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Selected Publications

Books:

[THE SPECTER OF DICTATORSHIP: JUDICIAL ENABLING OF PRESIDENTIAL POWER](#) (2021).

[ENVIRONMENTAL LAW: A CONCEPTUAL AND PRAGMATIC APPROACH](#) (with ROBERT W. ADLER & KIRSTEN H. ENGEL) (3RD ED. 2016 & TEACHERS MANUAL 2016).

[THE ECONOMIC DYNAMICS OF LAW](#) (2012).

[ENVIRONMENTAL LAW: A CONCEPTUAL AND PRAGMATIC APPROACH](#) (with ROBERT W. ADLER & KIRSTEN H. ENGEL) (2ND ED. 2011).

[ENVIRONMENTAL LAW: A CONCEPTUAL AND PRAGMATIC APPROACH](#) (with ROBERT W. ADLER) (2007).

[THE ECONOMIC DYNAMICS OF ENVIRONMENTAL LAW](#) (2003).

Articles:

[*Does the Separation of Powers Justify the Major Questions Doctrine?*](#), 2024 U. ILL. L. REV. 1177 (2024).

[*Industrial Policy, Populism, and the Political Economy of Climate Action*](#) (with David Popp & Michael Mehling), 14 NATURE CLIMATE CHANGE 414 (2024).

[*Pricing, Decarbonization, and Green New Deals*](#) (with Michael Mehling), 48 WM & MARY ENV'T L. REV. 211 (2024).

[*Feasibility Analysis and the Climate Crisis*](#), 39 YALE J. REG. 533 (2022).

[*Appointment and Removal*](#), 74 ADMIN. L. REV. 422 (2022).

[*Making Appointment the Means of Presidential Removal of Officers of the United States*](#), 26 LEWIS & CLARK L. REV. 315 (2022).

[*The Political Remedies Doctrine*](#), 71 EMORY L. J. 1 (2021).

[*The Unitary Executive Theory in Comparative Context*](#), 72 HASTINGS L. J. 1 (2020).

[*Implied Presidential and Congressional Powers*](#) (with Bill Banks), 41 CARDOZO L. REV. 1301 (2020).

[*Toward a Populist Political Economy of Climate Disruption*](#), 49 ENVT'L L. 379 (2019).

[*President Trump's Executive Orders and the Rule of Law*](#), 87 UMKC L. Rev. 489 (2019).

[*Half a Century of Supreme Court Clean Air Act Interpretation: Purposivism, Textualism, Dynamism, and Activism*](#) (with Thomas M. Keck & Brandon T. Metroka), 75 WASH. & LEE L. REV. 1781 (2018).

[*Inactivity, Deregulation, and the Commerce Clause: A Thought Experiment*](#), 53 WAKE FOREST L. REV. 479 (2018).

The Economic Dynamics of Climate Disruption and the Need for a Better Legal Theory, 8 CLIMATE LAW 172 (2018).

[*Judicial Review of Executive Orders' Rationality*](#), 98 B.U. L. REV. 1013 (2018).

[*Emissions Trading Versus Pollution Taxes: Playing "Nice" with Other Instruments*](#), 48 ENVT'L L. 29 (2018).

[*The Ends and Means of Pollution Control: Toward a Positive Theory of Environmental Law*](#), 2017 UTAH L. REV. 57 (2017).

[*The Economic/Noneconomic Activity Distinction Under the Commerce Clause*](#), 67 CASE WESTERN RESERVE L. REV. 337 (2016).

[*Must the States Discriminate Against their Own Producers under the Dormant Commerce Clause?*](#) 54 HOUSTON L. REV. 1 (2016)

[*Legal Theory Lessons from the Financial Crisis*](#), 40 J. CORP. L. 55 (2014).

[*Putting a Price on Carbon: The Metaphor*](#), 44 ENVT'L L. 695 (2014).

[*The Limits of Pricing Carbon*](#), 4 CLIMATE L. 107 (2014).

[*Cost-Benefit Analysis and the Precautionary Principle: Can They Be Reconciled?*](#) 2013 MICH. ST. L. REV. 771.

[*Cap Without Trade: A Proposal for Resolving the Emissions Trading Problem Under CAA §111*](#), 43 ENVT'L L. REP. 10555 (2013). ©2013 Environmental Law Reporter®. Reprinted with permission from ELR.

[*Purposeless Construction*](#), 48 WAKE FOREST L. REV. 97 (2013).

