The Law School and the Environment

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That the environment has a place in the law school curriculum is becoming increasingly evident. Sixty-four institutions replying to a recent survey of environmental programs at law schools listed 120 courses and seminars related to the environment and 122 faculty members teaching or performing research in the field.¹

A few environmental courses were introduced in the late sixties at law schools such as Harvard, Indiana, Michigan, and Stanford. The number skyrocketed in 1970 and continues to increase rapidly. The Walter F. George School of Law at Mercer University in Georgia and Washburn University of Topeka School of Law are among those which offered their first environmental law courses last fall. Meanwhile, other schools are moving beyond a first experimental course. Rutgers this year added seminars on energy and transportation policies to its previous seminar in environmental problems.

While the most common forms of environmental law offered remain the single introductory semester survey or research seminar, other approaches range from day-long short courses to major programs. Environmental Law Societies at Chicago, George Washington, and Harvard have sponsored one or two day intensive courses. George Washington held its Second Annual Short Course in November with a focus on "Water Pollution: the Potomac, A Case in Point." At least a half dozen institutions, often with the help of outside funding, are establishing major programs. One example is the University of Southern California Law Center. As a participant in the Sea Grant Program, the Center is developing a capability for research, education, and advisory services relating to the institutional framework required for managing marine resources. The Center offers a local government course which includes materials on coastline man-

¹The bulk of information for this article comes from replies to a letter sent to American law schools in June 1971 by Wolfgang R. Burhenne, Chairman of the Committee on Environmental Law of the International Union for Conservation of Nature and Natural Resources (IUCN). The original purpose of the letter was to elicit information about the programs and interests of professors at these law schools which might help IUCN carry out its work, which ranges from collecting and computerizing environmental laws to drafting international agreements. The responses proved so interesting that IUCN wanted to make them available to a wider audience. Similar surveys are being made of environmental law programs in European universities.

††Formerly with Commission on Environmental Policy, Law and Administration, International Union For Conservation of Nature and Natural Resources.

1. These figures reflect the opinions of faculty members answering the survey on which courses offered and research done at their schools have a primary environmental component.
agement. Its library of materials on legal problems of coastal zones and international waters serves local attorneys and other interested individuals. It has proposed research which would result in a draft international convention on allocation of income from oceanic resources.

Courses with environmental content are required of all students at only a few law schools including the Universities of Denver, Iowa, Kansas, and the State University of New York at Buffalo. At Denver the first-year students take an introductory course called Environment and Resources Law which explores both the legal and economic dimensions of the conflicting demands for resources and the quality of the environment. The course defines and evaluates probable effects of present policies and alternatives from the points of view of the individual, the enterprise, and the public. At Kansas the course is called Property II but deals with environmental questions.

Where environmental law is an elective or an extracurricular activity, it is affecting a significant number of students. Fordham has regularly scheduled two or three sections of 20 to 25 students each of its Law and the Environment seminar since it was first offered in the spring of 1970. At George Washington University, the National Law Center's Environmental Law I course, given for the first time in 1970-71, attracted 74 students the first semester and 70 the second, while Environmental Law II enrolled 43 second semester and 36 during the summer session. The University of Pennsylvania Law School reports that a quarter of the first-year students are participating in the extracurricular Environmental Law Group which works with state and city agencies.

Just what environmental law is and what its place in the law school should be are debated questions. Environmental science has been defined as:

\[\ldots\] the study of all of the systems of air, land, water, energy and life that surround man. It includes all science directed to the system-level of understanding of the environment, drawing especially on such disciplines as meteorology, geophysics, oceanography, and ecology, and utilizing to the fullest the knowledge and techniques developed in such fields as physics, chemistry, biology, mathematics, and engineering. Included therefore are such diverse matters as climate, air turbulence, the air-sea interface, estuaries, forests, epidemics, earthquakes, and groundwater. These environmental systems contain the complex processes that must be mastered in the solution of such human problems as the maintenance of renewable resources (water, timber, fish), the conservation of non-renewable resources (fuel, metals, species), reducing the effects of natural
disasters (earthquakes, tornadoes, floods), alleviating chronic damage (erosion, drought, subsidence), abating pollution by man (smoke, pesticides, sewage), and coping with natural pollution (allergens, volcanic dust, electromagnetic "noise").

Environmental law considers the role of law in man's relationship to these surrounding systems of air, land, water, energy and life. Just as environmental science looks to various disciplines and fields for knowledge and techniques, environmental law draws on many legal specialties including administrative law, civil procedure, constitutional law, property, torts, and urban government as well as perhaps its most direct predecessors—land use planning, natural resources, and law and technology.

