

Public Lands: Rebellion, Legacy and Management

Monday and Wednesday 1:30 to 3:20 pm

Math Building (Room 380, 380F)

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Former Deputy Assistant Secretary of Interior for Lands and Minerals (1999-2000)

Former Director of the Bureau of Land Management (1997-99)

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Office Hours: By appointment. Email or text. Flexible to meet your schedule

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Seminar Objectives:

The United States owns more than 640,000,000 million acres of public surface lands and another 800,000,000 subsurface (minerals, oil, & gas rights). That is, 28% of the land mass of the United States is “owned/managed” by the Federal Government. For comparison, California’s land mass is 101,534,080 acres. Some states have 89% of their land owned/managed by a Federal Agency (Nevada, mostly Bureau of Land Management) while others have less than 0.3% (Connecticut, Iowa and New York, mostly National Parks Service).

The Federal lands are managed by five agencies, Bureau of Land Management, Fish and Wildlife Services, Bureau of Reclamation, National Parks Service (Department of Interior) and the Forest Service (Department of Agriculture). Each agency has a different “organic act”, thus a different mission with distinctly different goals. Various Native American tribes have Reservation Lands which they manage for the benefit of tribal members.

Since the colonial days public lands have been the source of great opportunity, great scandals and almost constant dispute. These disputes have pitted Federal Agencies against one another, States against the Federal Government, Counties against States against the Federal Government and self-perceived patriots against Government in any form. As the U.S. population continues to grow these disputes have become more intense and, indeed, deadly.

The first course will briefly exam the history of public lands, beginning with a brief examination of “public lands” during the Greek and Roman times, followed by the development of English common law regarding land and its ownership. Beginning with Colonial times the course will exam the evolution of public lands during different periods of transition, from the Declaration of Independence, the Articles of Confederation, the Constitution and the acquisition of lands through purchase, Louisiana Purchase, Civil War, Mexican War of 1848 and negotiation and purchase of Alaska from Russia.

The majority of the course will exam the different regimes, some established by Congress, (Yellowstone Park), some by the Executive Branch, (Grand Canyon) the Antiques Act passed by Congress but administered by the President and the initial rationale for their creation. And some established by Native American tribes.

The final portion of the course will focus on the successes, but more importantly the failures of these different regimes to manage public lands.

Additionally, the course will exam various options and combinations that might be considered for managing public lands in the 21st Century. Should there be a reorganization at the Federal level of land management?

Should States and Counties play a larger role in management of public lands?

Who should pay for the management?

Should more public lands be privatized?

Are there scientific standards, which could be used to evaluate the effectiveness of managing public lands?

The U.S. Forest Service has a Field Guide which, provides a unified source for management decisions within the Forest Service, the Bureau of Land Management has none, should one be created for all Federal land management agencies? How should the Tribal lands be considered or categorized?

Seminar Requirements:

Students who come to the seminar, complete the course readings and contributor their ideas will do well.

The seminar will be interactive. With each class students will be assigned roles or perspectives they are to advocate in the course of the seminar. With several of the seminars students will be asked to play the particular role of historic figures who made major contributions to particular legislative or executive branch acts. Costumes and props are optional.

There will be several Skype/Zoom interviews with key public and tribal land managers. Former Secretary of Interior Sally Jewell, former Solicitor for the Department of Interior John Leshy, Dan Ashe, former Director of Fish and Wildlife Service and a Director of a Native American Tribal lands program are among those who will participate.

Several events at the Lane Center will be complimentary to the seminar. Please check their web page west.stanford.edu/events. Students will be notified of particular events they are expected to attend at the Lane Center.

Written Requirements:

There will be two short papers (one page) done in class, one short paper (two pages) done outside of class and one longer paper (no more than five pages long) due two weeks before the seminar is completed. The longer paper will focus on particular policy options for public land management in the 21st Century. There will be no final examination.

