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RECENT RESEARCH BY CPR SCHOLARS, 2007-2011

Frank Ackerman

Subjects: *climate change, REACH, CBA, Atrazine*

Books

- ***The Economics of Climate Change in China: Towards a Low Carbon Economy* (Earthscan Ltd, 2010)(with Neva Goodwin, Julie A. Nelson & Thomas Weisskopf)** – discusses the necessity and likelihood of China’s reduction of its carbon footprint, given its dependence on fossil fuels, lack of sustainability and history of greenhouse gas emissions, and how a transition into green industry could have economic and security benefits for the country
- ***Can We Afford the Future? Economics for a Warming World* (Zed Books, 2009).** Critical acclaim for *Can We Afford the Future*: “Frank Ackerman provides the ammunition that advocates of strong climate policy need to debunk the conclusion that stabilizing our future climate is 'too expensive'.” - Stephen H. Schneider, Stanford University; “This book is essential reading for anyone trying to understand the major economic debates around the major new long-term challenge of our times - global warming. Frank Ackerman has done us all a great service with this very accessible critical survey of the varied and complicated issues involved.” - Jomo Kwame Sundaram, UN Assistant Secretary General for Economic Development
- ***Poisoned for Pennies: The Economics of Toxics and Precaution* (Island Press, 2008).**

Book chapters

- **“Wrong in retrospect: cost-benefit analysis of past successes,”** in *Frontiers in Ecological Economic Theory and Application* (with Lisa Heinzerling, & Rachel I. Massey) (Jon D. Erickson and John M. Gowdy, eds., Edward Elgar, 2007)

Articles

- ***Inside the Integrated Assessment Models: Four Issues in Climate Economics*, 1 CLIM. & DEV. 166 (2009) (with Elizabeth A. Stanton & Sivan Kartha)** –assessed thirty current climate change models on four important aspects of results achieved based on the model’s structure, equity, uncertainty and costs, ultimately finding that none of the models were able to address all of the issues simultaneously
- ***Limitations of Integrated Assessment Models of Climate Change*, 95 CLIMATIC CHANGE 297 (2009) (with Stephen DeCanio, Richard Howarth, & Kristen Sheeran)** –assessed the shortcomings of IAM’s in climate change, including discounting of climate change impacts and assigning monetary values to subjective concepts, and suggested an alternative mechanism for climate change policy decision-making
- ***Did the Stern Review Underestimate U.S. and Global Climate Damages?* 37 ENERGY POL’Y 2717 (2009) (Elizabeth A. Stanton, Chris Hope & Stephane Alberth)** –reapplied the PAGE2002 model for climate change, finding an increase of 2.2% GDP for the US and 8.6% for the world for climate change damages in 2100, compared to the Stern Review results
- ***Review of Nicholas Stern’s Blueprint for a Safer Planet, in Nature Reports: Climate Change (on-line journal), April 2009*** –analyzed the potential worldwide policy that could be made on climate change as presented in Stern’s book, praising aspects such as its cause to act now, as opposed to most economists’ advice to move slowly, but questioning whether the proposed deal would make enough steps to work against climate change

- ***Looks Can Be Deceiving: Measuring the Benefit of Trade Liberalization*, 37 INT'L J. POL. ECON., 50 (2008) (with Kevin Gallagher).**
- ***Hot, It's Not: Reflections on Cool It!*, by Bjorn Lomborg, 2008, 89 CLIMATIC CHANGE 435 (2008) –** refuted evidence presented in Lomborg's book suggesting climate change should not be a global priority; argued against cost-benefit analysis in reference to climate change; proposed solutions to influence government approach to climate change
- ***Can Climate Change Save Lives? A comment on "Economy-wide estimates of the implications of climate change: Human health,"* 66 ECOL. ECON. 8 (2008) (with Elizabeth Stanton)**-refuted an article written by Francesco Bosello, Robert Roson and Richard Tol claiming that climate change and increased temperatures would save human lives
- ***Climate Economics in Four Easy Pieces*, 51 DEV. 3 (2008) –**argued against the use of CBA in climate economic policy
- ***Mad Cows and Computer Models: The US Response to BSE*, 18 NEW SOLUTIONS 16 (2008) (with Wendy Johnnecheck) –**discussed the models used in current BSE outbreak predictions, the inherent flaws in these models, and the need for precautionary policies in prevention of such outbreaks, in light of the inherent flaws in the statistical modeling
- ***Implications of REACH for Developing Countries*, 18 EUR. ENV'T 16 (2008) (with Elizabeth A. Stanton, Brian Roach & Anne-Sofie Andersson) –**analyzed the potential harms to African, Caribbean and Pacific exporters connected to Europe in light of the new chemical regulation, finding that "almost all ACP exports subject to REACH face insignificant obstacles from the new regulation"
- ***The Economics of Atrazine*, 13 (4) INT'L J. OCCUPATIONAL & ENVTL. HEALTH 441 (2007) –**discussed the cost-benefit analysis of Atrazine, showing that even if the full 6% reduction of corn occurred due to a ban on the chemical, the impact of the loss should not outweigh the impact of exposure to the chemical
- ***Law and Economics for a Warming World*, 1 HARV. L. & POL'Y REV. 331 (2007) (with Lisa Heinzerling) –**addressed climate change with regard to public policy, and offered suggestions as to how to address climate change through new policy
- ***Wasting Away in Paretoville: A Reply to Cass Sunstein*, 1 HARV. L. & POL'Y REV. 363 (2007) (with Lisa Heinzerling) –**refuted four major areas of research presented in Professor Sunstein's article by calling for a full departure from traditional welfare theories
- ***The Carbon Content of Japan-US Trade*, 35 ENERGY POL'Y 4455 (2007) (with Masanobu Ishikawa & Mikio Suga) –**discussed the change in greenhouse gas emissions due to trade between the two countries and found a global decrease in emissions, while also finding that a much larger reduction (nearly half) could be made by American industry if the US imposed standards similar to those of Japan

CPR

- **Perspectives**
 - **REACH**
 - **Cost-Benefit Analysis (with Lisa Heinzerling, former member)**
- **Testimony/Op-eds**
 - **"Building climate policy right," in Worcester Telegram & Gazette, September 3, 2010 (with Elizabeth A. Stanton) -** discussed the need for effective climate change legislation to impose fees on greenhouse gas emissions and to use the fees appropriately by refunding tax payers
 - **"Saving the Planet: Addressing a problem we can afford to solve," in Washington Post, October 23, 2009 and Portland Oregonian, October 25, 2009 (with Eban Goodstein and**

Kristen Sheeran) – op-ed describing the current push for 450ppm of CO₂ in the atmosphere by 2050, how this goal must be reduced to 350ppm if it is to be successful, and how the true reason for inaction has been politically motivated, but the cost of inaction would be vastly above the cost of action

- **Frank Ackerman:** April 22, 2009 before the House Committee on Energy and Commerce hearing on Waxman-Markey on “The Costs of Inaction”

▪ **Blogs**

- ***Facing up to the Real Cost of Carbon*, CPRBlog, July 21, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=4CE402B8-DCC5-4A85-1A7A5DFE8AFFA7E3>** - discussed the cost of inaction against climate change and how the current government bodies are resisting climate change protection measures because of inaccurate cost models
- ***Did Environmentalists Kill Climate Legislation?* CPRBlog, May 6, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=C5DDD6AF-9087-5FB5-D512E9D3924E141D>** - discussed the reasons for legislation failure, finding attributes from both political gridlock and environmentalists' mistakes, including reduced education programs, increased focus on message and failed attempts to highlight the green agenda as job stimulating.
- ***Costs of Inaction: Popular Climate Econ Model Needs Major Overhaul*, CPRBlog, March 15, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=BCB59FF7-0411-69A6-86D96E394ACC7347>** - discussed the inadequacies of the FUND model of climate economics, pointing out its main flaw in assuming that all “other” costs of climate change, beside electricity consumption, can be minimized to only a \$4 net cost
- ***Would Passing Climate Legislation Reduce Our Dependence on Oil?* CPRBlog, June 24, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=66081827-A886-4942-3B645D0D79DB53D6>** – discussed the need for more aggressive Congressional legislation on carbon prices and energy laws
- ***Socializing Risk: The New Energy Economics*, CPRBlog, May 26, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=D4BF7BB9-A8E5-B07D-FBE1FF82303B361F>** – discussed the low liability on oil and nuclear energy companies in the aftermath of an accident, and how this limit relates to the socialization of energy costs and potential climate change liabilities
- ***Bjorn Lomborg Misreads Climate Change Economics in Washington Post Op-Ed*, CPRBlog, January 19, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=47C43313-BB9F-7619-44CBFCF39A04D04E>** – discussed Lomborg’s opinion article stating his views on economic policies and climate change, pointed out flaws in his arguments, and noted the many studies, including the Stern Review, that consistently show findings opposite of those asserted by Lomborg
- ***EPA and NHTSA Lowball Estimates of Carbon Costs in Proposed Tailpipe Emissions Standard*, CPRBlog, December 4, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=5A24178F-D2D0-D3D8-E101B3E5C8155F5B>** –discussed the underestimating of costs of carbon pollution, highlighting the importance of the chosen discounting rate and the inclusion of large-scale climate change risks into the economic analysis
- ***A Day at the Waxman-Markey Hearings*, CPRBlog, April 23, 2009, <http://www.progressivereform.org/CPRBlog.cfm?fkScholar=1>** –described his

appearance before the Energy and Commerce Committee on the costs of climate change in regards to the Waxman-Markey bill

Other

- Blogs on Eco-compass: topics ranging from a comparison of the financial crisis to environmental issues in terms of risks, and encouraging government to insure against the risks before they happen, as opposed to a cost-benefit analysis to determine whether the problems are worth fixing; how unemployment affects overall health, and how the government under President Bush made erroneous claims that environmental regulation would cause a crumbling economy and create health problems through unemployment; and the actual low cost of regulation.
- Initiated www.RealClimateEconomics.org, a gathering of peer-reviewed articles promoting climate regulation for the stabilization of world-wide economies

David Adelman

Subjects: adaptive federalism, climate change

Book chapters

- “Climate change, federalism and promoting technological change,” in *Beyond Environmental Law: Policy Proposals for a Better Environmental Future* (David M. Driesen & Alyson C. Flournoy, eds., Cambridge University Press, 2010).
- “Adaptive Environmental Federalism,” in *Preemption Choice: The Theory, Law and Reality of Federalism’s Core Question* (with Kirsten H. Engel) (William W. Buzbee, ed., Cambridge University Press, 2009).

Articles

- ***A Cautiously Pessimistic Appraisal of Trends in Toxicological Regulation*, 32 WASH. U. J.L. POL’Y 377 (2010)** - analyzed toxics regulation and advancement of toxicogenomics, surveying the trends in toxics regulation throughout the world, finding improvements in REACH’s precautionary approach and CEPA’s structure that has allowed for examination of many more chemicals than TSCA, and finding that three types of policies could strengthen future toxics regulation: tiered systems for testing and review, better post-market review of chemicals, and policies that promote innovation
- ***Misplaced Fears in the Legislative Battle Over Affordable Biotech Drugs*, 50 IDEA 565 (2010) (with Christopher M. Holman)** -
- ***The Challenge of Abrupt Climate Change for US Environmental Regulation*, 58 EMORY L.J., 379 (2008)** –suggested that abrupt climate changes will motivate people to reassess how environmental technology is utilized and developed; urged government away from cost-benefit analysis to progressive decision-making methods
- ***Reorienting State Climate Change Policies to Induce Technological Change*, 50 ARIZ. L. REV. 835 (2008) (with Kirsten H. Engel)** –asserted that states can be instrumental in creating the technological advancements in controlling greenhouse gases; proposes a two-tiered strategy: primary federal responsibility for reducing greenhouse gas emissions, while state policies focus on promoting technological developments and change
- ***Adaptive Federalism: The Case Against Reallocating Environmental Regulatory Authority*, 92 MINN. L. REV. 1796 (2008) (with Kirsten H. Engel)**, available at SSRN: <http://ssrn.com/abstract=1016767> -supported current dynamic system of overlap of jurisdictions of federal and state environmental policies, in opposition to preemptive federal control
- ***The Art of the Unsolvable: Locating the Vital Center of Science for Environmental Law & Policy*, 37 ENVTL. L. 935 (2007)**; Arizona Legal Studies Discussion Paper No. 07-17. –pertained to creating appropriate benchmarks for the role of science in environmental law policy; includes how to utilize finance theory in said benchmarks
- ***Patent Metrics: The Mismeasure of Innovation in the Biotech Patent Debate*, 85 TEX. L. REV. 1677 (2007) (with Kathryn L. DeAngelis)** –an empirical study of biotechnology patents, with the conclusion that the rise in biotechnology patents is not stifling innovation

Last Updated May 8, 2012

- ***Another Reason for Optimism, CPRBlog, August 25, 2008,***
<http://www.progressivereform.org/CPRBlog.cfm?fkScholar=2> –cited examples where the data gap between science and regulation has been bridged, usually by institutions, inciting hope that the approach may help in more difficult areas, like toxics regulation

Robert Adler

Subjects: water law, restoration, the Colorado River

Books

- ***Restoring Colorado River Ecosystems: A Troubled Sense of Immensity* (Island Press, 2007).**

Book chapters

- **“Rethinking Water Law in a Changing Climate,”** in *Climate Change: A Reader* (William Rodgers, et al. eds., Carolina Academic Press, 2011)
- **“Legal Framework for the Urban Water Environment,”** in *The Water Environment of Cities* (Larry Baker, ed., Springer, 2009) –analyzed the complex legal structure of urban water laws, which can integrate local, state, regional, federal and, sometimes, international laws
- **“Institutions Affecting the Urban Water Environment,”** in *The Water Environment of Cities* (Larry Baker, ed., Springer, 2009) –analyzed the equally complex structure of agencies, courts, legislative bodies and governmental entities that shape, enforce, and actually act out urban water laws
- **“Overcoming Legal Barriers to Hydrological Sustainability of Urban Systems,”** in *Cities of the Future: Towards Integrated Sustainable Water and Landscape Management* (Vladimir Novotny & Paul Brown, eds., IWA Publishers, 2007)

Articles

- ***Resilience, Restoration, and Sustainability: Revisiting the Fundamental Principles of the Clean Water Act*, 32 WASH. U. J.L. POL’Y 139 (2010)** – analyzed the original intention of CWA, suggesting a shift toward resilience: allowing for actions that address the dynamic nature of ecosystems; toward restoration: allowing positive growth in the ecosystems and addressing more pollution factors; and toward sustainable waters: allowing more clarity and expansion in the definition of what waters are protected
- ***Priceline for Pollution: Auctions to Allocate Public Pollution Control Dollars*, 34 WM. & MARY ENVTL. L. & POL’Y REV. 745 (2010)** - argued for competitive bidding for public pollution control money, most notably in the area of nonpoint source pollution, finding that the addition of bidding into programs, such as the Chesapeake Bay Program, could increase cost-effectiveness and efficiency in pollution control
- ***Climate Change and the Hegemony of State Water Law*, 29 STAN. ENVTL. L.J. 1 (2010)** – discussed the balance between state and federal regulation of water in the face of climate change, as well as the scientific and legal predictions on the effect of climate change on water supply and how these impacts indicate the need for an increased federal role in water law
- ***Environmental Criminal Prosecution: Essential Tool or Government Overreaching?* 2009 UTAH L. REV. 1097 (2009)** – discussed the roadblocks and questions raised by prosecution of environmental crimes
- ***Freshwater: Sustaining Use by Protecting Ecosystems* 39 ENVTL. L. REP. NEWS & ANALYSIS 10309 (2009); reprinted in *Agenda for a Sustainable America*, (John Dernbach, ed) (Earth Island Press, 2009)** –analyzed the current state of US laws governing freshwater resources and ecosystems, discussed changes in the laws since 2002, and provided recommendations for continuing freshwater resources and ecosystems policies
- ***Revisiting the Colorado River Compact: Time for a Change?* 28 J. LAND RESOURCES & ENVTL. L., 19 (2008); U of Utah Legal Studies Paper No. 08-01, available at SSRN:**

<http://ssrn.com/abstract=1089507> -suggested the Colorado River Compact needs revision based on six major factors: use of inadequate hydrologic records, global warming, water needs of Native Americans and Mexico, instream environmental needs, change of regional growth patterns, and the strain of these factors on the area over the long-term

- ***An Ecosystem Perspective on Collaboration for the Colorado River*** 8 NEV. L.J. 1031 (2008), UNLV William S. Boyd School of Law Legal Studies Research Paper No. 08-13 –encouraged the end goal of Colorado River policy to be the restoration of the river, as opposed to an appeasement of all parties and compliance with the Endangered Species Act
- ***Restoring the Environment and Restoring Democracy: Lessons from the Colorado River***, 25 VA. ENVTL. L.J. 55 (2007) –discussed environmental restoration as an important area of environmental policy in the near future, as well as how to make restoration possible with current legislation

CPR

- **Perspective: *Nonpoint Source Pollution***
- **Blog**
 - ***CAFOs, Circularity and Certainty in the CWA: Fifth Circuit’s Decision in National Pork Producers Council v. EPA Raises Problems***, CPRBlog, March 18, 2011, <http://www.progressivereform.org/CPRBlog.cfm?fkScholar=3> - discussed the environmental and health safety risks posed by CAFOs, and the uncertainty for both environmental regulators and the livestock industry in light of the ruling

Forthcoming

- ***Introduction, Environmental Criminal Prosecution: Effective Tool or Government Overreaching?*** UTAH L. REV. symposium introduction (in progress)

William Andreen

Subjects: federalism, climate change, water law, Alabama water law, water pollution, air pollution

Books

- ***Alabama Water Law* (editor) (Alabama Law Institute for the Alabama Office of Water Resources, 2007)**

Book chapters

- **“Is There a Silver Lining to Midnight Mischief?” in *Transitions: Legal Change, Legal Meaning* (Sarat, ed., University of Alabama Press, 2012)**
- **“Water Law and the Search for Sustainability: A Comparative Analysis,” in *Water Resources, Planning and Management* (Grafton & Hussey, eds., Cambridge University Press, 2011) – analyzed the incorporation of environmental concerns into water management laws in the US, Australia and South Africa, as well as the pure market approach in Chile that ultimately failed, and discussed the challenges that remain even in these countries**
- **“The Clean Water Act” in *3 The Encyclopedia of Sustainability: The Law & Politics of Sustainability* (Bosselman, et al., eds.)(Berkshire Publishing, 2011).**
- **“Delegated Federalism Versus Devolution: Some Insights from the History of Water Pollution Control,” in *Preemption Choice: The Theory, Law and Reality of Federalism’s Core Question* (Buzbee ed., Cambridge Univ. Press 2009) –discussed the fact that state efforts to control water pollution were inadequate prior to 1972, and that it was time to institute a wholly new approach in the form of the Clean Water Act of 1972, an approach that has produced remarkable progress in the fight against water pollution**
- **“Alabama Water Law” in Volume 4 of *Waters and Water Rights* (3d edition 2009), (in Volume 6, 2005 edition, and in Volume 6, 1994 edition)(Robert Beck, editor, LexisNexis/Matthew Bender & Company), and Annual Supplements 1996-2004; 2007-2008.**
- **“Water Pollution and Wetlands,” in *Encyclopedia of the Supreme Court of the United States* (Tanenhaus, et al., eds., Macmillan, 2008).**

Articles

- ***Climate Change and the Puget Sound: Building the Legal Framework for Adaptation* (co-authored), 2 CLIM. L. 299 (2011).**
- ***US Climate Change Legislation and Preemption*, 3 ENVTL. & ENERGY L. & POL’Y J., 261 (2008); U of Alabama Public Law Research Paper No. 1348209 –argued that federal climate change legislation should not preempt more stringent state or local regulation**
- ***Motivating Enforcement: Institutional Culture and the Clean Water Act*, 24 PACE ENVTL. L. REV. 67 (2007) –analyzed federal enforcement of the Clean Water Act and discussed ways in which to nurture and sustain a tough, consistent but fair enforcement tradition at the EPA**

CPR

- **White Papers**
 - ***Climate Change and the Puget Sound: Building the Legal Framework for Adaptation* (by Robert Glicksman, Catherine O’Neill and Yee Huang, with other CPR scholars) White Paper #1108, Washington, D.C.: Center for Progressive Reform (2011).**

- ***Making Good Use of Adaptive Management*** (with Holly Doremus, et al.) White Paper #1104, Washington, D.C.: Center for Progressive Reform (2011).
- ***Missing the Mark in the Chesapeake Bay: A Report Card for the Phase I Watershed Implementation Plans*** (with Robert Glicksman, Rena Steinzor and Yee Huang) White Paper #1102, Washington, D.C.: Center for Progressive Reform (2011).
- ***The BP Catastrophe: When Hobbled Law and Hollow Regulation Leave Americans Unprotected*** (with Alyson Flournoy, et al.) White Paper #1101, Washington, D.C.: Center for Progressive Reform (2011).
- ***Regulatory Blowout: How Regulatory Failures Made the BP Disaster Possible, and How the System Can Be Fixed to Avoid a Recurrence*** (with Flournoy, et al.) White Paper #1007, Washington, D.C.: Center for Progressive Reform (2010).
- ***Cooperative Federalism and Climate Change: Why Federal, State and Local Governments Must Continue to Partner*** (with Robert Glicksman et al.), White Paper #803, Washington, D.C.: Center for Progressive Reform (2008) –discussed the growing concerns of addressing climate change in environmental law, ultimately suggesting that the US continue to utilize state and local governments, as opposed to federal preemption
- ***The Clean Water Act: A Blueprint for Reform***, White Paper #802, Washington, D.C.: Center for Progressive Reform (2008) (with Shana Campbell Jones); U of Alabama Public Law Research Paper No. 1236162. –addressed various way in which the Clean Water Act needs to be updated and revised
- ***“Reforming the Clean Water Act,” CPR for the Environment: Breathing New Life in the Nation’s Major Environmental Statutes, A Legislative Sourcebook of Progressive Ideas for Members of Congress and Staff*** (Alyson Flournoy and Matthew Shultz, eds.), White Paper #701, Washington, D.C.: Center for Progressive Reform (2007) –assessed the Clean Water Act and suggested a number of possible reforms
- **Conferences**
 - **The Annual Ward Kershaw Forum on a Time for Action: Accountability for Chesapeake Bay Restoration**, University of Maryland School of Law, October 21, 2011
 - **Symposium on Climate Change Adaptation and the Law**, Seattle University School of Law, January 21, 2011
 - **Chevron: Getting Back to Basics**, Southeastern Association of Law Schools, July 25, 2011
 - **Intersections: Water and Energy**. Workshop on Climate Change Adaptation in the Puget Sound, August 19, 2010
 - **Envisioning an Ethiopian Environmental Law Graduate Program**, A Workshop on Graduate Legal Education in Ethiopia, Debre Zeit, December 12, 2009
 - **State Summit on Climate Change and Preemption, March 25, 2009** – with the National Association of Clean Air Agencies
- **Perspective**
 - ***Wetlands***
- **Op-eds**
 - **“Insight: Do We Believe in Magic?”** in *Mobile Press Register*, August 8, 2010
 - **“Alabama Voices: Magic, Not Policy,”** in *Montgomery Advertiser*, July 18, 2010
- **Blogs**

- ***EPA and the Corps of Engineers Deserve Praise for Their Draft Guidance on the Jurisdictional Scope of the Clean Water Act***, CPRBlog, May 2, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=B2979328-9DEB-63AA-BBEF21B62BC0484A> - discussed the draft guidance and how it should expand the CWA to cover waters that were restricted under SWANCC and Rapanos.
- ***Update: EPA Releases Full FY 2010 Stats on CWA Convictions***, CPRBlog, October 26, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=E56D2002-E8B4-11A7-3F3B40C2C91184BC> - discussed the moderate improvements in the EPA enforcement division with the hiring of 40 new criminal investigators, the retirement of the previous head of Criminal Enforcement, Forensics and Training and appointment of the former Director of the Criminal Investigation Division into her role
- ***Convictions for Violations of the Clean Water Act Continue to Ebb***, CPRBlog, October 19, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=C13C8A02-A692-984A-AC6BC3A37A61F3A9> - discussed the trend toward far fewer criminal convictions over the past twenty years, with the least convictions during the Bush administration, where a large portion of EPA's funding was cut
- ***One More Point on the N.Y. Times Water Article -- the Problem of Nonpoint Source Pollution***, CPRBlog, September 16, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=C3005BE8-9986-1AF5-AC40D113AE85900C> –discussed the continuing problem of nonpoint source pollution in achieving clean water, the relative ineffectiveness of BMPs, and why Congress should take more proactive steps in the prevention of this type of pollution
- ***N.Y. Times Article on Water Pollution: A Timely Reminder of the Role of Enforcement***, CPRBlog, September 15, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=BDD6269F-A5B4-D675-44D4D6DF807DD81D> –discussed the history of CWA enforcement lapses over the past thirty years, and how these lapses can be prevented in the long-run

Forthcoming

- ***“Is There a Silver Lining to Midnight Mischief?”*** in *Transitions* (Austin Sarat, ed., University of Alabama Press)
- ***Of Fables and Federalism: A Re-examination of the Historical Rationale for Federal Environmental Regulation*** (in progress)
- ***The Modern Era of Water Pollution Control: Implementation of the Clean Water Act Since 1972*** (in progress)

Mary Jane Angelo

Subjects: environmental law, water law, energy synthesis, genetically modified organisms

Book Chapters

- “Water Quality Regulation and Policy Development” in *Water Quality Concepts, Sampling, and Analyses* (CRC Press, 2010) (with Kati Whie Migliaccio).
- “Valuing Nature: The Challenge of a National Environmental Legacy Act” in *Beyond Environmental Law: Policy Proposals for a Better Environmental Future* (David M. Driesen & Alyson C. Flournoy, eds., Cambridge University Press, 2010).

Articles

- ***Corn, Carbon and Conservation: Rethinking U.S. Agricultural Policy in a Changing Global Environment*, 17 GEORGE MASON L. REV. 593 (2010)** – discussed the regulatory and incentive-based federal programs used in current US agricultural policies and the issues that arise from the current structure, including the need for a combined subsidy program to ensure that farmers’ compensation extends to a wider variety of crops
- ***Modernizing Water Law: The Example of Florida*, 61 FLA. L. REV. (2009) (with Christine A. Klein, & Richard Hamm); University of Florida Levin College of Law Research Paper No. 2009-09** – discussed the need for water laws to be updated to address modern problems of water shortages, ecological upkeep, and distribution
- ***Stumbling Toward Success: A Story of Legal Adaptation and Ecological Resilience*, 87 NEB. L. REV. 950 (2009).**
- ***Harnessing the Power of Science in Environmental Law: Why We Should, Why We Don’t, and How We Can*, 86 TEX. L. REV. 1527 (2008)** –assessed the current use of science in environmental law, discussed why science has been left out of aspects of environmental law, and posed ways in which new areas of science and technology could be incorporated into environmental law
- ***The Killing Fields: Reducing the Casualties in the Battle Between U.S. Species Protection Law and U.S. Pesticide Law*, 32 HARV. ENVTL. L. REV. 95 (2008)** –compared the two laws and how they are applied in opposition to each other, as well as suggesting ways to bridge the legal gaps in order to protect the environment and humanity
- ***The Florida Water Resources Act of 1972: Beyond the First 35 Years*, monograph for distribution to The Century Commission for a Sustainable Florida, *2008 Water Congress: Planning for Florida’s Water Future* (with Christine A. Klein & Richard Hamm)**
- ***Embracing Uncertainty, Complexity and Change to Protect Ecological Integrity: An Eco-Pragmatic Reinvention of a First Generation Environmental Law*, 33 ECOLOGY LAW QUARTERLY 105 (2006)**, Chosen as one of the top ten environmental and land use law review articles of 2006, reprinted in volume 38 of the *LAND USE AND ENVIRONMENTAL LAW REVIEW* (A. Dan Tarlock and David Callies, eds., 2007) – described the burgeoning theory of eco-pragmatism and, after applying ecological science principles to the approach, applied the use of eco-pragmatism to pesticide law
- ***Incorporating Energy Synthesis into Environmental Law: An Integration of Ecology, Economics, and Law*, 37 ENVTL. L. 963 (2007) (with Mark T. Brown)** –analyzed how energy synthesis could be applied to environmental law policy by incorporating economic and ecologic concerns with a sound scientific background

- ***Regulating Evolution For Sale: An Evolutionary Biology Model for Regulating the Unnatural Selection of Genetically Modified Organisms*, 42 WAKE FOREST L. REV. 93 (2007)** –suggested that new laws should be enacted for genetically engineered organisms, since this technology was not available when most environmental laws were written; laws would also be applicable to other newer areas of biological concern, such as artificially cultivated organisms, like farmed fish, or species introduced in non-indigenous areas

CPR

- **White Paper**
 - **“Reforming the Federal Insecticide, Fungicide and Rodenticide Act,”** in ***CPR for the Environment: Breathing New Life in the Nation’s Major Environmental Statutes, A Legislative Sourcebook of Progressive Ideas for Members of Congress and Staff*** (Alyson Flournoy and Matthew Shutz, eds.), **White Paper #701, Washington, D.C.: Center for Progressive Reform (2007)** –assessed FIFRA and suggested improvements, including moving from CBA to open-ended balancing, adding an adaptive management mechanism to allow for local and temporal flexibility, and encouraging local enforcement
- **Comments**
 - comments submitted to the U.S. Fish and Wildlife Service on **ways to improve Section 7 regulations, Aug. 3, 2009 (with Holly Doremus, Daniel Rohlf & James Goodwin)**

Forthcoming

- ***Poison, Pests & Policy: The Coevolution of the Law and Science of Pesticides*** (Ashgate Publishing Limited, 2010).

John Applegate

Subjects: *data gap (chemical), role of science in regulation*

Book

- ***The Regulation of Toxic Substances and Hazardous Wastes, 2d. Ed.* (with Jan G. Laitos, Jeffrey M. Gaba, Noah M. Sachs) and Teachers Manual (Foundation Press, 2011).**

Book chapters

- **“Embracing a Precautionary Approach to Climate Change,” in *Economic Thought and United States Climate Change Policy* (David Dreisen, ed.)(MIT Press, 2010).**
- **“Environmental Justice and the Sense of Place,” in *Teaching Environmental Literacy: Across Campus and Across the Curriculum* (Heather L. Reynolds et al., eds.)(Indiana University Press, 2010).**

Articles

- ***Bridging the Data Gap: Balancing the Supply and Demand for Chemical Information*, 86 TEX. L. REV. 1365 (2008)** –analyzed the use of risk-based chemical regulation and discussed how this approach leaves a gap between the supply and demand of chemical information; suggested a protection-based approach that would allow for the supply of chemical information to catch up with its demand
- ***Symposium: Missing Information: The Scientific Data Gap in Conservation and Chemical Regulation*, foreword, 83 IND. L. J. 399 (2008) (with Robert L. Fischman)** –similar to study above, with discussion on the difficulties of scientific uncertainty and the division between chemical and conservation law, and a general introduction to the research in the symposium
- ***Synthesizing TSCA and REACH: Practical Principles for Chemical Regulation Reform*, 35 ECOLOGY L. Q. 721 (2008), reprinted in 41 LAND USE & ENVT. L. REV. 515 (2010)** –discussed the fundamental similarities and differences between the two acts, and suggested ways the US could utilize REACH to improve and update TSCA; reprint as one of the peer-selected six best environmental law articles published in 2009
- ***Hazard and Probability: Two 'Risks,' Information Supply and Demand, and the Consequences for Chemical Regulation*, working paper series (2008), available at SSRN: <http://ssrn.com/abstract=1184018>** –discussed the differences between the two aspects of risk, as applied in environmental law; suggested a bridge solution between the supply and demand of chemical information to allow science to find a smaller amount of obtainable research that can be applied to more efficient chemical regulation
- ***The Temporal Dimension of Land Pollution: Another Perspective on Applying the Breaking the Logjam Principles to Waste Management*, 17 N.Y.U. ENVT. L.J. 757 (2008)** –discussed how land pollution poses a time element because land pollution is slow-moving and its toxicity persists for long periods; proposed that land pollution regulation needs the temporal element addressed, and the ability to adapt the regulation as technology develops over time

CPR

- **White Papers**
 - ***Reinvigorating Protection of Health, Safety and the Environment: The Choices Facing Cass Sunstein* (with Glicksman et al.), White Paper #901, Washington, D.C.: Center for**

- **Progressive Reform (2009)** –discussed the need for regulatory reform from the Obama administration, suggesting an end to most cost-benefit analyses, more funding for oversight agencies, and a more active role for OIRA in coordinating regulatory agencies; discussed Sunstein’s views on, and CPR’s responses to, CBA, CBA’s vulnerability to challenge or manipulation, discounting, the precautionary principle, grouping agencies under the executive branch, OSHA’s Constitutionality and climate change legislation
- **“Reforming the Toxic Substances Control Act”, *CPR for the Environment: Breathing New Life in the Nation’s Major Environmental Statutes, A Legislative Sourcebook of Progressive Ideas for Members of Congress and Staff* (with Wendy E. Wagner)(Alyson Flournoy and Matthew Shultz, Eds.), White Paper #701, Washington, D.C.: Center for Progressive Reform (2007)** –assessed TSCA and suggested improvements, especially an effective licensing system, bringing US regulations more aligned with European regulations in REACH
- **Symposium**
 - ***Missing Information: The Scientific Data Gap in Conservation and Chemical Regulation, 2008*** – with the Indiana University School of Law-Bloomington
- **Comments**
 - comments submitted to OIRA on **Obama regulatory review process, March 16, 2009 (with Glicksman, et al., collectively as the CPR Board)**
- **Blogs**
 - ***If Not Science, Then What?*, CPRBlog, August 25, 2008, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=FA306EA1-1E0B-E803-CAF70B7208A3F5A8>** –encouraged that scientific research be used as one part of regulation decisions, instead of the current reliance on science, or the inadequacies thereof, based on current demands
 - ***The Value of Information*, CPRBlog, August 21, 2008, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=E544E8EC-1E0B-E803-CADEF8E87B3E67A1>** –discussed the history of science in environmental regulation and proposed a shift toward a more inclusive look at different factors

Forthcoming

- **“Environmental Justice and the Sense of Place,” in *Environmental Literacy: A Basic Competency for 21st Century University Education* (Heather Reynolds and Eduardo Brondizio, eds.)**
- **“Embracing a Precautionary Approach to Climate Change,” in *Economic Thought and United States Climate Change Policy* (David Driesen, ed., MIT Press, 2010)**

Rebecca M. Bratspies

Subjects: *trust, genetically modified organisms, transgenic aquaculture*

Books

- *International Law: Questions and Answers* (Lexis 2011)
- *Progress in International Law* (with Russell Miller)(Martinus Nijoff, 2008)

Book chapters

- “Reconciling the Irreconcilable: Progress Toward Sustainable Development,” in *Progress in International Law (Developments in International Law)* (Martinus Nijoff, 2008) –assessed the steps made in international law toward sustainability in terms of the rhetorical, conceptual and material aspects of progress
- “Environmental Constitutionalism,” in *Comparative Constitutionalism and Rights: A Global Perspective* (P. Andrews ed., 2008)
- “Farming the Genetically Modified Seas – The Perils and Promise of Transgenic Aquaculture,” in *the International Governance of Fisheries Ecosystems: Learning from the Past, Finding Solutions for the Future* (B. Taylor, M. Schechter and N. Leonard eds., Cambridge University Press, 2007)
- “Can Transgenic Fish Save Fisheries?” in *Globalization: Effects on Fisheries Resources* (B. Taylor and M. Schechter eds., Cambridge University Press, 2007)

Articles

- *A Regulatory Wake Up Call: Lessons from BP’s Deepwater Horizon Disaster*, 5 GOLDEN GATE U. ENVTL. L.J. 7 (2011).
- *Sustainability: Is Law Up to the Challenge?* 34 SUFFOLK TRANSNAT’L L. REV. 283 (2011).
- *Using Human Rights to Improve Environmental Regulation*, 38 GA. J. INT’L. L. 649 (2010).
- *The Intersection of International Human Rights and Domestic Environmental Regulation*, 38 GA. J. INT’L & COMP. L. 649 (2010) – analyzed the intersection of environmental regulation and international human rights, using the US’s approval of oil leases in the Chukchi Sea as a model for both its positive and negative human rights effects
- *Remarks*, 102 AM. SOC’Y INT’L L. PROC. 457 (2009) –discussed the narratives constructed in international law and the progress toward including human rights and the environment in international law
- *Biotechnology, Sustainability & Trust*, 18-WTR KAN. J.L. & PUB. POL’Y 273 (2009) –discussed the relationship between these three concepts and the role of social trust in dealing with issues of uncertainty
- *Regulatory Trust*, 51 ARIZ. L. REV. 575 (2009)–discussed the role of trust in regulatory systems, and suggested ways for government agencies to enhance trust in order to regulate most efficiently
- *Human Rights and Arctic Resources*, 15 SW. J. INT’L L. 251 (2009) –discussed the emerging problem of arctic resources, the international push by the US, Russia, Canada, Denmark and others to increase their presence in the region, and whether international laws favoring indigenous people’s right to natural resources on their land will be put into practice