Environmental law courses have been organized in different ways. One method is to limit the subject matter to one of the systems. The University of Southern California has offered a course in air pollution. Yale's catalog lists Environmental and Economic Regulation of Energy Sources. At Chicago and Michigan, water law courses have taken a resource planning approach. Land use planning courses have become standard fare at many schools. Population control is beginning to receive attention. Minnesota offers a seminar, and the Fletcher School of Law and Diplomacy started a Law and Population Program during the past year.

Rather than focusing on one of these systems, many of the courses take case studies from several systems. At Harvard the Environment Protection course uses automotive air pollution, water quality management, and the control of carcinogens as case studies to provide the context for discussing questions such as:

How should choices be made among alternative forms of private litigation and public regulation as modes of social control? How can conflicting interests best be identified and represented in processes of lawmaking and administration? Whose responsibility should it be to consider the future and how much weight should such consideration be given? By what criteria should the factual and economic burdens of uncertainty be allocated among the prospective beneficiaries and victims of technological developments? How can the use of expertise and systematic analysis in decisionmaking be reconciled with the goals of pluralism and participation? Through what institutional arrangements, and under what assumptions, are competing values such as "economic progress" and "quality of life" best reconciled?

At Michigan the emphasis in the course on Legal Problems of Environmental Quality is on the role of private citizens and organizations in using the legal processes, the need for legislative reform and problems in the use of administrative and regulatory agencies. The subject matter used in covering these themes includes air and water pollution, shoreline and estuarine regulation, acquisition and management of public lands, waste disposal, and pesticides.

In some instances the environment is the subject matter for teaching legal techniques. The environment is providing a "jet age" vehicle for considering an age-old set of relationships, Professor Harold W. Young says, describing its function for the legal process course at Oklahoma which studies the interactions of the courts, legislatures, and administrative agencies. The law revision seminar at Colorado, the law and social change course at the University of Southern California and the legislation seminar at Ohio State have all used environmental topics extensively. It is also a favorite subject for independent research. Stanford students have completed about 20 research projects related to environmental law under its independent study program.

At a quarter of the schools replying, environmental law is being used for experiments with clinical and interdisciplinary approaches to legal education. UCLA and Colorado both include environmental internships as part of their programs, funded by the Ford Foundation. The interns are selected from second year law students and placed in industry, government, public interest law firms, and private law firms all over the country. They take an environmental law course before the summer internship and then participate in a seminar in the fall semester to help evaluate their experience. Professor Donald M. Carmichael, one of the faculty supervisors of the Colorado program, explains: "Since the students actually do their research within the agencies, they get insiders' views of the recalcitrancies of putting regulatory environmental law into operation. Frequently their research yields suggestions on legal and operational matters which is of benefit to the host agencies."  

Professor A. Dan Tarlock is skeptical of the rapid increase of courses on environmental law. More important is for universities to train a new type specialist. "Persons trained in one discipline with the ability to synthesize and apply the insights of related fields are needed for future decision-making." While the great majority of

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environmental law courses recognize the interdisciplinary nature of the problem and then consider the legal aspect, 17 of the schools responding indicated specific efforts to create courses open to students from other disciplines or to use materials from other fields. Several have already planned or are planning joint programs with other schools within their universities. The law school at the University of Montana is developing a four-year program with the graduate school under which a student would receive a law degree and a Master of Science in Environmental Quality.

The Colorado Law School is experimenting with one of the broadest interdisciplinary projects. It is a Technology Evaluation Seminar, funded by the National Science Foundation. Faculty and students from the Law School are cooperating with participants from Engineering, Political Science, Psychology, and Economics. Through an interdisciplinary case study approach, they hope to "elucidate major causes of the chronic time lag between the introduction of new technology, the perception within the scientific community of untoward environmental consequences of the technology, the emergence of this scientific knowledge into political and legal spheres, and the generation of an appropriate legal or political response. Pesticides provide the classic example . . ."6

At Notre Dame the Environmental Law program is open to both law students and graduate students in other disciplines. A three hour survey course discussing various legal remedies to environmental problems is followed by a course in which students are given an actual pollution problem in the local area and asked to develop solutions which are technically feasible and legally acceptable. At the University of Pennsylvania last year, Professor Bruce A. Ackerman formed a seminar of six students each from the schools of law, economics, and engineering to study control of water pollution in the Delaware Valley.

