

**LAW and ENVIRONMENT:
Historical and Contemporary Perspectives
LEGAL ST/ENVIR ST/HIST 430
University of Wisconsin-Madison, Spring 2023**

Instructional Modality and Location

Face-to-face, Tuesdays and Thursdays, 2:30–3:45pm, Social Sciences 6240.

Instructor

Prof. Richard Keyser, rkeyser@wisc.edu; Office Hours: 7131 Social Sciences Building, 11:00 am – 12:00 pm, Tues. and Thur., and by appointment (virtual options available).

Course 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. Topics include a survey of English, European, and early American legal approaches to land use, natural resources, and pollution through World War II as well as an examination of the development and practice of contemporary U.S. environmental law and consideration of the recent emergence of international environmental law.

Credits: This is a 3-Credit-Hour Course. It carries the expectation that students will work on the course learning activities (reading, lectures, class discussions, writing, etc.) for a total of at least 135 hours (45 hours per credit hour) over the semester, or about 9.5 hours per week. This includes the two class meetings of 75 minutes each per week, or a total of 2.5 hours of class time. That leaves about 7 hours/week outside of class that you should devote to course materials and activities.

Regular and Substantive Student-Instructor Interaction: In this course students interact with the instructor primarily in each scheduled class meeting and through the comments provided by the instructor on each student’s assigned papers. The instructor also interacts with each student and the class during individual students’ presentations to the class and in the midterm and final consultations with each student. The instructor’s weekly office hours provide an additional opportunity for students to ask questions.

Course Level & Requisites: Level: Intermediate. Requisite: Sophomore standing.

Course Attributes: Breadth Attribute: Humanities or Social Science Breadth; Grad Attribute; Sustainability Attribute; and Comm B.

Grades

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>
Short Essay	10	50
Midterm and Final Oral Presentations	10	50

Participation	20	100
Midterm Essay	20	100
Research Paper	40	200
Total	100	500

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

Student Learning Goals

1. Analyze and articulate their own arguments about how social, political, and cultural phenomena shape law and legal systems.
2. Analyze and articulate their own arguments about the social, political, and cultural impacts of law at the societal and individual levels.
3. Demonstrate knowledge about how legal ideas and ideologies have changed over time and have shaped law and legal systems.
4. Demonstrate their abilities to find, interpret, and utilize resources relevant to law and society.
5. Demonstrate their abilities to analyze information, to write clearly and persuasively, and to construct original arguments.
6. Analyze the causes of and solutions for the sustainability challenge of the conservation of natural resources, especially insofar as their governance involves and impacts local stakeholders.
7. Analyze the social, economic, legal, political, and environmental dimensions of the sustainability of natural resources, biodiversity, clean air and water, and other, larger earth systems (such as climate).
8. 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.

Students will accomplish goals 1-3 and 5-7 throughout the class, and in particular through: a) a midterm essay about how the industrial revolution and romantic ideas about nature led to the rise of the Conservation Movement and how this impacted local people; 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, fields which most students explore through their research topics.

Students will work on goals 4 and 5 throughout the class, and in particular in their midterm essays, by considering the sources through which early conservation can be studied, and then especially in their research papers, by finding and critically analyzing primary and secondary sources on a topic of their choice concerning environmental governance.

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, you should inform me of your absence in advance if at all possible. Missing class without prior notice may be considered as an unexcused absence.

Participation Guidelines: You should try to speak up often, and I will also try to call on students. (*Please let me 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 discouraged. However, I make an exception to this rule when screens are needed to access a class text. 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.

Written Work

Essays: The short essay (2-3 pages) and the midterm essay (5-6 pages) focus on the assigned readings, with topics and guidelines provided one or two weeks before their due dates. Essays must be turned in digitally on Canvas, where the anti-plagiarism website (www.turnitin.com) will be used. 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 an 8-12-page research paper on some aspect of environmental law and regulation.