- ***Another View of Sotomayor's Enviro Record*, Law360, June 12, 2009** –discussed Sotomayor's opinion in *Riverkeeper v. EPA* and how her decision was based on the unambiguous statutory language and earlier CWA cases
- ***Some Thoughts on the American Approach to Regulating Genetically Modified Organisms*, 16 KANSAS J. L. & PUB. POL. 393 (2007)** –discussed the relationship between consumers and government in regulation of GMO's in terms of transparency, trust, risk and oversight
- ***Rethinking Decisionmaking in International Environmental Law: A Process-Oriented Inquiry into Sustainable Development*, 32 YALE J. INT'L L. 363 (2007)** –discussed the New Haven School of legal analysis's jurisprudence of human dignity and application to authoritative decision making, especially in science's role in legal analysis, with regards to global sustainability
- ***The New Discovery Doctrine: Some Thoughts on Property Rights and Traditional Knowledge*, 31 AM. INDIAN L. REV. 253 (2007)** –discussed biodiversity in relation to indigenous peoples, and how the current legal system does not protect them under cultural or intellectual property rights

CPR

- **White Papers**
 - ***Regulatory Blowout: How Regulatory Failures Made the BP Disaster Possible, and How the System Can Be Fixed to Avoid a Recurrence* (with Flournoy, et al.) White Paper #1007, Washington, D.C.: Center for Progressive Reform (2010).**
 - ***From Ship to Shore: Reforming the National Contingency Plan to Improve Protections for Oil Spill Cleanup Workers* (with Alyson Flournoy, et al.) White Paper #1006, Washington, D.C.: Center for Progressive Reform (2010)** - analyzed the actions of OSHA and NIOSH in both preparation for, and in reaction to, the BP oil spill, and recommended five actions for future preparedness: requirement of Regional Response Teams by EPA and the Coast Guard, inclusion of OSHA into Regional Contingency plans for disasters, requirement of a NIOSH Health Hazard Evaluation for cleanup workers, consultation with workers of past spills and appropriation of executive funds for OSHA for its role in response to the oil spill
 - ***Protecting Public Health and the Environment by the Stroke of a Presidential Pen: Seven Executive Orders for the President's First 100 Days* (with David M. Driesen, et al.) White Paper #806, Washington, D.C.: Center for Progressive Reform (2008)** – proposed seven executive orders for the incoming administration – 1., reduction of the federal government's carbon footprint; 2., consideration of climate change in agency decision-making; 3., taking children into account in toxics regulation; 4., new environmental justice legislation; 5., promotion of transparency in regulatory review; 6., prevention of preemption; and 7., a policy on sustainable public land use
- **Letter**
 - to EPA Administrator, Lisa Jackson on the **North American Commission for Environmental Cooperation (with Gonzalez, et al.), March 29, 2012**
- **Blogs**
 - ***Separating the Natural and Environmental Disasters in Japan*, CPRBlog, March 21, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=D88DE55E-BA5E-BC9B-9598070EEAD512FD>** - after the major earthquake in Japan and following problems at the Fukushima Daiichi Nuclear Power Station, this blog set out to determine where the fault lies in the nuclear fallout and how the 1973 decision that nuclear power had little environmental risk affected the safety measures of the plant

- **Judge's Injunction Blocking Moratorium on Deepwater Drilling Discounts Statutory Intent**, CPRBlog, June 25, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=70149D98-9DA7-0A41-75CC3320720D1411> - discussed the ruling in favor of business by the judge, and how the suspension of drilling, which was clearly in protection of the local people and environment, could be stopped without a continuation of the moratorium
- **Deepwater Horizon: Day 48**, CPRBlog, June 7, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=1264E146-B88B-D81E-1A7E658BF7F52307> – discussed the general problems of deregulation and reliance on the fair market, and the more specific problems of the development of cleanup technology in deepwater drilling, the permission granted to BP for the drilling project when no cleanup technology existed, and how the government has reached such a hands-off approach to regulation over the past five administrations
- **When Hoping for the Best is Official Policy**, CPRBlog, May 6, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=6F28653E-E6FA-D7CF-311316C2FC04A24F> - discussed the missing remote shut-off valve in the Deepwater Horizon blowout, the industry pushback under the Bush administration that probably led to the valve not being required on all deepwater rigs, and the need for a worst-case scenario plan if a rig were to blowout again
- **Saving Our Fisheries**, CPRBlog, February 24, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=005A578F-B2BD-D027-4A01D76B2E876900> – discussed the current state of overfishing in the US, the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act, and the annual catch limits imposed by the National Marine Fisheries Service in response to the maximum sustainable yield set in the Act
- **Senator Snowe's Bill on Fisheries Would Open a Wide Loophole**, CPRBlog, December 21, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=B1AFE50-E3EC-9307-A6AFBCD905F753CE> –discussed S. 2856, which would expand the exemption of fisheries covered by international treaties to Maine's groundfisheries, causing many more fisheries to claim exemption
- **NOAA's Draft Catch Share Policy is Cautious, and That's Good News**, CPRBlog, December 18, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=9ED0A5E0-0364-8183-72751F7B3566810B> –described the positive goals of the draft, including its focus toward education, cooperation and transparency, as opposed to requiring catch shares, which without further regulation, could be damaging toward fishermen
- **Paterson's Executive Order: Win for Industry, Loss for Public Health and Safety**, CPRBlog, August 12, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=10A0BB6D-C7F1-9EFD-B436DF4197F40C0E> –discussed the recent Order calling for the streamlining of regulations and how this set-up is biased toward business and industry, and potentially detrimental to citizens
- **Paterson's Executive Order: Win for Industry, Loss for Public Health and Safety**, CPRBlog, August 13, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=10A0BB6D-C7F1-9EFD-B436DF4197F40C0E> - Paterson's lookback order, requiring agencies to eliminate unnecessary regulations as, he says, to protect the health, safety and welfare of his constituents, despite the fact that regulations serve to actually accomplish those things

- **Privatize the Seas? If Only Solving Overfishing Were so Easy**, CPRBlog, July 10, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=63218838-F816-5CDF-B5A53CF9FF4402FB> –discussed the proposal of catch shares and ITQs, as well as their potential benefits and shortcomings, as displayed by the current overfishing problems

Other

- **“Saving Seafood from Extinction,”** in *Atlantic Monthly*, November 4, 2009, <http://food.theatlantic.com/sustainability/saving-seafood-from-extinction.php> –discussed the new sustainable approach to catch limits by NMFS and the dangers of overfishing for both humans and ecosystems alike
- **“Why the Free Market Can’t Fix Overfishing,”** in *Atlantic Monthly*, August 3, 2009, <http://food.theatlantic.com/sustainability/why-the-free-market-cant-fix-overfishing.php> – described the theory behind catch shares, its shortcomings, including uncertainty, regulation and overcapacity, and why this approach will do little to address the problem of overfishing

Forthcoming

- *Sustainability: Using Law and Science to Remake Our World* (in progress)
- **“Marine Environmental Law: UNCLOS and Fisheries,”** in *Routledge Handbook of International Environmental Law* (Erika J. Terecha et al., forthcoming 2012)
- **“The Vexing Relationship between Environmental Protection and Global Trade,”** in *The Creation of International Law* (Cecilia M. Bailliet, ed.)(forthcoming 2011/12)
- *Human Rights and Environmental Regulation*, ___NYU ENV’T L. J.__(forthcoming 2011)

William Buzbee

Subjects: preemption, public health, environmental law, climate change, constitutional law, regulatory federalism, citizen standing, statutory interpretation, administrative law

Books

- ***Environmental Protection: Law and Policy* (6th ed. Wolters Kluwer 2011) and *Teachers' Manual* (with co-authors Robert Glicksman, David Markell, Daniel Mandelker, Daniel Bodansky).**
- ***Preemption Choice: The Theory, Law and Reality of Federalism's Core Question* (William W. Buzbee, editor and contributor to three chapters) (Cambridge University Press, 2009).**

Articles

- ***State Greenhouse Gas Regulation, Federal Climate Change Legislation, and the Preemption Sword*, 1 SAN DIEGO J. OF CLIM. & ENERGY L. 23 (2010)** – expanded version of paper given at 2009 Conference on “Federal Preemption or State Prerogative: California in the Face of National Climate Policy
- ***Clean Air Act Dynamism and Disappointments: Lessons for Climate Change Legislation to Prompt Innovation and Discourage Inertia*, 32 WASH. U. J.L. & POL'Y 33 (2010)** - called for the continuation of the dynamic structure established in the CAA in new pollution regulating legislation; applied the lessons learned from CAA's structure to ACES and CEJAP, finding that they set up similarly burdensome regulatory requirements of EPA and create costly risks and delay in regulation of greenhouse gas emissions through the notice-and-comment regime, as in CAA
- ***The Scope of Congressional Authority to Protect the Environment: Comments and Colloquy*, 40 ENV'T'L L. REP. NEWS & ANALYSIS 10977 (2010).**
- ***Preemption Hard Look Review, Regulatory Interaction, and the Quest for Stewardship and Intergenerational Equity*, 77 GEO. WASH. L. REV. 1521 (2009).**
- ***Adjudicatory Triggers of Enhanced Ambient Environment Information*, 83 INDIANA L. J. 583 (2008)** –analyzed the use of adjudicatory triggers in the 1970's and 80's, and discussed shortcomings and possible legal changes that could be made
- ***Asymmetrical Regulation: Risk, Preemption, and the Floor/Ceiling Distinction*, 82 N.Y.U L. REV. 1547 (2007)** –discussed the inherent risks involved in ceiling preemptive regulation and suggested floor preemption to allow states to tailor the policies for their localities
- ***Interaction's Promise: Preemption Policy Shifts, Risk Regulation, and Experimentalism Lessons*, 57 EMORY L.J. 145 (2007)** –compared the use of floor and ceiling regulation and discussed the risks of complete federal preemption, while suggesting that federal floor level regulations could be an effective compromise
- ***Roundtable Discussion: Access to the Courts after Massachusetts v. EPA: Who Has Been Left Standing?* 37 ENVTL. L. REPORTER 10692 (2007)** –transcript of a seminar on the above topic, with moderator Jamison Colburn and fellow panelists Jeffrey B. Clark and Brian Wolfman; Buzbee focused on separation of power and procedural rights

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- **White Papers**
 - ***“Fifty FDA’s”: An Argument for Federal Preemption of State Tort Law That is Less than Meets the Eye* (with William Funk et al.), White Paper #911, Washington, D.C.: Center for Progressive Reform (2009)** –put to rest the unhelpful and disingenuous “Fifty FDAs” argument that proponents of federal regulatory preemption have trumpeted the last few decades
 - ***Congress’s Authority to Correct the Courts’ Preemption Decisions* (with Funk et al.) White Paper #905, Washington, D.C.: Center for Progressive Reform (2009)** – discussed the major Supreme Court cases where preemption has been used and whether Congress has authority to amend the interpretation of preemption to make its intent clearer, finding that Congress, indeed, has this power and should utilize it
 - ***The Truth about Torts: Rethinking Regulatory Preemption and Its Impact on Public Health* (with Funk et al.) White Paper #902, Washington, D.C.: Center for Progressive Reform (2009)** –sixth paper in the series, describing the state of torts and preemption in the US; urged Congress to create anti-preemption legislation for clarity in future court cases, specifically define the word “requirements” in the legislation, and write cross-cutting legislation to ensure proper balance between agencies; urged President Obama and the Executive Branch to review the changes enacted by the Bush administration, and revise Executive Order 13132 to reign preemption back in to its original intention and ensure proper procedures are established to protect federalism
- **Conferences**
 - ***State Summit on Climate Change and Preemption, March 25, 2009*** – with the National Association of Clean Air Agencies
 - ***Conference on Regulatory Preemption, December 17, 2008***
- **Perspective**
 - ***The Strategies of Regulatory Underkill***
- **Blogs**
 - ***Williamson v. Mazda: Sound and Clear Preemption Decision*, CPRBlog, February 23, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=54B88667-ACE6-622B-FC32F1B54997A22B>** - discussed the preemption case and the limiting of the scope of the lower court’s ruling in light of *Geier*, and the long term implications from this ruling in favor of a reading closer to the preemption intentions of Congress
 - ***Climate Legislation Federalism Choices: Reflections After Murkowski, Brown and in Anticipation of the Forthcoming Kerry-Graham-Lieberman Bill*, CPRBlog, April 1, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=BA07FB11-FF73-288A-D4F2904A0FFADC23>** – discussed the federalism issues facing climate change legislation, why state and local governments’ actions should be protected because of their ability to tailor the programs to their area and promote innovative techniques for accomplishing environmental protection, the broader protection of state and local initiatives under Boxer-Kerry and Waxman-Markey, and the risks of preempting state and local entities under KGL
 - ***Boxer-Kerry: Measures to Address Error and Illegality*, CPRBlog, October 5, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=26AA1345-C71B-3C79-0B6C7A24A8DEE099>** –discussed the structure of the bill, its potential benefits, and its potential shortcomings, namely a large-scale implementation issue and preemption issues
 - ***Waxman-Markey: Federalism Battles*, CPRBlog, April 10, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=903A8A9A-1E0B-E803->**

CA7D01AC90F07AC0 –discussed the issue of preservation of state regulation in the wake of Waxman-Markey, finding that areas of the bill take different approaches to the idea of preemption versus preservation, and despite the lack of preemption language, stakeholders will likely try to use preemption to prevent regulation

- ***The Supreme Court's Decision on Standing in Summers vs. Earth Island Institute***, CPRBlog, March 10, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=EE72EF0E-1E0B-E803-CA248A6845CF4768> –discussed the Supreme Court's decision against citizen standing in the Summers case, and discussed the implications of this decision and its possible limitations

Testimony/Op-eds

- **Bill Buzbee** - April 16, 2008: before the U.S. House Committee on Transportation and Infrastructure on the Rapanos and SWANCC decisions and the Clean Water Restoration Act
- **"Tough Caps Would Likely Curb Pollution and Cool Warming," in Atlanta Journal-Constitution, May 5, 2009, at A10 (with Victor Flatt)** –discussed the Waxman-Markey bill's cap-and-trade and offset programs, and why these federal measures are necessary in fighting climate change
- **"Climate bill good first step in long and arduous trip," in Houston Chronicle, April 24, 2009 (with Victor B. Flatt)** –op-ed describing the climate change bill discussion draft and its shortcomings, including lax standards for GHG emissions in the cap and trade system, the benefit of offsets and their potential environmental harm, continued state regulation and the need for clear language in their jurisdiction and environmental justice issues
- **"Let California Experiment," in Atlanta Journal-Constitution, December 28, 2007, at A15** – discussed the "patchwork" argument against state climate change programs, arguing that limiting state programs not only delays emissions reductions and harm, but also prevents innovation and regulation

Forthcoming

- ***Westway, the City, and the Art of Regulatory War*** (manuscript in progress)

Alejandro Camacho

Subjects: *climate change, adaptive management, adaptive regulation, endangered species, natural resource management, land use regulation*

Book chapters

- “Maintaining Resilience in the Face of Climate Change,” in *Resilience and Law* (Columbia University Press forthcoming 2011)(with Douglas Beard).
- “Managing Adaptation: Developing a Learning Infrastructure in the United States’ Federal System,” in *Implementing Adaptation Strategies by Legal, Economic and Planning Instruments on Climate Change* (Springer forthcoming 2011).

Articles

- ***Transforming the Means and Ends of Natural Resource Management*, 89 N.C. L. REV. 1405 (2011).**
- ***Assisted Migration: Redefining Nature and Natural Resource Law Under Climate Change*, 27 YALE J. ON REG. 171 (2010)** – discussed the need for reassessment and scientific data analysis for the incorporation of adaptive processes, such as assisted migration, into climate change legislation, as opposed to the static, slow-changing lens through which natural resources are currently protected by law; to be reprinted in A. Daniel Tarlock & David L. Callies eds., *LAND USE AND ENVIRONMENT LAW REVIEW* (Thompson West forthcoming 2011)(peer reviewed).
- ***Collaborative Planning and Adaptive Management in Glen Canyon: A Cautionary Tale*, 35 COLUM. J. ENVTL. L. 1 (2010) (with Lawrence Susskind & Todd Schenk)** – discussed the shortcomings of the AMP, identified the problems that led to the shortcomings of the program, and provided advice on how to avoid the same problems of adaptive management projects in the future
- ***Adapting Governance to Climate Change: Managing Uncertainty through a Learning Infrastructure*, 59 EMORY L.J. 1 (2009)** –suggested a regulatory system for addressing the uncertainties of climate change adaptation, promoting interagency information sharing and adaptable natural resource management
- ***Multidimensional Evaluation of Managed Relocation*, 106 PROC. NATL. ACAD. SCI. 9721 (2009)** – discussed managed relocation, a potential climate change adaptation strategy for biodiversity management, and proposed a multidimensional heuristic tool for evaluating its use in various management scenarios
- ***Beyond Conjecture: Learning about Ecosystem Management from the Glen Canyon Dam Experiment*, 8 NEV. L.J. 942 (2008) (invited)** –used the example of Glen Canyon to illustrate the pitfalls of the current regulatory system in resolving problems and adapting
- ***Climate Change and Regulatory Fragmentation in the Great Lakes Basin*, 17 MICH. ST. J. INT’L. L. 139 (2008)(invited)** –discussed how regulatory fragmentation allowed for gaps in effective regulation, particularly in the basin, and how this model is particularly dangerous in light of climate change, where a more adaptable system of regulation will be required
- ***Can Regulation Evolve? Lessons from a Study in Maladaptive Management*, 55 UCLA L. REV. 293 (2007)** –assessed the movement toward cooperative experimentalist regulatory agencies, in particular the Endangered Species Act’s Habitat Conservation Plan (HCP), and discussed how mistakes in the organization of HCP’s can be used to determine how to more effectively establish regulatory programs

CPR

- **White Paper**
 - ***Making Good Use of Adaptive Management (with Holly Doremus, et al.) White Paper #1104, Washington, D.C.: Center for Progressive Reform (2011).***
- **Comments**
 - comments submitted to the U.S. Fish and Wildlife Service on **interagency cooperation under the Endangered Species Act, Oct. 10, 2008 (with Doremus, et al.)**
- **Blogs**
 - ***Why Federal Climate Change Legislation Shouldn't Stop States From Innovating in Adaptation Efforts, CPRBlog, May 27, 2010,***
<http://www.progressivereform.org/CPRBlog.cfm?idBlog=D5C84AED-945C-C3FD-544E28312EF15CF5> – discussed the need for local and state adaptation in climate change bills, especially in the area of natural resource management
 - ***On Adaptation, Kerry-Lieberman Climate Bill Largely Similar to ACES, But Drops Several Provisions and Provides Less Money, CPRBlog, May 14, 2010,***
<http://www.progressivereform.org/CPRBlog.cfm?idBlog=94E5459C-97E7-DDCE-87B470670A5F3030> – discussed the similar weaknesses in the adaptation provisions, as well as the eliminated provisions in Kerry-Lieberman, including allowances between states and Indian tribe and the creation of a public health adaptation program
 - ***Climate Change Adaptation Still Being Given Short Shrift in Local, State, and Federal Government, CPRBlog, November 9, 2009,***
<http://www.progressivereform.org/CPRBlog.cfm?idBlog=D7819AB5-EC36-9AA0-80708822A4D91DD2> – discussed the need for inclusion of adaptation in climate change legislation, and recent attempts and failures of including adaptation in new legislation
 - ***Boxer-Kerry Centralizes Procedures for Adaptation But Lacks Substantive Guidance, CPRBlog, October 7, 2009,***
<http://www.progressivereform.org/CPRBlog.cfm?idBlog=2F4A0AC3-9C36-B744-0E6837E8236BF962> – discussed the Boxer-Kerry bill, its similarities and differences between the bill and ACES, and the potential shortcomings of the bill
 - ***Interior's Initiative on Adaptation Will Need to Overcome a Legacy of Inaction, CPRBlog, September 18, 2009,***
<http://www.progressivereform.org/CPRBlog.cfm?idBlog=CD5C73F0-FA12-C1DE-B3ADD951AE431420> – discussed the Interior's strategy on management options for incorporating adaptation into climate change impact decisions
 - ***Tweaking the Climate Change Adaptation Proposal, CPRBlog, May 5, 2009,***
<http://www.progressivereform.org/CPRBlog.cfm?fkScholar=10> – described HR 2192 and its establishment of a “Natural Resources Climate Change Adaptation Panel,” compared this panel with the adaptation provisions of Waxman-Markey, and highlighted the potential shortcomings of the panel, especially in the area of natural resource adaptation language
 - ***Waxman-Markey: Adaptation, CPRBlog, April 7, 2009,***
<http://www.progressivereform.org/CPRBlog.cfm?idBlog=821DA05A-1E0B-E803-CAB2F26DB3327080> **(with Holly Doremus)** – discussed the strengths and weaknesses of the adaptation program proposed under the Waxman-Markey bills

Other

- **“Reconsidering Conservation Goals for a Changing Climate,”** in *Issues in Science and Technology*, Volume 26, Issue 4 (2010) (with Alejandro Camacho, Jason McLachlan & Ben Minter) – discussed the need for adjusting the goals of conservation legislation as the effects of climate change integrate into ecosystems, pointing out the flaws of a reserve-based strategy in light of the dynamic environmental changes and the need for concrete, implementable goals from abstract protection principles

Forthcoming

- *Comparing Experiments in Collaborative Planning and Adaptive Management* (with Lawrence Susskind) (in progress)
- *Climate Change Adaptation, Uncertainty & Learning in a Federal System* (in progress)

Robin Kundis Craig

Books:

- ***Comparative Ocean Governance: Placed-Based Protections in an Era of Climate Change*** (Edward Elgar Publishing, forthcoming 2011/2012).
- ***Toxic Torts: Cases and Materials*** (Thomson West Publishing, forthcoming 2010) (with Andrew R. Klein, Joseph Sanders, and Michael Green).

Chapters:

- “The Atmosphere, the Oceans, Climate Change, and Ecosystem Services,” in *Climate Change: A Reader* (William H. Rodgers, Jr. et al, eds., Carolina Academic Press, 2011)
- “Sustainable Governance Institutions for Estuaries and Coasts,” in *Ecological Economics of Estuaries and Coasts* (Elsevier Press, forthcoming 2010) (with J.B. Ruhl).
- “Standing and Procedural Due Process,” in *Constitutional Environmental Law* (Jim May, ed., American Bar Association, forthcoming 2010).
- “Should There Be a Constitutional Right to a Clean and Healthy Environment?” in *Environmental Governance* (Amicus Books, forthcoming 2009).
- “Oceans and Estuaries: The Ocean Commission’s Unfulfilled Vision,” in *Agenda For a Sustainable America* (John C. Dernbach, ed., Environmental Law Institute, 2009).
- “Environmental Citizen Suits, Private Attorney General, *Rapanos v. United States* and *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*,” in *Encyclopedia of the Supreme Court of the United States* (Gale, 2008).
- “Coastal Water Quality Protection,” in *Ocean and Coastal Law and Policy* (Donald C. Baur, Timothy Eichenberg, & Michael Sutton, eds., ABA, 2008).

Articles:

- ***Defining Riparian Rights as “Property” Through Takings Litigation: Is There a Property Right to Environmental Quality?*** 42 ENVTL. L. 115 (2012) – discussed the use of takings in water and water rights by describing takings in general, its application to water rights, and the cases of riparian water rights and claims
- ***Legal Remedies for Deep Marine Oil Spills and Long-term Ecological Resilience: A Match Made in Hell***, ___BYU L. REV. 1863 (2011) – the role of stability in the assumptions governing natural resource damages regimes in deepwater oil extraction, and that resilience thinking could better equip disaster regimes for offshore drilling
- ***Agencies Interpreting Courts Interpreting Statutes: The Deference Conundrum of a Divided Supreme Court***, 61 EMORY L.J. 1 (2011) – analyzed agencies’ decision between deferring to a Supreme Court plurality decision or facing judicial review by reclaiming interpretive deference
- ***Avoiding the Jellyfish Sea, or, What Do We Mean by Sustainable Oceans, Anyway?***, ___ J. LAND RES. & ENVTL. L. ___ (forthcoming 2010).
- ***Adapting Water Federalism to Climate Change Impacts: Energy Policy, Food Security, and the Allocation of Water Resources***, ___ ENVTL. & ENERGY L. & POL’Y J. (forthcoming 2010).
- ***Adapting Water Law to Public Necessity: Reframing Climate Change Adaptation as Emergency Preparedness and Response***, ___ VT. J. ENVTL. L. ___ (forthcoming 2010).

- ***Governing for Sustainable Coasts: Complexity, Climate Change, and Coastal Ecosystem Protection*, ___ SUSTAINABILITY ___ (forthcoming 2010) (with J. B. Ruhl).**
- ***Constitutional Contours for the Design and Implementation of Multistate Renewable Energy Programs*, 81 U. COLO. L. REV. ___ (forthcoming 2010).**
- ***Administrative Law in the Roberts Court: The First Four Years*, 62 ADMIN. L. REV. 69 (2010).**
- ***Water Supply, Desalination, Climate Change, and Energy Policy*, 41 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 225 (2010).**
- ***Adapting to Climate Change: The Potential Role of State Public Trust Doctrines*, 34 VT. L. REV. ___ (forthcoming 2010).**
- ***A Comparative Guide to the Western States' Public Trust Doctrine: Public Values, Private Rights, and the Evolution Toward an Ecological Public Trust*, 37 ECOLOGY L. Q. 53 (2010)** – compared the public trust doctrines of 31 eastern states, finding five common components of public and private water rights and a general trend of intrusion into “privately owned riparian and littoral property”
- ***“Stationarity Is Dead” – Long Live Transformation: Five Principles for Climate Change Adaptation Law*, 34 HARV. ENVT’L L. REV. 9 (2010)** – proposed a principled flexibility bi-modal model of climate change adaptation law in order to update American environmental and conservational laws from stationary to adaptive legislation
- ***Climate Change Comes to the Clean Water Act: Now What?*, 1 WASH. & LEE J. ENERGY, CLIM. & ENVT. ___ (forthcoming 2010).**
- ***A Public Health Perspective on Sea-Level Rise: Starting Points for Climate Change Adaptation*, 15 WIDENER L. REV. 521 (2009).**
- ***The Public Health Aspects of Environmental Enforcement*, 2 PITT. J. ENVTL. L. & PUB. HEALTH L. ___ (forthcoming 2009).**

CPR – White Paper

- ***Climate Change and the Puget Sound: Building the Legal Framework for Adaptation* (by Robert Glicksman, Catherine O’Neill and Yee Huang, with other CPR scholars) White Paper #1108, Washington, D.C.: Center for Progressive Reform (2011).**

Forthcoming

- ***“Marine Protected Areas, Marine Spatial Planning, and the Resilience of Marine Ecosystems,” in Resilience and the Law* (with Terry Hughes)(forthcoming) – covered the scientific and legal analysis of place-based management of marine ecosystems**
- ***Defining Riparian Rights as ‘Property’ Through Takings Litigation: Is There a Property Right to Environmental Quality*, ___ ENVT’L L. ___ (forthcoming) – applying the concept of takings to water and water rights, especially in the riparianism context**
- ***Ocean Governance for the 21st Century: Making Marine Zoning Climate Change Adaptable*, 2 HARVARD ENVT’L. L. REV. ___ (2012) – applying climate change to the concept of marine spatial planning by analyzing how marine protected areas can help in adaptation, how Australia has incorporated climate change considerations into marine spatial planning, and how to incorporate adaptation in marine spatial planning to address climate change**
- ***Asian Carp and the Great Lakes: When is Irreparable Harm ‘Likely’ and ‘Imminent’ Enough – and What Science Do You Trust to Tell You?* ___ Trends ___ (forthcoming).**

Last Updated May 8, 2012

Carl F. Cranor

Subjects: toxics, risk assessment, role of science in regulation

Books

- ***Legally Poisoned: How the Law Puts Us at Risk From Toxicants* (Harvard University Press, 2010)** - selected critical acclaim:
 - “Both passionate and incisive, this book reveals how much we have failed to control the spread of toxic chemicals in our environment and our bodies. Our laws are ineffective at preventing the use of toxicants in the first place, and unbearably slow at stopping them once damage has been done. Carl Cranor recommends reforms to protect the public health that are thorough, pragmatic--and necessary.” -Ellen Silbergeld, Johns Hopkins University (20110901)
- ***Toxic Torts: Science, Law and the Possibility of Justice* (Cambridge University Press, 2008)** – analyzed the Supreme Court decisions that changed the role of scientific testimony in courts and how these decisions put consumers at risk in areas such as transparency, deterrence and compensation in toxic tort cases.
 - Selected critical acclaim for *Toxic Torts*: “Carl Cranor has achieved the almost impossible goal of a learned, readable, and exciting book on the torturous interactions between law and science in tort litigation. For a scientist, his analysis of case law in this field is exceptionally informative and provocative.” -Ellen K. Silbergeld, PhD, Professor, Environmental Health Sciences, Johns Hopkins University, Bloomberg School of Public Health; “Cranor’s insightful discussions of science and law as it is seen by the Courts in toxic tort litigation is a ‘must read’ for scientists in toxicology, epidemiology, and pharmacology.” -Eula Bingham PhD, Professor, College of Medicine, University of Cincinnati

Book chapters

- “**Toward a Premarket Approach to Risk Assessment,**” in *Handbook on Risk Assessment*, ed. Sabine Roeser and Lotte Asveld (forthcoming, Elsevier, 2012).
- “**Developing Science Challenges Torts: Can the Tort Law Retain a Central Legal Role?**” in *Perspectives on Causation*, ed. Richard Goldberg (Hart Publishing Co. 2011).
- “**Collective and Individual Duties to Reduce Global Warming,**” in *Economic Thought and U.S. Climate Change Policy*, ed. David M. Driesen (MIT Press, 2010).
- “**A Plea for a Rich Conception of Risks,**” in *Ethical Aspects of Risk* (Lotte Asveld & Sabine Roeser, eds., Earthscan 2009).
- “**(Almost) Equal Protection for Genetically Susceptible Subpopulations: A Hybrid Regulatory-Compensation Proposal,**” in *Genomics and Environmental Policy* (Gary Marchant, ed., Johns Hopkins University Press, 2008).
- “**Risk Assessment, Susceptible Subpopulations and Environmental Justice,**” in *The Law of Environmental Justice*, 2d Edition (Michael B. Gerrard & Sheila Foster, eds., American Bar Association, 2008).
- “**Different Kinds of Labels and Acceptable Risks: An Institutional Argument for Labeling Transgenic Foods,**” in *Labeling Genetically Modified Food: The Philosophical and Legal Debate* (Paul Weirich, ed., Oxford University Press, 2007).
- “**Toward a Non-Consequentialist Theory of Acceptable Risks,**” in *Risk and Philosophy* (Tim Lewens, ed., Routledge, 2007).