Outside research and visits:

The seminar will have specific topics for research and presentation purposes. In addition to the two-hour seminar the student will be expected to spend at least another three hours outside of the seminar conducting research, doing telephone interviews with various public land managers, and making public land visits.

Course Outline

Purpose of the course. Everyone introduces themselves

Reading: "This Land" by Christopher Ketcham (will be used throughout the class). It presents a harsh, political critique of public lands in the West, but does cover the history.

January 6

Have you visited public lands?

What are Public Lands?

Do they matter?

Who should manage them?

Who should pay for them?

Divide class into six groups for study and analysis of the Bureau of Land Management, U.S. Forest Service, National Fish and Wildlife Service, National Parks, Bureau of Reclamation and Tribal Lands

January 8

Origins of the concept of property

Primitive Times

Nomad/Agrarian

Greek and Roman concepts of public, private and sacred

How to allocate recently acquired lands by conquest?

Readings:

Sacred Property and Public Property in the Greek City

By Denis Rousset The Journal of Hellenic Studies, Vol. 133 (2013) pp.113-133

Public Land in the Roman Empire (A Social and Economic History of Ager Publicus in Italy, 396-89 BC

By Saskia T. Roselaar Oxford University Press pp. 54-64, 223-243

What worked and why, and what failed and why?

Medieval times

The Church

The Royals

The emergence of the State

Assignment: Telephone assigned personnel from

Land Management Agencies

January 13

Questions: Did the founding fathers get it right or wrong in the Constitution? Were there alternatives available? Would political parties have formed if the Founders had considered alternatives?

Pre-colonial, colonial, Declaration of Independence/Articles of Confederation and the Constitution.

Pilgrims, refugees and criminals

Readings;

The Origin of Every Other Right: A Constitutional History of Property Rights

Oxford 2007 Chapter “The Origins of Property Rights: The Colonial Period

Property Rights in American History James W. Ely Vanderbilt University

<https://www.hillsdale.edu/wp-content/uploads/2016/02/FMF-2008-PropertyRights-in-American-History.pdf>

Theory of Justice John Rawls Harvard Press 1971

Chapter “Justice between Generations”

The Louisiana Purchase and Our Title West of the Rocky Mountains

Binger Hermann 1900

https://en.wikipedia.org/wiki/Louisiana_Purchase

America's Acquisition History

Colonies

Florida and the Louisiana Purchase

1848 Mexican War

Civil War

Spanish America War Puerto Rico, Cuba, Philippines

Hawaii and Alaska

January 15

General Land Office

Founding Fathers, Scandals and Exploration

Civil War

Dividing the Country by Slavery – Missouri Compromise

Homestead Act, Creation of States and School/State Trust Lands

The dawning of systematic efforts to manage private and public lands.

Yellowstone Park

Formation of the U.S. Forest Service

Antiquities Act

Teapot Dome Scandal

Class discussion on telephone interviews BLM, Forest Service, Bureau of Reclamation

Readings:

The Lure of the Land: A Social History of the Public Lands from the Articles of Confederation to the New Deal Everett Dick 1970

Inclusion in the American Dream: Assets, Poverty & Public Policy

Michael Sherraden 2005 Oxford UP

Tina R. W. Shanks “The Homestead Act: A Major Asset Building Policy in American History” pp 20-41

Questions: If more of the Founding Fathers had been merchants would have the settling of the “new lands” had a more efficient result? A more sustainable result than what occurred with the General Land Office? To stop the bribery and scandals over public land what alternatives should have been considered?

Optional Reading Resources: Paul Schulley, Lee Whittlesey Myth & History in the Creation of Yellowstone Park University of Nebraska Press 2006 pp. 270-287

Chris Magoc Yellowstone – The Creation and Selling of an American Landscape 1870-1903 University of New Mexico 1999

Aubrey Haines The Yellowstone Story – A History of Our First National Park University of Colorado Press 1996

https://en.wikipedia.org/wiki/Bibliography_of_Yellowstone_National_Park

J. Leonard Bates The Origins of the Teapot Dome University of Illinois Press 1963

In class writing of one page, or less, in response to question to be presented in class.

