Property Rights (8 pp.).

Week 2, Jan. 30- Feb. 1. Commons Governance in Traditional Agro-Ecosystems.

- Course Pack (& Canvas): finish Ostrom, *Governing the Commons*, ch. 1, pp. 1-8; ch. 3, pp. 58-102.
- Course Pack (& Canvas): begin Early Legal Texts on Forests & Commons (7 pp.).
- Course Pack (& Canvas): Healey, *English Commons, 1500-1700*, pp. 27-40.

Week 3, Feb. 6 - 8. From England to American Colonies.

- Course Pack (& Canvas): finish Early Legal Texts on Forests & Commons (7 pp.).
- Course Pack: English Royal Forest maps (4 pages).
- Course Pack: begin Judd, *Common Lands*, intro, pp. 1-12.
- **Short Essay Due, Thur., Feb. 8.**

II. American Conservation to the Early Twentieth Century

Week 4, Feb. 13-15. The 19th-Century Land Bonanza & Early Conservation.

- Course Pack: Judd, *Common Lands*, ch. 2, pp. 40-56; ch. 3, pp. 59, 78-79, 84-89; & ch. 4, pp. 90-111; ch. 5, pp. 123-27, 144-45 (53).
- Course Pack Primary Sources: Colonial America (8 pp.)
- Mining Act of 1872 (3 pp.); Mineral Leasing Act, 1920.

Week 5, Feb. 20-22. Conservation, Public Health, & the Progressive Era.

- Course Pack: Judd, *Common Lands*, ch. 6, pp. 146-57, 168-72 (17); & ch. 7, pp. 173-94 (22) (=39).

- Jacoby, *Crimes Against Nature*, intro, pp. 1-7; ch. 1, pp. 11-28 (25)
- Course Pack: Weeks Act, 1911.

Week 6, Feb. 27-March 1. From Progressive to Post-War Environmentalism.

- Jacoby, *Crimes Against Nature*, ch. 2-3, pp. 29-78. (50)
- Layzer, *The Environmental Case*, ch. 2, pp. 33-35; ch. 7, pp. 202-09.
- **Midterm Essay Due, Tues., March 6.**

III. Modern Environmental Law in the U.S.

Week 7, Thur., March 8. The 'Golden Age' of Environmental Law: Introduction.

- Layzer, *The Environmental Case*, ch. 1, pp. 1-6; ch. 2, pp. 31-44.
- Course Pack: Administrative Procedure (1946), Freedom of Information (1966), & Wilderness (1964) Acts.
- Klyza and Sousa, table 2.1 (2 pages)

Week 8, March 13-15. The 'Golden Age:' The EPA & Key Laws.

- Layzer, *The Environmental Case*, ch. 1, pp. 6-21; ch. 2, pp. 44-58.
- Course Pack: Clean Air Act (1970).
- Klyza and Sousa, table 2.1 (2 pages).

Week 9, March 20-22. Hazardous Wastes & CERCLA.

- Layzer, *The Environmental Case*, ch. 3, pp. 63-87.
- Case Study: *Fox River Current*, 2015 (EPA, 8 pp.); Frank Leone and Mark Miller, "Passing the Buck," *Daily Environment Report*, 2015 (Bloomberg, 6 pp.).
- **Paper Proposals Due: March 20.**
- **Spring Break: March 24 - April 1.**

Week 10, April 3-5. Second-Generation Environmental Law: Market-Based Solutions to Acid Rain.

- Layzer, *The Environmental Case*, ch. 5, pp. 133-62.
- *Chevron v. NRDC*, 1984.

Week 11, April 10-12. Courts, Litigation, & Negotiation: The Impact of the Endangered Species Act

- Layzer, *The Environmental Case*, ch. 8, pp. 239-69.
- Primary Source TBA

Week 12, April 17-19. The Precautionary Approach: The U.S. & Europe Compared

- Course Pack: Vogel, *The Politics of Precaution*, ch. 1-2, pp. 1-21 & 34-37.

Week 13, April 24-26. U.S. & European Chemicals Policy.

- Course Pack: Vogel, *The Politics of Precaution*, ch. 5, pp. 153-88.
- **Research Paper Due: April 26.**

Week 14, May 1-3. Climate Change and International Environmental Law.

- **Final Presentations.**

Final Exam Period: Monday, May 7, 2:45 – 4:45 pm (finish final presentations).