Articles

- ***Do You Want to Bet Your Children's Health on Post-Market Harm Principles? An Argument for A Trespass or Permission Model for Regulating Toxicants*, 19 VILL. ENVTL. L.J. 251 (2008).**
- ***Information Generation and Use Under Proposition 65: A Model for Other Post-market Laws?* 83 IND. L. REV. 609 (2008).**
- ***The Legal Failure to Prevent Sub-clinical Toxicity*, 102 BASIC & CLINICAL PHARMACOLOGY & TOXICOLOGY 267 (2008)** –discussed the need for more stringent precautionary laws, as opposed to the post-market law system of the current US government or the less vigorous preventative measures of REACH
- ***Scientific Sentinels: What Should Constitute Minimal Scientific Evidence for Identifying Substantial Public Health Problems?* COLLEGIUM RAMAZZINI ONLINE J. 23 (2008), 25th Anniversary Jubilee** –discussed an approach between precautionary actions and post-market laws, suggesting a “scientific standard for identifying substances likely to pose substantial public health problems”
- Guest Editorial: ***Judicial Distortion of Science and the Handicapping of Justice in US Law*, 12 EUR. J. ONCOLOGY 229 (2007)** –discussed the potential incentives for industry to avoid testing products before release, despite the obvious potential for harm to public health
- ***The Use of Empirical Evidence to Assess and Critique Judicial Decisions about Science*, 31 MIDWEST STUDIES IN PHILOSOPHY: PHILOSOPHY AND THE EMPIRICAL 25 (2007).**
- ***A Framework for Assessing Scientific Arguments: Gaps, Relevance, and Integrated Evidence*, 15 J.L. & POL’Y 7 (2007)** – analyzed the toxics data and how it is used in legal claims, discussed nondeductive inferences, and assessed the problems facing courts in toxics decisions

Forthcoming

- **“The Abandonment of Justice and Toward Distributional Justice,” in *Economic Thought and U.S. Climate Change Policy* (with Amy Sinden) (David M. Driesen, ed., MIT Press, 2010)**
- ***Reckless Nation, Contaminated Nation: How the Law Puts Us at Risk from Toxicants* (on contract, Harvard University Press)**
- **"Collective and Individual Duties to Reduce Global Warming," in *Climate Change and the Neo-Liberal Model* (David M. Driesen ed., MIT Press, 2009, 25 ds ms pp)**

Holly Doremus

Subjects: *climate change, the Clean Air Act, natural resource management, water law, environmental law, Atrazine, scientific integrity*

Books

- ***Environmental Policy Law: Problems, Cases, and Readings*, 5th ed. (Foundation Press, 2008)(with Lin, Rosenberg, and Schoenbaum).**
- ***Water War in the Klamath Basin: Macho Law, Combat Biology, and Dirty Politics* (Island Press, 2008) (with A. Dan Tarlock) – described the water management crisis of 2001, a drought year in which the Klamath Basin was closed for water transfer in order to preserve endangered species; applied the lessons learned in this specific situation to the dangerous problem of water use in the American west**

Book Chapters

- **“Lots of Science, Not Much Law: Why Knowledge Has Not (Yet) Been Power Over Greenhouse Gas Emissions,” in *Climate Change: A Reader* (William Rodgers, et al. eds., Carolina Academic Press, 2011).**
- **“The Clean Air Act as a Template for Climate Change Legislation,” in *Climate Change and Federalism* (with Michael Hanemann) (Edella Schlager et al. eds, University of Arizona Press, 2011).**

Articles

- ***Through Another’s Eyes: Getting the Benefit of Outside Perspectives in Environmental Review*, 38 B.C. ENV’T L. AFF. L. REV. 245 (2011).**
- ***Adaptive Management as an Information Problem*, 89 N.C. L. REV. 1455 (2011).**
- ***Adapting to Climate Change Through Law that Bends Without Breaking*, 2 SAN DIEGO J. CLIMATE & ENERGY L. 45 (2010).**
- ***Reassessing Conservation Goals in a Changing Climate*, ISSUES IN SCIENCE AND TECHNOLOGY, Summer 2010, 21-26.**
- ***The Endangered Species Act: Static Law Meets Dynamic World*, 32 WASH. U. J.L. POL’Y 175 (2010) – analyzed ESA, finding that the framework of the ESA created strategies for a static ecosystem, whereas ecological research has shown that species and their living areas are inherently dynamic; concluded by enumerating the political, psychological and practical limitations of addressing dynamism in legislation, including the legal issues surrounding a dynamic approach to land and water use and the ability to create practical alternatives with concrete, enforceable goals**
- ***CALFED and the Quest for Optimal Institutional Fragmentation*, 12 ENV’T L. SCIENCE & POL’Y 729 (2009).**
- ***Foreword: Annual Review of Environmental and Natural Resources Law*, 36 ECOLOGY L.Q. 201 (2009) (with Robert Infelise) –introduced the articles in the review, connecting many of them through themes of the Bush administration’s “abysmal” record on environmental law and the challenges faced by the Obama administration and its courts, as well as describing the more significant Supreme Court ruling this year in *New Jersey v. Delaware***

- ***Scientific and Political Integrity in Environmental Policy*, 86 TEX. L. REV. 1601 (2008)** –examined the need for integrity in scientific research and the policies created from the research, and suggested ways to combat the issue through increased oversight
- ***Data Gaps in Natural Resource Management: Sniffing for Leaks Along the Information Pipeline*, 83 IND. L.J. 407 (2008) reprinted in LAND USE & ENVTL. L. REV.** –analyzed the movement of scientific information from research to policy development, and suggested ways to minimize gaps, including setting priorities on both broad and specific scales, and collaboration across all agencies working with the information
- ***Of Babies and Bathwater: Why the Clean Air Act’s Cooperative Federalism Framework is Useful for Addressing Global Warming*, 50 ARIZ. L. REV. 799 (2008) (with Michael Hanemann)** – suggested that greenhouse gas emissions should be regulated in a similar way to the Clean Air Act by having a minimum federal standard and allowing states to enact more stringent standards to capitalize on innovation at the state level
- ***The Challenges of Dynamic Water Management in the American West*, 26 UCLA J. ENVTL. L. & POL’Y 55 (2008) (with Michael Hanemann)** –discussed the need for adaptable legislation in addressing climate change, highlighting the difficult task of water management in the American west as an example where adaptability is vital
- ***Scientific and Political Integrity in Environmental Policy*, 87 TEX. L. REV. (2008)** –discussed how integrity might be more closely monitored in science and politics by adding oversight for political integrity, and reducing judgment and political or business incentives in scientific research
- ***Precaution, Science, and Learning While Doing in Natural Resource Management*, 82 WASH. L. REV. 547 (2007)** –assessed the use of learning-while-doing in areas of scientific uncertainty in order to obtain more information, and suggested ways in which this principle might be employed by management agencies

CPR

- **White Papers**
 - ***Regulatory Blowout: How Regulatory Failures Made the BP Disaster Possible, and How the System Can Be Fixed to Avoid a Recurrence* (with Flournoy, et al.) White Paper #1007, Washington, D.C.: Center for Progressive Reform (2010).**
 - ***Making Good Use of Adaptive Management* (with Bill Andreen, et al.) White Paper #1104, Washington, D.C.: Center for Progressive Reform (2011).**
- **Comments**
 - comments submitted to the U.S. Fish and Wildlife Service on **ways to improve Section 7 regulations, Aug. 3, 2009 (with Mary Jane Angelo, Daniel Rohlf & James Goodwin)**
 - comments submitted to the U.S. Fish and Wildlife Service on **interagency cooperation under the Endangered Species Act, Oct. 10, 2008 (with Camacho, et al.)**
- **Testimony/Op-eds**
 - asked to testify before the House Committee of Natural Resources on the Bush consultation rule
 - **“Gulf oil spill: Obama’s regulatory response falls short,” in the Los Angeles Times, May 20, 2010 (with Eric Biber)** –discussed the implications of dividing MMS into two agencies in light of the Deepwater Horizon catastrophe
- **Perspective**
 - ***Protecting Endangered Species***

▪ **Blogs**

- ***Court Skeptical of EPA's Section 404 Role Overturns Mine Veto***, CPRBlog, March 26, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=4FF10273-F53B-0121-C3F3BDA36FE0459D> – discussed the decision in favor of the mine owners, stating that EPA does not have the authority to veto a permit after it has already been granted
- ***Where Does NOAA Belong?*** CPRBlog, January 14, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=DE4240B8-F8B7-6436-B57CABD9667D53AB> – the truth about President Obama's request to Congress to reorganize and streamline government agencies, and the low possibility that NOAA will actually be reorganized
- ***Can You Stand to Hear More About Sackett?*** CPRBlog, January 11, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=CD2BE23B-CAB2-F5DA-04F6391BA069730F> - discussed the merits of the case after oral arguments, finding that she believes the decision will be statutory, not beyond the context of CWA, affecting judicial resources in the long term, and will have long term effects on EPA's wording of letters
- ***How the Tenth Circuit Upheld the Clinton-era Roadless Rule***, November 8, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=83928A33-D989-D9F2-B7B92BD653E29539> – the Tenth Circuit's long-time-in-coming ruling in favor of the rule
- ***Lisa Jackson at Berkeley Law***, CPRBlog, November 4, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=6FC59831-EA86-024D-D8E0BEE056F6CCFE> – discussed her appearance at the law school, describing Jackson as “tough,” “resilient,” and in command of everything involving the agency
- ***UK Report: Behavioral Change Takes More than a Nudge***, CPRBlog, July 22, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=51EA4512-C21C-8753-F8FED742339F1924> – the House of Lords Science and Technology Committee's study finding that nudges are less effective than a “combination of voluntary and regulatory measures”
- ***EPA Finalizes Mountaintop Removal Guidance***, CPRBlog, July 21, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=4E2DEF10-0143-8605-5533698D3620E6CE> – discussed the guidance, which ultimately indicated that EPA will be enforcing permit decisions in accordance with environmental laws
- ***White Paper on Habitat Conservation Plans and Climate Change***, CPRBlog, July 20, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=47C6BF1C-A66B-2083-76A73685AFF75A3B> – described the paper's analysis of the role of climate change in affecting the implementation of tools in the ESA to address greenhouse gas emissions, and offered recommendations on how to look at the permitting issues through the lens of climate change
- ***The New BOEMRE-NOAA MOU: A Good Start, But More is Needed***, CPRBlog, May 27, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=3220CAFA-B747-E0CC-506B1EAA44C17392> – NOAA's role in approving offshore drilling
- ***White House Review Delays EPA Mountaintop Removal Guidance***, CPRBlog, April 5, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=25E65166-F22C-B6FD-FC70ED0DF720F456> – OMB's role in the delayed guidance
- ***Right on the Commerce Clause, Wrong on the ESA***, CPRBlog, April 1, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=1138DED3-FA31-82FE->

- [2F9B30A03EFE1132](#) – discussed the *San Luis & Delta-Mendota Water Authority v. Salazar* case
- **Supreme Court Won't Hear Critical Habitat Cases**, CPRBlog, February 23, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=53051B31-0C1A-25AD-B5EA87D3C4A1EB28> – the narrow statute interpretations in the cases and why the Supreme Court did not grant cert
 - **Judge Feldman is Still Mad**, CPRBlog, February 18, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=39390A83-C993-CBA9-2FC423FC4431F813> – the ruling that a decision in the five pending deepwater drilling permits in the Gulf must be made within 30 days
 - **What We're Reading, Oceans Edition**, February 11, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=15310018-DD6C-CA3C-94519B2688857B7> – summarized issues in ocean policy, including deepwater drilling permits, the difficulty in achieving baseline data on the Gulf ecosystem, underreporting of fisheries catch data and NOAA's Draft Aquaculture Policy
 - **Contempt? Not by Interior**, CPRBlog, February 9, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=0B4834E0-BD9C-FB46-483F7200222C87D7> – Judge Feldman's financial and political stock in the Gulf oil industry, and the implications of this relationship for future rulings
 - **EPA Vetoes Mountaintop Removal Mining Permit**, CPRBlog, January 13, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=80CC048E-B28D-458B-B7442CAEBB2D1AE8> – the veto of the permit that was already in place, and the legal issues EPA faces in future court cases against EPA's statutory limitations
 - **CEQ Finalizes Guidance for Categorical Exclusions**, CPRBlog, November 24, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=7EE9E0DC-AB0C-20ED-50024EA07D16A0C6> – discussed the new guidance, prompted mainly by catastrophic categorical exclusions in the Deepwater Horizon and Macondo well tragedies, calling for clearer distinctions of actions with no significant environmental impacts, a more stringent application process, and periodic review of exclusions
 - **Finally, a National Ocean Policy**, CPRBlog, July 21, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=F7125D9B-DDC2-74D6-9E7153EA54684F01> – discussed Obama's executive order on a national ocean policy, which includes elements of resilience, conservation, sustainability, and restoration in attempts to protect the ocean ecosystems
 - **Interior Hits Pause Button Again**, CPRBlog, July 13, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=CBE51A29-E75F-C0EF-739C6FF6804A7A00> – discussed Salazar's decision memorandum placing a more clearly defined moratorium on deepwater drilling operations, in order for industry to develop better plans and responses to problems with a deepwater blowout
 - **Stay Denied in Appeal of Offshore Moratorium Decision**, CPRBlog, July 9, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=B785FDB4-E3F5-26D9-12A39FFA2091BD3B> – discussed the decision by the Fifth Circuit court to deny the Interior's request for a stay on the deepwater drilling moratorium, citing Salazar's inability to justify the moratorium
 - **EPA proposes general Clean Water Act permit for pesticides**, CPRBlog, June 14, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=36C95AF7-B50D-7CAC-12023843DD83E196> – discussed the proposed EPA permitting for pesticides

- ***If Not at Yucca Mountain, then Where?*** CPRBlog, March 26, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=9AB64059-A478-C5B7-A97D303B357E7137> – discussed nuclear waste disposal, the challenges thereof, and the problems raised by rejecting the Yucca Mountain disposal project
- ***Settlement Marks a Step Forward on Ocean Acidification***, CPRBlog, March 15, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=621DE5AB-E559-C5C8-C0AE3B8B1639FFC0> – discussed the push by the Center for Biological Diversity to encourage EPA to regulate chemicals that lead to ocean acidification under CWA, and the current settlement that has started a rulemaking process against acidification
- ***Conservation Deal Just a Sugar Fix?*** CPRBlog, March 10, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=4863B479-B239-42D9-247372E649C8FB45> – discussed the conservation deal in which Florida planned to buy out US Sugar, the scaled-down version of the deal after the economic depression, and the possible conservation problems that will be created by the lessened deal
- ***The Delta: Pumps, Politics and (Fish) Populations***, CPRBlog, February 19, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=E6F83C8D-C5DE-900C-1A853E3EE0DCDDD8> – described the recent pumping up and down in the delta region and the effects on local salmon and smelt populations, as well as the rulings by Judge Wanger that have allowed this pumping to continue
- ***Good News for the Pika... Or Not***, CPRBlog, February 8, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=AF8561F8-F914-76AD-5C71F6FCAAABB688> – discussed FWS’s decision to not list the pika as endangered or threatened in light of climate change, and how this decision may be detrimental in the long run
- ***Time to Make NOAA Official***, CPRBlog, February 3, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=942C0AF8-F6B5-C1FC-8ED4C56BBA6581B0> – discussed the current push for an organic act for NOAA and why this step is both necessary and helpful
- ***On EPA Approval of the Hobet 45 Mountaintop Removal Permit***, CPRBlog, January 12, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=2300CEB1-E1DD-2264-68695065451E9EF9> – discussed the acceptance of the permit by EPA and why this decision could be extremely detrimental, especially considering the effects on local waterways and the possible violations of CWA
- ***A Look at the Interim Federal Delta Plan***, CPRBlog, January 5, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=FEC8C3F9-F2E3-8C57-5BB634A36C1E68A3> –discussed the impacts of the plan, including the positives, such as multilevel government cooperation, and the negatives, such as the role of science in decision-making and the role of stakeholders
- ***60 Minutes Flubs the California Water Story***, CPRBlog, December 31, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=E5A4C9B8-E4D0-1008-EC232CEAB22E83E1> –discussed the show’s inaccurate portrayal of the water crisis, with its lack of attention to the coastal salmon fishery closure and the promotion of the idea that the environmental regulations to protect the Delta smelt led to the economic problems in California
- ***NPDES Permits on Impaired Waterways***, CPRBlog, December 2, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=4FCE97BC-BDDD-9336-084C122BB628C185> –discussed a possible ruling by EPA on allowing new permits for

- already impaired waterways, the history of permitting rulings by courts on impaired waterways, and the restrictions that should be included by an EPA ruling
- ***Brown Pelican Dis-Endangered*, CPRBlog, November 12, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=E9053F27-E899-AD10-1C49DA35EA11543E>** –discussed the recent announcement of the bird’s upcoming removal from the endangered and threatened species list because of its early protection when the species was harmed by the use of DDT
 - ***Civil Disobedience and Climate Change*, CPRBlog, October 14, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=534B649D-A303-A3F6-2318A6D3DBBD003>** –discussed the case of Tim DeChristopher, who interfered with a federal oil auction, the planned Necessity Defense, and the history and one-time success of the use of the necessity defense in an environmental protest case
 - ***Mountaintop Removal Review Moves to Next Stage*, CPRBlog, October 2, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=16682782-B6E3-B232-D3002BC657F90AB6>** –discussed EPA’s recent decision to delay any actions by reviewing all 79 mountaintop removal mining permits on the grounds of water pollution and cumulative effects
 - ***Wishful Thinking Doesn’t Justify Grizzly Delisting*, CPRBlog, September 23, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=E7057AB8-0C00-924A-C78B527180EBFCA7>** –discussed the recent ruling against the US Fish and Wildlife Service in their delisting of grizzly bears in 2007, citing that protective mechanisms were not implemented to maintain the elevated population level
 - ***A Promising Step Toward a National Ocean Policy*, CPRBlog, September 22, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=E20A9235-B9C1-C814-BB84AE4C863680A9>** –described the Interim Report by the Interagency Ocean Policy Task Force created by President Obama, the three stewardship principles determined by the Task Force as the guiding principles behind ocean use, and implementation and policy recommendations contained in the report
 - ***Mountaintop Removal Update: EPA May Grow a Spine*, CPRBlog, September 11, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=AAFA58FE-E5EC-6717-56ABAF07664C0960>** –discussed the encouraging move that EPA would reevaluate the mountaintop removal mining permits for possible water quality issues
 - ***The Royal Society’s Geoengineering Report*, CPRBlog, September 3, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=800A33B0-E264-BE18-DB2F6E92215B28C0>** –discussed briefly the conclusions of the report, which found geoengineering less effective than GHG reduction and that more research needed to be done, especially on the risks of the practice
 - ***Would a CO₂ “Monkey Trial” Improve Scientific Integrity and Transparency?*, CPRBlog, August 26, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=578694DD-C48D-083A-4E568AB52B7245E1>** –discussed the U.S. Chamber of Commerce’s petition for EPA to hold a hearing in the style of the Scopes trial before presenting its findings on GHG’s danger to public health, arguing that such a trial is inappropriate for questioning scientific research
 - ***Atrazine in Drinking Water*, CPRBlog, August 24, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=4CD2B8B3-B197-B1F4-CF571B41D73B7FAB>** –discussed the history of Atrazine research and lax regulations,

- the current sharpening of suspicion toward the herbicide, and the lessons that can be gleaned from the problems with Atrazine regulation
- ***Court to Interior: Not So Fast on Rule Change***, CPRBlog, August 17, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=26AB6056-9027-BB1D-4C7D4AD0BDC4EC89> –discussed Salazar’s attempt to halt Bush’s last minute rule on mountaintop removal mining, and acknowledging that, while the ruling was frustrating for those trying to protect the ecosystem, a favorable ruling would have led to a precedent creating a loophole around the public comment process
 - ***The Need for, and Challenges of, Climate Adaptation***, CPRBlog, August 7, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=F5111646-A5A1-22D2-8A238A6A16D5C07E> –discussed the use of adaptation in climate change legislation and described other alternatives being posed, such as assisted migration
 - ***Time for Mining Law Reform?*** CPRBlog, July 22, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=A0CFCCB3-E8BE-CC55-4C7984CCCE3AC12B> –discussed the need for updated mining laws, especially in the area of hard rock mining on federal land, as the price of minerals has skyrocketed
 - ***Bush Administration Forest Planning Rules Struck Down -- Again***, CPRBlog, July 6, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=5046FDE5-BBA6-D782-22494A34E0DBF92E> –discussed a recent ruling favoring the environmental plaintiffs in the Northern District of California and that the Bush administration’s actions were not legally adopted
 - ***Section 7 Status Quo Reinstated***, CPRBlog, July 2, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=12D2A699-1E0B-E803-CAF7F71C75DD0D83> –discussed the Interior’s withdrawal of the midnight regulations of the Bush administration that would have loosened the consultation requirements under ESA section 7, and why this section could still benefit from a useful review
 - ***The End of the Exxon Valdez Legal Saga?***, CPRBlog, June 19, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=F931BA89-15C5-EA6D-34D295C28154ADFO> –discussed the recent final ruling on damages from the Exxon Valdez oil spill, with judgment favoring the plaintiff in both areas: interest start date and appeal cost recovery
 - ***Congress Looks at Pharmaceuticals in the Water. Here’s What They Should Do.*** CPRBlog, June 12, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=D530FDF7-15C5-EA6D-3492689C01CA29AC> –discussed the introduction of drugs into the water system and ways in which the government could counteract this problem
 - ***Executive Branch Agreement on Mountaintop Removal: A Positive Step, but Only a Step***, CPRBlog, June 11, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=D11A8C58-15C5-EA6D-34FAB247CE8436A6> –discussed the vague nature of the interagency agreement on mountaintop removal and how the Obama administration, although attempting to clarify the issue, has not taken a firm stance on regulation
 - ***11th Circuit Stirs the NPDES Pot***, CPRBlog, June 10, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=CA76DC3B-15C5-EA6D-345F54A1D0D98F19> –described the recent ruling upholding the need for a permit to transfer water containing agricultural and municipal pollutants from one source to another distinct body of water, in this case Lake Okeechobee and the Everglades

- ***Sharing the Catch*, CPRBlog, May 28, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=87E9FA78-1E0B-E803-CACD053B348656BB>** –discussed the theory and benefits of catch shares, as well as the implementation issues faced by the US
- ***Mountaintop Mining Update*, CPRBlog, May 20, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=5E3B8E67-1E0B-E803-CA99A0A8551F63B5>** –enumerated EPA’s approval of 42 of 46 mountaintop mining permits
- ***NEPA: Middle-Aged, But Still Vigorous*, CPRBlog, May 2, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=1B6CBA76-1E0B-E803-CAC1D54B5A996918>** –discussed the benefits of NEPA and cited two recent cases in which NEPA was utilized to prevent environmentally harmful actions
- ***What’s New on the Delta?* CPRBlog, April 22, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=CDFCC31B-1E0B-E803-CACF24F4F2F970CA>** –described the Sacramento-San Joaquin river as the country’s “most endangered,” and how the longfin smelt will not be put on state or federal threatened lists as of yet
- ***EPA Asserts Itself on Mountaintop Removal Mining*, CPRBlog, April 6, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=7BAB3B9F-1E0B-E803-CAA5E222833E7F8B>** –discussed the history of mountaintop removal mining and EPA’s shift toward acting against the practice
- ***Time for NMFS to lead on hatcheries*, CPRBlog, March 23, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=314B38F7-1E0B-E803-CAD347D7D87E2FB2>** –discussed the Chevron deference of the Ninth Circuit court to NMFS in determining the components of an evolutionarily significant unit and how to deal with them, as well as the history of deference and the importance of an administration’s appointees to head agencies to which rulings can be deferred in this manner
- ***Good news for right whales*, CPRBlog, March 17, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=161ED973-1E0B-E803-CADEB44823DFC5EE>** –described the recent finding that no Atlantic right whales had died due to human interaction over the past year for the first time in hundreds of years, due to altered shipping channels and speed restrictions
- ***Bad Endangered Species Act Rules Not Yet Undone*, March 5, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=D488E9FC-1E0B-E803-CAB3381237D58BB5>** –described Obama’s memo telling agencies to return to pre-Bush policies, and the two roadblocks that still remain in actually expunging the Bush section 7 midnight regulations
- ***CO₂ and the Clean Air Act*, CPRBlog, February 19, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=8B07A0F3-1E0B-E803-CA4F8F964CEDF294>** –described the Obama administration’s push to regulate CO₂ as an air pollutant, as decided in *Massachusetts v. EPA*, and the mechanisms of CAA by which this regulation can be implemented
- ***More Accusations of Politics Trumping Science and Law at Interior*, CPRBlog, January 28, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=1D983DDE-1E0B-E803-CAF67F12336BD93B>** –discussed DOI’s dismissal of scientific evidence when restricting water flows in the Grand Canyon, which is typically perceived as the model of science-driven adaptive management

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- ***Bush Regulatory Record: Transferring Polluted Water***, CPRBlog, January 20, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=F339A32C-1E0B-E803-CAF215AA412D1666> –discussed the Bush administration’s water transfer exemptions from CWA’s permitting requirements

Other

- assorted blogs on Legal Planet on topics ranging from EPA to Atrazine in drinking water and mountaintop removal

Forthcoming

- ***Environmental Policy Law: Problems, Cases, and Readings*** 6th ed. (Foundation Press, forthcoming 2012).
- ***Climate Change and the Evolution of Property Rights***, 2 U.C. IRVINE L. REV. ____ (forthcoming 2012).

David Driesen

Subjects: climate change, sustainability, the Kyoto Protocol, CBA

Books

- ***The Economic Dynamics of Law* (Cambridge University Press, 2012)(forthcoming)**
- ***Environmental Law: A Conceptual and Pragmatic Approach, 2nd Edition* (with Robert Adler and Kirsten Engel)(Aspen/Kluwer 2011)**
- ***Beyond Environmental Law: Policy Proposals for a Better Environmental Future* (David M. Driesen & Alyson C. Flournoy, eds., Cambridge University Press, 2010) - offered a vision for the third generation of environmental law designed to enhance its ability to protect our environment through two proposals: an environmental legacy for future generations, and a competition to promote technological developments**
- ***Economic Thought and US Climate Change Policy* (MIT Press, 2010) (edited volume)**
- ***Environmental Law: A Conceptual and Pragmatic Approach* (with Robert Adler)(2007)**

Book chapters

- **“Alternatives to Regulation? Market Mechanisms and the Environment,” in *Oxford Handbook on Regulation* (Martin Cave, Rob Baldwin and Martin Lodge eds., Oxford University Press, 2009) – “presents a discussion of instrument choice in institutional context, with an emphasis on the Kyoto Protocol as an example of environmental benefit trading under a multilevel governance arrangement”**
- **“Neoliberal Instrument Choice,” in *Economic Thought and U.S. Climate Change Policy* (David Driesen, ed. MIT Press, 2010) –discussed how U.S. market worship influenced the Kyoto Protocol and the tension between maximizing short-term cost effectiveness and maximizing long-term innovation**
- **“Toward Sustainable Technology,” in *Economic Thought and U.S. Climate Change Policy* (David Driesen, ed., MIT Press, 2010) –discussed the need for sustainable technology and how long-term technological development is incompatible with maximizing short-term cost effectiveness, as well as proposing alternatives to Kyoto-style cap and trade**
- **“An Environmental Competition Statute,” in *Beyond Environmental Law* (Alyson Flournoy & David Driesen, eds., Cambridge University Press, 2010) –proposed that a competition statute, whereby businesses who make environmental innovations are paid by lagging businesses, would motivate businesses to make strides in environmental protection in the same way they accomplish other competitive goals**
- **“Sustainable Development and Air Quality: The Need to Replace Basic Technologies with Cleaner Alternatives,” in *Agenda for a Sustainable America* (John Dernbach ed., Earth Island Press, 2009) –analyzed the US’s attempt to regulate air quality to keep up with the standards of Agenda 21 and the Rio Declaration over the past five years, and determined that, while the US has improved air quality, it has not yet met the standards of the Rio Declaration and proposed ways in which the US could come closer to meeting the standards**
- **“Renewable Energy under the Kyoto Protocol: The Case for Mixing Instruments,” in *A Globally Integrated Climate Policy for Canada* (Steven Bernstien et al. eds., University of Toronto Press, 2008) –proposed that a mixture of initiatives for both short-term economic**

benefits and long-term technological developments will be necessary for renewable energy source development

- **“Economic Dynamics and Progressive Lawyering,”** in *Progressive Lawyering, Globalization and Markets: Rethinking Ideology and Strategy* (Clare Dalton, ed., William S. Hein & Co. 2007) –argued that economic dynamic theory provides a useful framework in a variety of areas and that progressive reform needs such a coherent theory

Articles

- ***Two Cheers for Feasible Regulation: A Response to Masur and Posner*, 35 HARV. ENVTL. L. REV. 313 (2011)**
- ***Contract Law’s Inefficiency*, 6 VA. L. & BUS. REV. 301 (2011).**
- ***An Environmental Competition Statute*, 2 SAN DIEGO J. CLIMATE & ENERGY L. 199 (2010).**
- ***Meaningful Technology Transfer for Climate Disruption*, 64 J. INT’L AFF. 1 (2010)(with David Popp).**
- ***Capping Carbon*, 40 ENVTL. L. 1 (2010)** – discussed current US approaches to capping trading programs, the role of Best Available Technology in caps, the establishment of aggregate caps, and recommendations for improved cap-setting
- ***Duty’s Promise and the Unitary Executive’s Terror*, 37 SYRACUSE J. INT’L. L. & COM. 7 (2009)** – described the Bush administration’s push for unitary executive power in order to promote the war on terror, the theory behind duty-based executive power, and how the theory could address terrorism
- ***Toward a Duty-based Theory of Executive Power*, 78 FORDHAM L. REV. 71 (2009)** –discussed how the Constitution’s framers gave the executive branch the duty to execute the law, not shape it, and how this interpretation protected the government from presidential abuse
- ***The Missing Instrument: Dirty Input Limits*, 33 HARV. ENVTL. L. REV. 65 (2009) (with Amy Sinden)** – explained that limits on inputs creating pollution rather than on the pollution outputs can prove extremely effective at stimulating innovation and reducing pollution
- ***Linkage and Multilevel Governance*, 19 DUKE J. COMP. & INT’L L. 389 (2009)** –outlined the use of multilevel governance in the Kyoto Protocol, and analyzed the shortcomings of this structure
- ***Cost-Benefit Analysis: New Foundations on Shifting Sand*, 3 REG. & GOVERNANCE 48 (2009) (reviewing Adler & Posner’s *New Foundations of Cost-Benefit Analysis* (Harvard University Press, 2006)) (with Amy Sinden & Douglas A. Kysar)** –discussed the book’s attempt to lay a theoretical foundation for CBA, highlighting its merits and pointing out the weak areas in the theory, ultimately determining that feasibility analysis could work better in real world situations
- ***Sustainable Development and Market Liberalism’s Shotgun Wedding: Emissions Trading Under the Kyoto Protocol*, 83 IND. L.J. 21 (2008)** –analyzed the subtle fundamental strain between these two ideas as they apply to environmental protection, namely how market liberalism tends to favor short-term cost effectiveness, whereas sustainable development inherently looks at long-term development
- ***Firing U.S. Attorneys: An Essay*, 60 ADMIN. L. REV. 707 (2008)** –analyzed the interpretation of executive power, promoting a duty-based interpretation to allow checks and balances, as opposed to less-limited presidential power
- ***An Economic Dynamic Approach to the Infrastructure Commons*, 35 ECOLOGY L.Q. 215 (2008)** – analyzed the infrastructure commons theory and how an economic dynamic approach would complement this theory

- ***Amicus Brief of Economists Ackerman et al. in Entergy v. Riverkeepers*, working paper series (2008) (with Douglas A. Kysar), available at SSRN: <http://ssrn.com/abstract=1288830> – explained what feasibility analysis is and why it is an appropriate alternative to cost-benefit analysis in analyzing questions under section 316 of the Clean Water Act**
- ***The Changing Climate for United States Law*, 1 CARBON & CLIMATE L. REV. 35 (2007) – summarized the state of U.S. climate law and explains how legal analysis can temper and improve policy conclusions based on economics**

CPR

- **White Paper**
 - ***Protecting Public Health and the Environment by the Stroke of a Presidential Pen: Seven Executive Orders for the President's First 100 Days* (with Rebecca M. Bratspies, et al.) White Paper #806, Washington, D.C.: Center for Progressive Reform (2008) – proposed seven executive orders for the incoming administration – 1., reduction of the federal government's carbon footprint; 2., consideration of climate change in agency decision-making; 3., taking children into account in toxics regulation; 4., new environmental justice legislation; 5., promotion of transparency in regulatory review; 6., prevention of preemption; and 7., a policy on sustainable public land use**
- **Perspective**
 - ***The Feasibility Principle***
- **Blogs**
 - ***Incorporating the Best of Cantwell-Collins into KGL: Don't Forget the Missing Instrument*, CPRBlog, March 24, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=904E47F8-034E-8D5D-05F3AF92DA9D0587> - discussed the addition of the CLEAR concepts into a climate disruption bill proposed by Kerry, Graham and Lieberman, especially the incorporation of Dirty Input Limits into trading and interest generation**
 - ***Administrative Delay in Implementing a Cap-and-Trade Program: A Compelling Reason to Auction All Allowances*, CPRBlog, September 17, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=C8235EBE-9D39-229A-7286420DE6D73CEE> –discussed the lack of administrative delays in the Regional Greenhouse Gas Initiative, due to the auction of almost 100% of allowances, and how this type of program could be beneficial for national policies**
 - ***In Debate on Waxman-Markey, a Question on Avoiding Liability for Violating the Law*, CPRBlog, April 29, 2009, <http://www.progressivereform.org/CPRBlog.cfm?fkScholar=14> –discussed the protection of citizen standing in section 336 of the bill, how some Democrats are attempting to take out this portion of the bill, and why losing this right would be detrimental to citizens**

John Echeverria

Subjects: regulatory takings rulings

Book chapter:

- “The Endangered Species Act and the Constitutional Takings Issue,” in *Endangered Species Act: Law, Policy, and Perspectives: Second Edition*, eds. Donald C. Baur & Wm. Robert Irvin (American Bar Ass’n 2010).

Articles

- ***Stop the Beach Renourishment: Why the Judiciary is Different*, 35 Vt. L. Rev. 475 (2010)** – discussed Justice Scalia’s outline of the takings claim and the takings issue in light of court rulings
- ***Is Regulation of Water a Constitutional Taking?* 11 Vt. J. Envtl. L. 579 (2010)** – the *Casitas* ruling and its impact on takings claims, the flawed nature of the narrow ruling, and its inconsistency with “modern takings jurisprudence”
- ***Making Sense of Penn Central*, 39 ENVTL. L. REP. NEWS & ANALYSIS 10471 (2009)** –discussed the takings ruling of *Penn Central Transportation Co. v. City of New York* and the confusion left in its wake over the past twenty five years, attempting to narrow the definition of the ruling, especially in light of the more recent ruling in *Lingle v. Chevron USA, Inc.*
- ***The Track Record on Takings Legislation: Lessons from Democracy’s Laboratories*, 28 STAN. ENVTL. L.J. 439 (2009) (with Thekla Hansen-Young)** –analyzed the takings versus property rights debate as it has developed over recent years, using the specific examples of Florida’s 1995 property rights legislation, Oregon’s Measures 37 and 49, and other takings legislation from Arizona, Louisiana, Mississippi, and Texas to show the relative successes and failures of takings and property rights in five areas
- ***Noghry v. Town of Brookhaven: How Far is “Too Far” in a Regulatory Takings Case*, ENVTL. L. IN NEW YORK (2009) (with Michael E. Kenneally, Jr.)** –described the ruling and its impact on narrowing the scope of takings by establishing that the “evidence must demonstrate that the owner of the property was left with no more than a ‘bare residue’ of value”
- ***The Death of Regulatory Takings*, 34 ECOLOGY L.Q. 291 (2007)** - introduction to Symposium: Litigating Takings, discussing the initial questions of the first takings conference in 1998 and how the Supreme Court had answered all of the questions in specific cases since then, and introduced the new articles that look beyond those fundamental questions to the farther reaching implications of takings

CPR - Testimony

- **On the proposal to restrict state use of eminent domain**, before the House Judiciary Committee’s Subcommittee on the Constitution, April 12, 2011

Blogs

- ***In Stop the Beach Renourishment Ruling, Conservatives Come up One Vote Short in Quest to Remake Property Rights Law***, CPRBlog, June 17, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=480598E4-9B74-D4DC->

69FCF9E648F55238 – discussed the ruling in favor of Florida’s interpretation of the law and the decision against judicial takings

- ***The Florida Beach Case Comes to Supreme Court: A Badly Flawed Test Case for Property Rights Advocates***, CPRBlog, November 30, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=4328B2F7-04B5-291C-B838782DF1D2175C> -discussed the takings case of *Stop the Beach Renourishment v. Florida Department of Environmental Protection*, and the major reasons why the Supreme Court is likely to favor the defendant or dismiss the claims

Other

- ***Eminent Domain: Implications for Community Redevelopment Efforts***, Baltimore: Annie E. Casey Foundation (2007) (with Steven Anderson et al.) –discussed the use of eminent domain and how this process could enhance economic development in lower income areas
- **“Getting Development Wrong,”** in *Los Angeles Daily Journal*, December 13, 2007 –op-ed refuting a recent op-ed by Ronald Zumbun, citing many cases that illustrate a more clear interpretation of due process claims and takings

Kirsten H. Engel

Subjects: *climate change, adaptive federalism, local incentives*

Books

- *Environmental Law: A Conceptual and Pragmatic Approach*, 2nd ed. (Aspen Publishers, 2011)(with David Driesen and Robert Adler)

Book chapters

- “When ‘Smoke isn’t Smoke’: Missteps in Air Quality Regulation of Wildfire Smoke,” in *Wildfire Policy: Law and Economics Perspectives* (Taylor and Francis Press, 2011)(with Andrew Reeves)
- “The Courts and Climate Policy: Now and in the Future,” in *Greenhouse Governance: Addressing American Climate Change Policy* (Barry G. Rabe, ed., Brookings Press, 2010)
- “State Governance: Leadership on Climate Change,” in *Agenda for a Sustainable America* (with Marc L. Miller) (John Dernbach ed., Earth Island Press, 2009) –discussed state governments’ role in climate change regulation, since most of the initiatives have been statewide, thus far, but found that only a few states were focusing on sustainability-related issues
- “Adaptive Environmental Federalism,” in *Preemption Choice: The Theory, Law and Reality of Federalism’s Core Question* (with David E. Adelman) (William W. Buzbee, ed., Cambridge University Press, 2009)

Articles

- *The Potential and Power of Renewable Energy Credits to Enhance Air Quality and Economic Development in Arizona*, ___ ARIZ. STATE L.J. ___ (2012)(with Matthew McDonnell and Ardeth Barnhart)
- *Mitigating the Constitutional Vulnerabilities and Economic Inefficiencies of State Renewable Power Location Preferences: Why Not a “Renewables RGGI”?* 3 SAN DIEGO J. CLIMATE & ENERGY L. 79 (2011)
- *State Standing in Climate Change Lawsuits*, 28 J. LAND USE & ENVTL L. 217 (2011)
- *Damages, Injunctions and Climate Justice: A Reply to Professor Zasloff*, 58 UCLA L. REV. DISCOURSE 189 (2011)
- *How to Take Climate Change into Account: A Guidance Document for Judges Adjudicating Water Disputes*, 40 ENVTL. L. REP. (NEWS & ANALYSIS) 11215 (2010)
- *Whither Subnational Climate Change Initiatives in the Wake of Federal Climate Legislation?* 39 PUBLIUS: THE JOURNAL OF FEDERALISM 432 (2009)
- *Micro-Motives for State and Local Climate Change Initiatives*, 2 HARVARD L. AND POL’Y REV. 119 (2008) (with Barak Y. Orbach) –analyzed why states have enacted climate change regulation, despite limited federal action, finding that some motives are from informed decisions, whereas others are from political biases
- *Symposium Introduction: Property Rights and the Environment*, 50 ARIZ. L. REV. 373 (2008)(with Dean Lueck) –discussed the goals and limitations of applying property rights to

environmental policies, including costs and the complexities of individual ecosystems, and likewise, their regulation

- ***Reorienting State Climate Change Policies to Induce Technological Change*, 50 ARIZ. L. REV. 835 (2008) (with David E. Adelman)** –asserted that states can be instrumental in creating the technological advancements in controlling greenhouse gases; proposes a two-tiered strategy: primary federal responsibility for reducing greenhouse gas emissions, while state policies focus on promoting technological developments and change
- ***Adaptive Federalism: The Case Against Reallocating Environmental Regulatory Authority*, 92 MINN. L. REV. 1796 (2008) (with David E. Adelman)**, available at SSRN: <http://ssrn.com/abstract=1016767> -supported current dynamic system of overlap of jurisdictions of federal and state environmental policies, in opposition to preemptive federal control
- ***The Politics of Local Climate Change Initiatives*, 32 SUM ADMIN. & REG. L. NEWS 6 (2007) (with Barak Y. Orbach)** –discussed how local climate change policies do not directly benefit those who spend money and time to impose these regulations, yet on a state and local level, policy makers were still making attempts to regulate GHG emissions, serving global interests instead of only self-interests
- ***Harmonizing Regulatory and Litigation Approaches to Climate Change Mitigation*, 155 U. PA. L. REV. 1563 (2007)** –discussed states’ recent legal action against greenhouse gas emitters, and analyzed whether state-level regulation is more effective than federal regulation, as well as offering the possibility of using tradable emissions offsets to control GHG emissions

CPR

- **Conferences**
 - ***State Summit on Climate Change and Preemption, March 25, 2009*** – with the National Association of Clean Air Agencies
- **Blogs**
 - ***EPA's Standing Argument: A Sleeping Giant in the Tailoring Rule Litigation?*, CPRBlog, Feb. 21, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=A0D46B85-0F01-D793-A9EB02579067D3A1>** - discussed the standing law barrier confronting industry’s challenge to EPA climate rules
 - ***States' Proposal for Meeting Federal Climate Change Rules an Opportunity to Think Seriously about Regional RPS*, CPRBlog, May 5, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=C054F880-9D09-2C69-784A9222008BC92D>** - discussed the drawbacks of state renewable portfolio standards, and the potential benefit to creating regional RPS's, following the example of regional climate change programs already in place
 - ***States Go to Bat for Improving Climate Change Legislation*, CPRBlog, September 11, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=A9AC6848-9E14-76CD-470C5528E0515E51>** –described the letter from the Attorneys General from California, Arizona, Connecticut, Delaware and New Jersey pushing for more stringent federal climate change legislation
 - ***Waxman-Markey: State and Regional Cap-and-Trade Regimes*, CPRBlog, April 2, 2009, <http://www.progressivereform.org/CPRBlog.cfm?fkScholar=65>** –discussed the

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preemption issues arising from Waxman-Markey, which will establish a five year federal ban on state level cap-and-trade programs and will ensure that businesses already involved in state programs will receive a federal allowance

Forthcoming

- *Climate Science and the Courts* (in progress)
- *The Economics of Wildfire Smoke: Distortions from Air Quality Policy* (in progress)(with Andrew Reeves)

Daniel A. Farber

Subjects: the Ninth Amendment, climate change and compensation, disaster law, federalism

Books

- *Disaster Law* (Elgar, 2010)(with M. Faure)(editor).
- *Research Handbook on Public Choice and Public Law* (Elgar, 2010)(with A. O’Connell)(editor).
- *Constitutional Law: Cases and Materials for the Constitution’s Third Century* (West Pub. Co, 4th ed. 2009)(with P. Frickey and W. Eskridge)(with 2009 Supp.).
- *Judgment Calls: Politics and Principle in Constitutional Law* (Oxford University Press 2008)(with S. Sherry)(Honorable Mention, 2010 Scribes Book Award).
- *Disasters and the Law* (Aspen Books, 2d ed. 2009)(with Jim Chen, Robert R.M. Verchick & Lisa Sun)
- *Environmental Law: Cases and Materials* (West Publishing, 8th ed. 2009)(with Ann Carlson & Jody Freeman)
- *Security v. Liberty: Conflicts Between Civil Liberties and National Security in American History* (Russell Sage, 2008)(editor).
- *Public Choice and Public Law (Economic Approaches to Law)*, (Elgar, 2007) (editor) -critical acclaim: 'Dan Farber has assembled a diverse and challenging set of readings that lay out the grounds of agreement and disagreement in theories of public choice and law. This collection will be valuable to students and others seeking an introduction to this difficult and contentious subject.' - John Ferejohn, Stanford University and New York University, US
- *Retained by the People: The ‘Silent’ Ninth Amendment and the Constitutional Rights Americans Don’t Know They Have* (Basic Books, 2007) –argued that the Ninth Amendment should be used by the Supreme Court in areas where the due process law of the Constitution had been used instead, including abortion, gay marriage, and a number of other divisive political and legal topics

Book chapters

- “‘Cadenzas’ Consitucianais,” in *Direitos, Deveres E Garantias Fundamentais* (George Leite, Ingo Sarlet and Miguel Carbonell, eds.)(2011).
- “The UNCC as a Model for Climate Compensation,” in *Gulf War Reparations and the UN Compensation Commission* (Cymie Payne and Peter Sand, eds.)(2011).
- “Introduction” (with M. Faure) in *Disaster Law* (Dan Farber and M. Faure, eds.)(Elgar, 2010).
- “Climate Change and U.S. Law,” in *Climate Change: La Risposta Del Diritto* (F. Fracchia and M. Occhiena, eds.)(Editoriale Scientifica, 2010).
- “Adaptation and Climate Justice” in *Adaptation to Climate Change: Law and Policy* (T. Bonhady, A. Macintosh and J. McDonald, eds.)(Federation Press, 2010).
- “Building a Better Judiciary,” in *The Psychology of Judicial Decision-Making* (with Suzanna Sherry) (David Klein and Gregory Mitchell, eds., Oxford University Press, 2008)—essay discussing the process of judicial decision-making, what hinders sound decision-making and how the legal structure can be utilized to promote the best decision-making possible
- “The Story of McCulloch: Banking on National Power,” in *Constitutional Law Stories* (Michael Dorf, ed.)(2d ed., 2009).