January 22

Efforts at Managing Public Lands, Examining the Bureau of Land Management

General Lands Office (1812)

Taylor Grazing Act (1934)

Bureau of Land Management (1948)

Federal Land Policy and Management Act (FLPMA 1976)

Lecture on how the BLM operates under FLPMA – Opportunities, Challenges and Changes of Administration.

The student group assigned to the BLM will make a twenty-minute presentation on present problems facing the BLM and possible solutions.

Readings:

The Nation’s Largest Landlord: The Bureau of Land Management in the American West

James R. Skillen University Press of Kansas 2009 pp. 102 -132

Questions: Why did the legislation occur in specific time periods? What were the private and public pressures for these Acts?

January 27

Federal Governments Public Lands Management Organizational Chart

White House - Council for Environmental Quality, Office Management & Budget

FBI/DEA/HLS/DOD

Department of Interior – Bureau of Land Management, National Parks Service, Fish and Wildlife Service, U.S. Geological Survey, Bureau of Reclamation, Bureau of Indian Affairs, Office of Surface Mining

Department of Agriculture – U.S. Forest Service, Natural Resource Conservation Services

State Government Land and Water Management Agencies

State Engineer, Department of Natural Resources, Department of Environmental Quality, State and County Department of Health, Department of Agriculture

Lecture on how U.S. Forest Service operates, Mike Dombeck, former Head of National Forest Service by Skype/Zoom.

The student group assigned to the U.S. Forest Service will make a twenty-minute presentation on present problems facing the U.S. Forest Service and possible solutions.

General Discussion about sources of conflict

The Sage Brush Rebellion, I, II, III and Future Conflicts

The Red Scare, Cleon Skousen and Ezra Taft Benson

Corporate Agriculture, shifting markets, droughts and more conservation

Who were the rebels?

LBJ Goldwater Martin Luther King Civil Right and Vietnam War Protest

Richard Nixon Watergate

Marlboro Man/Easy Rider

Posse Comitatus The Originalist

Waco, Ruby Ridge, Cliven Bundy, Bunkerville, Malhuer

Readings:

America's Public Lands, From Yellowstone to Smokey Bear and Beyond

Randall Wilson Rowman & Littlefield 2014 pp. 179-219, 255-263

A Brief History of the Sage Brush Rebellion High Country News

<https://www.hcn.org/articles/a-history-of-the-sagebrush-rebellion>

Monkey Wrench Gang Ed Abbey

Questions: Does scandal or crisis spur governmental reorganization? Does the Office of Management and Budget (OMB) use policy to determine budgets of land agencies, or politics?

What is the best way of dealing with the Constitutionalist like Cliven Bundy or the occupiers of Malheur? Do you intervene early or wait them out?

Is it best dealt with by the Federal Government or the States?

January 29

National Parks Service

Skype/Zoom Interview with Robert Stanton, former Director of National Parks.

Lecture on formation and function of National Parks Service.

The student group assigned to the NPS will make a twenty-minute presentation on present problems facing the NPS and possible solutions.

Rationale/political consensus (Zeitgeist)

leaders/opponents

preceded by scandal or some historic event

public perception, if any

Public consensus or bureaucratic maneuvering

Early history

Budgetary and/or bureaucratic challenges

First success

First failure

Present Budget/Personnel

Major challenges

Training program and external qualifications for personnel

Rate of Retirement National Parks Service

Skype/Zoom Interview with Robert Stanton, former Director of National Parks.

Lecture on formation and function of National Parks Service.

Reading: Freemuth, John. *Islands Under Siege: National Parks and the Politics of External Threats*. Lawrence: University of Kansas Press, 1991.