- [*Climate Disruption: An Economic Dynamic Approach*](#), 42 ENV'T'L. L. REP. 10639 (2012).
- [*Contract Law's Inefficiency*](#), 6 VA. L. & BUS. REV. 301 (2011).
- [*Two Cheers for Feasible Regulation: A Modest Response to Masur and Posner*](#), 35 HARV. ENV'T'L. L. REV. 313 (2011).
- [*An Environmental Competition Statute*](#), 2 SAN DIEGO J. CLIMATE & ENERGY L. 199 (2010).
- [*Capping Carbon*](#), 40 ENV'T'L. L. 1 (2010).
- [*Meaningful Technology Transfer for Climate Disruption*](#), 64 J. INT'L AFF. 1 (2010).
- [*Toward a Duty-Based Theory of Executive Power*](#), 78 FORDHAM L. REV. 71 (2009).
- [*Linkage and Multilevel Governance*](#), 19 DUKE J. COMP. & INT'L L. 389 (2009).
- [*The Missing Instrument: Dirty Input Limits*](#) (with Amy Sinden), 33 HARV. ENV'T'L. L. REV. 65 (2009).
- [*Firing U.S. Attorneys: An Essay*](#), 60 ADMIN. L. REV. 707 (2008).
- [*Sustainable Development and Market Liberalism's Shotgun Wedding: Emissions Trading Under the Kyoto Protocol*](#), 83 IND. L.J. 21 (2008).
- [*Regulatory Reform: The New Lochnerism?*](#), 36 ENV'T'L L. 603 (2006).
- [*Is Cost-Benefit Analysis Neutral?*](#), 77 U. COLO. L. REV. 335 (2006).
- [*The Functions of Transaction Costs: Rethinking Transaction Cost Minimization in a World of Friction*](#) (with Shubha Ghosh), 47 ARIZ. L. REV. 61 (2005).
- [*Distributing the Costs of Environmental, Health, and Safety Protection: The Feasibility Principle, Cost-Benefit Analysis, and Regulatory Reform*](#), 32 B.C. ENV'T'L. AFF. L. REV. 1 (2005).
- [*Standing for Nothing: The Paradox of Demanding a Concrete Context for Formalist Adjudication*](#), 89 CORNELL L. REV. 808 (2004).
- [*Does Emissions Trading Encourage Innovation?*](#), 33 ENV'T'L. L. REP. 10094 (2003).
- [*Loose Canons: Statutory Construction and the "New" Nondelegation Doctrine*](#), 64 U. PITT. L. REV. 1 (2002).

[*What is Free Trade?: The Real Issue Lurking Behind the Trade and Environment Debate*](#), 41 VA. J. INT'L L. 279 (2001).

[*Getting Our Priorities Straight: One Strand of the Regulatory Reform Debate*](#), 31 ENVTL L. REP. 10003 (2001).

[*Choosing Environmental Instruments in a Transnational Legal Context*](#), 27 ECOLOGY L.Q. 1 (2000).

[*Free Lunch or Cheap Fix? : The Emissions Trading Idea and the Climate Change Convention*](#), 26 B.C. ENVTL. AFF. L. REV. 1 (1998).

[*The Societal Cost of Environmental Regulation: Beyond Administrative Cost-Benefit Analysis*](#), 24 ECOLOGY L. Q. 545 (1997).

Chapters in Books:

Executive Privilege Ends with Impeachment, in EXECUTIVE PRIVILEGE AND THE POWERS OF THE PRESIDENCY (M.M. Eboch ed., 2022).

Climate Finance (with Cinnamon Carlane) in RESEARCH HANDBOOK ON CLIMATE CHANGE MITIGATION LAW (Leonie Reins & Jonathan Vershuuren eds., 2022).

Instrument Choice, in THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW (Lavanya Rajamani & Jacqueline Peel eds., 2nd ed. 2021).

Critiques of Law and Economics (with Robin P. Malloy), in THE OXFORD HANDBOOK OF LAW AND ECONOMICS (Francesco Parisi ed., 2017).

Decisions about Emissions Trading Design, in DECISION MAKING IN ENVIRONMENTAL LAW (Lee Paddock, Robert Glicksman, & Nicholas Byner eds., 2016).

Traditional Regulation's Role in Greenhouse Gas Abatement, in CLIMATE CHANGE LAW (Daniel Farber & Marjan Peeters eds., 2016).

Alternatives to Regulation?: Market Mechanisms and the Environment, in THE OXFORD HANDBOOK ON REGULATION (Robert Baldwin, Martin Cave, and Martin Lodge eds., 2010).

Renewable Energy Under the Kyoto Protocol: The Case for Mixing Instruments, in A GLOBALLY INTEGRATED CLIMATE POLICY FOR CANADA (Steven Bernstein et al. eds., 2008).

[*Air Quality: The Need to Replace Basic Technologies with Cleaner Alternatives*](#), in AGENDA FOR A SUSTAINABLE AMERICA (John Dernbach ed., 2009).