While at Notre Dame and Pennsylvania, as in many other programs, the stress is on local problems, courses are being offered and research carried out on international problems as well. At Northwestern, Professor Anthony A. D'Amato offers a course on Law, Ecology and the Global Environment, a study of legal and environmental variables in a global system perspective. Professor Samuel A. Bleicher of the University of Toledo has prepared materials on Pollution and Political Boundaries which "examine the fundamental elements of a 'newly-discovered' world concern, regulation of pollution, and at the same time use the problem as a springboard to

consideration of the processes by which law and governmental institutions develop or fail to develop to satisfy newly-perceived human needs and concerns." At Tulane, Professor Julian Juergensmeyer includes a section on comparative environmental law in his materials. Among others who combine international and environmental interests are Professor Thomas J. Schoenbaum of the University of North Carolina School of Law, who is studying the coordination and comparative approaches to environmental problems in the United States and in Common Market countries, Professor Ludwik A. Teclaff, who specializes in international water law at Fordham, and Professor Keith Rosenn of Ohio State, who includes environmental matters in his study of legal problems of developing economies.

While it is often assumed that environmental issues compete with urban and poverty programs or international studies for funds and student interest, the survey showed that such interests are frequently linked. Land use, public health, and consumer protection are issues in both urban and environmental programs. The State University of New York at Buffalo Law School calls its program Environmental and Urban Law. It lists such courses as Problems of Open Space Preservation and Rejuvenation in Metropolitan Communities and Interstate Cooperation, Regional Planning, and Federal Intervention in Water Resource Allocation. Cornell offers a course in Problems of Urban Development. At UCLA the National Legal Program on the Health Problems of the Poor engages in environmental litigation.

Environmental law has close relationships to urban law, but it is perhaps more often thought of as a revised version of courses previously taught as natural resources law. Usually a concern with quality and the decision-making process replaces the earlier concentration on exploitation. The catalog description for Nebraska's course in Natural Resources, Policy Planning, and Environmental Law reads:

Contemporary issues in water resource management and legal problems arising from the regulation of a public resource within the private property system. Riparian, appropriative and prescriptive water rights, rights in ground water; issues of large-scale government economic planning, including cost-benefit analysis; problems of interstate and federal-state relations; and the effect of present policies on future generations. Attention is given to zoning, recreation, and urban water development problems. . .

Ohio State has chosen to divide the subject into three different courses. Natural Resources Law covers the law of oil and gas and of water quantity; Conservation Law considers air and water quality and problems of the living environment; and Administration of Natural Resources deals with administrative problems of protecting and managing the environment. The Denver Natural Resources Program, established in 1965, requires a student emphasizing natural resources law to take the traditional courses in water rights, oil and gas, public land and mining, taxation, and securities regulation, but the student must also take the introductory environmental course and an additional seminar or land use planning course.

Technology assessment is another close relative of environmental law. The concern with evaluating and controlling the impact of technology on society is evident in several of the programs described above, particularly the Colorado Technology Evaluation Seminar and the Harvard Environmental Protection course. Cornell offered a course in Science, Technology, and Law for the first time this year. Air and water pollution and exhaustion of limited natural resources are among the subjects considered in discussing the problems and potential for solutions presented by the science and technology of affluence.

Whatever its roots in urban law, resources law, and technology assessment, spokesmen for environmental law see it as much more than old wine in new skins. Malcolm Baldwin, Legal Associate at the Conservation Foundation, finds a distinctive feature of environmental law in its concern for non-proprietary cases in contrast to a conservation law under which cases were brought by injured persons on their own behalf. Professor Harrison C. Dunning describes environmental law as "the law we employ to govern the interaction between man and the environment." He sees a need for new legal forms to evolve. "...[I]f the law of torts and the public regulatory agencies, which themselves sponsor the developmental activity that must be controlled, provide no solutions, what will? What new legal forms could evolve?"

Professor Joseph L. Sax of the University of Michigan Law School believes that environmental lawyers must reach beyond traditional legal aspirations. In a keynote paper given at the Environmental Law Seminar sponsored by the Smithsonian Institution and the American Law Institute and American Bar Association, he noted:

In the most important sense, there is no body of environmental law

11. *Id.* at 806.
today. The significant history is yet to be written by lawyers such as those sitting in this room; and their success will, in my judgment, be measured by the degree to which this history goes beyond traditional legal aspirations. While it would, of course, be foolish to suggest that the problems with which we must deal are unique to legal experience, I do suggest that they call for approaches which are sharply distinct from the legal milieu in which we are accustomed to working.\textsuperscript{12}

He proposed that:

An environmental law problem is presented when there is a loss of effective control over the impact of human activity on natural communities. And the job of the environmental lawyer is to restore that control. . . . [T]he first job . . . is to move from a static function of rulemaking for conflict resolution upon facts accepted as given to a prod and force for innovation of new knowledge which alone permits conflict to be resolved rationally. Only in this way can human activity be brought under control.\textsuperscript{13}


\textsuperscript{13} Id. at S 552.