February 1

Class will visit Santa Cruz Redwood Preserve. Transportation will leave Stanford at 10am and return by 4pm. Lunch will be included.

Tour will be led by Dr. Traci Bliss, a Stanford graduate who has written extensively on the Redwood Preserve, which in part was created by her Grandfather.

February 3

Skype/Zoom Interview with Dan Ashe, Former Director of National Fish and Wildlife Services

Lecture on FSW, its mission, challenges and future opportunities.

The student group assigned to the National Fish and Wildlife Service will make a twenty-minute presentation on present problems facing the FWS and possible solutions.

Rationale/political consensus (Zeitgeist)

leaders/opponents

preceded by scandal or some historic event

public perception, if any

Public consensus or bureaucratic maneuvering

Early history

Budgetary and/or bureaucratic challenges

First success

First failure

Present Budget/Personnel

Major challenges

Training program and external qualifications for personnel

Rate of Retirement

Reading: Leopold, Aldo "Sand County Almanac

February 5

Skype/Zoom Interview with Dan Beard, Former Director of Bureau of Reclamation

Lecture on Bureau of Reclamation, its mission, challenges and future opportunities.

The student group assigned to the Bureau of Reclamation will make a twenty-minute presentation on present problems facing the Bureau of Reclamation and possible solutions.

What does water have to do with Public Lands?

Early history

Budgetary and/or bureaucratic challenges and relationship to the Army Corp of Engineers

First success

First failure

Present Budget/Personnel

Major challenges

Training program and external qualifications for personnel

Rate of Retirement

Reading: Reisner, Marc "Cadillac Desert

Second in class writing of one page, or less, in response to question to be presented in class.

February 10

Skype/Zoom Interview with _____, Director of Tribal Lands for _____ tribe.

Lecture on Bureau of Indian Affairs, its mission, challenges and future opportunities.

The student group assigned to the Tribal Lands will make a twenty-minute presentation on present problems facing the Tribal Lands and possible solutions.

Early history

Budgetary and/or bureaucratic challenges

First success

First failure

Present Budget/Personnel

Major challenges

Training program and external qualifications for personnel

Rate of Retirement

Reading to be announced in January.

February 12

Visit Presidio and Golden Gate Recreation Area

Tour will be led by National Park Service Personnel

Will leave Stanford campus at 10am and return by 3pm.

Reading:

<https://www.presidio.gov/presidio-trust/Shared%20Documents/Milestones%202012%20Year-End%20Report.pdf>

February 19

Skype/Zoom with Former Secretary of Interior Sally Jewells

Challenges of public land management in its many different forms.

Objective land management

Use or not of science

Use of new technologies

- Drones

- Weather (NOAA)

- Satellite and interface with Intelligence Community

- Public Private Partnerships

Role of Universities and Foundations

H2O critical/not?

One page, or less, paper in response to question presented in class, due February 24.

February 24

Budget exercise, in class. Each of the six groups of students will be asked to make a presentation on why their agencies budget should be expanded. Three independent judges will decide which group gets what portion of an unexpected Bezos Bonus.

March 2

Five Page Paper due. Topic: Choose best public land management agency, explain and defend your choice with perspective on future sustainability.

Challenges

Who manages, with what, and budgets (revenue sources)?

Climate change

Fires

Drought

Endangered Species

Lack of loyalty/interest

Reforms/reorganizations

Czarina/Czar perspective

Practical politics 2020

Climate Change

How can you manage land if you don't have water?

March 4

Visit Jasper Ridge and research being conducted there.

March 9

Presentation of papers by students, with critiques being made by class.

March 11

The Future of Public Lands.

Reading: Carson, Rachel "Silent Spring"

Bibliography

Ackerman, Bruce (1977), *Private Property and the Constitution*, New Haven: Yale University Press.

Aristotle, *The Politics* [c. 330 BCE] Stephen Everson (ed.), Cambridge: Cambridge University Press, 1988.