- “**Judgment Calls: Politics and Principle,**” in *Constitutional Law* (with Suzanna Sherry) (Oxford University Press, 2008)—discussed judicial discretion in constitutional law, suggesting that judges are able to rule effectively without inflexible constraints or personal bias
- “**Security v. Liberty: Conflicts Between Civil Liberties and National Security,**” in *American History* (Russell Sage, 2008) (editor) —showed a pattern of changes of American civil liberties over the twentieth century when presidential administrations faced national emergencies

Articles

- *Uncertainty*, 99 GEO. L.J. 901 (2011).
- *Indirect Land Use Change, Uncertainty, and Biofuels Policy*, 2011 U. ILL. L. REV. 381 (2011).
- *Climate Change: A U.S. Perspective*, 2 YONSEI (KOREA) LAW JOURNAL 1 (2011).
- *Taking Responsibility for the Planet*, 89 TEX. L. REV. 147 (2010).
- *Owning Up to the Environment*, 40 ENV. L. REP. 10994 (2010).
- *Justice Stevens, Habeas Jurisdiction, and the War on Terror*, 43 U.C. DAVIS L. REV. 945 (2010) – discussed the roles of Supreme Court Justices Stevens and Scalia’s in the habeas jurisdiction decision of the Guantanamo detention site, and the differences between these two justices’ approach to jurisdiction statutes
- *Climate Adaptation and Federalism: Mapping the Issues*, 1 SAN DIEGO J. CLIM. & ENERGY L. 259 (2009).
- *Rethinking the Role of Cost-Benefit Analysis*, 76 U. CHI. L. REV. 1355 (2009) –discussed the reforms to OMB and CBA as proposed by Richard Revesz and Michael Livermore in their book, *Retaking Rationality*, and proposed more stringent reforms to create better environmental policies, especially in the areas of toxics and climate
- *Adaptation Planning and Climate Impact Assessments: Learning from NEPA’s Flaws*, 39 ENVTL. L. REP. NEWS & ANALYSIS 10605 (2009) –analyzed environmental impact statements and suggested five improvements that should be addressed in the establishment of Climate Adaptation Statements, including more effective supervision and adaptability
- *Confronting Uncertainty under NEPA*, 8 ISSUES IN LEGAL SCHOLARSHIP (2009) –analyzed NEPA, discussed its shortcomings and suggested six major improvements in its approach to climate change
- *The Categorical Approach to Protecting Speech in American Constitutional Law*, 84 IND. L.J. 917 (2009) –discussed types of speech protected or not protected under the First Amendment, how the categorical approach has evolved and whether it would be effective in constitutional law
- *Climate Justice and the China Fallacy*, 15 HASTINGS W.-N.W. J. ENVTL. L. & POL’Y 15 (2009) – discussed how China’s GHG emissions are used by the US to justify its reluctance to stricter regulation, and how this use is incongruent with the established legal practices of the US tort system
- *The Ninth Amendment and Individual Rights: A Reply to Professor McAfee*, 9 NEV. L.J. 243 (2008) –responded to McAfee’s essay review criticizing Farber’s book, *Retained by the People: The ‘Silent’ Ninth Amendment and the Constitutional Rights Americans Don’t Know They Have*; clarified his position on the purpose of the Constitution, the legal approach to the Ninth Amendment, whether moral rights supersede Constitutional rights, and Farber’s overall interpretation of the language of the Ninth Amendment

- ***Climate Change, Federalism and the Constitution*, 50 ARIZ. L. REV. 879 (2008)** –discussed how states have enacted GHG emissions laws despite a lack of federal regulation, and analyzed what the continuing role of states in policy and regulation should be
- ***A Place-Based Theory of Standing*, 55 UCLA L. REV. 1505 (2008)** –advocated the use of place-base in standing, making the test of standing that a plaintiff must have a personal connection to a geographical region in order to contest environmental violations in that area
- ***Constitutional Cadenzas*, 56 DRAKE L. REV. 833 (2008)** –assessed the use of improvisation in reference to interpretation of the Ninth Amendment and the Privileges or Immunities Clause of the Fourteenth Amendment
- ***Modeling Climate Change and its Impacts: Law, Policy, and Science*, 86 TEX. L. REV. 1655 (2008)** –assessed the use of scientific modeling in environmental policy making by explaining how modeling works and discussing the shortcomings and difficulties presented in applying these models into law
- ***Apportioning Climate Change Costs*, 26 UCLA J. ENVTL. L. & POL'Y 21 (2008)** –argued that GHG emitters should pay for climate change costs, discussed how the costs should be divided among emitters and posed basic questions about the details of a cost-apportionment scheme in the long-term
- ***The Case for Climate Compensation: Justice Climate Change Victims in a Complex World*, 2008 UTAH L. REV. 377 (2008)** –discussed whether the US should provide compensation for its role in GHG emissions, and if whether, morally, the US should impose limits on future emissions, ultimately arguing that the US should do both
- ***Regulatory “Slippage” and the Compliance Issue in Environmental Law*, 8 MEIJI GAKUIN U. GRADUATE L. SCH. L. REV. 3 (2008) (with Y. Tsuji)**
- ***California’s Leadership in American Environmental Law*, 8 MEIJI GAKUIN U. GRADUATE L. SCH. L. REV. 89 (2008) (with Y. Tsuji)**
- ***Global Warming and the United States: Will America Act?* 8 MEIJI GAKUIN U. GRADUATE L. SCH. L. REV. 97 (2008) (with Y. Tsuji)**
- ***California’s Leadership in American Environmental Law*, 8 MEIJI GAKUIN U. GRADUATE L. SCH. L. REV. 105 (2008) (with Y. Tsuji)**
- ***Basic Compensation for Victims of Climate Change*, 155 U. PA. L. REV. 1605 (2007) (reprinted 2008-2009 LAND USE & ENVTL. L. REV. 415; reprinted in revised form with responses from other scholars, 38 ENV. L. REP. 10521 (2008))** –discussed an international or US system to transfer funds from GHG emitters to climate change victims, as well as how to avoid the difficulties inherent to such a system
- ***Adapting to Climate Change: Who Should Pay?* 23 J. LAND USE & ENVTL. L. 1 (2007)** -discussed the high costs of climate change regulation and proposed four possible methods, ultimately favoring a system where emitters pay most of the costs
- ***The Supreme Court, the Law of Nations, and Citations of Foreign Law: The Lessons of History*, 95 CAL. L. REV. 1335 (2007)** –discussed the history of citations of foreign law in the US, as well as the validity of the practice and current arguments against it
- ***Disaster Law and Inequality*, 25 LAW & INEQ. 297 (2007)** –analyzed victims of disasters in terms of economic standing, gender, age and race, and presented the disproportionate impact on socially disadvantaged Americans and ways to fix this bias utilizing the legal system
- ***Introduction: the Role of Lawyers in a Disaster-Prone World*, 31 NOVA L. REV. 403 (2007)** – discussed lawyers’ role in victim compensation, land-use decisions, insurance claims, and a wide variety of environmental law issues

- ***When the Court Has a Party, How Many 'Friends' Show Up? A Note on the Statistical Distribution of Amicus Brief Filings*, 24 CONST. COMMENT 19 (2007)** –discussed his study modeling the distribution of briefs, finding that “a power law distribution does provide improved fit (over linear regression), but less strikingly than for citation frequencies” and “amicus brief filings are unrelated to the number of federal appellate citations received by an opinion, but are modestly related to the number of law review citations”
- ***Reinventing Flood Control*, 81 TUL. L. REV. 1085 (2007) (with Robert G. Bea, Karlene Roberts, Edward Wenk & Kofi Inkabi)** –proposed improvements to the Army Corps of Engineers and improved oversight of flood control in light of the breaking of the levees in New Orleans associated with Hurricane Katrina

CPR White Papers

- ***Six Myths About Climate Change and the Clean Air Act* (with Amy Sinden) White Paper #1105, Washington, D.C.: Center for Progressive Reform (2011).**
- ***Making Good Use of Adaptive Management* (with Holly Doremus, et al.) White Paper #1104, Washington, D.C.: Center for Progressive Reform (2011).**

CPR – blogs

- ***Going Beyond the “Design-Basis Event,”* CPRBlog, March 12, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=07273780-C48B-DEA4-AA197D65D9FFFFD2>** – pointing out the flaws in the design-base for the Fukushima nuclear plant, as described in the interim report
- ***Court to Feds: “Pay Up for Katrina Damage,”* CPRBlog, March 7, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=EDD940C0-B34C-CC73-DE25074CA237D8B7>** – the fifth circuit court’s upholding of the liability ruling against the federal government
- ***Full Speed Ahead!* CPRBlog, December 13, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=E034B236-A5AD-BAF9-E06CD68E4AC1E3A8>** – the DC Circuit Court’s decision to deny a stay in EPA’s greenhouse gas regulations and the unlikelihood of the Supreme Court to reverse the decision
- ***A Vigorous Global Response To a Systemic Issue (Why is Climate Change so Different?),* CPRBlog, September 15, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=1634BADD-A8BB-5947-74C4B91C494B21BE>** – discussed the similarities and differences between the global economic crisis and the global climate change crisis, showing that the same fervor that is applied to regulation of worldwide banks should be applied to climate change regulation, and that the economic crisis is more readily attended to because the Great Depression has taught the world lessons on economic crises and the effects of the downturn are apparent more quickly than the effects of climate change
- ***Agency Preemption of State Law,* CPRBlog, August 12, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=669E3DEB-B154-6AA3-0EA49D9CDE42959B>** – discussed the ABA’s recently adopted guidelines for agency preemption
- ***Using Disclosure as a Smokescreen: How Behavioral Economics Can Deflect Regulation,* CPRBlog, July 26, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=0EE2DB8A->**

- C986-ED1F-24F6630F162411CA** – discussed parallels between behavioral economics and environmental policy making, particularly that the application of behavior does not substitute the creation of more stringent regulatory policies
- **Utilities-Only Carbon Cap, CPRBlog, July 16, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=DBEFB500-A922-1E14-7C836837491FAAE6>** – discussed whether the utilities-only cap is beneficial or harmful, since, although some action is better than none, this cap will unfortunately exclude industrial sources and will be “less economically efficient”
 - **Verchick’s ‘Facing Catastrophe’: A Roadmap to a Safer Future, CPRBlog, June 11, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=26D9FB1D-FDD1-3605-B52069D9D89EC08F>** – discussed Verchick’s new book, pointing out Verchick’s arguments for protection of the natural resources and environment of the Gulf coast, and the shortcomings of CBA in determining regulations and policy for the area, especially in light of large-scale catastrophes, such as Hurricane Katrina and the Deepwater Horizon oil spill
 - **Voting Down a ‘Murky’ Resolution, CPRBlog, June 11, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=24EB4980-EA5B-90B1-5012A6F6E932752D>** – discussed the close Congressional vote against Murkowski’s attempt to stop EPA’s endangerment finding regarding greenhouse gases, and the possibility that enforcement by EPA could spur on Congressional climate change actions
 - **We’ve Known the Risks in the Gulf for Forty Years, CPRBlog, June 1, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=F40E9D3D-DE10-9A26-C8D3A985735C8767>** – discussed the 1971 ruling against Gulf drilling under NEPA, in sharp contrast to the rampant drilling and EIS exemptions allowed today, resulting in the Deepwater Horizon catastrophe
 - **White House Draft Guidance on Climate Change and Environmental Impact Statements – A First Look, CPRBlog, February 19, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=E7A91403-B41E-AE94-8DF7EA70EC3C529A>** – discussed the Council on Environmental Quality’s draft guidance on greenhouse gases, and how public land use as a cause of climate change is not addressed
 - **Copenhagen in a Nutshell, CPRBlog, December 23, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=BD0FE2C6-D571-57A2-EE720D431F52D975>** –described the modest, yet hopeful, achievements of the Copenhagen conferences
 - **The Other Shoe Drops: EPA Finally Issues Endangerment Finding, CPRBlog, December 7, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=6ADF0DCC-F526-D636-86B2A43DA383CE40>** –discussed EPA’s official determination that climate change exists due to greenhouse gas emissions, and is fueled by human activity
 - **Thoughts About the Future of Nuclear Power, CPRBlog, November 3, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=BAFEBF28-DD27-FDF4-4F69EA974E803197>** –discussed the containment issues of nuclear power waste, and whether the gamble about how future generations will deal with the dangerous problem is worth the benefits of nuclear power
 - **News on the Political Front, October 29, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=A06F34A1-BBCF-B0E1-2A7E6E5F9E354CA9>** – discussed recent stories in the Washington Post and New York Times about climate change legislation and how Congress and actors are influencing legislation
 - **It’s Déjà vu All Over Again, CPRBlog, September 16, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=C113ACA9-B392-25D9->**

- E7DD907878F5FDA3** –discussed the use of an EPA economist’s non-expert opinion on climate change as a means to delay legislation further
- ***Proposed Order on Floodplain Development*, CPRBlog, July 29, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=C6DA2ADF-0BF5-7A1B-3A7AC074DA352D4E>** –highlighted the specific wording of the new executive order
 - ***The Sotomayor Hearing and the Climate Nuisance Case*, CPRBlog, July 14, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=799BE2FB-9AC4-A00F-BD20DE95683878FA>** –described a case before Sotomayor and other panel members awaiting a ruling as to whether carbon emissions can be treated as a public nuisance
 - ***Supreme Court Decides Coeur Alaska*, CPRBlog, June 23, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=0D78DDF1-BE8F-AF9E-E7DA3B7329BFDEEA>** –discussed the permitting issue for Coeur to put a large amount of tailing in an Alaskan Lake; the Supreme Court ruled in favor of the Army Corps of Engineers, based on the regulatory scheme outlined in a memorandum written by the Director of the EPA’s Office of Wetlands, Oceans and Watersheds
 - ***What Does the CBO Report on Waxman-Markey Actually Tell Us? (Not Much)*. CPRBlog, June 16, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=E95D4473-15C5-EA6D-34DA039DB97FB15A>** –discussed the misleading budget numbers described in the CBO report and why the actual government spending would be far under what the report suggests
 - ***The Misleading Economic Criticism of Waxman-Markey*, CPRBlog, June 9, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=C5450C09-15C5-EA6D-3422732B380238C4>** –discussed the defense that climate change is too expensive to regulate and why this assumption is false, considering that almost all economic estimates for regulation have been too high before the regulation is enacted, and the potential benefits to humans and wildlife would much outweigh the costs
 - ***Climate Change Legislation: Is the Train (Finally) Leaving the Station?*, CPRBlog, April 21, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=C74326AF-1E0B-E803-CA900616F5984C9F>** –discussed hearings for the Waxman-Markey bill and the people asked to testify, including a broader range of representatives than assembled for other environmental protection acts
 - ***Climate Change and Environmental Impact Statements*, CPRBlog, April 17, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=B0B931EB-1E0B-E803-CA9883BB177FE8C9>** –discussed some of the more complex issues governments face when enacting climate change legislation
 - ***A Long-Overdue Step: EPA Addresses Climate Change*, CPRBlog, April 17, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=B604592B-1E0B-E803-CACA7F3C04CF6682>** –discussed EPA’s announcement that greenhouse gases are harmful and will be regulated under the Clean Air Act after a time for public comment, and why this important step took EPA so many years to take

Other

- ***Five Lessons from the REACH Directive*, in *EU Law and East Asia in the Age of Globalization: Agenda for the Future 173*, New York: Law Research Institute (2008) (in English and Korean translation)** –analyzed the US approach to toxics regulation thus far, and used REACH to propose five shortcomings that could be learned by the US for better toxics regulation, including transparency in policy changes

Last Updated May 8, 2012

- ***Review of Deak Nabers, Victory of Law, in American Historical Review (2007)*** –reviewed Nabers’ book, where he argued that the Fourteenth Amendment was written as a poem; called Nabers’ approach “intriguing”
- ***“Much Older than the Constitution”: Lincoln’s Theory of Nationhood, in Magazine of History (2007), Organization of American Historians***

Forthcoming

- ***Pollution Markets and Social Equity: Analyzing the Fairness of Cap and Trade, ECOL. L. QUARTERLY (forthcoming, 2012)***
- ***Climate Justice (review essay, forthcoming MICH. L. REV. 2012)***

Joe Feller

Subjects: water law, public land use, livestock grazing

Book Chapters

- “Rethinking Grazing Law,” in *Climate Change* (W. Rodgers et al., eds., 2010)

Articles

- ***Collaborative Management of Glen Canyon Dam: the Elevation of Social Engineering Over Law*, 8 NEV. L.J. 896 (2008)** –analyzed the Adaptive Management Plan, whereby stake-holders must come to a collaborative decision about changes to the dam, outlined the shortcomings of this plan, and suggested an adaptive plan without collaboration for better management of the dam, as well as compliance with environmental laws
- ***The Adjudication That Ate Arizona Water Law*, 49 ARIZ. L. REV. 405 (2007)** –analyzed the Gila River Adjudication, presenting the history of the area, the history of the ruling, analysis of the potential completion of the adjudication, explanation of the difficulties of enforcing water rights in light of the adjudication, and a proposed alternative mechanism for control of water rights in the area

CPR

- **Perspective**
 - ***The Trade-off Myth of Livestock Grazing on Public Lands***
- **Blog**
 - ***Bush on Livestock Grazing on Public Lands*, CPRBlog, January 20, 2009, <http://www.progressivereform.org/CPRBlog.cfm?fkScholar=16> - discussed legislation written by the Bush administration, its expected benefits, its proposed shortcomings as pointed out by government analysts, and its rejection based on environmental law violations**

Forthcoming – *Are Judges Biased Towards the Environment?* (in progress)

Robert L. Fischman

Subjects: natural resources law, wildlife refuge, public land use

Book chapters

- “National Wildlife Refuge System,” in *American Environmental History* (Kathleen Brosnan ed., Facts on File, 2010).
- “The Federalism Dynamic in Natural Resources Law,” in *The Evolution of Natural Resources Law and Policy* (American Bar Association, 2009)

Articles

- *The Story of Kleppe v. New Mexico: The Sagebrush Rebellion as Un-Cooperative Federalism*, 83 U. COLO. L. REV. 123 (2011)(with Jeremiah Williamson)
- *Beyond Trust Species: The Conservation Potential of the National Wildlife Refuge System in the Wake of Climate Change*, 51 NATURAL RESOURCES J. 1 (2011)(with Bob Adamcik)
- *Adaptive Management in the Courts*, 95 Minn. L. Rev. 424 (2010)(with J.B. Ruhl)
- *The Legal Challenge of Protecting Animal Migrations*, 28 VA. ENVTL. L.J. (2010) (with Jeffrey B. Hyman) –discussed the need for protection of migratory patterns for species protection and biodiversity, the legal obstacles that prevent proper protection, and the four “key legal elements of a conservation strategy”
- *Climate Change Adaptation for the U.S. National Wildlife Refuge System*, 44 ENVTL. MGMT. (2009)(with B. Griffith, et al.) –discussed the adaptation needed in NWRS as the US faces climate change and its effect on the habitats of wildlife, and suggested ways in which NWRS could be utilized and improved to more efficiently address climate change problems
- *Symposium: Missing Information: The Scientific Data Gap in Conservation and Chemical Regulation*, foreword, 83 IND. L. J. 399 (2008) (with John S. Applegate) –discussed the issue of data gaps between supply and demand of scientific research information, with discussion on the difficulties of scientific uncertainty and the division between chemical and conservation law, and a general introduction to the research in the symposium
- *The Divides of Environmental Law and the Problem of Harm in the Endangered Species Act*, 83 IND. L.J. 661 (2008) –discussed the general issue of data gaps between supply and demand of scientific information in environmental law, specifically citing the determination of when to issue an injunction against a habitat disrupting activity under ESA
- *Judicial Review of Agency Noncompliance with Public Land Manuals*, 32 SPG ADMIN. & REG. L. NEWS 13 (2007) –addressed whether policies included in public land manuals are binding on agencies
- *What is Natural Resources Law?*, 78 U. COLO. L. REV. 717 (2007) –compared natural resources and environmental law, ultimately posing four major differences between the two fields
- *From Words to Action: The Impact and Legal Status of the 2006 National Wildlife Refuge System Management Policies*, 26 STAN. ENVTL. L.J. 77 (2007) –discussed the new management policies, particularly in light of the 1997 legislative structure, and proposed new regulations for refuge conservation in the future
- *Savings Clauses and Trends in Natural Resources Federalism*, 32 WM. & MARY ENVTL. L. & POL’Y REV. 129 (2007)(with Angela King) –discussed the use of savings clauses in natural resource

laws, specifically in a case study of elk management in Jackson's Hole, Wyoming, as well as on a broad scale, and how the clauses will promote policy improvements in the future

- **Cooperative Federalism and Natural Resources Law**, 14 N.Y.U. ENVTL. L.J. 179 (2005). Portions reprinted in **Rosenberg et al.**, ENVTL. POL'Y L. (2008) –discussed both the benefits and setbacks presented in applying cooperative federalism to natural resources law, especially in areas such as land use and pollution control
- **The Meanings of Biological Integrity, Diversity, and Environmental Health**, 44 NAT. RESOURCES J. 989 (2004). Reprinted in **Bio-Diversity and Conservation: International Perspectives (A. Usha ed. 2007)** –discussed legislative mandate utilizing those three concepts, and highlighted three ways these concepts could be applied to other areas of environmental law

CPR

- **White Paper**
 - **Protecting Public Health and the Environment by the Stroke of a Presidential Pen: Seven Executive Orders for the President's First 100 Days (with Rebecca M. Bratspies, et al.) White Paper #806, Washington, D.C.: Center for Progressive Reform (2008)** – proposed seven executive orders for the incoming administration – 1., reduction of the federal government's carbon footprint; 2., consideration of climate change in agency decision-making; 3., taking children into account in toxics regulation; 4., new environmental justice legislation; 5., promotion of transparency in regulatory review; 6., prevention of preemption; and 7., a policy on sustainable public land use
- **Symposium**
 - **Missing Information: The Scientific Data Gap in Conservation and Chemical Regulation, 2008** – with the Indiana University School of Law-Bloomington
- **Blog**
 - **Stroke of a Pen: An Executive Order Protecting Public Lands, CPRBlog, November 12, 2008, <http://www.progressivereform.org/CPRBlog.cfm?fkScholar=19>** - encouraged the Obama administration to draft an executive order for federal land management to repeal those written by the Bush administration

Other

- **Migration Conservation: A View from Above**, 41 ENVTL. L. 277 (2011)
- **A New Vision for Refuges, Conserving the Future: Wildlife Refuges & the Next Generation Blog (May 11, 2011) available at <http://americaswildlife.org/2011/05/a-new-vision-for-refuges-will-require-the-fws-to-move-beyond-trust-species/>**
- **"National Wildlife Refuges" in Preliminary Review of Adaption Options for Climate-Sensitive Ecosystems and Resources (with J. Michael Scott and Brad Griffith, et al.) Washington DC: U.S. Environmental Protection Agency (S.H. Julius & J.M. West, eds., 2008)** –a Synthesis and Assessment Product publication distributed to President Bush and Congress compiling research of climate change and adaptive legislation options
- **Solicited Comment on Comprehensive Conservation, in Sustainability: Science, Practice, & Policy (2008)** –e-letter on the e-journal assessing Schroeder's work; although Fischman seemed to agree with most of Schroeder's information, he questioned "Schroeder's justification for a positive assessment of the CCPs' emphasis on restoration of historic conditions"

Last Updated May 8, 2012

- ***Reflections on the Tenth Anniversary of the Refugee Improvement Act: The Centrality of the Mission, in Refugee Update (2007)*** –praised the act for its protection of refugees and the programs that help sustain and maintain these refugees

Victor B. Flatt

Subjects: climate change and legislation, Waxman-Markey bill, carbon capture and sequestration, LNG

Books

- ***Legal Protection of the Environment* (Thomson West 2007, 2nd ed.) (with Funk & Johnston)**

Book chapters

- **“Domestic Disaster Preparedness and Response,” in *Climate Change Adaptation* (Gerrard and Kuh, eds., ABA 2012)**
- **“Federal Climate Change Legislation,” in *Climate Change: A Reader* (Rodgers, ed., 2011)**

Articles

- ***Adaptation, Legal Resiliency, and the U.S. Army Corps of Engineers: Managing Water Supply in a Climate-Altered World*, 89 N.C. L. REV. (2011)(with Jeremy M. Tarr)**
- ***Adapting Energy and Environmental Policy for Climate Change*, 11 VT. J. ENVTL. L. 655 (2010)**
- ***The History of State Action in the Environmental Realm: A Presumption Against Preemption in Climate Change Law?*, 1 SAN DIEGO J. CLIMATE & ENERGY L. (2009)**
- ***Environmental Enforcement in Dire Straits-“There is No Protection for Nothing and No Data for Free,”* 85 NOTRE DAME L. REV. 55 (2009) (with Paul M. Collins, Jr.)** –analyzed the relationship between effectiveness of state environmental enforcement and state expenditures, finding that states were more effective when expenditures were higher
- ***Paving the Legal Path for Carbon Sequestration from Coal*, 19 DUKE ENVTL. L. & POL’Y F. 211 (2009)** –discussed the theory behind and need for carbon sequestration, and focused on the legal issues faced by such a program, displaying the need for comprehensive federal legislation to prevent issues in areas including liability, property rights, permitting, and ownership
- ***Act Locally, Affect Globally: Why Local Government is the Best Arena for Engagement and Work with the Private Sector to Control Environmental Harms*, 35 B.C. ENVTL. AFF. L. REV. 455 (2008)**; (Selected as a finalist for inclusion as one of the best land use and environmental law articles of the year in Journal of Land use and Environmental Law 2009) –suggested that local government regulation of environmental issues can have a global impact, and thus, such programs should be continued and encouraged
- ***Federal Climate Change Legislation - The Perspective from 2008*, 3 ENVTL & ENERGY L. & POL’Y J. 195 (2008)** –introduction to the Symposium entitled, “Climate Change Legislation: the Should, the Bad, and the Maybe;” addressed the major points of the symposium, including whether the system can properly address the complex issue of climate change, if climate change legislation will have a global impact on other governments, how to address previously emitted greenhouse gases, and what the scope of federal legislation will be
- ***Taking the Legislative Temperature: Which Federal Climate Change Legislative Proposal is “Best”?* 102 NW. U. L. REV. COLLOQUY 123 (2007)(reprinted in the Icfai University Journal of Environmental Law; excerpted in Farber, Freeman, and Carlson, *Cases and Materials on Environmental Law Supplement* (Thomson West 2009); revised and reprinted in Rodgers, *Climate Change Reader* (2009))** – analyzed which policy choices are of highest priority in climate change laws and why, how these choices could be addressed in legislation, and which, of the ten proposed structures in Congress, would best address those choices

- ***The Legislative Temperature for Climate Change*, 102 NW. U. L. REV. (2007)** -discussed the vast array of issues that must be addressed in climate change policy and proposed ways to incorporate all of the issues into policy
- ***Liquefied Natural Gas and the Environment*, introduction, 2 ENVTL. & ENERGY L. & POL'Y J. 1 (2007)** –outlined the symposium’s positive and negative findings on LNG’s in terms of environmental risk and long-term viability
- ***The “Benefits” of Non-Delegation: Using the Non-delegation Doctrine to Bring Rigor to Benefit-Cost Analysis*, 15 WM. & MARY BILL RTS. J. 1087 (2007)** (lead article, Vol. 4) reprinted in ***Research in Law and Economics* (Zerbe, ed.)(Elsevier Ltd, 2007)** –outlined his interpretation of laws and how CBA can best be used to create sound laws for the good of the country
- ***Gasping for Breath: The Administrative Flaws of Federal Hazardous Air Pollution Regulation*, 34 ECOLOGY L. Q. 107 (Spring 2007)** (Reprinted as one of the ten best environmental or land use law articles of 2008 in the Journal of Land Use and Environmental Law 2008) –analyzed twelve states with stronger air quality legislation than the federal laws in CAA, finding commonalities within the most successful states that could positively influence stronger regulation for cleaner air

CPR

- **White Papers**
 - ***Climate Change and the Puget Sound: Building the Legal Framework for Adaptation* (by Robert Glicksman, Catherine O’Neill and Yee Huang, with other CPR scholars) White Paper #1108, Washington, D.C.: Center for Progressive Reform (2011).**
 - ***Regulatory Blowout: How Regulatory Failures Made the BP Disaster Possible, and How the System Can Be Fixed to Avoid a Recurrence* (with Flournoy, et al.) White Paper #1007, Washington, D.C.: Center for Progressive Reform (2010).**
 - **“Reforming the Clean Air Act,” *CPR for the Environment: Breathing New Life in the Nation’s Major Environmental Statutes, A Legislative Sourcebook of Progressive Ideas for Members of Congress and Staff* (Alyson Flournoy and Matthew Shultz, Eds.), White Paper #701, Washington, D.C.: Center for Progressive Reform, 2007** –assessed CAA and suggested improvements, including ending grandfathering, adding incentives for EPA to adhere to time tables for more stringent federal air pollution regulation, and the vastly important regulating of greenhouse gas emissions
- **Conferences**
 - ***State Summit on Climate Change and Preemption, March 25, 2009*** – with the National Association of Clean Air Agencies
- **Perspective**
 - ***"Grandfathered" Air Pollution Sources and New Source Review***
- **Blogs**
 - ***Tailoring Rule Draws Multiple Challenges*, CPRBlog, August 4, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=3E2366E6-9AB0-160D-B78BB7CDE2B6C33C>** – discussed the opposition to the tailoring rule by both industry and industry-protecting states, such as Texas, saying that regulation is illegal because of the limits already established, and environmental groups, claiming that the tailoring level of 75,000 tons of greenhouse gas emissions per year is too high
 - ***EPA Threads the Needle with New CAIR Rule*, CPRBlog, July 8, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=B256E01E-ED98-3A90-066BA1AE5EC29AFB>** – discussed the new interstate air rule, which protects states’ caps

- from being violated from interstate trading, although the rule is already outdated due to its older caps
- ***Texas' Clean Air Act Alamo May Win the Environmental War for us All***, CPRBlog, June 4, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=FC01C0A6-B928-44AE-199B3DACD79309AF> –discussed EPA's announcement to potentially take over Texas' Clean Air Act due to problems with their permitting allowances and how this takeover represents a more determined, credible EPA
 - ***Don't Blame Tony Hayward: Why We Need Laws and Regulations that Specifically Hold Parties Liable for the Harm They Cause***, CPRBlog, May 21, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=B78B7361-0D53-391C-AF0FB74FDC4D4DE5> – discussed the inherent threat to the public in liability caps in general, as well as in the wake of the Deepwater Horizon oil spill
 - ***Preemption Aside, New Climate Change Proposal Would Create Generally Similar Results as Prior Proposals (But Watch Out for Those Offsets)***, CPRBlog, May 12, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=8E8DB416-D325-A8E9-E204147156021F11> – compared the climate change legislation of Kerry-Lieberman to ACES, finding relatively little difference between the two
 - ***Tackling the Issue of "Fraud" in Carbon Trading***, CPRBlog, February 12, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=BE21130E-95D7-8F0B-8D7E1808E87E392C> – discussed how fraud in carbon trading is not more likely because of the nature of carbon trading, but because the system is new and has many variables that must be regulated and researched
 - ***G77 Countries May Ethically Deserve More in Copenhagen, But Chance for This Much Foreign Assistance Unlikely to Come Again Soon***, CPRBlog, December 17, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=9D4C4528-EAE6-EA0E-355F3038E802387C> – discussed the G77's actions against progress at the conferences, describing both the need for better funding for the countries, as well as the funding offers that may be rejected by G77
 - ***Inexorable March to Carbon Markets at Copenhagen***, CPRBlog, December 16, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=983E0AD7-EB37-7850-1AD6BCA6E456292F> – described the push toward carbon trading and offsets throughout the world, with more developed countries accepting the practice and more developing countries benefiting from it, as well as the possibility of a direct trading market between the US and the EU
 - ***Copenhagen: What Progress on Offsets and Adaptation?*** CPRBlog, December 7, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=6AB35A5B-9472-2F02-2A0B85A01D5B1568> –discussed those two aspects of climate change actions that will be discussed at the United Nations Framework Convention on Climate Change, hoping for the programs to be verifiable, truly emissions-reducing, and adaptable and useful in developing nations
 - ***Boxer-Kerry an Improvement over ACES on Offsets***, CPRBlog, September 30, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=0C5B33A7-95E0-ED85-595B51E295EC34D9> –discussed the offset programs of Boxer-Kerry, including the offsets administrator specified only as the President, accounting for offset reversals, and incorporating other environmentally sound projects into consideration
 - ***Offsets in the USDA - the Bad, the OK, and the Unknown***, CPRBlog, June 26, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=18961E76-AE22-D92A-2FBE3057B86F7841> - discussed the benefits and shortcomings of the biosequestration

- offset program, mainly displaying that the legislation must create a way to review offsets
- **Handing Primary Control of Offsets to USDA: What this Might Mean**, CPRBlog, June 24, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=133435C8-EA32-1324-D99F98085E213B03> -discussed the regulatory problems created by switching offset control from EPA to USDA in the areas of carbon markets and the loss of multi-agency regulation
 - **The Roberts Court Gets Reckless with Administrative Law in Coeur Alaska: Problems Now, Problems Later**, CPRBlog, June 23, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=0EA550A1-D3F0-34DC-86B39F0DC735C9B4> –discussed the ruling for the Army Corps of Engineers in the case, focusing on the more long-reaching effect of Chevron deference and increased Executive power with less oversight
 - **On Offsets, New Waxman-Markey Bill is a Mixed Bag**, CPRBlog, May 19, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=5A5F4482-1E0B-E803-CA8AED8B6DE4E739> –discussed the changes in the offset program, which created a one-to-one ratio of offsets to emission allowances, instead of the originally proposed 1.25:1 ratio that would encourage real reductions, and some of the shortcomings of the offset program
 - **Proposed Amendments to Waxman-Markey Could Diminish Integrity of Offset Provisions**, CPRBlog, April 27, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=E7C987F0-1E0B-E803-CA133569DC442C42>-discussed the addition of offsets to the bill by moderate Democrats and the weakened stance this addition takes on emission reduction
 - **Waxman-Markey: Carbon Offsets**, CPRBlog, April 2, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=64B9CE12-1E0B-E803-CAAC5B9AF14D5223> –discussed the elements of the proposed bill, focusing on the benefits and the risks of the offset program

Other

- **“What if drilling goes really wrong?”** in *News & Observer*, July 5, 2010 – discussed the regulatory failings under MMS and NEPA that led to the BP oil spill, and how such practices should be altered to prevent, or at least better react to, future catastrophic events
- **“Warming Woes and the World’s Women,”** in *News & Observer*, December 7, 2009 (with Dr. Donna Surge) –discussed the disproportionate effects of climate change and disasters on women in the poorest areas of the world, and how women are beginning to fight against this trend
- **“Climate bill good first step in long and arduous trip,”** in *Houston Chronicle*, April 24, 2009 (with William Buzbee) –op-ed describing the climate change bill discussion draft and its shortcomings, including lax standards for GHG emissions in the cap and trade system, the benefit of offsets and their potential environmental harm, continued state regulation and the need for clear language in their jurisdiction and environmental justice issues

Forthcoming

Last Updated May 8, 2012

- ***Adapting Laws for a Changing World – A Systemic Approach to Climate Change Adaptation***, 64 FLA. L. REV. (special issue on climate change with Heinzerling, Ruhl, Markell, Krakoff, and Owens – forthcoming Winter 2012)
- ***“Offsetting” Crisis? – Climate Change Cap and Trade Need Not Contribute to Another Financial Meltdown***, 39 PEPPERDINE L. REV. (forthcoming lead article, February 2012)
- ***The “Worst Case” May be the Best – Rethinking NEPA Law to Avoid Future Environmental Disasters***, 7 J. ENV. & ENERGY L. & POL’Y REV. (forthcoming summer 2012)

Alyson Flournoy

Subjects: natural resource legacy, NELA, public resources

Book

- ***Beyond Environmental Law: Policy Proposals for a Better Environmental Future* (David M. Driesen & Alyson C. Flournoy, eds., Cambridge University Press, 2010)** - offered a vision for the third generation of environmental law designed to enhance its ability to protect our environment through two proposals: an environmental legacy for future generations, and a competition to promote technological developments

Book chapters

- **“The Case for a National Environmental Legacy Act,”** in *Beyond Environmental Law: Policy Proposals for a Better Environmental Future*, David M. Driesen & Alyson C. Flournoy eds. (Cambridge Univ. Press 2010).