Essay Drafts for Writing Fellows: for the Midterm Essay and the Research Paper you are required to turn in a draft two weeks before the final paper is due. You will then work with an undergraduate Writing Fellow on revising them; see the [Writing Fellows Program](#) for general information. Our class is fortunate to have two great WFs to work with you! Their names are Amanda Jentsch and Ayuka Sinanoglu.

***Note:** the draft for the WF is a course requirement. Failing to submit a draft on time will result in a deduction of up to ten percent of the grade for the final version of that assignment.

Presentations and Consultations

Midterm and Final Presentations: These will be short (10 min. or so) oral presentations that allows you to share with the class the results of your work on the midterm paper and on the research project.

Individual Consultations: Each student will meet with me at least once in the semester, to discuss your progress in the course, suggestions for improvement, and any concerns you may have.

Honesty, Accommodations, and Graduate Students

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. 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 guidance on this topic, on the page "[Academic Misconduct](#)." Specifically on the proper ways to give credit to sources, consult the [Writing Center](#) and see their page on "[Quoting and Paraphrasing](#)."

Accommodations: If you need accommodations due to any disability, please let me know within the first two weeks of class, i.e. by Feb. 3. It is the student's responsibility to contact the McBurney Center and arrange to have the proper notification sent to me. See: <https://mcburney.wisc.edu/>. If you are on or near campus, you can also visit their office, the McBurney Disability Resource Center, 702 West Johnson St., Suite 2104, tel. 608-263-2741; or email them at: mcburney@studentlife.wisc.edu.

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).

Course Materials

Required Books (3): You need to acquire the books listed below, and bring them with you to class on the days when they are assigned. They are available, among other places, at the UW Bookstore: www.uwbookstore.com. 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. Both the books and the Course pack (see below) will also be on reserve at College Library.

Required:

Judd, Richard. *Common Lands, Common People: The Origins of Conservation in Northern New England*. Harvard University Press, 2000.

Jacoby, Karl. *Crimes Against Nature: Squatters, Poachers, Thieves, and the Hidden History of American Conservation*. Berkeley: University of California Press, 2001; rev. 2014. Either of the two editions is fine. *This book is also available in a digital version through the UW-Madison Library.

Layzer, Judith, and Sara Rinfret. *The Environmental Case: Translating Values into Policy*. 5th ed. Washington, D.C.: Sage/CQ Press, 2020. ***Note: only the 5th edition is acceptable.**

Recommended:

Keyser, Richard. *Course Pack for LS/ES/Hist 430, Law and the Environment*. Spring, 2023. Letters and Science Copy Center, 6102 Social Sciences Building (<http://copy.ls.wisc.edu/>), available for purchase on a print on demand basis; these materials will also provided on Canvas.

Reading Assignments: Ideally you should read each week's assignment by time of Tuesday's class, so that

you are better able to understand the lecture and discussion. 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 (laws, court cases, and other texts written during the period under study).

SCHEDULE

***Note:** the schedule below provides the weekly topics, the reading assignments in the required textbooks, and the due-dates for papers. These are all set and will not be changed. But the **full details for all of the course activities**, including such online activities as online discussions, quizzes, etc., **will be updated and provided on a weekly basis** on the course website on Canvas, under the **Activity Guide for each Module**.

I. Introduction: The Commons & Common Law in Medieval England

Week 1, Tues., Jan. 24 – Thur., Jan. 26. Introduction: Ostrom’s Model Villages & English Forests.

- Course Pack (CP), ch. 1-3, pp. 1-24 (or Canvas, ch. 1-3).

Week 2, Tues., Jan. 31 – Thur., Feb. 2. Common Law, Village Communities, & Enclosure over the Long Term.

- Course Pack (CP), ch. 4-8, pp. 25-55 (or Canvas, ch. 4-8).
- **Short Essay Due, Mon., Feb. 6.**

II. American Conservation to the Early Twentieth Century

Week 3, Tues., Feb. 7 – Thur., Feb. 9. From England to the American Colonies.

