

GLOBAL CLIMATE CHANGE AND U.S. LAW

Professor Katrina F. Kuh
Course No. 2856(A)
Fall 2014
Wednesday, 8:10am-10am
Room 243

Contact Information

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Course Overview

This course will explore domestic legal mechanisms for responding to global climate change. Topics covered will include common law tort actions, federal regulation of greenhouse gas (GHG) emissions under the Clean Air Act, proposals for a federal GHG-control statute, and mitigation measures adopted by local government. The course seeks to provide students with an understanding of the domestic legal options available to reduce GHG emissions and invites students to develop opinions about their viability, interplay, and desirability. No pre-requisites or co-requisites are required, but Environmental Law is recommended. The primary course requirement is the completion of a twenty-page research paper for which Writing I credit will be available.

Course Goals

This course seeks to (1) educate students about domestic legal approaches for mitigating climate change, (2) provide a forum for students to engage in thoughtful discussion and collaborative analysis of domestic climate policy, and (3) assist students in producing a substantial and successful legal research paper. These goals incorporate the following Learning Outcomes for Graduating Law Students:

- write analytically and persuasively [4(a)]
- present analysis orally outside of litigation [5(h), 6(m)]
- use policy to analyze and persuade [5(i)]
- work collaboratively [6(j)]
- present written and oral communication in a manner that meets the standards of the legal profession [7(a)].

Materials

- The required text is GLOBAL CLIMATE CHANGE AND U.S. LAW (Michael B. Gerrard & Jody Freeman, eds.) (2d edition 2014) [hereafter “Gerrard Text”]. Students will also be asked to access materials available from a variety of on-line sources. Students are expected to independently download these materials. Note that some of the materials are available only through the Hofstra Library web system (under “Online Resources,” “University Libraries” and in some instances through “Journal Finder”). If you have difficulty locating a source please check with the Deane Law Library staff.

Class Attendance and Participation

- I will call on students regularly during class and will consider class preparation and participation when writing student recommendations and with regard to grading, as described below.
- I may adjust by one-half grade (B to B+ or B+ to B, etc.) the course grade of (1) any student whose contributions to class discussion are exceptional (upward adjustment) or (2) any student who is repeatedly unprepared for or unengaged in class discussion (downward adjustment).
- In-class use of laptop computers is prohibited except as necessary to access on-line course materials. Any discovered use of a computer for a purpose unrelated to the course (to check e-mail, for example) will be considered in adjusting grades as noted above. A single discovered violation of the course laptop policy may warrant a downward adjustment of one-half grade.
- I will maintain a course TWEN site on Westlaw, available through www.lawschool.westlaw.com, assistance available at west.twensupport@thomson.com or 1-800-486-4876). Please register for the course on TWEN.
- A sign-in sheet will be available for each class. The sign-in sheet will be used to record and track attendance; falsification will be deemed a violation of the Code of Academic Conduct. Any student who misses more than three classes based on the sign-in sheet records is presumptively not in good and regular attendance and may be required to withdraw from the course or receive a failing grade, upon referral to and determination by the Office of Student Affairs.

Course Requirements and Grading

- Course grades will be based upon a draft and final course paper, with class participation factored in as described above. The final course paper will satisfy the Writing I requirement. The final course paper must be a substantial writing of at least 20 pages that involves independent research and legal analysis and addresses a legal topic related to climate change.

- Paper topic proposals are due by e-mail to me on or before October 1. Paper drafts are due by e-mail to me and also in hard copy at the beginning of class on November 5. Final course papers are due by e-mail to me and also in hard copy at the beginning of class on November 26.
- Paper topic proposals should consist, at minimum, of a short (~ a paragraph) description of the topic that the student's paper will address. I will also review more developed outlines if available.
- Paper drafts must be timely submitted, evidence significant progress in researching and developing arguments related to the paper topic, and be at least ten pages in length. If a draft is submitted that does not meet these requirements, the score on the final paper may be adjusted downward.
- Final papers should set forth a clear thesis or argument and support that thesis or argument through reasoned analysis and appropriate reference to authority. Papers will be holistically graded based on factors including clarity of thesis, organization, sophistication of argument and analysis, use of supporting reference materials, and overall format and presentation (spelling, grammar, adherence to Blue Book citation).

Course Outline

Global Climate Change and U.S. Law

Class #1 (August 27): Introduction and course overview – What is climate change? What are its causes and likely impacts? What is the status of existing U.S. and international efforts to control GHG emissions?