Articles

- ***Protecting a Natural Resource Legacy While Promoting Resilience: Can It be Done?* 87 NEB. L. REV. 1008 (2009)** –examined the existing tension between legal policies and scientific research, and how the two can be reconciled for future legislation with emphasis on resilience as the link; used specific example of the National Environmental Legacy Act, and analyzed the Act’s ability to address both the legal and scientific issues in statutory law
- ***Harnessing the Power of Information to Protect Our Public Natural Resource Legacy*, 86 TEX. L. REV. 1575 (2008) (Heather Halter & Christina Storz)** –discussed the need for protection of natural resources now and in the future, how an amended NEPA would be insufficient for this protection, and proposed alternative legislation (NELA) to achieve the protective goals
- ***Supply, Demand, and Consequences: The Impact of Information Flow on Individual Permitting Decisions Under Section 404 of the Clean Water Act*, 83 IND. L.J. 537 (2008)** – compared the supply and demand of scientific information and data gaps in natural resource law and chemical regulation, with emphasis on TSCA versus statute 404 of CWA; discussed the permitting process, and how the information supply and demand serves this aspect of CWA

CPR

- **White Papers**
 - ***The BP Catastrophe: When Hobbled Law and Hollow Regulation Leave Americans Unprotected* (with William Andreen, et al.) White Paper #1101, Washington, D.C.: Center for Progressive Reform (2011).**
 - ***Regulatory Blowout: How Regulatory Failures Made the BP Disaster Possible, and How the System Can Be Fixed to Avoid a Recurrence* (with Andreen, et al.) White Paper #1007, Washington, D.C.: Center for Progressive Reform (2010).**
 - ***From Ship to Shore: Reforming the National Contingency Plan to Improve Protections for Oil Spill Cleanup Workers* (with Rebecca Bratspies, et al.) White Paper #1006, Washington, D.C.: Center for Progressive Reform (2010)** - analyzed the actions of OSHA and NIOSH in both preparation for, and in reaction to, the BP oil spill, and recommended five actions for future preparedness: requirement of Regional Response Teams by EPA

and the Coast Guard, inclusion of OSHA into Regional Contingency plans for disasters, requirement of a NIOSH Health Hazard Evaluation for cleanup workers, consultation with workers of past spills and appropriation of executive funds for OSHA for its role in response to the oil spill

- ***The Future of Environmental Protection: The Case for a National Environmental Legacy Act, White Paper #1002, Washington, D.C.: Center for Progressive Reform (2010) (with Ryan Feinberg, Margaret Clune Giblin, Heather Halter, & Christina Storz)*** – proposed a statutory framework under which the US could initiate and carry out NELA to counteract the ongoing effects on the environment
- ***Squandering Public Resources, White Paper #705, Washington, D.C.: Center for Progressive Reform (2007) (with Margaret Clune Giblin & Matthew Shudtz)*** –discussed the rapid use of natural resources in an unsustainable way, despite protective legislation, particularly in the areas of depleting national forests, lack of funding, neglecting national parks, and privatizing public lands; suggested legal solutions to the problems of declining natural resources
- **Blogs**
 - ***Painting By Numbers: A Recipe for Disaster, CPRBlog, September 3, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=D5C7D4CB-ACB8-C369-04365A2CB743DBB6>*** – discussed how the mathematical probability of the likelihood of a disaster should not hold legislators back from creating prevention and response scenarios
 - ***Looking Beyond Deepwater to the Horizon: Government-on-Demand Doesn't Work (Surprise!), CPRBlog, June 2, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=F8ECE7F3-B943-C3F1-7F2F3A0BE74577E2>*** – discussed the dichotomy between Americans wanting small government and lower taxes, while calling on the same government to be able to respond to crises effectively, and how it is in the interest of all citizens to call for a government willing to regulate effectively, even if it means politicians must stand up against their financial support from big industry

Other

- ***“Recommendation No. 5: Adopt Model National Environmental Legacy Act – NELA,” in *Recalibrating the Law of Humans with the Laws of Nature: Climate Change, Human Rights, and Intergenerational Justice* (Climate Legacy Initiative, Vermont Law School, 2009)*** –discussed the adoption of NELA and the ten areas that NELA would address, including the goals, adaptation and enforcement of the act

Sheila Foster

Subjects: environmental justice, urban informality, antidiscrimination law

Books

- ***The Law of Environmental Justice: Theories and Procedures to Address Disproportionate Risks* (ABA, 2008) (with Michael Gerrard)**

Book chapters

- **“The Racial Subject in Legal Theory,”** in *The Oxford Handbook of Law and Politics* (with R.A. Lenhardt) (Keith E. Whittington et al. eds., 2008)—analyzed the shift toward race in legal scholarship in recent years in terms of cause and time, as well as discussing the history of race in law and recent scholarly work on the subject

Articles

- ***Collective Action and the Urban Commons*, 87 NOTRE DAME L. REV. 57 (2011)**
- ***The Social Function of Property: A Comparative Perspective* (Introduction to Symposium), 80 FORDHAM L. REV. 1003 (2011)**
- ***Environmental Justice and the Constitution*, 39 ENVTL. L. REP. NEWS & ANALYSIS 10347 (2009)** – discussed information about the lack of equal protection challenges to environmental justice policy presented in an essay by David Coursen, pointing out areas where Coursen’s findings either supported or refuted Foster’s research
- ***Urban Informality as a Commons Dilemma*, 40 U. MIAMI INTER-AM. L. REV. 261 (2008)** – discussed the rise of urban informality in Latin America and how the proper regulatory actions can be determined by analyzing the root of the problem
- ***Introduction – Symposium: Forty Years of Loving: Confronting Issues of Race, Sexuality, and the Family in the Twenty-First Century*, 76 FORDHAM L. REV. 2669 (2008 (with R.A. Lenhardt, Elizabeth B. Cooper & Sonia K. Katyal)** –analyzed the role of government in marriage and the role of marriage in contemporary society, relating these to the landmark decision in the Loving case; introduced the symposium that looked at how the Loving decision could be applied to areas of race, sexuality and family in today’s American context
- ***Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 CAL. L. REV. 1999 (2007) (with Brian Glick)** –discussed the recent shift from reactive to proactive environmental justice programs, and used the specific example of the change in West Harlem Environmental Action (WE ACT) as a model for how different legal and civil approaches can be utilized for environmental justice, as well as the problems created by this kind of system
- ***Causation in Antidiscrimination Law: Beyond Intent Versus Impact*, 41 Hous. L. REV. 5 (2007)** – analyzed the current nature of discrimination cases, dividing the legal vulnerabilities into two main categories: first, that the underlying causes of discrimination, cognitive biases, can affect one’s causal judgment about the discrimination, and second, the change from overt to more subtle discrimination, and the lack of legal change in this same direction

CPR

- **White Paper**
 - ***Protecting Public Health and the Environment by the Stroke of a Presidential Pen: Seven Executive Orders for the President’s First 100 Days* (with Rebecca M. Bratspies,**

et al.) **White Paper #806, Washington, D.C.: Center for Progressive Reform (2008)** – proposed seven executive orders for the incoming administration – 1., reduction of the federal government’s carbon footprint; 2., consideration of climate change in agency decision-making; 3., taking children into account in toxics regulation; 4., new environmental justice legislation; 5., promotion of transparency in regulatory review; 6., prevention of preemption; and 7., a policy on sustainable public land use

- **Perspective**

- ***Environmental Justice at Stake* (with Lisa Heinzerling, former member, et al.)**

Forthcoming

- ***Comparative Equality Law: Cases, Codes, Constitutions, and Commentary* (Foundation Press, forthcoming 2012)(with David Oppenheimer and Sora Han)**

William Funk

Subjects: tort law, preemption, public health

Books

- ***Legal Protection of the Environment*, 3d Ed. (with Craig Johnston and Victor Flatt)(West Group 2010)**
- ***Administrative Procedure and Practice: Problems and Cases*, 4th Ed. (with Sidney Shapiro and Russell Weaver)(West Group 2010)**
- ***Administrative Law: Examples and Explanations*, 3d ed. (with Richard Seamon)(Aspen 2009)**
- ***Introduction to American Constitutional Structure* (Thomson/West 2008)**
- ***Federal Administrative Procedure Sourcebook*, 4th ed. (with Jeffrey Lubbers and Charles Pou)(ABA Press 2008)**

Book chapters

- **“Constitutional Law and Separation of Powers,” in *Developments in Administrative Law and Regulatory Practice, 2008-09* (ABA Press 2010)**
- **“Preemption by Federal Agency Action,” in *Preemption Choice: The Theory, Law, and Reality of Federalism’s Core Question* (William Buzbee, ed., Cambridge University Press, 2009) – discussed whether federal agencies should have the ability to preempt state law, whether a statement for preemption by a federal agency is appropriate for courts’ rulings, and whether agencies can make preemption determinations, citing specific cases highlighting these issues**

Articles

- ***Judicial Deference and Regulatory Preemption by Federal Agencies*, 84 TUL. L. REV. 1233 (2010) – discussed preemption’s role in agency regulations in light of recent Supreme Court decisions in *Wyeth v. Levine*, *Altria Group, Inc. v. Good*, and *Cuomo v. Clearing House Ass’n* and the role of Congress in clarifying when preemption is necessary**
- ***Public Participation and Transparency in Administrative Law: Three Examples as an Object Lesson*, 61 ADMIN. L. REV. 171 (2009 Special Edition) –discussed three laws written in an attempt to promote transparency and public participation: the Federal Advisory Committee Act (FACA), the Government in the Sunshine Act (Sunshine Act), and the Negotiated Rulemaking Act (NRA); analyzed the relative failure of the laws, making suggestions for EU lawmakers in how to avoid the same pitfalls**
- ***Constitutional Implications of Regional CO₂ Cap-and-Trade Programs: The Northeast Regional Greenhouse Gas Initiative as a Case in Point*, 27 UCLA J. ENVTL. L. AND POL’Y 353 (2009) – discussed the RGGI program in the northeast and the constitutional problems that could arise under a federal program, including “preemption, the Compact Clause, and the Dormant Commerce Clause”**
- ***Electronic Surveillance of Terrorism: The Intelligence/Law Enforcement Dilemma - A History*, 11 LEWIS & CLARK L. REV. 1099 (2007) –discussed the purpose amendment to the Energy Independence and Security Act and the constitutionality of it, ultimately finding the amendment unneeded**
- ***A Tribute to Dean James Huffman*, 37 ENVTL. L. IX (2007) –a tribute to his colleague, citing Huffman’s unique ability to bring about programs for the greater good, whether or not these**

programs were aligned with his political views, as well as highlighting his friendships with colleagues with much more liberal political views

CPR

- **White Papers**
 - ***Climate Change and the Puget Sound: Building the Legal Framework for Adaptation* (by Robert Glicksman, Catherine O’Neill and Yee Huang, with other CPR scholars) White Paper #1108, Washington, D.C.: Center for Progressive Reform (2011).**
 - ***“Fifty FDAs”: An Argument for Federal Preemption of State Tort Law That is Less than Meets the Eye* (with William Buzbee et al.), White Paper #911, Washington, D.C.: Center for Progressive Reform (2009) –put to rest the unhelpful and disingenuous “Fifty FDAs” argument that proponents of federal regulatory preemption have trumpeted the last few decades**
 - ***The Truth About Torts: Regulatory Preemption at the Federal Railroad Administration* (with Tom McGarity, et al.), White Paper #910, Washington, D.C.: Center for Progressive Reform (2009) –discussed the reasons why a complementary system of federal regulatory standards and state common law is the best way to achieve railroad safety**
 - ***Congress’s Authority to Correct the Courts’ Preemption Decisions* (with Buzbee et al.) White Paper #905, Washington, D.C.: Center for Progressive Reform (2009) – discussed the major Supreme Court cases where preemption has been used and whether Congress has authority to amend the interpretation of preemption to make its intent clearer, finding that Congress, indeed, has this power and should utilize it**
 - ***The Truth about Torts: Rethinking Regulatory Preemption and Its Impact on Public Health* (with Buzbee et al.) White Paper #902, Washington, D.C.: Center for Progressive Reform (2009) –sixth paper in the series, describing the state of torts and preemption in the US; urged Congress to create anti-preemption legislation for clarity in future court cases, specifically define the word “requirements” in the legislation, and write cross-cutting legislation to ensure proper balance between agencies; urged President Obama and the Executive Branch to review the changes enacted by the Bush administration, and revise Executive Order 13132 to reign preemption back in to its original intention and ensure proper procedures are established to protect federalism**
 - ***Limiting Federal Agency Preemption: Recommendations for a New Federalism Executive Order* (with Thomas McGarity, et al.) White Paper #809, Washington, D.C.: Center for Progressive Reform (2008) –urged President Obama to create a new executive order to replace 13132, outlining the benefit of multiple levels of government: preventing agencies from abusing the power of preemption, discouraging ceiling preemption, separating state positive law and state tort law, encouraging state tort laws to allow consumers to sue agencies if regulations are not enforced, and providing a more effective way to monitor regulation enforcement**
 - ***The Truth About Torts: Regulatory Preemption at the Consumer Product Safety Commission* (with Thomas McGarity et al.) White Paper #807, Washington, D.C.: Center for Progressive Reform (2008) –discussed the push by agencies like FDA and NHTSA to use preemption to prevent consumers from being able to sue them under tort law; found that a blend of tort law and regulatory standards best protect consumers and that preemption would allow corporations to have weak regulation without fear of legal proceedings, putting consumers at great risk**

- ***The Truth About Torts: Regulatory Preemption at the National Highway Safety Administration (with Thomas McGarity et al.) White Paper #804, Washington, D.C.: Center for Progressive Reform (2008)*** – discussed how car manufacturers are claiming preemption to dismiss claims in courts by injured consumers, and urged the continuation of tort law, since NHTSA is very underfunded to keep up with regulations, tort law allows for the legal system to provide compensation when regulations are not met, and transparency and providing product information are better achieved through tort law
- ***The Truth About Torts: Using Agency Preemption to Undercut Consumer Health and Safety (with Sidney Shapiro, David Vladeck, and Karen Sokol) White Paper #704, Washington, D.C.: Center for Progressive Reform (2007)*** –discussed the problems inherent for consumers if preemption prevents claims, and presented recommendations for each branch of the government to prevent these problems; suggested that Congress should provide more oversight of agencies and clarification of its anti-preemption wording, that the Judicial Branch should return to pre-Bush administration interpretation of preemption laws and tendency toward allowing tort claims, and that the Executive Branch should push for its agencies to stop abusing preemption in courts
- ***“Endangered Species Act,” CPR for the Environment: Breathing New Life in the Nation’s Major Environmental Statutes, A Legislative Sourcebook of Progressive Ideas for Members of Congress and Staff (Alyson Flournoy and Matthew Shultz, Eds.), White Paper #701, Washington, D.C.: Center for Progressive Reform (2007)***–assessed ESA and suggested improvements, including strengthening existing regulations and expanding ESA’s protections in areas such as monitoring animals that are not included as endangered or threatened
- **Conferences**
 - ***Conference on Regulatory Preemption, December 17, 2008***
- **Perspective**
 - ***The Takings Clause of the Fifth Amendment***
- **Blogs**
 - ***The Public Needs a Voice in Policy. But is Involving the Public in Rulemaking a Workable Idea? CPRBlog, April 13, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=F74D5F86-B44E-2CBB-ED1507624B63809E>*** – discussed the overall role of the average citizen in rulemaking, and the role citizens could play in the CeRI project, finding that, while public participation in rulemaking is theoretically noble, the actual effect the public would have on rulemaking would be minimal due to lack of statutory requirement for its input
 - ***Obama’s Memo on Preemption -- Striking a Blow for Good Government, CPRBlog, May 22, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=68E98CB7-1E0B-E803-CA29140BC0F9EB54>*** –discussed the executive memo stating that agencies may not include preemption clauses in their preambles, but only include preemptive wording directly in legislation, reversing the Bush administration’s penchant for federal agency preemption
 - ***The First 100 Days: A Positive Beginning on the Freedom of Information Act, CPRBlog, April 28, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=EE986779-1E0B-E803-CAEFCAAB9B51A7FA>*** –described the history of information disclosure since the Carter administration and discussed Obama’s memo favoring disclosure
 - ***Preemption: The Courts, the Executive, and Congress, CPRBlog, Aug. 7, 2008, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=9FCCE2EA-1E0B-E803->***

CAC83547F76F4A9C –described the roles of these three players in preemption, finding that the Supreme Court tended to favor preemption, the Executive branch under Bush also favored preemption and neither candidate had firmly stated their opinion on preemption, so the group that would most be able to preserve the traditional balance of federal, state, local and tort law structure would be Congress

Other

- **“Beware Dangers of Roof-crush Rule,” (with Nina Mendelson and Sidney Shapiro); op-ed in Winston-Salem Journal, August 4, 2008** –discussed how the rule would allow for preemption against future claims about roof strength, despite the relatively small amount of consumer protection offered in the rule

Forthcoming

- ***Constitutional Implications of Regional CO2 Cap-and-Trade Programs: the Northeast Regional Greenhouse Gas Initiative as a Case in Point*, ___ UCLA J. ENV'T L. & POL'Y ___ (forthcoming)**

Eileen Gauna

Subjects: environmental justice, LNG

Book

- ***Environmental Justice Law: Policy and Environmental Protection*, 2nd Ed. (with Rechtschaffen and O'Neill, 2009)**

Articles

- ***El Dia de los Muertos, the Death and Rebirth of the Environment Movement*, 38 ENVTL. L. 457 (2008)** –part of the special issue on environmental justice
- ***LNG Facility Siting and Environmental (In)Justice: Is it Time for a National Siting Scheme?* 2 ENVTL. & ENERGY L. & POL'Y J. 85 (2007)** –described the push to quickly site LNG facilities, and the environmental justice issues posed by these facilities, as well as the need for a national siting scheme to prevent discrimination in the placement of high risk facilities and land use

CPR

- **White Paper**
 - ***Protecting Public Health and the Environment by the Stroke of a Presidential Pen: Seven Executive Orders for the President's First 100 Days* (with Rebecca M. Bratspies, et al.) White Paper #806, Washington, D.C.: Center for Progressive Reform (2008)** – proposed seven executive orders for the incoming administration – 1., reduction of the federal government's carbon footprint; 2., consideration of climate change in agency decision-making; 3., taking children into account in toxics regulation; 4., new environmental justice legislation; 5., promotion of transparency in regulatory review; 6., prevention of preemption; and 7., a policy on sustainable public land use
- **Perspective**
 - ***Environmental Justice at Stake* (with Lisa Heinzerling, former member, Sheila Foster, Carmen Gonzalez, Catherine O'Neill, Clifford Rechtschaffen & Robert R.M. Verchick)**

Robert L. Glicksman

Subjects: *climate change, public lands, preemption, enforcement*

Books

- *Pollution Limits and Polluters' Efforts to Comply: The Role of Government Monitoring and Enforcement* (Stanford University Press 2011) (with D. Earnhart).
- *Environmental Protection: Law and Policy* (6th ed. Aspen Publishers) (with D. Markell, B. Buzbee, D. Mandelker, & D. Bodansky) (2011) (website at <http://lawstudy.law.ku.edu/glicks/envprot>) (previous edition published in 2007)
- *Administrative Law: Agency Action in Legal Context* (Foundation Press 2010) (with R. Levy).
- *Public Natural Resources Law* (4 volumes, Thomson/West, updated three times annually) (2d ed. 2007) (with G. Coggins)

Book chapters

- "The Justifications for Nondegradation Programs in U.S. Environmental Law," in *Le Principe de Non-Régression En Droit De L'Environnement* (M. Prieur & G. Sozzo, eds.) (forthcoming 2012)
- "Executive Power, the Constitution, and the Environment: The Take Care Clause and the Unitary Executive," in *Principles of Constitutional Environmental Law* (James May ed., American Bar Ass'n & Environmental Law Inst.) (2011)
- "Facing Unprecedented Stewardship Challenges: Climate Change and Federal Land Management," in *Climate Change: A Reader* (W. Rodgers et al. eds., Carolina Acad. Press) (2011)
- "The Failure of U.S. Climate Change Policy" (with C. Schroeder) and "Anatomy of Industry Resistance to Climate Change: A Familiar Litany," in *Economic Thought and U.S. Climate Change Policy* (D. Driesen ed., The MIT Press) (2010)
- "Federal Preemption by Inaction," in *Preemptive Choice: The Theory, Law and Reality of Federalism's Core Question* (William Buzbee, ed., Cambridge University Press, 2009)
- "Environmental Law," in *Kansas Annual Survey* (KBA, 2007)

Articles

- *Solar Energy Development on the Federal Public Lands: Environmental Trade-Offs on the Road to a Lower Carbon Future*, 3 SAN DIEGO J. ENERGY & CLIM. L. 107 (2011)
- *Climate Change and the Puget Sound: Building the Legal Framework for Adaptation*, 2 CLIMATE L. 299 (2011) (with multiple CPR coauthors)
- *Agency-Specific Precedents*, 89 TEXAS L. REV. 499 (2011) (with R. Levy)
- *Climate Change Adaptation: A Collective Action Perspective on Federalism Considerations*, 40 ENVTL. L. 1159 (2010)
- *The Constitution, the Environment, and the Prospect of Enhanced Executive Power*, 40 ENVTL. L. REP. 1102 (2010)
- *Science, Politics, Law, and the Arc of the Clean Water Act: The Role of Assumptions in the Adoption of a Pollution Control Landmark*, 32 WASH. U. J.L. & POL'Y 99 (2010) - established the need for water pollution law both now and in 1972, when CWA was enacted, and then set out to determine what assumptions Congress held when enacting the legislation, and whether those assumptions, or improper implementation, led to the currently unfulfilled goals of the bill,

finding that both have played a role in the bill's shortcomings, but the major issues surround unclear legislation on non-point source pollution and wetland preservation

- ***Access to Courts and Preemption of State Remedies in Collective Action Perspective*, 59 CASE W. RES. L. REV. 919 (2009)(with R. Levy)**
- ***Ecosystem Resilience to Disruptions Linked to Global Climate Change: An Adaptive Approach to Federal Land Management*, 87 NEB. L. REV. 833 (2009)** –assessed the current land management laws for their adaptability in response to global climate change, highlighting the need for resilience as a factor in dynamic resource protection and provided a new legal framework under which land and resources may be managed with adaptability
- ***Sustainable Federal Land Management: Protecting Ecological Integrity and Preserving Environmental Principal*, 44 TULSA L.J. 147 (2008).**
- ***Coal-Fired Power Plants, Greenhouse Gases, and State Statutory Substantial Endangerment Provisions: Climate Change Comes to Kansas*, 56 U. KAN. L. REV. 517 (2008)** –assessed the legality of the Kansas Department of Health and Environment's refusal to grant permits for two coal-fired plants, finding that endangerment statutes allow for this permit refusal and may provide a way for others to block such activity in the future
- ***Nothing Is Real: Protecting the Regulatory Void through Federal Preemption by Inaction*, 26 VA. ENVTL. L.J. 5 (2008)** –discussed whether federal inaction provides grounds on which Congress should preempt state action, and how courts can decide if the lack of action is preemptive at all, providing four major recommendations for continued environmental protection and legal clarification
- ***Effectiveness of Government Interventions at Inducing Better Environmental Performance: Does Effectiveness Depend on Facility or Firm Characteristics?* 35 B.C. ENVTL. AFF. L. REV. 479 (2008) (with Dietrich Earnhart)** –studied whether regulatory enforcement is more effective when the program is tailored to the regulated facility's attributes, finding that facility characteristics do affect the efficacy of regulatory enforcement
- ***Bridging Data Gaps through Modeling and Evaluation of Surrogates: Use of the Best Available Science to Protect Biological Diversity Under the National Forest Management Act*, 83 IND. L.J. 465 (2008)** –discussed the use of modeling and surrogates by the US Forest Service in an attempt to comply with NFMA, and outlined the requirements for analyzing models and the efficacy of the Service's actions based on the model analyses
- ***Balancing Mandate and Discretion in the Institutional Design of Federal Climate Change Policy*, 102 NW. U. L. REV. COLLOQUY 196 (2008)** – discussed how much power Congress should give to agencies in deciding and enforcing climate change regulations, how climate change should be addressed by the government, and if state and local laws should be preempted by federal climate change policies
- ***A Collective Action Perspective on Ceiling Preemption by Federal Environmental Regulation: The Case of Global Climate Change*, 102 NW. U. L. REV. 579 (2008) (with Richard E. Levy)** – discussed the disparity between state environmental regulatory laws and ceiling preemption by federal laws, using the example of GHG emissions and its purported preemption by CWA
- ***The Comparative Effectiveness of Government Interventions on Environmental Performance in the Chemical Industry*, 26 STAN. ENVTL. L.J. 317 (2007) (with Dietrich Earnhart)** –discussed the need for different programs to enforce environmental regulations, focusing on point source chemical regulation as established by CWA; presented findings on specific and general deterrence, and results from interviews with industry employees as to their perception of enforcement

- ***Depiction of the Regulator-Regulated Entity Relationship in the Chemical Industry: Deterrence-Based v. Cooperative Enforcement*, 31 WM. & MARY ENVTL. L. & POL'Y REV. 603 (2007) (with Dietrich Earnhart)** –studied the performance differences between coercive and cooperative enforcement programs of CWA, finding most industries reported their relationship as having aspects of both coercion and cooperation, displaying a complex, multi-faceted relationship between the regulator and the regulated entity that must be addressed as such when creating new environmental policy
- ***A Jurisprudence of Ideology*, 24 ENVTL. F. 22 (2007) (with J. May)**

CPR

- **White Papers**
 - ***Climate Change and the Puget Sound: Building the Legal Framework for Adaptation* (with Catherine O'Neill and Yee Huang, with other CPR scholars) White Paper #1108, Washington, D.C.: Center for Progressive Reform (2011).**
 - ***Making Good Use of Adaptive Management* (with Holly Doremus, et al.) White Paper #1104, Washington, D.C.: Center for Progressive Reform (2011).**
 - ***Missing the Mark in the Chesapeake Bay: A Report Card for the Phase I Watershed Implementation Plans* (with William Andreen, Rena Steinzor and Yee Huang) White Paper #1102, Washington, D.C.: Center for Progressive Reform (2011).**
 - ***Regulatory Blowout: How Regulatory Failures Made the BP Disaster Possible, and How the System Can Be Fixed to Avoid a Recurrence* (with Flournoy, et al.) White Paper #1007, Washington, D.C.: Center for Progressive Reform (2010).**
 - ***Failing the Bay: Clean Water Act Enforcement in Maryland Falling Short* (with Yee Huang), White Paper #1004, Washington, D.C.: Center for Progressive Reform (2010) - discussed how the state of Maryland is failing to enforce existing water pollution laws, allowing illegal pollution that damages Maryland waters and the Chesapeake Bay; focused on MDE's role in enforcing CBP policies**
 - ***Reinvigorating Protection of Health, Safety and the Environment: The Choices Facing Cass Sunstein* (with John Applegate et al.), White Paper #901, Washington, D.C.: Center for Progressive Reform (2009) –discussed the need for regulatory reform from the Obama administration, suggesting an end to most cost-benefit analyses, more funding for oversight agencies, and a more active role for OIRA in coordinating regulatory agencies; discussed Sunstein's views on, and CPR's responses to, CBA, CBA's vulnerability to challenge or manipulation, discounting, the precautionary principle, grouping agencies under the executive branch, OSHA's Constitutionality and climate change legislation**
 - ***Protecting Public Health and the Environment by the Stroke of a Presidential Pen: Seven Executive Orders for the President's First 100 Days* (with Rebecca M. Bratspies, et al.) White Paper #806, Washington, D.C.: Center for Progressive Reform (2008) – proposed seven executive orders for the incoming administration – 1., reduction of the federal government's carbon footprint; 2., consideration of climate change in agency decision-making; 3., taking children into account in toxics regulation; 4., new environmental justice legislation; 5., promotion of transparency in regulatory review; 6., prevention of preemption; and 7., a policy on sustainable public land use**
 - ***Cooperative Federalism and Climate Change: Why Federal, State and Local Governments Must Continue to Partner* (with William Andreen et al.), White Paper #803, Washington, D.C.: Center for Progressive Reform (2008) –discussed the growing**

concerns of addressing climate change in environmental law, ultimately suggesting that the US continue to utilize state and local governments, as opposed to federal preemption

- **Congressional testimony**
 - Testimony before the House Judiciary Committee’s Subcommittee on Courts, Commercial and Administrative Law on “**Raising the Agency’s Grades — Protecting the Economy, Assuring Regulatory Quality and Improving Assessments of Regulatory Need**” (March 29, 2011)
- **Conferences**
 - Moderator of panel presentations on “Why Accountability Mechanisms Matter: Pressing for Change,” at conference on “**A Time for Action: Accountability in the Chesapeake**,” University of Maryland School of Law, Baltimore, MD (Oct. 21, 2011)
 - Moderator of panel discussion on Adaptation in Puget Sound, at conference on “**Toward a Well Adapted Future in Puget Sound: A Symposium on Climate Change Adaptation and the Law**,” Seattle University School of Law, Seattle, WA (Jan. 21, 2011)
 - Workshop at GW Law School for CPR member scholars on Climate Change Adaptation (Nov. 5, 2010)
- **Conferences**
 - **State Summit on Climate Change and Preemption, March 25, 2009** – with the National Association of Clean Air Agencies
- **Comments**
 - comments submitted to OIRA on **Obama regulatory review process, March 16, 2009 (with Applegate, et al., collectively as the CPR Board)**
 - comments submitted to the U.S. Fish and Wildlife Service on **interagency cooperation under the Endangered Species Act, Oct. 10, 2008 (with Camacho, et al.)**
- **Perspectives**
 - **National Forest Management**
 - **Technology-Based Standards**
- **Blogs**
 - **A Bill to Steamroll the NEPA Process, CPRBlog, April 27, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=F414D64C-00C2-D342-A3C55E020F13F175>** – the RAPID Act, and its potential affects if passed
 - **EPA Steps Up to the Plate on Clean Water Act Enforcement. Congress Needs to Step Up, Too, CPRBlog, October 15, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=596C5BCC-D858-DB1F-C8C4EDD3CC63BA85>** –discussed EPA’s Action Plan on enforcing CWA, after studying the state of compliance around the country, and how Congress should follow this lead in enforcement of clean water measures
 - **The Supreme Court’s Decision on Standing in Summers vs. Earth Island Institute, Part Two, CPRBlog, March 10, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=EE7EB6DD-1E0B-E803-CA8C3996D89DA47F>** – discussed the ruling and the inconsistencies between standings rulings by the Supreme Court when approached as a separation of powers issue or a method of allowing adversary cases that can be resolved in the court to be tried
 - **Revitalizing Cooperative Federalism by Limiting Federal Preemption of State law, CPRBlog, Nov. 14, 2008, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=98B13094-1E0B-E803->**

CA3815A3369755D4 –discussed CPR’s recommendations for the Obama administration’s first executive orders, focusing on a return to a more function cooperative federalism structure between all levels of government

Other

- ***Throwing Precaution to the Wind: NEPA and the Deepwater Horizon Blowout*, 2 GEO. WASH. J. OF ENERGY & ENVTL L. 62 (Summer 2011) (with S. Zellmer & J. Mintz).**
- Interpretive essays: **“The Comprehensive Environmental Response, Compensation, and Liability Act”** and **“The National Environmental Policy Act”** (with Daniel Mandelker), in ***Encyclopedia of the Supreme Court of the U. S.* (Macmillan Co., 2008)**
- Book Review: ***Environmental Protection and the Social Responsibility of Firms* (B. Hay et al. eds., 2005), 36 J. ENVTL. QUALITY 2 (2007)** – outlined the major highlights of the text, praising its interdisciplinary approach to the subject, providing sections on legal, economic and business approaches to environmental protection, as it is a collaboration between the Harvard Business School, Law School, and John F. Kennedy School of Government

Forthcoming

- ***Solar Energy Development on the Federal Public Lands: Environmental Trade-Offs on the Road to a Lower Carbon Future*, _ SAN DIEGO J. ENERGY & CLIMATE LAW ___ (2012) (forthcoming).**
- **“Landscape Level Management of Parks, Refuges, and Preserves for Ecosystem Resilience,”** in ***Resilience and Law* (Ahjond S. Garmestani ed., Columbia Press) (forthcoming) (with Garry Peterson).**
- **“The Justifications for Nondegradation Programs in U.S. Environmental Law,”** in ***The Non regression Principle in Environmental Law* (M. Prieur & G. Sozzo, eds.) (forthcoming).**
- **“Governance of Public Lands, Public Agencies, and Natural Resources,”** in ***The Law of Adaptation to Climate Change: U.S. and International Aspects* (Michael B. Gerrard & Katrina F. Kuh, eds.) (forthcoming)**
- CPR co-sponsored conference on the Clean Water Act at 40 at the George Washington University Law School, March 2012