- Begin Judd, *Common Lands*, intro, pp. 1-12; ch. 1, pp. 15-19, 23-35; ch. 2, pp. 40-56.
- CP: Colonial America (8 pp.).

Week 4, Tues., Feb. 14 – Thur., Feb. 16. The 19th-Century Land Bonanza & Early Conservation.

- Judd, *Common Lands*, ch. 3, pp. 59-73, 78-89; ch. 4, pp. 90-111.
- CP: Mining Act of 1872.

Week 5, Tues., Feb. 21 – Thur., Feb. 23. Conservation, Public Health, & the Progressive Era.

- Judd, *Common Lands*, ch. 5, pp. 123-27, 144-45; ch. 6, pp. 146-57, 168-72.
- Jacoby, *Crimes Against Nature*, intro, pp. 1-7; ch. 1, pp. 11-28.
- CP: Weeks Act, 1911; Mineral Leasing Act, 1920.
- **Begin student presentations on conservation history.**

Week 6, Tues., Feb. 28 – Thur., March 2. Conservation & the Progressive Era, continued.

- Jacoby, *Crimes Against Nature*, ch. 2-3, pp. 29-78.
- Layzer, *The Environmental Case*, ch. 2, “Background,” pp. 37-39; ch. 7, pp. 207-13.

- **Continue student presentations on conservation history.**
- **Midterm draft: due Mon., March 6.**

Week 7, Tues., March 7 – Thur., March 9. From Progressive to Post-War Environmentalism.

- Review Course Materials & Begin Revising Midterm Essay.
- **Finish student presentation on conservation history.**

Spring Break, March 11-19.

III. Modern Environmental Law in the U.S.

Week 8, Tues., March 21 - Thur., March 23. The ‘Golden Age’ of Environmental Law: Introduction.

- Layzer, *The Environmental Case*, ch. 1, pp. 1-9; ch. 2, pp. 35-46.
- CP: Administrative Procedure (1946), Freedom of Information (1966), & Wilderness (1964) Acts.
- CP: Klyza and Sousa, table 2.1 (2 pages).
- **Midterm Essay: Final Draft Due, Mon., March 27.**

Week 9, Tues., March 28 – Thur., March 30. The ‘Golden Age:’ The EPA & Key Laws.

- Layzer, *The Environmental Case*, ch. 1, pp. 9-20; ch. 2, pp. 46-59.
- CP: Clean Air Act (1970); Clean Water Act (1972).
- CP: Klyza and Sousa, table 2.1 (2 pages).

Week 10, Tues., April 4 – Thur., April 6. Toxics, Hazardous Wastes, & CERCLA.

- Layzer, *The Environmental Case*, ch. 3, pp. 65-87.
- CP Case Study: *Fox River Current*, 2015 (EPA, 8 pp.).
- **Research Proposals Due: Thur., April 6.**

Week 11, Tues., April 11 – Thur., Nov. 13. Second-Generation Environmental Law: Acid Rain.

- Layzer, *The Environmental Case*, ch. 5, pp. 135-62.
- CP: Clean Air Act (1970); *Chevron v. NRDC*, 1984.

Week 12, Tues., April 18 – Thur., April 20. Courts, Litigation, & Negotiation: The Endangered Species Act

- Layzer, *The Environmental Case*, ch. 8, pp. 245-75.
- CP: Endangered Species Act (1973).
- **Begin Final Presentations.**
- **Research Paper Draft: Due Thur., April 20.**

Week 13, Tues., April 25 – Thur., April 27. Climate Change and International Environmental Law.

- Layzer, *The Environmental Case*, ch. 12, pp. 387-414.
- **Continue Final Presentations.**

Week 14, Tues., May 2 – Thur., May 4. Climate Change & International Law.

- **Continue Final Presentations.**
- **Research Paper Final Draft Due: Thur., May 4.**

Final Exam Period: Mon., May 8, 7:45 – 9:45 am: Finish final presentations.