Required:

- Gerrard Text, Chapter 1

Supplemental:

- Intergovernmental Panel on Climate Change Fifth Assessment Report (Climate Change 2014: Mitigation of Climate Change): Summary for Policymakers, *available at* <http://www.ipcc.ch/report/ar5/wg3/>
- Intergovernmental Panel on Climate Change Fifth Assessment Report (Climate Change 2014: Impacts, Adaptation and Vulnerability): Summary for Policymakers, *available at* <http://www.ipcc.ch/report/ar5/wg2/>

- National Climate Assessment, U.S. Global Change Research Program, *available at* <http://nca2014.globalchange.gov/>

Class #2 (September 3): Existing statutes – Does the Clean Air Act authorize/require the regulation of GHG emissions?

Required:

- *Massachusetts v. E.P.A.*, 127 S.Ct. 1438 (2007)
- Gerrard Text, Chapter 4, pp. 121-124

Class #3 (September 10): Existing statutes – Does the Clean Air Act authorize/require the regulation of GHG emissions? (cont.)

Required:

- Gerrard Text, Chapter 4, pp. 129-141 (*read this first*)
- *Utility Air Regulatory Group v. E.P.A.*, 134 S.Ct. 2427 (2014)

Class #4 (September 17): Assessing potential common law solutions.

Required:

- The Complaint in Native Village of Kivalina v. ExxonMobil Corp., *available at* <http://www.climatelaw.org/cases/country/us/kivalina/Kivalina%20Complaint.pdf>
- Restatement (Second) of Torts §§ 821B, 826

Supplemental:

- David A. Grossman, *Warming Up to a Not-So-Radical Idea: Tort-Based Climate Change Litigation*, 28 COLUM. J. ENVTL. L. (2003)
- Thomas W. Merrill, *Global Warming as a Public Nuisance*, 30 COLUM. J. ENVTL. L. 293 (2005)

Class #5 (September 24): Assessing potential common law solutions (cont.).

Required:

- Gerrard Text, Chapter 8, pp. 239-255
- Students will also be assigned to review and report on standing analysis in either *Connecticut v. American Electric Power Co., Inc.*, 582 F.3d 309 (2d. Cir. 2009), *rev'd*, 131 S.Ct. 2527 (2011), or *Native Village of Kivalina v. ExxonMobil Corp.*, 663 F.Supp.2d 863 (N.D.Cal. 2009), *aff'd*, 696 F.3d 849 (9th Cir.)

Class #6 (October 1): Environmental law research tutorial; paper topic proposals due.

- Paper topic proposals due to Professor Kuh by e-mail.
- A Deane Law Library Reference Librarian will conduct an environmental law research training session.

Class #7 (October 8): Comparing policy options -- What is the best (most efficient, fair, effective) structure for a federal law designed to reduce GHG emissions?

Required:

- Robert R. Nordhaus & Kyle W. Danish, *Designing a Mandatory Greenhouse Gas Reduction Program for the U.S.* (Pew Center on Global Climate Change May 2003), available at: <http://www.c2es.org/docUploads/USGas.pdf>
- Alice Kaswan, *Environmental Justice and Domestic Climate Change Policy*, 38 ENVTL. L. REP. NEWS & ANALYSIS 10287, pp. 10287-10303 (2008)

Supplemental:

- Maxine Burkett, *Just Solutions to Climate Change: A Climate Justice Proposal for a Domestic Clean Development Mechanism*, 56 BUFF. L. REV. 169 (2008)

Class #8 (October 15): Assess and critically evaluate proposed federal legislation to control U.S. GHG emissions.

- *Note: This reading assignment will be to review the leading federal legislative proposal for controlling GHG emissions. As proposals are likely to develop in coming months and weeks, the specific piece of proposed legislation will be announced during a prior class.*

Class #9 (October 22): Assess the role of local governments in responding to climate change.

Required:

- Gerrard Text, Chapter 12
- Katherine A. Trisolini, *All Hands on Deck: Local Governments and the Potential for Bidirectional Climate Change Regulation*, 62 STAN. L. REV. 669 (2010) (Introduction and Part II)

Supplemental:

- David E. Adelman & Kirsten H. Engel, *Adaptive Federalism: The Case Against Reallocating Environmental Regulatory Authority*, 92 MINN. L. REV. 1796 (2008)

Class #10 (October 29): Does the U.S. have a duty/obligation (moral or otherwise) to significantly reduce its GHG emissions? To help developing nations with mitigation and/or adaptation? Evaluate and assess rationales for/against the adoption of stringent U.S. emission limits and the provision of climate aid to developing nations.