Dale Goble

Subjects: ESA, recovery, biodiversity

Books

- ***Topics in Endangered Species* (University of California Press, 2010)(with J. Michael Scott)**

Book chapters

- **“Lacey Act,” in *3 Encyclopedia of Sustainability: The Law and Politics of Sustainability* (Klaus Bosselman, Daniel Fogel, & J.B. Ruhl, eds., Berkshire Publishing, 2011)**
- **“Recovery,” in *Endangered Species Act: Law, Policy, and Perspectives* (Donald C. Baur & Wm. Robert Irvin eds., 2d. ed., American Bar Association Publishing, 2009)**
- **“The Endangered Species Act,” in *Encyclopedia of Environmental Ethics and Philosophy* (J. Baird Callicott & Robert Frodeman eds., Macmillan Reference, 2008)**

Articles

- ***Beyond Reserves and Corridors: Policy Solutions to Facilitate the Movement of Plants and Animals in a Changing Climate*, 61 *BIOSCIENCE* 713 (2011)(with John Kostyack, Joshua J. Lawler, Julian D. Olden, & J. Michael Scott)**
- ***Conservation-Reliant Species and the Future of Conservation*, 3 *CONSERVATION LETTERS* 91 (2010)(with J. Michael Scott, Aaron M. Haines, John A. Wiens, & Maile C. Neel)**
- ***A Fish Tale: A Small Fish, the ESA, and Our Shared Future*, 40 *ENVTL. L.* 339 (2010)**
- ***The Endangered Species Act: What We Talk About When We Talk About Recovery*, 49 *NAT. RESOURCES J.* 1 (2009) –an evaluation of what recovery has meant under the ESA from the simple assumptions built into the Act to the more complex requirements that have evolved as experience with implementing the Act has increased**
- ***Recovery in a Cynical Time – With Apologies to Eric Arthur Blair*, 82 *WASH. L. REV.* 581 (2007) – evaluated the Bush Department of the Interior's manipulation of the ESA's standards for delisting species as recovered, discussing the Aleutian Canada goose, Robbin's cinquefoil, wolves, and grizzly bears**
- ***What Are Slugs Good For? Ecosystem Services and the Conservation of Biodiversity*, 22 *J. LAND USE & ENVTL. L.* 411 (2007) –assessed the assumption that biodiversity will be preserved by ecosystem services, and whether or not this relationship can act as a formal surrogate to ensure the conservation of biodiversity**
- ***E-mail to Rebecca*, 78 *U. COLO. L. REV.* 695 (2007) –described the three casebooks on natural resources law available at the time of this publication, assessing their inclusion of legislation like ESA, their perspectives, and their structures**

CPR White Papers

- ***Climate Change and the Puget Sound: Building the Legal Framework for Adaptation* (by Robert Glicksman, Catherine O'Neill and Yee Huang, with other CPR scholars) White Paper #1108, Washington, D.C.: Center for Progressive Reform (2011).**
- ***Making Good Use of Adaptive Management* (with Holly Doremus, et al.) White Paper #1104, Washington, D.C.: Center for Progressive Reform (2011).**

CPR Blog

- ***A Bit More on the Bush Record on Endangered Species, CPRBlog, Jan. 19, 2009,*** <http://www.progressivereform.org/CPRBlog.cfm?fkScholar=63> –described the Bush administration’s last minute addition of a number of species to the endangered list, many of which are non-indigenous species, requiring no action taken by the US and a bevy of new policies and additional funding required from the Obama administration

Carmen G. Gonzalez

Subjects: environmental justice, urban informality, genetically modified organisms

Book

- ***Democracia, derecho y economia de Mercado* (with Daniel Bonilla Maldonado and Colin Crawford, coordinators)(Editorial Temis S.A., 2010)** –a Spanish translation of the free market fundamentalism symposium papers initially published in *5 Seattle J. Social Justice* (2007), with a revised and expanded introduction by the three project coordinators

Book chapters

- **“An Environmental Justice Critique of Comparative Advantage: Lessons from the Mexican Neoliberal Economic Reforms”** in ***Social and Economic Inequality: The Role of Law, Markets, and Social Structures*** (Emma Coleman Jordan and Charles Ogletree, eds., Russell Sage, 2010) – examines the ways in which the free market reforms adopted by Mexico as a consequence of the debt crisis of the 1980s and of its implementation of NAFTA obligations have undermined the livelihoods of poor farmers, increased migration within Mexico and to the US, jeopardized biological diversity in Mexico, and imposed additional stress on the environment in the US

Articles

- ***The Global Food System, Environmental Protection, and Human Rights*, 26 NAT. RESOURCES & ENV'T 7 (2012)** – discussed the legal framework of the global food system, how the current laws lead to food insecurity and unsustainable cultivation practices, the role of the World Trade Organization, and an alternative approach to global governance based on food sovereignty
- ***Climate Change, Food Security, and Agrobiodiversity: Toward a Just, Resilient, and Sustainable Food System*, 22 FORDHAM ENVTL. L. REV. ____ (2011)**
- ***An Environmental Justice Critique of Comparative Advantage: Indigenous Peoples, Trade Policy, and the Mexican Neoliberal Economic Reforms*, 32 U. PENN. J. INT'L L. 723 (2011)**
- ***The Global Food Crisis: Law, Policy, and the Elusive Quest for Justice*, 13 YALE HUMAN RIGHTS AND DEVELOPMENT L.J. 462 (2010)**
- ***China in Latin America: Law, Economics, and Sustainable Development*, 40 ENVTL. L. REP. 10171 (2010)** - analyzes two competing narratives about China's growing economic ties with Latin America, the first depicting China as an economic model for developing countries, and the second portraying China as a new imperial power scouring the world for natural resources and replicating colonial patterns of trade and investment; critiques both narratives and presents a more balanced account of the developmental and environmental challenges and opportunities posed by China's growing economic power
- ***China en American Latina: Derecho, economia y desarrollo sostenible*, 44 REVISTA DE DERECHO PRIVADO (2010)**(peer-reviewed law journal published by the Universidad de los Andes in Bogota, Colombia)
- ***Is NAFTA a Good Model for China? Lessons from Mexico and the United States*, 5 JIANGXI SOCIAL SCIENCES 244 (2009)** -used NAFTA as a case study on the complex ways that trade policy affects domestic efforts to protect the environment and promote rural development, hoping to draw lessons from the experiences of the United States and Mexico that may enable China and other developing countries to simultaneously promote economic development and protect the environment

- ***Squatters, Pirates, and Entrepreneurs: Is Informality the Solution to the Urban Housing Crisis?*** 40 U. MIAMI INTER-AM. L. REV. 239 (2009) –analyzed the World Bank and Hernando De Soto’s push for giving the poor legal title to the lands they occupy extra-legally as a means of addressing both poverty and the scarcity of affordable housing in the urban centers of the global South; criticized de Soto’s work in three main respects; concluded that formal title must be evaluated on a case-by-case basis and that De Soto's ideas are dangerous because they persuade policy-makers that the free market will be sufficient to solve poverty and housing scarcity once the poor are given legal titles to the lands they occupy informally
- ***Environmental Impact Assessment in Post-Colonial Societies: Reflections on the Expansion of the Panama Canal***, 4 TENN. J. LAW & POL’Y (2008) –examined the ways in which environmental impact assessment (EIA) can serve as a valuable development planning tool in nations where natural resources have been exploited as economic enclaves lacking significant linkages to other sectors of the economy, proposing a democratic approach to the EIA process and recommending ways to improve the information available to government agencies
- ***Genetically Modified Organisms and Justice: the International Environmental Justice Implications of Biotechnology***, 19 GEO. INT’L ENVTL. L. REV. 583 (2007) –examined the ramifications of introducing GMOs into developing countries and argued that the WTO SPS Agreement and the Cartagena Biosafety Protocol are inadequate to address the unique risks posed by GMOs to the environment, to the human right to food, and to the promotion of sustainable models of economic development in developing countries
- ***Reality, Theory, and a Make-Believe World: The Fundamentalism of the “Free” Market***, 5 SEATTLE J. FOR SOC. JUST. 499 (2007) (with Daniel Bonilla Maldonado & Colin Crawford) – introduction to a symposium on free market fundamentalism, pointing out the major flaws in the construct, and how this construct has led to social, political and environmental injustice

CPR

- **White Paper**
 - ***Markets, Monocultures, and Malnutrition: Agricultural Trade Policy through an Environmental Justice Lens***, White Paper #702, Washington, D.C.: Center for Progressive Reform (2007) –described the general issues of environmental justice in the developing world, and analyzed the effect of agricultural trade policy on hunger and environmental degradation in these areas, as well as the detrimental effects on food supply and land use in these areas because of their reliance on exports; also described the effect of free market economic reforms on the developing world and mechanisms by which the double-standard that these reforms have imposed could be altered to benefit those who live and work in the developing countries
- **Perspective**
 - ***Environmental Justice at Stake*** (with Lisa Heinzerling, former member, et al.)
- **Letter**
 - to EPA Administrator, Lisa Jackson on the **North American Commission for Environmental Cooperation (with Bratspies, et al.)**, March 29, 2012
- **Op-ed**
 - **“Setting the Record Straight about Latino Immigrants,”** (with Richard Delgado and Jean Stefancic), Seattle Times, May 20, 2011

Last Updated May 8, 2012

Forthcoming

- ***Presumed Incompetent: the Intersections of Race and Class for Women in Academia* (with Angela P. Harris, Gabriella Gutierrez y Muhs, and Yolanda Flores-Niemann, eds.)(Utah State University Press, forthcoming 2012)**

Donald T. Hornstein

Subjects: organic agriculture, climate systems

Book chapters

- “Climate Systems and Legal Systems,” in *The Report of the UNC Climate Change Committee* (November, 2008)

Articles

- *The Road Also Taken: Lessons from Organic Agriculture for Market- and Risk-Based Regulation*, 56 *DUKE L.J.* 1541 (2007) – discussed the rise in organic agriculture and the National Organic Program (NOP), and whether organic agriculture can be aligned with the notion of sound science

David Hunter

Subjects: *international environmental law, climate change, liability*

Books

- ***Climate Change and the Law*** (Lexis-Nexis Publishing: 2009) (with Wold & Powers)
- ***International Environmental Law & Policy, 3rd ed.*** (Foundation Press: 2007) (with Salzman & Zaelke)

Book chapters

- **“Implications of Climate Change Litigation for International Environmental Law-Making,”** in ***Adjudicating Climate Control: Sub-National, National and Supra-National Approaches*** (Cambridge Press, 2007) –discussed the increase in climate change litigation, the awareness brought about by such cases, the increased energy of politicians to seek out climate change legislation, and the strategies employed in such cases
- **“Use of IFI Accountability Mechanisms for Addressing Climate Change,”** in ***Adjudicating Climate Control: Sub-National, National and Supra-National Approaches*** (Cambridge Press, 2007) (with Jenifer Gleason)

Articles

- ***International Climate Negotiations: Opportunities and Challenges for the Obama Administration***, 19 DUKE ENVTL. L. POL’Y F. 247 (2009) –discussed the international aspects of potential climate change legislation to be written by the Obama administration
- ***Civil Society Networks and the Development of Environmental Standards at International Financial Institutions***, 8 CHI. J. INT’L L. 437 (2008) –described the trend in financial institutions toward inclusion of environmental and sustainability policies in their standards, how these policies are implemented and the long-term impact of these policies on the promotion of environmental laws throughout the world
- ***Narrowing the Accountability Gap: Toward a New Foreign Investor Accountability Mechanism***, 20 GEO. INT’L ENVTL. L. REV. 187 (2008)(with Natalie L. Bridgeman) –discussed the “enforcement gap” in regulating multinational enterprises and the current flawed mechanisms by which this problem is addressed; posed a Foreign Investor Accountability Mechanism and described how this mechanism could be employed and successful
- ***Negligence in the Air: The Duty of Care in Climate Change Litigation***, 155 U. PA. L. REV. 1741 (2007) (with James Salzman) –addressed duty and breach in climate change tort cases, and how these elements can be addressed in future litigation
- ***Emerging Standards for Sustainable Finance of the Energy Sector***, 7 SUSTAINABLE DEV. L. & POL’Y 4 (2007) (with Kirk Herbertson) –described environmental and social standards of international financial institutions in the energy sector, and the policies created by the creation of these standards

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- **Conferences**

- **State Summit on Climate Change and Preemption, March 25, 2009** – with the National Association of Clean Air Agencies
- **Letter**
 - to EPA Administrator, Lisa Jackson on the **North American Commission for Environmental Cooperation (with Bratspies, et al.), March 29, 2012**
- **Blogs**
 - **Extending Protection to Wildlife: Why the United States Should Ratify the Agreement on the Conservation of Albatrosses and Petrels, CPRBlog, February 27, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=BF1205C3-CF00-6D72-41D59768F31232A6>** – the blog series discussing the treaties the US should ratify
 - **Cap, But no Trade for Bella Center Passes; Meanwhile, Conference’s Legacy of Transparency in Danger, CPRBlog, December 16, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=9943F969-DE3B-FD4E-972C542131D2BB19>** – described the long waits and “capped” system of admittance into the conference for non-governmental groups, and the stalled debates over the framing of commitments of the AWG-LCA and progress in REDD occurring inside the conference
 - **In Copenhagen, Progress on Financial Pledges Limited; Draft Document Punts Details to COP-16, CPRBlog, December 15, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=92F2B773-15C5-EA6D-349FD9CCAF180AA>** –discussed the funding commitments among the participants, the proposed Green Fund supplied by auctioning of emission allowances, and other funding alternatives presented at the conferences
 - **(Re)Defining Success at Copenhagen: Here’s What I’ll be Looking For, CPRBlog, December 11, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=7F5E31E9-BB5B-5C7F-AA13890F24A54E78>** –discussed what the author thought of as the most important topics of the conferences, including voluntary pledges, the economic outlook of future climate change action, the effect of climate change action on sustainable development, and REDD

Other

- **Private Sector Liability for Environmental Harm under International Law, background paper commissioned by the International Commission of Jurists (2007)**

Mona L. Hymel

Subjects: incentives, fuel

Book chapters

- “The Impossible Dream?” in *Careers in Tax Law: Perspectives on the Tax Profession and What it Holds for You* (John Gamino et al. eds, 2009)

Articles

- ***Moonshine to Motorfuel: Tax Incentives for Fuel Ethanol*, 19 DUKE ENVTL. L. & POL’Y F. 43 (2008) (with Roberta F. Mann)**—analyzed the tax incentives and environmental benefits of ethanol in fuel, proposing that encouraging less driving would secure better benefits for the environment
- ***Trading Greenbacks for Green Behavior: Oregon and the City of Portland’s Environmental Incentives*, 5 CRITICAL ISSUES IN ENVTL. TAXATION (2007) (with Roberta F. Mann & Beth S. Wolfson)** – analyzed the use of fiscal instruments in Portland to encourage environmentally protective actions, and looked at how these programs affect different societal groups
- ***Globalization, Environmental Justice, and Sustainable Development: The Case of Oil*, 7 MACQUARIE L.J. 125 (2007)** – discussed the global advantages and damages caused by oil in the context of globalization, environmental justice and sustainable development, and how policies need to be developed to change the global economy’s dependence on oil

Bradley C. Karkkainen

Subjects: information deficits

Book chapters

- “Endangered Species Protection in the United States: From Prohibition to Proactive Management,” in *Uppsala-Minnesota Colloquium: Law Culture and Values* (Mattias Dahlberg, ed., Iustus, 2009)
- “NEPA and the Curious Evolution of Environmental Impact Assessment in the United States,” in *Taking Stock of Environmental Assessment: Law Policy and Practice* (Jane Holder & Donald McGillivray, eds., Routledge-Cavendish, 2007)

Articles

- *The Great Lakes and International Environmental Law: Time for Something Completely Different?* 54 WAYNE L. REV. 1571 (2008) –discussed the history of the Boundary Waters Treaty and the Great Lakes Water Quality Agreement between the US and Canada, the history of improvements for these policies, and the use of these policies as models for other international laws, as well as offering advice as to how the policies could be amended from their current state
- *Framing Rules: Breaking the Information Bottleneck*, 17 N.Y.U. ENVTL. L.J. 75 (2008) –suggested a mechanism by which governments could collect and disseminate information from private parties pertaining to solutions to environmental problems
- *Bottlenecks and Baselines: Tackling Information Deficits in Environmental Regulation*, 86 TEX. L. REV. 1409 (2008) –assessed information failure and the development of salutary mechanisms to avoid the data gaps, describing four specific types of information deficits and mechanisms by which these gaps could be crossed
- *Getting to “Let’s Talk”: Legal and Natural Destabilizations and the Future of Regional Collaboration*, 8 NEV. L.J. 811 (2008) –argued that destabilizations, both legal and natural, provide an effective means for regulation and collaboration between the state and the private party that must create a new regulatory policy, and specifically cited the example of the Colorado River arrangements as an example of such collaboration

CPR White Paper

- *Making Good Use of Adaptive Management* (with Holly Doremus, et al.) White Paper #1104, Washington, D.C.: Center for Progressive Reform (2011).

CPR Blog

- *The Peterson Compromises and the Question of*, CPRBlog, June 26, 2009, <http://www.progressivereform.org/CPRBlog.cfm?fkScholar=30> –discussed the addition of provisions to Waxman-Markey that weakened the efforts of the bill by creating exemptions in the offset program for agriculture and forestry, and the difficulty of defining “additionality” under the new rules

Alice Kaswan

Subjects: *climate change, Waxman-Markey bill, environmental justice, cap-and-trade programs, federalism*

Book chapters

- **“Reconciling Justice and Efficiency: Integrating Environmental Justice into Domestic Cap-and-Trade Programs for Controlling Greenhouse Gases,”** in *Ethics, Energy, and Climate Change* (Denis Arnold, ed., 2009) –discusses the tension between environmental justice and market-based mechanisms, provides a philosophical justification for incorporating equity considerations into cap-and-trade programs, and proposes specific mechanisms for achieving both equity and efficiency

Articles

- ***Climate Change, the Clean Air Act, and Industrial Pollution*, 30 UCLA J. ENVTL. L. & POL’Y 51 (2012)** – analyzed the use of the Clean Air Act to regulate GHG emissions, the relevance of co-pollutant consequences to climate policy choices, the use of direct regulation of GHG emissions as opposed to a market-based approach, and EPA’s authority to address emissions under CAA
- ***Decentralizing Cap-and-Trade? The Question of State Controls within a Federal Greenhouse Gas Cap and-Trade Program*, 28 VA J. ENVTL. L.343 (2010)**- argues that federal cap-and-trade legislation should allow states to control stationary sources within their jurisdiction through direct regulation, limits on offset use, and trading controls to maximize co-pollutant reduction benefits
- ***Decentralizing Cap-and-Trade? The Question of State Stringency*, 1 SAN DIEGO J. CLIMATE & ENERGY L. 103 (2009)** –in the context of a federal cap-and-trade program, discusses the benefits and drawbacks of allowing states to achieve more demanding targets than the federal government, finding that states should be allowed to impose stricter limitations
- ***Greening the Grid and Climate Justice*, 39 ENVTL. L. 1143 (2009)** - argues for a comprehensive approach to climate policy that integrates environmental and economic justice
- ***Climate Change, Consumption, and Cities*, 36 FORDHAM URB. L.J. 253 (2009)** –discussed the limitations of a federal cap-and-trade program in reducing consumption resulting from land use patterns and buildings, the importance of local government action, the current disincentives to local government regulation, and proposed that federal legislation overcome these roadblocks by requiring state and local government action
- ***Environmental Justice and Domestic Climate Change Policy*, 38 ENVTL. L. REP. NEWS & ANALYSIS 10287 (2008)** –discussed the environmental justice implications of climate policies, particularly in the context of cap-and-trade programs and biofuels, and proposed mechanisms for better serving environmental justice goals
- ***A Cooperative Federalism Proposal for Climate Legislation: The Value of State Autonomy in a Federal System*, 85 DENV. U. L. REV. 791 (2008)** –discussed the importance of both federal and state roles in climate legislation, demonstrated the important state interests at stake by considering the environmental justice provisions in California’s climate legislation, and identified areas where federal legislation could provide an appropriate role for states
- ***The Domestic Response to Global Climate Change: What Role for Federal, State, and Litigation Initiatives?*, 42 U.S.F. L. REV. 39 (2007)** –provided an overview of domestic climate policy issues,

assessing federal administrative and legislative initiatives, the role of the states, and the role of common law litigation

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- **White Paper**
 - ***Climate Change and the Puget Sound: Building the Legal Framework for Adaptation* (by Robert Glicksman, Catherine O’Neill and Yee Huang, with other CPR scholars) White Paper #1108, Washington, D.C.: Center for Progressive Reform (2011).**
- **Conferences**
 - ***State Summit on Climate Change and Preemption, March 25, 2009* – with the National Association of Clean Air Agencies**
- **Perspective**
 - ***Environmental Justice and Climate Change: Incorporating Environmental Justice into Greenhouse Gas Cap-and-Trade Programs***
- **Blogs**
 - ***Applying the Clean Air Act to Greenhouse Gases: What Does It Mean for Traditional Pollutants?* CPRBlog, April 24, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=E4664A35-D41B-2025-284CEFD189F48E58> – discussed her recently published article on using CAA to reduce greenhouse gases**
 - ***Greenhouse Gas Standards for New Power Plants: Glass Half-full and Half-empty,* CPRBlog, March 28, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=5AB070F0-CCCE-C1CD-B9F7C9D9AB10A2F9> – described the beneficial EPA NSPSs for greenhouse gases from new power plants, but also the potentially harmful flexibility for these new plants to violate clean air laws initially and then “catch up” with carbon sequestration programs, as well as the lack of attention to existing power plants**
 - ***AEP v. Connecticut: Will the Supreme Court Shut the Door Again?* CPRBlog, December 6, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=BE238DED-AB16-9943-91E04CE9CE7FE09C> – discussed the climate nuisance case, and the implication for future attempts at creating climate change policy in this manner, in terms of the complex issues of standing, preemption, and political question doctrine**
 - ***Climate Change: The Ball’s Bounced Back to the States, EPA and DOE,* CPRBlog, July 23, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=00D18447-F9EA-DFC7-D94904E8E24D52AE> – discussed the balance of action and implementation between states and the federal government in regards to climate change, after Congress eliminated the national emissions cap from legislation**
 - ***Mind the Climate Gap: New Study Highlights the Need to Design GHG Cap-and-Trade Policies to Improve Local Air Quality,* CPRBlog, April 15, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=01AAA0E8-9802-FAC5-7D2466D724BFAE6D> – discussed the racial and health disparities present in cap-and-trade systems when disadvantaged communities are exposed to higher levels of pollution due to trading efforts**
 - ***The Senate’s Refinements to Climate Change Legislation: Tailoring the Clean Air Act for Greenhouse Gases,* CPRBlog, November 5, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=C54BE0CF-0043-8D62->**

- 0D668B5A3FCE1A53** –discussed the Boxer-Kerry bill’s adjustments to the Clean Air Act’s regulatory mechanisms and argued for Congress to develop a new regulatory approach to GHG emissions rather than attempting to refine CAA
- **Boxer-Kerry: Integrating Regulation and Cap-and-Trade**, CPRBlog, October 1, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=0EF54957-D377-FF79-4930A62A84F0F0B8> –discussed Boxer-Kerry’s retention of the CAA’s regulatory authority (authority that was preempted in Waxman-Markey) and the benefits of combining cap-and-trade with regulation
 - **Second Circuit’s Decision in Connecticut vs. AEP Makes Clear No One is Above the Law**, CPRBlog, September 23, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=E70BB35F-B603-E4AB-AB7DA1AECA8DD9D9> –discussed the climate change nuisance lawsuit and the more general issue of the judiciary’s ability to make decisions in cases where other branches of government have not yet made policy decisions
 - **Why a Cap-and-Trade System Needs a Regulatory Backstop**, CPRBlog, Aug. 26, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=56F58E4B-D5FD-4FDB-7CFE8D1838C2AADA> –argued against the claim that a cap-and-trade program will necessarily induce sufficient greenhouse gas emission reductions and explained the importance of providing government with direct regulatory powers
 - **The Waxman-Markey Bill’s Federal-State Partnership**, CPRBlog, June 17, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=EE7806DF-15C5-EA6D-34FB404A33620B92> –discussed states’ ability to enact more stringent greenhouse gas emissions regulations and why such a structure is desirable
 - **Waxman-Markey: Environmental Justice**, CPRBlog, April 2, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=6775B831-1E0B-E803-CA612C7FE7518148> –discussed the cap-and-trade system of the bill and described how better environmental justice results would be achieved through direct regulation
 - **Waxman-Markey: Renewables, Transportation, and EPA and State Regulation**, CPRBlog, April 2, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=6780FE11-1E0B-E803-CA9874FBA689F902> –discussed several elements contained in the original Waxman-Markey bill that recognize appropriate roles for federal and state action

Forthcoming

- **"Greenhouse Gas Cap-and-Trade Programs and Environmental Justice," (Robert Bullard, ed., MIT Press, forthcoming)** – explains the environmental justice implications of cap-and-trade programs and proposes mechanisms to better achieve environmental justice goals

Alexandra Klass

Subjects: carbon capture and sequestration, tort law, renewable energy, wind energy siting, solar energy siting, energy

Book

- ***The Practice and Policy of Environmental Law* (Foundation Press, 2d ed., 2010)(with J.B. Ruhl, John Nagle & James Salzman)**

Book chapters

- **“State and Municipal Energy Efficiency Laws,” in *The Law of Clean Energy: Efficiency and Renewables* (Michael B. Gerrard, ed., ABA, Section of Environment, Energy, and Resources, 2011)(with John K. Harting)**
- **“The Growing Influence of Tort and Property Law on Natural Resources Law: Case Studies of Coalbed Methane Development and Geologic Carbon Sequestration,” in *The Evolution of Natural Resources Law and Policy* (Lawrence J. MacDonnell & Sarah F. Bates, eds., ABA, Section of Environment, Energy, and Resources, 2009)**

Articles

- ***Property Rights on the New Frontier: Climate Change, Natural Resource Development, and Renewable Energy*, 38 ECOLOGY L. QUARTERLY 63 (2011)**
- ***State Standards for Nationwide Products Revisited: Federalism, Green Building Codes, and Appliance Efficiency Standards*, 34 HARV. ENVTL. L. REV. 335 (2010)** – discussed the need for state and local innovation of green building codes because of the high demand of appliances for energy use, the historical problems of preemption in energy standards, and the new theories of a dynamic system “that allows for state innovation without disrupting the national market for appliances”
- ***Climate Change, Carbon Sequestration, and Property Rights*, 2010 U. ILL. L. REV. 363 (2010)** – discussed the legal issues facing carbon sequestration, mainly takings and property rights issues, and how these issues could be addressed with a proposed framework under the Natural Gas Act
- ***Punitive Damages After Exxon Shipping Company v. Baker: The Quest for Predictability and the Role of Juries*, 7 U. ST. THOMAS L.J. 182 (2009)** - examined the dynamic between the Supreme Court’s attempt at limiting punitive damages awards, and the constitutionality of the awards, based on the requirements set out by the Court, finding that the long-term effect of the Exxon decision will likely be low, single-digit ratios of punitive damages awards in the future
- ***Tort Experiments in the Laboratories of Democracy*, 50 WM. & MARY L. REV. 1501 (2009)** – discussed the vital role of tort law and how its scope has been limited by Congress and the Supreme Court
- ***Climate Change and Carbon Sequestration: Assessing a Liability Regime for Long-term Storage of Carbon Dioxide*, 58 EMORY L.J. 103 (2008) (with Elizabeth J. Wilson)** – addressed carbon sequestration in light of current environmental and tort laws, finding that the laws are not sufficient in regulating CCS, but they can serve as a model of litigation to come and that they would protect citizens from harm at this point
- ***The Frontier of Eminent Domain*, 79 U. COLO. L. REV. 651 (2008)** –assessed the use of eminent domain in the western US states, where gas, oil and mining companies can utilize eminent

domain to take over lands where these resources can be found and developed, and compared this use with the ruling in *Kelo v. City of New London*

- ***State Innovation and Preemption: Lessons from State Climate Change Efforts*, 42 LOY. L.A. L. REV. 1653 (2008)** – discussed the Supreme Court’s “presumption against preemption” in areas of “traditional state concern,” and supported state climate change legislation that fulfills Congressional mandates as part of this ruling
- ***Punitive Damages and Valuing Harm*, 92 MINN. L. REV. 83 (2007)** – discussed lower courts’ failure to depart from the single-digit ratio of punitive damages to compensatory damages when the value is difficult to assess, proposing that “courts focus on the existence of uncompensated harm” in such cases
- ***Common Law and Federalism in the Age of the Regulatory State*, 92 IOWA L. REV. 545 (2007)** – assessed the movement toward federal regulatory laws instead of state laws, and argued that this trend should be discouraged in the development of new environmental policy

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- **White Papers**
 - ***Restoring the Trust: Water Resources & the Public Trust, A Manual for Advocates, Water Resources and the Public Trust (with Yee Huang), White Paper #908, Washington, D.C.: Center for Progressive Reform (2009)*** –focused on using the public trust doctrine to protect surface and ground water resources; its purpose was to introduce grassroots water advocacy groups and others to the public trust doctrine and to provide an overview of its traditional use and modern evolution
 - ***Protecting Public Health and the Environment by the Stroke of a Presidential Pen: Seven Executive Orders for the President’s First 100 Days (with Rebecca M. Bratspies, et al.) White Paper #806, Washington, D.C.: Center for Progressive Reform (2008)*** – proposed seven executive orders for the incoming administration – 1., reduction of the federal government’s carbon footprint; 2., consideration of climate change in agency decision-making; 3., taking children into account in toxics regulation; 4., new environmental justice legislation; 5., promotion of transparency in regulatory review; 6., prevention of preemption; and 7., a policy on sustainable public land use
- **Perspective**
 - ***Carbon Capture and Geologic Sequestration***
- **Blogs**
 - ***Nevada Court’s Public Trust Decision A Welcome Addition to Growing Body of Protection for State Lands and Resources*, CPRBlog, August 8, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=AAFEF2D5-EA49-146E-6636CF86C65E3DD7>** - discussed the Nevada Supreme Court’s ruling in favor of the public trust doctrine in protection of lands that were submerged at the time of Nevada’s statehood.
 - ***Will the Atmosphere Make it as the Public Trust Doctrine’s Next Frontier?* CPRBlog, May 6, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=C6A8099E-B578-9283-B72C22CA3382CA43>** - whether suits aimed at federal agencies for not regulating greenhouse gas emissions and therefore violating the public trust will have validity in the courts.

- **Boxer-Kerry: Carbon Capture and Sequestration Provisions Are About Right**, CPRBlog, October 5, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=1BC99AF0-ED49-546A-9609052452A3F515> –discussed the CCS provisions included in the bill, focusing on the improvements from Waxman-Markey, especially the broader range for bonus allowance amounts, while emphasizing the need for looking forward toward overall greater energy efficiency instead of becoming too focused on CCS
- **Carbon Capture and Sequestration: An Assessment of the Facts (Below) the Ground Today**, CPRBlog, Aug. 6, 2009, <http://www.progressivereform.org/CPRBlog.cfm?fkScholar=31> –discussed the process, current projects, funding and regulations required, benefits and risks of CCS programs

Other

- **“Fishermen are Entitled to Punitive Damages from Exxon,” ACSblog (with Alexandra Klass), February 27, 2008, <http://www.acslaw.org/node/12177>** –discussed the Supreme Court hearing of *Exxon Shipping Company v. Baker*, on which the Ninth District ruled that Exxon was liable for punitive damages, and the need for punitive damages for private citizens that were harmed in such cases

Forthcoming

- ***Renewable Energy and the Public Trust Doctrine*, UC DAVIS L. REV. (forthcoming 2012)**

Christine A. Klein

Subjects: water law, environmental law, natural disasters

Book

- ***Natural Resources Law: A Place-Based Book of Problems and Cases* (2d. ed., Aspen Publishers 2009)(with Frederico Cheever and Bret C. Birdsong)** – includes teacher’s manual and website with substantive updates and supporting maps, photographs, and documents

Book chapters

- **“Environmental Patriotism,” in *Beyond Environmental Law: Policy Proposals for a Better Environmental Future* (David M. Driesen & Alyson Flournoy, eds., Cambridge University Press, 2010)** - discussed the approach to law as an issue of patriotism, that the good of the environment promotes the good of the country through improved health and safety; proposed two main legislative actions, namely NELA and the Environmental Competition Statute, that are aligned with the thought of environmental patriotism; discussed how the laws that have passed the test of time are most rooted in these same thoughts; and proposed how patriotism can effectively add to future legislation

Articles

- ***The Dormant Commerce Clause and Water Export: Toward a New Analytical Paradigm*, 35 HARVARD ENVTL L. REV. 131 (2011)**
- ***The Environmental Deficit: Applying Lessons from the Economic Recession*, 51 ARIZ. L. REV. 651 (2009)** –compared the financial system problems with environmental protection issues, arguing that the environmental legislation needs to focus back on more regulation, depart from the use of CBA in determining regulations, and examine more closely where funds are being allocated for sustainability in environmental protection
- ***Modernizing Water Law: The Example of Florida*, 61 FLA. L. REV. (2009) (with Mary Jane Angelo & Richard Hamann); University of Florida Levin College of Law Research Paper No. 2009-09** – discussed the need for water laws to be updated to address modern problems of water shortages, ecological upkeep, and distribution
- ***Cultural Norms as a Source of Law: The Example of Bottled Water*, 30 CARDOZO L. REV. 507 (2008) (with Ling-Yee Huang)** –utilized the metaphor of the cultural phenomenon of supporters versus detractors of bottled water use as a model that could be applied to water supply laws, enumerating four specific usage issues: “reasonable use, beneficial use, preferred uses, and the public interest”
- ***The New Nuisance: An Antidote to Wetland Loss, Sprawl, and Global Warming*, 48 B.C. L. REV. 1155 (2007)** –discussed the impact of *Lucas v. South Carolina Coastal Council* on regulatory decisions, and the role of nuisance as an offensive legal posture and new approach to once unregulated issues
- ***Mississippi River Stories: Lessons from a Century of Unnatural Disasters*, 60 SMU L. REV. 1471 (2007) (with Sandra Zellmer)** –discussed the lessons learned from the Great Flood of 1927, the Midwest Flood of 1993, and Hurricanes Katrina and Rita of 2005, and how these disasters, when assessed together, point to the need for significant reform of the national flood insurance program and the Army Corps of Engineers’ flood hazard control

- ***Water Transfers: The Case Against Transbasin Diversions in the Eastern States*, 25 UCLA J. ENVT. L. & POL'Y 249 (2007)** –discussed the problems caused by, as well as the necessity for, water transfer in the western states, and proposed that eastern states change to a demand model for water supply, as opposed to the current supply model
- ***The Law of the Lakes: From Protectionism to Sustainability*, MICH. ST. U. L. REV. 1259 (2006), reprinted in *Environmental Law: Principles and Governance* (A. Usha, ed., Icfai University Press, India, 2007)** – discussed the impending legislation of the Great Lakes Basin, drawing lessons from legislation of the Colorado River basin, discussing the differences between sustainability and protectionism, and enumerating six necessary parts of sustainable water use legislation

Other

- ***The Florida Water Resources Act of 1972: Beyond the First 35 Years*, monograph for distribution to The Century Commission for a Sustainable Florida, *2008 Water Congress: Planning for Florida's Water Future* (with Mary Jane Angelo & Richard Hamm)**
- ***Florida to Georgia: God Helps Those Who Help Themselves*, in Orlando Sentinel, Dec. 16, 2007, <http://www.orlandosentinel.com/news/opinion/views/orl-water1607dec16,0,1732889.story> – op-ed describing water allocation between Georgia, Florida and Alabama, with three suggestions for Georgia: adopt a water plan, equally share water among the states, and regard protected and endangered animals in the long-term**
- ***Patriotism is Redefined by Environmental Conservation*, in Gainesville Sun, April 22, 2007, <http://www.gainesville.com/apps/pbcs.dll/article?AID=/20070422/EDITORIALS0101/704220310&SearchID=73279036202265> –discussed the role of patriotism in Americans' attitudes toward, and legislation of, climate change, encouraging politicians to look past reelection to the common good of their constituents and their children**
- **"Survey of Florida Water Law," in *Waters and Water Rights* (Robert E. Beck, ed., Matthew Bender & Co. Inc., including annual updates 2005 – present).**

