

**David M. Driesen**  
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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. REV. 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. REV. 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., 2<sup>nd</sup> 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).