Required:

- Byrd-Hagel Resolution, S.Res. 98, 105th Cong. (as passed by the Senate, July 25, 1997), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=105_cong_bills&docid=f:sr98is.pdf
- Andrew C. Revkin, *Poor nations to bear brunt as world warms*, N.Y. TIMES, April 1, 2007, at 11, available at 2007 WLNR 6181378
- Eric A. Posner and Cass R. Sunstein, *Climate Change Justice*, 96 GEO. L.J. 1565, 1592-1612 (2008) (NOTE: Assignment is to read pp. 1592-1612 only.)
- Gardiner, S.M. (2004), "Ethics and global climate change." *Ethics* 114(3): 555, pp. 575-95 (available for Internet download through Academic Search Premier, EBSCO Host, Hofstra Library website) (NOTE: Assignment is to read pp. 575-95 only.)
- United Nations Framework Convention on Climate Change, Articles 2-4 and Annex I/II lists (pp. 4-9, 23-24), available at <http://unfccc.int/resource/docs/convkp/conveng.pdf>

***** DRAFT PAPERS DUE AT THE BEGINNING OF CLASS**

Kuh (Global Climate Change and U.S. Law)

WEDNESDAY NOVEMBER 5*
HARD COPY & E-MAIL TO PROFESSOR KUH
HARD COPY & E-MAIL TO PEER REVIEWERS**

Class #11 (November 5): DRAFT PAPERS DUE. Understanding the domestic debate over climate change – politics, business, science, worldview, and risk perception.

Required:

- Jedediah Purdy, *Climate Change and the Limits of the Possible*, 18 DUKE ENVTL. L. & POL'Y F. 289, 289-298 (2008)
- Dan M. Kahan et al., *The Second National Risk and Culture Study: Making Sense of - and Making Progress In -The American Culture War of Fact* (2007), pp. 1-6 & p. 16, *available for download from* <http://ssrn.com/abstract=1017189>
- Andrew C. Revkin, *Hacked E-Mail Is New Fodder for Climate Dispute*, N.Y. TIMES, Nov. 21, 2009, *available at* 2009 WLNR 23542150
- Gallup Politics, *One in Four in U.S. Are Solidly Skeptical of Global Warming* (April 22, 2014) (presenting the results of detailed polling of American regarding attitudes toward and beliefs about climate change), *available at* <http://www.gallup.com/poll/168620/one-four-solidly-skeptical-global-warming.aspx>
- Frank Luntz, *The Environment: A Cleaner, Safer, Healthier America* pp. 137-141 (2002) (strategy memo to the White House for Republican Party candidates), *available at* <http://www2.bc.edu/~plater/Newpublicsite06/suppmats/02.6.pdf>

Supplemental:

- Boykoff, M. T., and J. M. Boykoff. 2004. Balance as bias: global warming and the US prestige press. *Global Environmental Change-Human And Policy Dimensions* 14 (2):125-136 (*available for Internet download from the Hofstra University Library website*)
- Aaron M. McCright, *The Social Bases of Climate Change Knowledge, Concern and Policy Support in the U.S. General Public*, 37 HOFSTRA L. REV. 1017 (2009)
- Union of Concerned Scientists, *Atmosphere of Pressure: Political Interference in Federal Climate Science* (2007), http://www.ucsusa.org/scientific_integrity/abuses_of_science/atmosphere-of-pressure.html

Class #12 (November 12): Exchange and review of draft papers.

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- Students will break into small groups to review and comment on colleagues' draft papers.

Class #13 (November 19): Assess opportunities for and obstacles to reductions of GHG emissions from changes in individual behaviors.

- Michael P. Vandenberg et al., *Individual Carbon Emissions: The Low Hanging Fruit*, 55 UCLA L. REV. 1701 (2008)
- Before coming to class, please calculate (and record) your carbon footprint using the Berkeley Institute of the Environment CoolClimate Carbon Footprint Calculator, available at <http://coolclimate.berkeley.edu/carboncalculator>

Supplemental:

- Michael P. Vandenberg & Anne C. Steinemann, *The Carbon-Neutral Individual*, 82 N.Y.U. L. REV. 1673 (2007)

Class #14 (November 26): FINAL PAPERS DUE. Concluding lecture and discussion.