Bentham, Jeremy (1931), *The Theory of Legislation* [1802], C.K. Ogden (ed.) London: Kegan Paul, Trench, Trubner & Company

Blackstone, William (2001), *Blackstone's commentaries on the Laws of England* [1763], Wayne Morrison (ed.), London: Cavendish Publishing.

Cohen, G. A. (1979) 'Capitalism, Freedom and the Proletariat,' in Alan Ryan (ed.) *The Idea of Freedom: Essays in Honor of Isaiah Berlin*, Oxford: Oxford University Press

Cohen, G.A. (1995), *Self-ownership, Freedom and Equality*, Cambridge: Cambridge University Press.

Friedman, Milton (1962), *Capitalism and Freedom*, Chicago: University of Chicago Press

Hardin, Garrett (1968), 'The Tragedy of the commons,' *Science* 162:1243-8

Hart, H.L.A. (1968), *Punishment and Responsibility*, Oxford: Clarendon Press

Hegel, G.W.F. (1967) *The Philosophy of Right* [1821], T.M. Knox (trans.) Cambridge: Cambridge University Press.

Hobbes, Thomas (1893), *De Cive: The English Version* [1647], Howard Warrender (ed.), Oxford: Clarendon Press.

Hume, David (1978) *A Treatise of Human Nature* [1739] L.A. Selby-Bigge and P.H. Nidditch (eds.), Oxford: Clarendon Press.

Kant, Immanuel (1991) *The Metaphysics of Morals* [1797]. Mary Gregor (trans.) Cambridge: Cambridge University Press.

Locke, John (1988), *Two Treatises of Government* [1689] Peter Laslett (ed.), Cambridge: Cambridge University Press.

Marx, Karl (1972), *Theories of Surplus Value* [1862], London, Lawrence and Wishart.

_____ (1976), *Capital, Volume I* [1867]. Be Fowkes (trans.) Harmondsworth: Penguin Books.

Mill, John Stuart (1994), *Principles of Political Economy* [1848], Jonathan Riley (ed.) Oxford: Oxford University Press.

Munzer, Stephen R. (1990), *A Theory of Property*, Cambridge: Cambridge University Press.

Nozick, Robert (1974), *Anarchy, State and Utopia*, Oxford: Basil Blackwell.

Packard, Herbert (1968) *The Limits of the Criminal Sanction* Stanford: Stanford University Press.

Plato, *Republic* [c. 370 BCE], Robin Waterfield (trans.), Oxford: Oxford University Press.

Radin, Margaret Jane (1982) 'Property and Personhood,' *Stanford Law Review*, 34: 957 1014

Rawls, John (1971), *A theory of Justice*, Cambridge: Harvard University Press

Rousseau, Jean Jacques (1994), *Discourse on the Origin of Inequality* [1755]. Franklin Philip (trans.) Oxford: Oxford University Press.

_____ (1968), *The Social Contract* [1762], Maurice Cranston (trans.) Harmondsworth: Penguin Books

Ryan, Alan (1984), *Property and Political Theory*, Oxford: Basil Blackwell.

Stegner, Wallace (1953) *Beyond the Hundredth Meridian: John Wesley Powell and the Second Opening of the West*, Penguin Books

_____ (1964) *The Gathering of Zion: The Story of the Mormon Trail*. Bison Books Waldron,

Jeremy (1988), *The Right to Private Property*, Oxford: Clarendon Press.

_____ (1992), 'Superseding Historic Injustice,' *Ethics*, 103:4-28

_____ (1993), 'Property, Justification and Need,' *Canadian Journal of Law and Jurisprudence*, 6:185-215

_____ (1994), 'The Advantages and Difficulties of the Human Theory of Property,' *Social Philosophy and Policy*, 11:85-123

Williams, Bernard (2002), *Truth and Truthfulness*, Princeton: Princeton University Press.