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- **Blogs**
 - ***Reversing the Environmental Deficit*, CPRBlog, October 21, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=77663E98-9787-DBEF-A900C2DAED6EDAD3> – discussed the deregulation of environmental oversight, a "trivialization" of important, and dangerous, environmental risks, and the unsustainable use of natural resources, likening the problems in the environment to those of the financial crisis**
 - ***Coveting Their Neighbor's Water: the Importance of Hood v. City of Memphis*, CPRBlog, Sept. 24, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=EC3F8551-DA97-C159-1A0293BECAD46FD2> –discussed the potential ruling of the Supreme Court applying equitable apportionment to underground aquifers for the first time and the regulation issues this ruling would address**

Forthcoming

- ***Mississippi River Stories: Lessons from a Century of Unnatural Disasters* (work in progress) (with Sandra Zellmer)** –described floods and hurricanes on the Mississippi from its headwaters

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to its delta, and exploring policy implications for areas including environmental justice, wetlands protection, agricultural policy, federal subsidies, flood control, flood insurance, and regulatory takings law

- ***Compartmentalized Thinking and the Clean Water Act*, GEORGE WASHINGTON J. ENERGY AND ENV'T'L. L. (symposium piece solicited for 2012 publication)**

John Knox

Subjects: human rights, environmental protection, international trade

Book chapters

- “Diagonal Environmental Rights,” in *Universal Human Rights and Extraterritorial Obligations* (University of Pennsylvania Press, 2010)

Articles

- *The Unpredictable Presumption Against Extraterritoriality*, 40 SW. L. REV. 635 (2011)
- *A Presumption Against Extrajurisdictionality*, 104 AM. J. INT’L L. 351 (2010)
- *Neglected Lessons of the NAFTA Environmental Regime*, 45 WAKE FOREST L. REV. 391 (2010)
- *Climate Change and Human Rights Law*, 50 VA J. INT’L L. 163 (2009)
- *Linking Human Rights and Climate Change at the UN*, 33 HARV. ENVTL. L. REV. 477 (2009)
- *Horizontal Human Rights Law*, 102 AM. J. INT’L L. 1 (2008)
- *The Boundary Waters Treaty: Ahead of Its Time and Ours*, 54 WAYNE L. REV. 1591 (2008)
- *Natural Resources Defense Council v. EPA*, 101 Am. J. Int’l L. 471 (2007)(case note)

CPR Letter

- to EPA Administrator, Lisa Jackson on the **North American Commission for Environmental Cooperation (with Bratspies, et al.)**, March 29, 2012

CPR Blogs

- *Preserving the Pristine: Why the United States Should Ratify the Antarctic Liability Annex*, CPRBlog, April 11, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=A1EA48A0-A049-C979-BD87DF8F7C2BE551> – continuing the blog series discussing the environmental treaties paper; described the need for and steps the US can do to ratify a treaty protecting Antarctica’s ecosystem
- *A New Twist in the Kiobel Case*, CPRBlog, March 7, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=EE90ABFB-A189-5FAC-504C486F7F005752> – the shift from a Supreme Court decision about whether corporations can be liable for human rights violations to whether any defendant can be liable for violations occurring in the jurisdiction of another country
- *Can Corporations Violate Human Rights? In Kiobel v. Royal Dutch Petroleum, the Supreme Court May Say Yes... or No*, CPRBlog, February 23, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=AA9376E1-E9F7-F6C0-6B0D00FCDDEFF2DF> – the hope that the Supreme Court will overrule the circuit court’s judgment in favor of corporations
- *Reclaiming Global Environmental Leadership*, CPRBlog, January 20, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=FB9153F2-ABFE-3CF2-8053EAF1ED929DB8> – describing the CPR White Paper
- *In Chevron versus Ecuador, the Decisions (and the Ironies) Multiply*, CPRBlog, January 9, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=C2E51045-FD08-D886-159878EF37A7536D> – the long-running case and the irony that Chevron is now claiming the

ruling unjust because of the corruption of the Ecuadorian judicial system after initially convincing the US courts to allow the case to be tried in Ecuador

- ***Does the Radiation from Japan Violate International Law When It Crosses International Boundaries?*** CPRBlog, March 22, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=DA473364-D0A4-9CD5-900EB2BF282C47E0> – although Japan will be open to criticism and is being asked to be more forthcoming in the environmental disaster, how Japan will not face international legal trouble
- ***Who Wanted Ecuador to Try the Biggest Environmental Case in History? That Would Be the Defendant, Chevron,*** CPRBlog, February 18, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=39C42648-C655-A3F8-C920F078F815F9D0> – the plausibility of Chevron having to pay the \$8.6 billion ruling, now that Chevron is appealing based on the corruption of the Ecuadorian courts

Forthcoming

- ***The Evolution of Environmental Rights*** (in progress)
- ***“Establishing the Duties of Corporations Under Human Rights Law,”*** in *Corporations and Human Rights* (Radu Mares ed., 2012)(forthcoming)

Douglas Kysar

Subjects: CBA, economics, nation-state issues

Book

- ***Regulating from Nowhere: Environmental Law and the Search for Objectivity* (Yale University Press, 2010)** - drawing insight from a diverse array of sources, including moral philosophy, political theory, cognitive psychology, ecology, and science and technology studies, the book offered a new theoretical basis for understanding environmental law and policy, exposing a critical flaw in the dominant policy paradigm of risk assessment and cost-benefit analysis, which asks policymakers to, in essence, “regulate from nowhere.”
 - Select critical acclaim: “This study, deeply and thoroughly informed by philosophical, legal, and political analysis, presents the practical and moral wisdom we need to assess the history and to project the future of environmental law.” -- Mark Sagoff, University of Maryland School of Public Policy
 - “Kysar’s book should be indispensable reading for anyone interested in evaluating the use of cost-benefit analysis in the environmental context. His skepticism flows not from a political predisposition but from a highly nuanced argument that will change the course of the debate.” -- Dean Richard Revesz, New York University School of Law
- ***Economics of Environmental Law* (Edward Elgar Publishing, 2009)(with Richard Brooks & Nathaniel Keohane, eds.)**
- ***The Torts Process* (7th ed., Aspen Publishers, 2007)(with James A. Henderson, Jr., Richard N. Pearson, & John A. Siliciano)**

Book chapters

- **“Fish Tales,” in *Reforming Regulatory Impact Analysis* (Winston Harrington, Lisa Heinzerling & Richard D. Morgenstern, eds., Resources for the Future press, 2009)** –discussed the use of CBA in regulation and proposed reasons why CBA should not be used in environmental policy making, citing the history and process of CWA’s regulation of cooling water intake
- **“Regulating from Nowhere: Domestic Environmental Law and the Nation-State Subject,” in *The Impact of Globalization on the United States, Vol. 2: Law and Governance* (with Ya-Wei Li) (Beverly Crawford, Michelle Bertho, and Ed Fogarty, eds., 2008)** -discussed the shortcomings of CBA in domestic law, citing how the use of CBA does not take into account the US’s role and responsibility in global environmental law and determining that this problem should be addressed for the future welfare of the planet

Articles

- ***What Climate Change Can Do About Tort Law*, 41 ENVTL. L. 1 (2011)**
- ***Abnormally Dangerous: Inequality Dissonance and the Making of Tort Law*, ___ VALPARAISO U. L. REV. ___ (2010 Monstanto Lecture)(with Jon Hanson)**
- ***Ecologic: Nanotechnology, Environmental Assurance Bonding, and Symmetric Humility*, 28 UCLA ENVTL. L. & POL’Y J. 201 (2010)**

- ***Harnessing the Power of Information for the Next Generation of Environmental Law*, TEX. L. REV. (2009) (with James Salzman)** –discussed the role of scientific information in environmental law, including how it is acquired, analyzed, distributed and applied to law
- ***Cost-Benefit Analysis: New Foundations on Shifting Sand*, 3 REG. & GOVERNANCE 48 (2009) (reviewing Adler & Posner's *New Foundations of Cost-Benefit Analysis* (Harvard University Press 2006)) (with David Driesen & Amy Sinden)** –discussed the book's attempt to lay a theoretical foundation for CBA, highlighting its merits and pointing out the weak areas in the theory, ultimately determining that another mechanism for regulatory control could work better in real world situations
- ***The Consultants' Republic*, 121 HARV. L. REV. 2041 (2008)** –analyzed *Break Through: From the Death of Environmentalism to the Politics of Possibility*, by Ted Norhaus and Michael Shellenberger, finding that their goal of using marketing skills, as opposed to science, in climate change policy would be “ultimately self-undermining” and could result in a “nightmare” situation; proposed questions needed to be answered in environmental politics to avoid this type of situation
- ***Introduction: Climate Change and Consumption*, 38 ENVTL. L. REP. 10825 (2008) (with Michael P. Vandenberg)** –addressed the consumer as a source of climate change legislation, discussed the lack of regulations against consumers thus far in the legislation, and provided possible mechanisms by which consumer consumption could be regulated
- ***Like a Nation State*, 55 UCLA L. REV. 1621 (2008) (with Bernadette A. Meyler)** – assessed states' ability to align with international laws, using California's GHG emission trading system as an example, and enumerated the legal roadblocks in accomplishing such regulation
- ***Foreword: Making Sense of Information for Environmental Protection*, 86 TEX. L. REV. 1347 (2008) (with James Salzman)** – introduced the research in the symposium and provided a model by which a reader could understand the connection between the wide range of topics discussed, linked through the questions of what scientific information must be studied, how the information could be acquired, and how this acquired information could be spread throughout the legal community to be applied to legislation
- ***Amicus Brief of Economists Ackerman et al. in Entergy v. Riverkeepers*, working paper series (2008) (with David Driesen), available at SSRN: <http://ssrn.com/abstract=1288830> – summarized the brief filed by economists criticizing the use of CBA by the EPA, favoring engineering analysis and financial analysis of the costs, instead of the benefits**
- ***Discounting... On Stilts*, 74 U. CHI. L. REV. 119 (2007)** – discussed the use of discounting in CBA and its shortcomings in terms of fairness and farsightedness, especially in the area of environmental law
- ***The Jurisprudence of Experimental Law and Economics*, 163 J. INSTITUTIONAL & THEORETICAL ECON. 187 (2007).**

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- **Perspectives**
 - ***Medical Malpractice***
 - ***Cost-Effectiveness Analysis, Risk-Risk Analysis, and Other 'Cost-Benefit Cousins'***
- **Blogs**
 - ***SCOTUS Grants Cert in AEP v. Connecticut; Why the Threat of Tort Liability Should Remain as Part of the Balance of Powers*, CPRBlog, December 6, 2010,**

- <http://www.progressivereform.org/CPRBlog.cfm?idBlog=BCB61249-A9B7-A1FF-281A238733DED3C3> – discussed the role of the judiciary in climate nuisance cases, the courts’ reasoning for quick dismissal in the past, and the problem of preemption of EPA’s greenhouse gas regulations
- ***Bad Times for Good Government*, CPRBlog, Sept. 27, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=534DBCD3-E0D8-77CD-87AF3DAC4667FE59>** - discussed the two recently published books by CPR scholars: *The People's Agents and the Battle to Protect the American Public*, by Rena Steinzor and Sid Shapiro, and *Facing Catastrophe: Environmental Action for a Post-Katrina World*, by Rob Verchick, and how the lessons learned in these books can be applied to the BP oil spill, as well as innumerable future disasters
 - ***The State of the Cost-Benefit State: What We Can Expect from Sunstein, ‘Nudge,’ and OMB on Regulatory Impact Analysis*, CPRBlog, February 5, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=9C909A89-C2F0-131F-ED41AA737CC39C3F>** – discussed Sunstein’s proposed regulatory “nudges”, why a reform of cost-benefit analysis would be a more effective way to regulate, and the opaque nature of regulatory impact analysis today
 - ***Lomborg Plays Economist-as-Philosopher-King on Climate Change*, CPRBlog, Sept. 5, 2009, <http://www.progressivereform.org/CPRBlog.cfm?month=09%2F01%2F2009&start=31>** –discussed the ideas of climate engineering proposed by Lomborg and his panel, who contend that options other than tax programs would be more beneficial in fighting climate change

Other

- ***Democratizing Knowledge Generation*, Discussion Paper prepared for the Yale-UNITAR Conference on Environmental Governance and Democracy, May 10-11, 2008, New Haven, CT**
- ***Biased Assimilation, Polarization, and Cultural Credibility: An Experimental Study of Nanotechnology Risk Perceptions*, Woodrow Wilson International Center for Scholars Project on Emerging Technologies Research Brief No. 3 (2008) (with Dan M. Kahan, Paul Slovic, Donald Braman, John Gastil, and Geoffrey Cohen)** –discussed the potential for public interest in nanotechnology and “how the perceived cultural outlooks of information sources would affect public reactions to arguments about the risks and benefits of nanotechnology”

Forthcoming

- ***Environmental Policy and Law* (Island Press, Foundations of Contemporary Environmental Studies series) (with Daniel Esty)**
- **“The Missing Market Instrument: Environmental Assurance Bonds and Nanotechnology Regulation,” in *The Nanotechnology Challenge* (David Dana ed., forthcoming Cambridge University Press)**
- **“‘You Call, I Hammer!’: Adversarial Legalism and Social Influence,” in *Ideology, Psychology, and Law* (Jon Hanson ed., forthcoming, Oxford University Press)**
- ***Prods and Pleas: Limited Government in an Era of Unlimited Harm*, 121 YALE L. J. ___ (forthcoming)(with Benjamin Ewing)**

Mary L. Lyndon

Subject: EHS risk evaluation

Articles

- ***Secrecy and Access in an Innovation Intensive Economy: Reordering Information Privileges in Environmental, Health, and Safety Law*, 78 U. COLO. L. REV. 465 (2007)** – discussed the disclosure obligations under EHS risk evaluation in the face of newly developing technology, as well as the role of EHS information in competition and risk management

Lesley K. McAllister

Subjects: *cap-and-trade programs, enforcement, Latin American environmental law*

Books

- ***Making Law Matter: Environmental Protection and Legal Institutions in Brazil*** (Stanford University Press, 2008).

Book chapters

- “Litigating Climate Change at the Coal Mine,” in *Adjudicating the Climate: Subnational, National, and Supranational Approaches* (William C.G. Burns & Hari M. Osofsky, eds., Cambridge University Press, 2009).

Articles

- ***The Enforcement Challenge of Cap-and-Trade Regulation***, 40 ENVTL. L. 1195 (2010)
- ***Dimensions of Enforcement Style: Factoring in Regulatory Capacity and Autonomy***, 32 L. & POL’Y 61 (2010)
- ***Enforcing Cap and Trade: A Tale of Two Programs***, 2 San Diego J. Climate & Energy L. 1 (2010)
- ***Reorienting Regulation: Pollution Enforcement in Industrializing Countries***, 32 L. & POL’Y 1 (2010) (with Benjamine van Rooij & Robert A. Kagan)
- ***Regional Climate Regulation: From State Competition to State Collaboration***, 1 SAN DIEGO J. CLIMATE & ENERGY L. 81 (2009) –analyzed the divergence between how common theories of competitive state behavior would have predicted states to behave in the absence of federal climate law and the actual patters of state collaboration evident in major regional initiatives, such as the Western Climate Initiative
- ***On Environmental Enforcement and Compliance: A Reply to Professor Crawford’s Review of Making Law Matter: Environmental Protection and Legal Institutions in Brazil***, 40 GEO. WASH. INT’L L. REV. (2009) –responded to a book review and set forth a research agenda for the study of environmental law and legal institutions in developing countries, calling for further research on the effectiveness of enforcement, environmental justice, environmental movement organizations and comparative law
- ***The Overallocation Problem in Cap-and-Trade: Moving Toward Stringency***, 34 COLUM. J. ENVTL. L. 395 (2009) –analyzed overallocation of allowances in four current cap-and-trade programs, finding that overallocation, whether occurring throughout the whole program or just at its onset, compromised the level of environmental benefits in the program as a whole; proposed ways in which cap-and-trade programs could be streamlined for environmental effectiveness
- ***Sustainable Consumption Governance in the Amazon***, 38 ENVTL. L. REP. NEWS & ANALYSIS 10873 (2008) – discussed the deforestation of tropical forests for export commodities in Brazil and how this market could be regulated in a sustainable way to benefit the parties involved, as well as the future generations that would be protected from the high level of GHG emissions from deforestation
- ***Revisiting a “Promising Institution”: Public Law Litigation in the Civil Law World***, 24 GA. ST. U. L. REV. 693 (2008) – described the group litigation mechanism in Brazilian law, and the highly influential role of the Brazilian Ministério Público, a position equivalent to that of the Attorney General in other countries
- ***Putting Persuasion Back in the Equation: Compliance in Cap and Trade Programs***, 24 PACE ENVTL. L. REV. 299 (2007) – described how the meaning of compliance will be altered in cap and

trade programs, particularly in the regulator-regulated relationship, and both the benefits and pitfalls this change will create in the efficacy of environmental regulation

- ***Beyond Playing “Banker”: The Role of the Regulatory Agency in Emissions Trading*, 59 ADMIN. L. REV. 269 (2007)** – discussed the roles of regulator and regulated of the cap and trade program under RECLAIM, and how this program can be used as a model for future environmental policy; found that the regulator might need a more proactive, strong program for regulation

Forthcoming

- ***Climate Change Law & Policy (Aspen, forthcoming 2012)***(with Hari M. Osofsky)
- ***Regulation by Third-Party Verification*, 53 B.C. L. REV. ____ (forthcoming, 2012)**
- ***“Adaptive Mitigation in the Energy Sector”***: setting forth a framework to assess how climate change is likely to affect energy demand and energy supply in the United States and proposing policies that could alleviate and adapt to those effects
- ***“Environmental Advocacy Litigation in Brazil and the United States”***: comparing the different form that public interest environmental litigation takes in Brazil and the US and analyzing its implications for environmental enforcement and public participation
- ***“Regulation and Self-Regulation in Mexican Environmental Law: The National Environmental Audit Program”***: describing the hybrid nature of the audit program and analyzing how it enables the government to sidestep the high barriers to the success of traditional regulation
- ***“The Kyoto Mismatch”***: exploring how the emissions trading architecture of the Kyoto Protocol is a mismatch with the enforcement capacity limitations in international law
- ***Models of Enforced Self-Monitoring for a Greenhouse Gas Cap and Trade Scheme*** –analyzing enforcement needs in federal climate legislation
- ***Environmental Enforcement in Mexico: 15 Years of NAFTA*** –analyzing how environmental law enforcement has changed since the passage of the North American Free Trade Agreement

Martha T. McCluskey

Subjects: constitutional law, tort, insurance, regulation, economic inequality

Book chapters

- “Defending and Developing Critical Feminist Theory as Law Leans Rightward,” in *Transcending the Boundaries of Law* (Martha Albertson Fineman, ed.)(Routledge 2010)
- “Razing the Citizen: Economic Inequality, Gender, and Marriage Tax Reform,” in *Gender Equality: Dimensions of Women’s Equal Citizenship* (Linda McClain and Joanna Grossman, eds.)(Cambridge University Press, 2009)
- “How Queer Theory Makes Neoliberalism Sexy: Economics and the Queer Challenge to Feminism,” in *Feminist and Queer Legal Theory: Intimate Encounters, Uncomfortable Conversations* (Martha Albertson Fineman, Jack Jackson, and Adam Romero, eds.) (Ashgate Press 2009)
- “Changing, Not Balancing, the Market: Economic Politics and ‘Social’ Programs,” in *Progressive Lawyering, Globalization, and Markets: Rethinking Ideology and Strategy* (Clare Dalton ed.)(William S. Hein 2007)

Articles

- *Taxing Family Work: Aid for Affluent Husband Care*, 21 COLUM. J. GENDER & L. 109 (2011)
- *How the Biological/Social Divide Limits Disability and Equality*, 33 WASH. UNIV. J. L. & POL’Y (2010)
- *Constitutionalizing Class Inequality: Due Process in State Farm*, ClassCrits Essay Issue, 56 BUFFALO L. REV. 1035 (2008)
- *Thinking with Wolves: Left Legal Theory After the Right’s Rise*, 54 BUFFALO L. REV. 1013 (2007)

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Forthcoming

- *A Field Guide to Law, Economics, and Justice* (book project)
- *Reinventing Buffalo: A City Battles for Real Development* (co-edited anthology project with Sam Magavern, Sara Faherty and Lou Jean Fleron)
- *How Money for Legal Theory Disadvantages Feminism*, invited for *Issues in Legal Scholarship* (BePress Online), special issue titled “Legal Feminism Now” (forthcoming)
- “From the Welfare State to the Militarized Market: Losing Choices, Controlling Losers,” in *Accumulating Insecurity, Securing Accumulation* (Shelley Feldman, ed.)(under review Univ. of Georgia Press)

Thomas McGarity

Subjects: tort law, preemption, public health, sound science

Books

- ***The Preemption War: When Federal Bureaucracies Trump Local Juries* (Yale University Press, 2008)** –discussed the somewhat secretive battle between federal preemption and tort law, and the impact on citizens when preemption is favored
- ***Bending Science: How Special Interests Corrupt Public Health Research* (Harvard Univ. Press, 2008)(with Wendy Wagner)**
 - -critical acclaim: *Bending Science* is so chock-full of ideas and insights...McGarity and Wagner's insight has large implications both for potential legal reforms and for public faith in the integrity of the scientific process...*Bending Science* is an immensely important book. It is one of quite a large number of books published recently on the manipulations of science by interest groups and the government. Yet even in this crowded field, *Bending Science* stakes out its own ground and makes an invaluable contribution to the debate over the role of science in public policy. --Lisa Heinzerling (*Texas Law Journal*)
 - -*Bending Science* is an intelligent and compelling blend of investigative journalism and theoretical analysis of the structural and functional flaws of the research enterprise, from the development of testable ideas to the use of its results for practical purposes...*Bending Science* an indispensable read for our current troubled times. All in all, this book is a must-read not only for researchers devoted to the scientific method but also for all who wish to become competent consumers of research that can influence their lives. The narrative is an eye-opener, which will provide the reader with tools to understand the research process and protect himself/herself from advocacy-based distortions. --Maura Pilotti (*Metapsychology*)

Book chapters

- **“The Regulation-Common Law Feedback Loop in Nonpreemptive Regimes” in *Preemption Choice: The Theory, Law and Reality of Federalism’s Core Question* (W. Buzbee, ed 2009)** – discussed the loop between regulatory agencies that collect information about a regulated business and lawyers seeking information to satisfy the large burden of proof of negligence, and how this loop could be used cooperatively; used the specific example of PFOA to demonstrate this feedback loop
- **“Frankenfood Free: Consumer Sovereignty, Federal Regulation, and Industry Control in Marketing and Choosing Food in the United States,” in *Labeling Genetically Modified Food* (P. Weirich, ed., 2007)** –discussed the constitutionality of labeling of GMO’s in the US, the steps the FDA has taken to address the legal issues surrounding labeling, and the current attitudes and discussions on this topic

Articles

- ***A Movement, a Lawsuit, and the Integrity of Sponsored Law and Economics Research*, 21 STAN. L. & POL’Y REV. 51 (2010)** – discussed the possibility that sponsored research leads to corruption, and whether corruption is present or not, that the integrity of the research is undermined by

the sponsorship, concluding that academics should be cautious in accepting research sponsorship

- ***The Perils of Preemption*, 44 SEP TRIAL 20 (2008)** –described the continuing use of preemption under the Bush regulatory “reforms,” citing a number of specific cases, and suggested reforms for the incoming executive branch and the judicial branch to prevent preemption from allowing businesses to harm consumers
- ***Hazardous Air Pollutants, Migrating Hot Spots, and the Prospect of Data-Driven Regulation of Complex Industrial Complexes*, 86 TEX. L. REV. 1445 (2008)** –described the current lack of regulation against HAPs by EPA, developing risks associated with HAPs around the country, and the EPA’s reluctance to incorporate technological advances into its regulatory scheme
- ***Corporate Accountability for Scientific Fraud: Ketek and the Perils of Aggressive Agency Preemption*, 58 EMORY L. J. 287 (2008)** –described the use of preemption in drug and medical device cases, the potential incidence of scientific fraud by the pharmaceutical companies in obtaining support for products and the specific example in the case of the antibiotic Ketek; the role of tort law in protecting consumers during this approval process, the specific case of *Buckman Co. v. Plaintiffs’ Legal Committee*, and the effect this ruling had on future cases
- ***The Complementary Roles of Common Law Courts and Federal Agencies in Producing and Using Policy-Relevant Scientific Information*, 37 ENVTL. L. 1027 (2007)** –describes the need for cooperation between regulatory agencies and attorneys in obtaining and applying useful scientific information to regulations, as well as the roadblocks and benefits of this cooperation

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- **White Papers**
 - ***The Truth About Torts: Defensive Medicine and the Unsupported Case for Medical Malpractice “Reform”* (with Sidney Shapiro, Nicholas Vidargas and James Goodwin) White Paper #1203, Washington, D.C.: Center for Progressive Reform (2012)** – discussed the trend toward capping damages in malpractice cases, how the limits against victims does not actually reduce health care costs or malpractice occurrences, and the limitations of the study often cited to promote that myth
 - ***Protecting the Public from BPA: An Action Plan for Federal Agencies* (with Noah Sachs, Rena Steinzor, Aimee Simpson and Matthew Shudtz) White Paper #1202, Washington, D.C.: Center for Progressive Reform (2012).**
 - ***Opening the Industry Playbook: Myths and Truths in the Debate Over BPA Regulation* (with Rena Steinzor, Matthew Shudtz and Lena Pons) White Paper #1107, Washington, D.C.: Center for Progressive Reform (2011).**
 - ***The BP Catastrophe: When Hobbled Law and Hollow Regulation Leave Americans Unprotected* (with William Andreen, et al.) White Paper #1101, Washington, D.C.: Center for Progressive Reform (2011).**
 - ***From Ship to Shore: Reforming the National Contingency Plan to Improve Protections for Oil Spill Cleanup Workers* (with Rebecca Bratspies, et al.) White Paper #1006, Washington, D.C.: Center for Progressive Reform (2010)** - analyzed the actions of OSHA and NIOSH in both preparation for, and in reaction to, the BP oil spill, and recommended five actions for future preparedness: requirement of Regional Response Teams by EPA and the Coast Guard, inclusion of OSHA into Regional Contingency plans for disasters, requirement of a NIOSH Health Hazard Evaluation for cleanup workers, consultation

- with workers of past spills and appropriation of executive funds for OSHA for its role in response to the oil spill
- ***Workers at Risk: Regulatory Dysfunction at OSHA* (with Sidney Shapiro, Rena Steinzor and Matthew Shutz), White Paper #1003, Washington, D.C.: Center for Progressive Reform (2010)** –discussed the lack of resources and staff that have led to the dysfunction at OSHA, especially in the area of enforcement, and how these problems could effectively be remedied
 - ***“Fifty FDAs”: An Argument for Federal Preemption of State Tort Law That is Less than Meets the Eye* (with William Buzbee et al.), White Paper #911, Washington, D.C.: Center for Progressive Reform (2009)** –put to rest the unhelpful and disingenuous “” argument that proponents of federal regulatory preemption have trumpeted the last few decades
 - ***The Truth About Torts: Regulatory Preemption at the Federal Railroad Administration* (with William Funk et al.), White Paper #910, Washington, D.C.: Center for Progressive Reform (2009)** –discussed the reasons why a complementary system of federal regulatory standards and state common law is the best way to achieve railroad safety
 - ***Congress’s Authority to Correct the Courts’ Preemption Decisions* (with Buzbee et al.) White Paper #905, Washington, D.C.: Center for Progressive Reform (2009)** – discussed the major Supreme Court cases where preemption has been used and whether Congress has authority to amend the interpretation of preemption to make its intent clearer, finding that Congress, indeed, has this power and should utilize it
 - ***The Truth about Torts: Rethinking Regulatory Preemption and Its Impact on Public Health* (with Buzbee et al.) White Paper #902, Washington, D.C.: Center for Progressive Reform (2009)** –sixth paper in the series, describing the state of torts and preemption in the US; urged Congress to create anti-preemption legislation for clarity in future court cases, specifically define the word “requirements” in the legislation, and write cross-cutting legislation to ensure proper balance between agencies; urged President Obama and the Executive Branch to review the changes enacted by the Bush administration, and revise Executive Order 13132 to reign preemption back in to its original intention and ensure proper procedures are established to protect federalism
 - ***Reinvigorating Protection of Health, Safety and the Environment: The Choices Facing Cass Sunstein* (with John S. Applegate et al.), White Paper #901, Washington, D.C.: Center for Progressive Reform , 2009** –discussed the need for regulatory reform from the Obama administration, suggesting an end to most cost-benefit analyses, more funding for oversight agencies, and a more active role for OIRA in coordinating regulatory agencies; discussed Sunstein’s views on, and CPR’s responses to, CBA, CBA’s vulnerability to challenge or manipulation, discounting, the precautionary principle, grouping agencies under the executive branch, OSHA’s Constitutionality and climate change legislation
 - ***Limiting Federal Agency Preemption: Recommendations for a New Federalism Executive Order* (with William Funk et al.) White Paper #809, Washington, D.C.: Center for Progressive Reform (2008)** –urged President Obama to create a new executive order to replace 13132, outlining the benefit of multiple levels of government: preventing agencies from abusing the power of preemption, discouraging ceiling preemption, separating state positive law and state tort law, encouraging state tort laws to allow consumers to sue agencies if regulations are not enforced, and providing a more effective way to monitor regulation enforcement

- ***The Truth about Torts: Regulatory Preemption at the Consumer Product Safety Commission (with William Funk et al.) White Paper #807, Washington, D.C.: Center for Progressive Reform (2008)*** –discussed the push by agencies like FDA and NHTSA to use preemption to prevent consumers from being able to sue them under tort law; found that a blend of tort law and regulatory standards best protect consumers and that preemption would allow corporations to have weak regulation without fear of legal proceedings, putting consumers at great risk
- ***The Truth About Torts: Regulatory Preemption at the National Highway Safety Administration (with William Funk et al.) White Paper #804, Washington, D.C.: Center for Progressive Reform (2008)*** – discussed how car manufacturers are claiming preemption to dismiss claims in courts by injured consumers, and urged the continuation of tort law, since NHTSA is very underfunded to keep up with regulations, tort law allows for the legal system to provide compensation when regulations are not met, and transparency and providing product information are better achieved through tort law
- **Conferences**
 - ***Conference on Regulatory Preemption, December 17, 2008***
- **Comments**
 - comments submitted to OIRA on **Obama regulatory review process, March 16, 2009 (with Applegate, et al., collectively as the CPR Board)**
- **Letter**
 - to the Chairman of the Administrative Conference of the United States, Paul Verkuil, on the event with the Chamber of Commerce about the “incorporation by reference” regulatory policy, **April 27, 2012 (with Rena Steinzor)**
- **Perspective**
 - ***Estimating Regulatory Costs***
- **Blogs**
 - ***Two Years After Upper Big Branch Disaster, Where Are the Reforms? CPRBlog, April 5, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=82A69C6E-05B1-9A9F-ADC803376A6606E9>*** – discussed the details of the case after investigations, and the surprising fact that no new legislation has been enacted as a result of the tragedy
 - ***The McAteer Report: A Mine Safety Blockbuster, CPRBlog, May 19, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=08A643D3-076B-538D-FE8DB45D4E2F6240>*** - discussed the report's unbiased look at the Massey mining disaster, the differences between the government's and the independent group's reports, and the likelihood of implementation of recommendations the McAteer report promotes
 - ***The New Consumer Protection Agency and Bureaucratic Reality, CPRBlog, July 28, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=1932CB3E-BEEE-F9BA-5F4130C9F2A7B0F3>*** – discussed the creation and role of the new Consumer Financial Protection Bureau and its possible leadership by Elizabeth Warren, a seemingly well-qualified candidate based on the author’s expertise and experience with Ms. Warren
 - ***Amendment on Consumer Financial Protection Could Block Citizens from Taking Banks to Court, CPRBlog, October 13, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=4ED2E264-9F42-0574-402041C23A7FB142>*** –discussed the potential preemption issues with the Consumer

- Financial Protection Agency, and the potential legal risks for consumers, despite the creation of the agency as a means to protect consumers
- ***New FDA Database on Food Safety Has Good Potential. The Proof Will be in the Pudding***, CPRBlog, September 9, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=A0953AFA-EFFE-DBF8-FBD96BD042A4466E> –discussed the FDA’s implementation of the Reportable Food Registry for reports from food manufacturers of foodborne illnesses, which is a great step toward consumer health and safety, but will still need to be monitored to see if the program is properly implemented and acted on
 - ***Waxman’s Food Safety Bill Would Go a Long Way Toward Fixing Regulatory Failures***, CPRBlog, May 29, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=892D16A0-1E0B-E803-CA499F3049007A5A> –discussed the Waxman bill’s proposed rules for food safety, including a registry and fee for every food facility and more frequent inspection requirements
 - ***One More Thought on the Entergy Case and Cost-Benefit***, CPRBlog, April 3, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=68587EAA-1E0B-E803-CA374132ABC78E86> –described “soft variables” in CBA, typically under-studied factors that are difficult to put a price on but beneficial in some way, and how the courts tend to disregard such variables
 - ***Bush Administration Deregulatory Agenda Finishing Strong***, CPRBlog, November 7, 2008, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=74351FAA-1E0B-E803-CA2348C4395E80BE> –described Bush’s midnight regulations, focusing on EPA’s permitting process for Concentrated Animal Feeding Operations waste, occupational safety standards decision-making, and changed rules for implementing ESA
 - ***The Wyeth Case***, CPRBlog, November 3, 2008, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=6288A34A-1E0B-E803-CAA762F77048B944> –discussed the circumstances of the Levine case against Wyeth and the far-reaching implications of the preemption decision by the Supreme Court
 - ***The Golden Arches Coffee Myth***, CPRBlog, July 28, 2008, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=6C9C7988-1E0B-E803-CA8FF41EBOF34FFF> –discussed the often-cited Liebeck case against McDonalds, and dispelled the myths surrounding the facts of the case that were promulgated by the media

Testimony/Op-eds

- **“Texas water will suffer under plan to lower standards,” in the Austin American-Statesman, March 18, 2010** – op-ed discussing the TCEQ’s proposal to downgrade existing water quality standards, and the reasoning against, and possible illegality of, this action
- **Thomas McGarity** - August 4, 2009: on preemption of state tort laws in cases involving medical devices, before the Senate HELP Committee
- **“A Rare Win for Consumers,” in the Dallas Morning News, March 6, 2009** (reprinted in the Houston Chronicle, March 7, 2009, and the Austin American-Statesman, March 9, 2009) –op-ed describing the victory for Levine in *Wyeth v. Levine*, holding Wyeth accountable for Levine’s injuries after an improperly labeled drug was administered to her; the Supreme Court ruled against Wyeth’s claim that the FDA approval of the initial label for the drug preempted any civil suits

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- **“Court Takes Up Preemption Doctrine,”** commentary in the **Austin American-Statesman, November 28, 2008** – described the case of *Wyeth v. Levine* and discussed how the Supreme Court’s decision whether to uphold the jury-decided award or favor preemption could shape tort law interpretation in the future

Nina Mendelson

Subjects: tort law, preemption, Waxman-Markey bill

Book chapters

- **“Six Simple Steps to Increase Contractor Accountability,”** in *Government by Contract: Outsourcing and American Democracy*, (Jody Freeman & Martha Minow, eds., Harvard University Press, 2009) –discussed the potential transparency and safety issues in contractors fulfilling roles formerly fulfilled by government agencies, reforms to the legal framework by which these problems could be addressed, and six specific steps that would make contractors legally accountable for their actions
- **“Preemption and Theories of Federalism,”** in *Preemption Choice: The Theory, Law, and Reality of Federalism's Core Question* (with Robert R.M. Verchick) (William Buzbee, ed., Cambridge University Press, 2009) –discussed when and why preemption is legally supported, and how judicial decision making on preemption is influenced, particularly in three areas: “cases involving asserted preemption by agency action, cases involving areas of traditional federal or state concern, and cases involving statutory ‘savings’ clauses”

