

**LAW and ENVIRONMENT:  
Historical and Contemporary Perspectives  
Legal Studies/Env. Studies/History 430,  
University of Wisconsin-Madison, Spring 2020**

Sterling 1313, 9:30 – 10:45 am, Tuesday and Thursday

Prof. Richard Keyser, [rkeyser@wisc.edu](mailto:rkeyser@wisc.edu)

Office Hours: 11:00 am – 12:30 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 carries the expectation that students will work on the course learning activities (reading, lectures, film clips, class discussions, quizzes, 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 at least 7 hours/week outside of class that you should devote to course materials and activities.

**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	15	75
Quizzes	5	25
Short Essay	10	50
Midterm Essay	20	100
Research Paper	50	250
Final Presentation	5 (part of particip.)	25 (part of particip.)
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 through: a) a midterm essay about how the industrial revolution and romantic ideas about nature led to the rise of the Conservation Movement; 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.
3. Introduce students to the social, political, and economic impacts of law. 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 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.
5. 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).
6. 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 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 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 after the midterm to test your knowledge 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 and true/false questions.

**Essays:** The short essay and the midterm essay (of 3 and 5-6 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](http://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 10-12-page research paper on some aspect of environmental law and regulation.

**Final Presentation:** This will be a short (10 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 Jan. 30. You will need to provide (digital) documentation from the McBurney Disability Resource Center (<https://mcburney.wisc.edu/>), 702 West Johnson St., Suite 2104, tel. 608-263-2741, email: [mcburney@studentlife.wisc.edu](mailto: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 (laws, court cases, and other texts written during the period under study).

**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 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 L and S Copy Center, 6102 Social Sciences (<http://copy.ls.wisc.edu/>), and the books at the UW Bookstore: [www.uwbookstore.com](http://www.uwbookstore.com). All these items will also be on reserve at College Library.

**Required:**

Keyser, Richard. *Course Pack for LS/ES/Hist 430, Law and the Environment*. Spring 2020. Letters and Science Copy Center, 6102 Social Sciences Building.

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.

Layzer, Judith, and Sara Rinfret. *The Environmental Case: Translating Values into Policy*. 5<sup>th</sup> ed. Washington, D.C.: Sage/CQ Press, 2020.

**Recommended:**

Nash, Jonathan. *Environmental Law and Policy: The Essentials*. New York: Wolters Kluwer, 2010.

## SCHEDULE

### I. Commons: Theory & History in Preindustrial England

Week 1, Jan. 21-23. 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. 28-30. Commons Governance in Traditional Agro-Ecosystems.

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

Week 3, Feb. 4-6. From England to American Colonies.

- Course Pack: 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. 6.**

### II. American Conservation to the Early Twentieth Century

Week 4, Feb. 11-13. The 19<sup>th</sup>-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.
- Course Pack Primary Sources: Colonial America (8 pp.)
- Course Pack: Mining Act of 1872 (3 pp.); Mineral Leasing Act, 1920.

Week 5, Feb. 18-20. Conservation, Public Health, & the Progressive Era.

- Course Pack: Judd, *Common Lands*, ch. 6, pp. 146-57, and 172-73.
- Jacoby, *Crimes Against Nature*, intro, pp. 1-7; ch. 1, pp. 11-28.
- Course Pack: Weeks Act, 1911.

Week 6, Feb. 25-27. From Progressive to Post-War Environmentalism.

- 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.
- **Midterm Essay Due, Tues., March 3.**

### III. Modern Environmental Law in the U.S.

Week 7, Tues.-Thur., March 3-5. The 'Golden Age' of Environmental Law: Introduction.

- Layzer, *The Environmental Case*, ch. 1, pp. 1-9; ch. 2, pp. 35-46.

- Course Pack: Administrative Procedure (1946), Freedom of Information (1966), & Wilderness (1964) Acts.
- Course Pack: Klyza and Sousa, table 2.1 (2 pages)

Week 8, March 10-12. The 'Golden Age:' The EPA & Key Laws.

- Layzer, *The Environmental Case*, ch. 1, pp. 9-20; ch. 2, pp. 46-59.
- Course Pack: Clean Air Act (1970); Clean Water Act (1972).
- Course Pack: Klyza and Sousa, table 2.1 (2 pages).
- **Spring Break, March 14-22**

Week 9, March 24-26. Hazardous Wastes & CERCLA.

- Layzer, *The Environmental Case*, ch. 3, pp. 65-87.
- Course Pack Case Study: *Fox River Current*, 2015 (EPA, 8 pp.).
- **Research Proposals Due: March 12.**

Week 10, March 31 – April 2. Second-Generation Environmental Law: Acid Rain.

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

Week 11, April 7-9. Courts, Litigation, & Negotiation: The Endangered Species Act

- Layzer, *The Environmental Case*, ch. 8, pp. 245-75.
- Course Pack: Endangered Species Act (1973)

Week 12, April 14-16. 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 21-23. U.S. & European Chemicals Policy.

- Course Pack: Vogel, *The Politics of Precaution*, ch. 5, pp. 153-88.

Week 14, April 28-30. Climate Change and International Environmental Law.

- Layzer, *The Environmental Case*, ch. 12, pp. 387-414.
- **Begin Final Presentations.**
- **Research Paper Due: April 30.**

**Final Exam Period: Tuesday, May 5, 2:45 – 4:45 pm (finish final presentations).**