

SYRACUSE UNIVERSITY
COLLEGE OF LAW

David M. Driesen

University Professor

Selected Publications

Syracuse University College of Law
Selected Publications – David M. Driesen

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).

[ECONOMIC THOUGHT AND U.S. CLIMATE CHANGE POLICY](#) (2010).

[BEYOND ENVIRONMENTAL LAW: POLICY PROPOSALS FOR A BETTER ENVIRONMENTAL FUTURE](#) (with ALYSON C. FLOURNOY ED., 2010).

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

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

Articles:

[*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 ENV'T'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).

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

[*Emissions Trading Versus Pollution Taxes: Playing "Nice" with Other Instruments*](#), 48 ENV'T 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 ENV'T 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 ENV'T 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. 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. REV. 313 (2011).

[*An Environmental Competition Statute*](#), 2 SAN DIEGO J. CLIMATE & ENERGY L. 199 (2010).

[*Capping Carbon*](#), 40 ENV'T 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).

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[*The Missing Instrument: Dirty Input Limits*](#) (with Amy Sinden), 33 HARV. ENVT'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 ENVT'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. ENVT'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 ENVT'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:

Critiques of Law and Economics (with Robin P. Malloy), in THE OXFORD HANDBOOK OF LAW

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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).