Articles

- ***Another Word on the President's Statutory Authority Over Agency Action*, 79 FORDHAM L. REV. 2455 (2011)**
- ***Foreword: Rulemaking, Democracy, and Torrents of E-mail*, 79 GEO. WASH. L. REV. 1343 (2011)**
- ***Disclosing “Political” Oversight of Agency Decision Making*, 108 MICH. L. REV. 1127 (2010)** – discussed the patterns evoked by presidential oversight of agencies, how this oversight has caused changes in rulemaking without disclosure of such influence, and how transparency is necessary in improving presidential oversight of agencies
- ***Quick Off the Mark? In Favor of Empowering the President-Elect*, 103 NW. U. L. REV. COLLOQUY 464 (2009)** –discussed a change from focusing on outgoing presidents, especially their “midnight rulemaking,” to focusing on the president-elect to make the transition shorter, clearer and more aligned with the president-elect’s campaign promises, as well as presenting three potential ways in which this could be successfully accomplished
- ***A Presumption Against Agency Preemption*, 102 NW. U. L. REV. 695 (2008)** –argued that unless Congress explicitly states that an agency has preemption power, federal agencies should not have preemptive power, and cited specific cases in which agencies have attempted to use preemption in the courts
- ***The California Greenhouse Gas Waiver Decision and Agency Interpretation: A Response to Galle and Seidenfeld*, 57 DUKE L.J. 2157 (2008)** –discussed Galle and Seidenfeld’s suggestion that agency preemption would result in more transparency and accountability in preemption decision making, agreeing that more oversight of these decisions is necessary, but arguing that the authors’ somewhat reserved stance on the issue pointed out some of the shortcomings of agency preemption
- ***Regulatory Beneficiaries and Informal Agency Policymaking*, 92 CORNELL L. REV. 397 (2007)** - discussed the use of guidance documents by agencies to determine policies, and how this use, while it has some benefits, does not allow the beneficiaries of the regulations to stay involved in the policymaking

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- **White Papers**
 - ***The Truth About Torts: Regulatory Preemption at the Federal Railroad Administration (with Tom McGarity, et al.), White Paper #910, Washington, D.C.: Center for Progressive Reform (2009)*** –discussed the reasons why a complementary system of federal regulatory standards and state common law is the best way to achieve railroad safety
 - ***The Truth about Torts: Rethinking Regulatory Preemption and Its Impact on Public Health (with Buzbee et al.) White Paper #902, Washington, D.C.: Center for Progressive Reform (2009)*** –sixth paper in the series, describing the state of torts and preemption in the US; urged Congress to create anti-preemption legislation for clarity in future court cases, specifically define the word “requirements” in the legislation, and write cross-cutting legislation to ensure proper balance between agencies; urged President Obama and the Executive Branch to review the changes enacted by the Bush administration, and revise Executive Order 13132 to reign preemption back in to its original intention and ensure proper procedures are established to protect federalism
 - ***Limiting Federal Agency Preemption: Recommendations for a New Federalism Executive Order (with Thomas McGarity et al.) White Paper #809, Washington, D.C.: Center for Progressive Reform (2008)*** –urged President Obama to create a new executive order to replace 13132, outlining the benefit of multiple levels of government: preventing agencies from abusing the power of preemption, discouraging ceiling preemption, separating state positive law and state tort law, encouraging state tort laws to allow consumers to sue agencies if regulations are not enforced, and providing a more effective way to monitor regulation enforcement
 - ***The Truth about Torts: Regulatory Preemption at Consumer Product Safety Commission (with Thomas McGarity et al.) White Paper #807, Washington, D.C.: Center for Progressive Reform (2008)*** –discussed the push by agencies like FDA and NHTSA to use preemption to prevent consumers from being able to sue them under tort law; found that a blend of tort law and regulatory standards best protect consumers and that preemption would allow corporations to have weak regulation without fear of legal proceedings, putting consumers at great risk
 - ***The Truth About Torts: Regulatory Preemption at the National Highway Safety Administration (with Thomas McGarity et al.) White Paper #804, Washington, D.C.: Center for Progressive Reform (2008)*** – discussed how car manufacturers are claiming preemption to dismiss claims in courts by injured consumers, and urged the continuation of tort law, since NHTSA is very underfunded to keep up with regulations, tort law allows for the legal system to provide compensation when regulations are not met, and transparency and providing product information are better achieved through tort law
 - ***Cooperative Federalism and Climate Change: Why Federal, State and Local Governments Must Continue to Partner (with William Andreen et al.), White Paper #803, Washington, D.C.: Center for Progressive Reform (2008)*** –discussed the growing concerns of addressing climate change in environmental law, ultimately suggesting that the US continue to utilize state and local governments, as opposed to federal preemption
- **Conferences**
 - ***State Summit on Climate Change and Preemption, March 25, 2009*** – with the National Association of Clean Air Agencies
 - ***Conference on Regulatory Preemption, December 17, 2008***

- **Blogs**
 - ***SCOTUS Decision in Sackett v. EPA Weakens Government's Ability to Respond to Urgent Threats to Water Quality***, CPRBlog, March 21, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=373CE032-DE6C-17CA-1662860FB5C44EA0> – discussed the ongoing case and its implications for EPA's power
 - ***In Sackett v. EPA, Troubling Potential for SCOTUS to Undermine Government's Ability to Promptly Respond to Environmental Threats***, CPRBlog, January 4, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=A706AFFB-D70B-9B5D-C6405D7D8237CEF9> – the Sackett wetland case and its future implications on environmental regulations if the court decides that the couple should be granted a pre-enforcement judicial hearing
 - ***Holding Government and Emitters Accountable Under Boxer-Kerry***, CPRBlog, October 7, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=2F17F886-C581-00E2-AAB0D92BE02B2551> – discussed the accountability and enforcement mechanisms of Boxer-Kerry, focusing on the need for citizen enforcement suits and offset accountability
 - ***An Attack on Waxman-Markey That's a False Alarm***, CPRBlog, April 16, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=AF31B9BC-1E0B-E803-CA519F890CBF72F7> – refuted the notion in the *Washington Times* that the bill created a new realm of citizen standing in the court system, pointing out the other environmental statutes that allow citizen enforcement and the benefits provided by this ability
 - ***Waxman-Markey: Citizen Enforcement Suits***, CPRBlog, April 2, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=64B248D0-1E0B-E803-CA880EBEFB8ADC32> – discussed the protective measures in the bill that give citizens the ability to sue businesses with environmental violations, despite the recent court decisions that made citizen suits more difficult to prove
 - ***Wyeth Ruling a Victory for Consumers***, CPRBlog, March 4, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=D2FE20B0-1E0B-E803-CA18A6630FE3B1AE> – described how the Levine case favoring the plaintiff will protect consumers from federal preemption in the future, as well as for Levine herself
 - ***The Omniscient Agency Myth***, CPRBlog, July 31, 2008, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=7A07FE1E-1E0B-E803-CA1ED80092C27B4B> – discussed the need for tort cases in consumer protection to promote industry vigilance, quick action in the event of a harmful mistake, and consumer compensation

Other

- ***"Beware Dangers of Roof-crush Rule," with William Funk and Sidney Shapiro; op-ed in Winston-Salem Journal, August 4, 2008*** – discussed how the rule would allow for preemption against future claims about roof strength, despite the relatively small amount of consumer protection offered in the rule

Forthcoming

- ***"Midnight Rulemaking and Congress," in Transitions***, edited by A. Sarat. Univ. Alabama Press, forthcoming

Joel A. Mintz

Subjects: *climate change, enforcement, sustainable development, hazardous waste*

Books

- ***Law for Sustainability* (2011)**(co-edited with Professor John C. Dernbach)
- ***Fundamentals of Municipal Finance* (ABA 2010)**(with Larry A. Bakken and Ronald H. Rosenberg)
- ***State and Local Government Taxation and Finance in a Nutshell, 3rd ed.* (West Group, Inc., 2007) (with Peter Salsich)**
- ***Environmental Enforcement: Cases and Materials* (Carolina Academic Press, 2007)**(with Clifford Rechtschaffen & Robert Kuehn)

Book chapters

- **“Enforcement,”** in ***The Law and Politics of Sustainability* (Berkshire Publishing Company 2011)**
- **“Few Changes and Little Progress: U.S. Hazardous Waste Management and Sustainable Development in the Past Five Years,”** in ***Agenda for a Sustainable America* (John C. Dernbach, ed.)(Environmental Law Institute, 2009)** –discussed the move toward sustainability in hazardous waste management, and the continued need for legal action to accomplish this goal; defined a specific goal of phased decreases of hazardous waste production, and the legal reforms necessary for this goal to be accomplished

Articles

- ***Throwing Precaution to the Wind: NEPA and the Deepwater Horizon Blowout*, 2 GEO. WASH. J. ENERGY & ENVTL. L. 62 (2011)**(with Zellmer and Glicksman)
- ***Review of Large-Scale Ecosystem Restoration: Five Case Studies from the United States*, 40 ENVTL. L. 335 (2010)** – discussed the book by Mary Doyle and Cynthia Drew, praising its unique nature, clear language and focus on restoration, while mentioning a few shortcomings, like the redundancy of information over chapters
- ***Introductory Note: A Perspective on Pakistan’s Chief Justice, Judicial Independence, and the Rule of Law*, 15 ILSA J. INT’L & COMP. L. 1 (2009)** – described the events of Chief Justice Chaudhary’s actions as Chief Justice, President Musharraf’s dismissal and house arrest of Chaudhary and other justices and attorneys in Pakistan, and the continuing struggle for an independent judiciary in Pakistan
- ***Presidential Leadership and the Challenge of Global Climate Change*, 39 ENVTL. L. REP. 10045 (2009)** –addressed the difficulties a president faces in climate change regulation, but proposed specific ways in which the Obama presidency can create sound global climate change policy, after studying a survey by presidential scholars of how US presidents can influence policy
- ***Taking Congress’s Words Seriously: Towards A Sound Construction of NEPA’s Long Overlooked Interpretation Mandate*, 38 ENVTL. L. 1031 (2008)** –described subsection 102(1) of NEPA, its history, interpretation and application, and how it was used in *National Ass’n of Home Builders v. Defenders of Wildlife*

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- **White Papers**
 - ***Regulatory Blowout: How Regulatory Failures Made the BP Disaster Possible, and How the System Can Be Fixed to Avoid a Recurrence*** (with Flournoy, et al.) White Paper #1007, Washington, D.C.: Center for Progressive Reform (2010).
 - ***“Reforming the National Environmental Policy Act,” CPR for the Environment: Breathing New Life in the Nation’s Major Environmental Statutes, A Legislative Sourcebook of Progressive Ideas for Members of Congress and Staff*** (Alyson Flournoy and Matthew Shultz, eds.), White Paper #701, Washington, D.C.: Center for Progressive Reform, 2007 – assessed NEPA and suggested improvements, including improved oversight and Environmental Impact Statements, and a provision to require agencies to employ the most environmentally beneficial mitigation techniques
- **Perspective**
 - ***Environmental Enforcement***
- **Blogs**
 - ***Cutting EPA’s Enforcement Budget: What It Might Mean***, CPRBlog, April 12, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=A6A2E941-98B3-8007-9CEEB42458BED78E> – the proposed cutbacks and how they would lead to a less robust, effective EPA without helping the country’s budget problems
 - ***After Sackett: What Next for Administrative Compliance Orders?*** CPRBlog, March 24, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=4530CE02-CDDC-F5B7-080BE0BBA3E97180> – EPA’s continuing enforcement issues and the implications for future administrative compliance order challenges
 - ***Encouraging News About Everglades Restoration***, CPRBlog, August 26, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=AC85216E-FC6B-529B-997DCE5215597D90> – discussed the “sugar deal,” in which the Florida Water Management District purchased land in order to protect the ecosystem, as well as the events leading up to the purchase and decision
 - ***Assessing the Federal Response to the Deepwater Horizon Catastrophe***, CPRBlog, May 25, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=D000AEEA-F52C-D027-C1BD45BF750E6EE0> – discussed the Obama administration’s continuing support of expanded offshore drilling projects, the DOI’s Minerals Management Service’s granting of new permits for offshore drilling, and MMS’s continuing role as royalty collector while granting permits
 - ***Is It Time to Depoliticize EPA’s Regional Administrators?*** CPRBlog, November 20, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=11FBD6EE-E77D-CAFO-A731FA721EAEBF01> –discussed the slow process of appointing regional administrators to the EPA and whether these positions should be political appointments at all, because their association with Senatorial approval tends to lead to less strict state agency oversight
 - ***Lisa Jackson’s Memo on CWA Enforcement -- Looks Like a Good First Step***, CPRBlog, July 15, 2009, <http://www.progressivereform.org/CPRBlog.cfm?fkScholar=37> – discussed the memo, which called for stricter compliance and enforcement of CWA, the current issues resulting in the non-compliance, and ways in which these problems could be resolved

Other

- book review of Karl Boyd Brooks, *Before Earth Day* (University of Kansas Press, 2008)

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- **book review of Mary K. Doyle and Cynthia Drew, *Large Scale Ecosystem Restoration* (Island Press, 2008)**

Catherine A. O’Neill

Subjects: *environmental justice, risk regulation, mercury*

Book

- ***Environmental Justice: Law, Policy, and Regulation* (2d ed., 2009)(with Rechtschaffen and Gauna)**

Book chapters

- **“The Mathematics of Mercury,”** in ***Reforming Regulatory Impact Analysis* (Winston Harrington, Lisa Heinzerling & Richard D. Morgenstern, eds., Resources for the Future press, 2009)** –analyzed the use of CBA in mercury emission regulation by EPA under the Clean Air Mercury Rule, finding that the information presented about the mercury emission in the regulatory impact analysis was used to blanket some of the facts and obscure the information; suggested improvements for regulatory impact analyses

Articles

- ***Environmental Justice in the Tribal Context: A Madness to EPA’s Method*, 38 ENVTL. L. 495 (2008)** –analyzed EPA’s lack of consideration for American Indian tribes in the determination of mercury regulation, particularly “the impact of its decision on tribes’ fishing rights”
- ***No Mud Pies: Risk Avoidance as Risk Regulation*, 31 VT. L. REV. 273 (2007)** –discussed the shift from risk reduction to risk avoidance, analyzed the positive and negative attributes of risk avoidance, suggesting that risk avoidance is often ineffective as a regulatory mechanism, and it would require a means of determining if the risk avoidance is just
- ***Protecting the Tribal Harvest: The Right to Catch and Consume Fish*, 22 J. ENVTL. L. & LITIG. 131 (2007)** – described the disparity between average consumption and tribal consumption of fish (and the contaminants the fish contain), and suggested ways in which the tribes could be better protected from the contaminants while still maintaining the cultural practices of their diets, such as through equal protection and water rights laws

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- **White Papers**
 - ***Climate Change and the Puget Sound: Building the Legal Framework for Adaptation* (with Rob Glicksman and Yee Huang, with other CPR scholars) White Paper #1108, Washington, D.C.: Center for Progressive Reform (2011).**
 - ***The Hidden Human and Environmental Costs of Regulatory Delay*, with Amy Sinden & Rena Steinzor, White Paper #907, Washington, D.C.: Center for Progressive Reform (2009)**– presenting three case studies showing how regulatory delay has harmed human health and the environment
 - ***Protecting Public Health and the Environment by the Stroke of a Presidential Pen: Seven Executive Orders for the President’s First 100 Days* (with Rebecca M. Bratspies, et al.) White Paper #806, Washington, D.C.: Center for Progressive Reform (2008)** – proposed seven executive orders for the incoming administration – 1., reduction of the federal government’s carbon footprint; 2., consideration of climate change in agency decision-making; 3., taking children into account in toxics regulation; 4., new

environmental justice legislation; 5., promotion of transparency in regulatory review; 6., prevention of preemption; and 7., a policy on sustainable public land use

- **Perspectives**
 - ***Preventing Mercury Pollution* (with Rena Steinzor & Lisa Heinzerling, former member)**
 - ***Environmental Justice at Stake* (with Lisa Heinzerling, former member, et al.)**
- **Blogs**
 - ***What Progress Looks Like: Washington State's Climate Change Preparedness Strategy*, CPRBlog, April 20, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=CFE742A5-ACF0-11D2-BC1A22D34ACC14C9> – discussed the strategy's goals of implementing climate change adaptive measures, although the strategy does not include how these changes will be implemented**
 - ***Three Chirps for Risk Reduction*, CPRBlog, January 24, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=11578D15-CB75-1B2C-CF970D853ACFF655> – the need for risk reduction as opposed to risk avoidance in light of the new studies confirming the broader problem of mercury in ecosystems**
 - ***Newest Research on Effects of Mercury Underscores Importance of Utility MACT*, CPRBlog, October 28, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=4B2A000B-D53A-4D8C-CCCD4165FC8D76FC> - discussed the physiological and ecological impacts of mercury as reported in the *Great Lakes Mercury Connections: The Extent and Effects of Mercury Pollution in the Great Lakes Region*, including the disproportionate effects on different populations and impact on piscivorous fish species**
 - ***New EPA Guidance Will Bring Some Needed Scrutiny of Institutional Controls at Toxic Sites, But Still Doesn't Require Checking That People are Actually Protected*, CPRBlog, October 5, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=D2607EE9-AD6C-8BCE-D753667BD46BCAEC> - discussed the continued reliance on Institutional Controls, as opposed to taking steps to prevent the pollution exposure in the first place**
 - ***EPA's Apparent Effort to Appease Environmentalists over the Boiler MACT Rule Not Very Appeasing*, CPRBlog, June 24, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=C3B49F8F-C562-26FC-6F74F3843A7DB78E> - discussed**
 - ***In Coming Utility MACT, EPA Has Clean Air Act Authority to Make Big Strides in Protecting Americans from Mercury Pollution*, CPRBlog, March 11, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=A5D283F4-AFDF-5002-893A583E01B38843> - the MACT standard determination**
 - ***EPA's New Boiler Rule Will Deliver Reduced –But Still Huge—Health Benefits*, CPRBlog, February 24, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=59016EBE-DB11-B917-EEE275F0A4CEC1B9> -**
 - ***EPA's New Guidance on Considering Environmental Justice in Rulemaking a Welcome First Step*, CPRBlog, July 27, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=14C3F3B2-FF9F-FAC1-ACF7A9916F6ED03B> – discussed the guidance measures that call for the consideration of disproportionate adverse effects of environmental decisions on low-income communities, indigenous populations, tribes and racially diverse areas**

- ***EPA Chides Polluters for Downplaying Risk From Portland Harbor Superfund Site; Still, Must Honor Fishing Tribes' Rights***, CPRBlog, February 11, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=BD70A2D7-0FB0-1A21-C6BCDB584EA34E0D> – discussed the Lower Willamette Group's downplaying of risks associated with the Superfund site in Portland, Oregon by altering fish consumption rates, and the more specific risks posed to tribal communities' fishing rights
- ***Reducing Mercury Emissions from Coal-Fired Power Plants: Yes We Can (And Could Have, Years Ago)***, CPRBlog, October 26, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=91B652F9-E88B-F379-A7E7F730CAC7C5BE> –discussed Michigan's recent regulation of emissions, the Bush administration's push against regulation, and the success and innovation of twenty three states' actions to regulate coal-fired power plants despite the Bush administration
- ***EPA Touts Remedy That Leaves Fish Off LA Coast Contaminated with DDT and PCBs for Years***, CPRBlog, October 16, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=5D95D856-D9AE-EF76-73E0E4999E465A7D> – discussed the EPA's announcement of its successes in the cleanup of the Palos Verdes Shelf and its outreach programs to prevent contaminated fish consumption, and how these current strategies are reactive and delayed
- ***USGS's Study on Mercury in Fish: Trouble in the Water***, CPRBlog, August 19, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=34816E32-D535-3FF1-8852BFD5DDF274A6> –discussed the recent findings that every fish studied contained mercury in its tissues, the history of avoidance tactics promoted by the Bush administration, and the main physiological concerns for citizens and their children with regards to mercury poisoning
- ***New Fish Consumption Advisory in California: Another Lesson in the Problems with 'Risk Avoidance' Approach***, CPRBlog, July 2, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=3BB2209F-DB47-2532-266AE5E46DE4BD75> –discussed the new advisory and the reliance on avoidance as opposed to proactive limitations or recovery projects, as well as the history of DDT dumping in the area and environmental justice issues related to the literacy requirements of warning signs and the disproportionate affects on lower income and lower educated citizens
- ***Fish Tales from West Virginia***, CPRBlog, May 26, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=666E5F8E-1E0B-E803-CA8FB8D956561BA5> –discussed the slippery slope logic of West Virginia's Department of Environmental Protection, asking for more lenient mercury emissions standards due to the lowered fish consumption of its citizens after the statewide fish consumption advisory

Testimony/Op-eds

- **Catherine O'Neill** - May 12, 2009: on the need to act on the remaining mercury-emitting chlor-alkali plants in the United States, before the U.S. House Energy and Commerce Committee's Subcommittee on Commerce, Trade, and Consumer Protection
- ***Have West Virginia Officials Lost Their Minds When It Comes to Water Safety Standards? (2009)***, available at http://www.alternet.org/story/140395/have_west_virginia_officials_lost_their_minds_when_it_comes_to_water_safety_standards/ -described the logic used by West Virginian officials to argue that they should be able to allow higher mercury contamination levels in their waters

because less fish is consumed in West Virginia, mainly because the West Virginian officials have put out an advisory for its citizens to not eat fish due to high contamination rates

- **“The cost-benefit dodge,” op-ed in the Philadelphia Inquirer, May 12, 2009 (with Amy Sinden)**
–discussed the use of CBA in environmental regulation in light of Cass Sunstein’s nomination for “regulatory czar” in the Obama administration

Clifford Rechtschaffen

Subjects: common law, compliance, environmental justice

Book chapters

- ***Creative Common Law Strategies for Protecting the Environment (Clifford L. Rechtschaffen & Denise E. Antolini, eds., 2007)*** –described how common law can be utilized with environmental law, and provided case studies highlighting how this was achieved; critical acclaim: "A fascinating review of the varied ways environmental activists are increasingly turning to the common law to remedy the effects of several decades of federal courts' anti-environmental activist decisions. *Creative Common Law Strategies* provides environmental practitioners with helpful and potentially adaptable strategies. This book deserves a place in the library of all lawyers committed to environmental and social justice." --*Trial Magazine*

Articles

- ***Common Law Remedies: A Refresher, 38 ENVTL. L. REP. NEWS & ANALYSIS 10114 (2008) (with Denise Antolini)*** –discussed a number of recent cases in which common laws are cited to enforce environmental regulations, as well as the areas in which federal laws preempt state and local laws
- ***Fighting Back Against a Power Plant: Some Lessons from the Legal and Organizing Efforts of the Bayview-Hunters Point Community, 14 HASTINGS W.-N.W. J. ENVTL. L. & POL'Y 537 (2008)*** – described the low income community in San Francisco that housed two power plants, in which the government then attempted to add a third power plant, and the community's social and legal response; utilized this example to demonstrate how other communities might use the same methods in other local environmental justice cases
- ***Strategies for Implementing the Environmental Justice Vision, 1 GOLDEN GATE U. ENVTL. L.J. 321 (2007)*** –discussed the improvements and setbacks in the promotion of environmental justice in the US, and discussed how many of the programs designed to promote environmental justice have not been implemented in most cases
- ***Note on Inaugural Edition, 1 GOLDEN GATE U. ENVTL. L.J. 1 (2007) (with Jennifer A. Maier)*** – introduced the symposium titled, *1982 Warren County Protests: Environmental Justice Twenty-Five Years Later* and the first edition of this journal, by highlighting the goals of the journal and the need for strong environmental lawyers in the face of climate change
- ***Shining the Spotlight on European Union Environmental Compliance, 24 PACE ENVTL. L. REV. 161 (2007)*** –described the problem of enforcement of EU environmental laws, and suggested spotlighting as a means for increased compliance, citing specific examples in the US and abroad where spotlighting was effective

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- **White Paper**
 - ***"Reforming the Emergency Planning and Community Right to Know Act," CPR for the Environment: Breathing New Life in the Nation's Major Environmental Statutes, A Legislative Sourcebook of Progressive Ideas for Members of Congress and Staff (Alyson Flournoy and Matthew Shudtz, eds.), White Paper #701, Washington, D.C.: Center for Progressive Reform, 2007*** – assessed EPCRA, and suggested improvements for dispersing more information in a more transparent and fast way
- **Perspectives**

Last Updated May 8, 2012

- ***Environmental Enforcement*** (with Joel Mintz)
- ***Environmental Justice at Stake*** (with Lisa Heinzerling, former member, et al.)
- ***The Public Right to Know***

William Rodgers

Subjects: *environmental law, Elwha management*

Book

- ***Climate Change: A Reader* (William Rodgers, et al. eds., Carolina Academic Press, 2011)**
- ***Environmental Law* (Thomson/West Supp. 2011) 4 vols.**

Book chapters

- **“Oil Pollution,”** in ***Gulf Coast Oil Disaster: Litigation and Liability* (West, 2011)**
- **“Oil Pollution Act of 1990,”** in ***Gulf Coast Oil Disaster: Litigation and Liability* (West, 2011)**
- **“Dam Building and Removal on the Elwha: A Prototype of Adaptive Mismanagement and a Tribal Opportunity,”** in ***The Evolution of Natural Resources Law and Policy* (Lawrence J. MacDonnell & Sarah F. Bates, eds., ABA Publishing, 2010)** –discussed the dams built on the Elwha River and the effect these dams had on the local salmon population, and how the application of adaptive management techniques would allow restoration and scientific exploration on this area
- **“The War of ‘Clever Hans’ on the Common Law of Environmental Law,”** in ***Creative Common Law Strategies for Protecting the Environment* (Clifford L. Rechtschaffen & Denise E. Antolini, eds., 2007)**

Articles

- ***The Environmental Laws of the 1970’s, They Looked Good on Paper*, 12 VT. J. ENVTL. L. 1 (2011)**
- ***Betty B. Fletcher: NEPA’s Angel and Chief Editor of the Hard Look*, 40 ELR 10268 (2010)**
- ***The Worst Case and the Worst Example: An Agenda for Any Young Lawyer Who Wants to Save the World from Climate Chaos*, 17 SE ENVTL L.J. 295 (2009) (with Anna T. Moritz)** – urges young lawyers to follow four basic principles: honor knowledge and learning, protect your institutions and love your country, plan and conduct you personal war on bad law, and reject defeatism and impossibility theorems, as stated in the article
- ***Punitive Decisionmaking*, 7 U. ST. THOMAS L.J. 89 (2009)** - discussed the aftermath of the Supreme Court decision to limit the punitive damages in Exxon Shipping v. Baker to the amount of the compensatory damages, citing erratic or unpredictable jury behavior in awarding damages
- ***NEPA’s Insatiable Optimism*, 39 ENVTL. L. REP. NEWS & ANALYSIS, 10618 (2009)** –analyzed NEPA and described the areas where the laws have been particularly successful, namely good science, investigative practices, and ongoing protection
- ***Biodiversity, Baking and Boiling, Endangered Species Act Turning Down the Heat*, 44 TULSA L. REV. 205 (2008) (with Anna T. Moritz, Kassie R. Siegel, & Brendan R. Cummings)** –discussed the imminent threat to biodiversity by climate change over the next century, the impact of losing biodiversity, and how ESA can be utilized to promote climate change regulations
- ***Tribal Government Roles in Environmental Federalism*, 21-WTR NAT. RESOURCES & ENV’T 3 (2007)** –discussed tribal government roles of sovereignty, trust and property interests, and how these roles could be applied to future environmental regulations and suits
- ***Energy & Resources*, 21 NAT. RESOURCES & ENV’T 3 (Winter 2007).**

Dan Rohlf

Subjects: environmental protection

Articles

- ***Geography and Recovery Under the U.S. Endangered Species Act*, 24 CONSERVATION BIOLOGY 395 (2010)(with co-authors)**
- ***Avoiding the 'Bare Record': Safeguarding Meaningful Judicial Review of Federal Agency Actions*, 35 OHIO N.U. L. REV. 575 (2009).**
- ***Conserving Endangered Species in an Era of Global Warming*, 38 ENVTL. L. REP. 10203 (2008) (with John Kostyack); reprinted in SR021 ALI-ABA 147 (2009)** – discussed the biological need for conservation of species, the shortcomings of ESA in the face of climate change, and how ESA could be amended to protect species in the future
- ***Introduction to Symposium – Law, Science, and the Environment Forum: A Meeting of the Minds*, 37 ENVTL. L. 931 (2007) (with Elizabeth C. Brodeen)** –discussed the shift in environmental law in light of climate change, including the need for cooperation in science, law, economics, etc, and the challenges created in intertwining and applying the information from each discipline into sound policy

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- **White Papers**
 - ***Making Good Use of Adaptive Management* (with Holly Doremus, et al.) White Paper #1104, Washington, D.C.: Center for Progressive Reform (2011).**
 - ***Regulatory Blowout: How Regulatory Failures Made the BP Disaster Possible, and How the System Can Be Fixed to Avoid a Recurrence* (with Flournoy, et al.) White Paper #1007, Washington, D.C.: Center for Progressive Reform (2010).**
- **Comments**
 - comments submitted to the U.S. Fish and Wildlife Service on **ways to improve Section 7 regulations, Aug. 3, 2009 (with Mary Jane Angelo, Holly Doremus & James Goodwin)**
 - comments submitted to the U.S. Fish and Wildlife Service on **interagency cooperation under the Endangered Species Act, Oct. 10, 2008 (with Camacho, et al.)**
- **Blogs**
 - ***Tester: Don't Get the (Toxic) Lead Out*, CPRBlog, May 10, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=C1645794-E21C-B329-5C8964526DA31C68>** - discussed the push for lead to be removed from bullets, the opposition from Senator John Tester, and the potential harm caused to his constituents who consume wild game attained through hunting, as well as to the environment and animals who consume fragments of lead bullets
 - ***The "State Sovereignty Wildlife Management Act" is as Ridiculous as it Sounds,*" CPRBlog, December 7, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=BE3FEC26-ECCF-A8EC-C6784C2712089F94>** – discussed the recent attempts to bring animal protection back from federal to state regulated, following the midterm elections, and the danger posed to animals, particularly wolf populations, in the American West

- ***FWS' Critical Habitat Area Designation for Polar Bears is Good News, but How Much Difference Will it Make?*** CPRBlog, November 30, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=9D3539C0-AEE7-F4AD-7B34BB3A997DD055> – discussed the large amount of land set aside to protect polar bears, but how this new habitat may not actually create any protection for the animals because of the practice of excluding greenhouse gas emissions as a threat and the June 2010 decision that allowed FWS to destroy protected lands
- ***What if MMS Had Followed the Law When Considering the Deepwater Horizon Permit?*** CPRBlog, May 19, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=B0B98CA9-D2F4-B015-E31F82A654341AA3> – discussed possible violations of environmental statutes, especially ESA, when MMS granted a Categorical Exclusion to Deepwater for offshore drilling under NEPA
- ***Republicans Senators Target Free Recoveries in Public Interest Suits Against Federal Agencies,*** CPRBlog, March 23, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=8B2BC68B-9FA5-030C-A6A849F619BB1707> - discussed the proposed bill that would force organizations to disclose the financial awards to attorneys who have sued government agencies, and how this disclosure could intimidate organizations into not pursuing legal action
- ***Senator Inhofe is on the case!***, CPRBlog, March 16, 2009, <http://www.progressivereform.org/CPRBlog.cfm?fkScholar=40> –discussed the Commerce Department's inspector general's inquiry into who leaked the information that the Bush administration was going to ban federal agencies from looking at GHG emissions' effects on endangered species

Other

- ***Good news, bad news on recovering the condor in Oregon,*** OregonLive, May 2, 2011
- ***Mercury and the DEQ: trading our health for economic gain,*** Portland Oregonian, September 4, 2009 –discussed how a cement company in Oregon deposits high levels of mercury and how the Oregon Department of Environmental Quality is fighting to maintain this company's dumping rights because of its economic benefits
- ***Can Federal Courts Save the Environment?*** Forest Magazine (2007) available at <http://www.fsee.org/forestmag/0901pov.shtml> -discussed the shift toward executive changes in environmental policy and whether the courts will be able to overcome these issues both currently and in the future, because of the high amount of Bush appointees in of the courts

Forthcoming

- ***"Integrating law, policy, and science in managing and restoring ecosystems,"*** in *The Laws of Nature: Reflections on the Evolution of Ecosystem Management Law and Policy* (University of Akron Press, Kalyani Robbins ed., forthcoming 2012)

Noah M. Sachs

Book

- Co-Author, *Regulation of Toxic Substances and Hazardous Wastes* (Foundation Press, 2011)

Articles

- *Rescuing the Strong Precautionary Principle from its Critics: The Case of Chemical Regulation*, **UNIV. ILL. L. REV. (2010)** – discussed the benefits of the Strong Precautionary Principle, debunked some of the scholarship against the principle, and outlined how the principle could be used in TSCA reform
- *Jumping the Pond: Transnational Law and the Future of Chemical Regulation*, **62 VAND. L. REV. 1817 (2009)** – discussed EU’s toxics legislation and its potential impacts on the US, especially in the area of toxicity testing
- *Greening Demand: Energy Consumption and U.S. Climate Policy*, **19 DUKE ENVTL. L. & POL’Y F. 295 (2009) (invited symposium article)** - the need for cheaper, more efficient greenhouse gas emissions through a greening demand, as opposed to new technology development
- *Beyond the Liability Wall: Strengthening Tort Remedies in International Environmental Law*, **55 UCLA L. REV. 837 (2008)** - discussed the reasons that negotiated liability regimes have failed, and how liability treaties should be altered in both content and the negotiation process in order to create tort remedies “for victims of transboundary environmental damage”
- *Planning the Funeral at the Birth: Extended Producer Responsibility in the European Union and the United States*, **30 HARV. ENVTL. L. REV. 51 (2006)** - discussed the principle of Extended Producer Responsibility in Europe, why it has not been adopted in the US, and whether the “transaction costs of EPR may outweigh its environmental benefits and that practical problems of implementation may preclude the achievement of expected product design incentives”

CPR White Paper

- *Protecting the Public from BPA: An Action Plan for Federal Agencies* (with Tom McGarity, Rena Steinzor, Aimee Simpson and Matthew Shudtz) White Paper #1202, Washington, D.C.: Center for Progressive Reform (2012).

CPR Letter

- to EPA Administrator, Lisa Jackson on the **North American Commission for Environmental Cooperation** (with Bratspies, et al.), March 29, 2012

CPR Blog

- *Big Win for Children’s Health in Second Circuit Risk Assessment Decision*, CPRBlog, September 26, 2011, <http://www.progressivereform.org/CPRBlog.cfm?fkScholar=102> – NRDC’s victory in its challenge of EPA’s flawed risk assessment of the pesticide dichlorvos

Comments

- to FDA on the American Chemistry Council’s petition to the agency on BPA, **April 17, 2012 (with Aimee Simpson)**

Last Updated May 8, 2012

Other

- Book Review: *The Effluent of Affluence: Challenging the Cult of More-Is-Better*, The Environmental Forum, November-December 2007, at 7 (review of McKibben, *Deep Economy: The Wealth of Communities and the Durable Future*)

Christopher H. Schroeder

Subjects: pragmatism, presidential power, preemption

Books

- ***Keeping Faith with the Constitution* (American Constitution Society, 2009) (with Goodwin Liu & Pamela Karlan)** –discussed the framing of the Constitution in terms of the moral and ethical issues addressed and how these issues are upheld today; Critical acclaim: “*Keeping Faith with the Constitution* is a splendid addition to the growing body of serious writing on the elusive art of constitutional interpretation. While meticulously referenced for judges and academics to use, it is easily understood and thought-provoking for laypeople concerned about the meaning of our Constitution and the accountability of our judicial system. It sets out a sensible and appealing way of judging our judges.”-Judge Patricia Wald, former Chief Judge, U.S. Court of Appeals for the D.C. Circuit
- ***Presidential Power Stories* (Christopher H. Schroeder & Curtis A. Bradley, eds., Foundation Press, 2008)** –discussed specific cases of presidential power issues and the overall context of the presidential role in the US government

Book chapters

- **“Supreme Court Preemption Doctrine,”** in ***Preemption Choice: The Theory, Law, and Reality of Federalism's Core Question* (William Buzbee ed., 2009)** –discussed theory behind preemption, where it is applicable, and the role of the Supreme Court in either supporting or ruling against preemption
- **“The United States Failure to Act,”** in ***Economic Thought and U.S. Climate Change Policy* (with Robert Glicksman) (David Driesen ed., MIT Press, 2009)**
- Introduction: **“The Story of Presidential Power,”** in ***Presidential Power Stories* (Christopher H. Schroeder & Curtis A. Bradley eds., Foundation Press, 2008)**
- **“The Story of United States v. Nixon: The President and the Tapes,”** in ***Presidential Power Stories* (Christopher H. Schroeder & Curtis A. Bradley eds., Foundation Press, 2008)**

Articles

- ***Global Warming and the Problem of Policy Innovation: Lessons from the Early Environmental Movement*, 39 ENVTL. L. 285 (2009)** –discussed how the current concern among Americans regarding climate change is not as elevated as environmental concerns in the sixties and seventies, and how this lowered level may delay new policies, especially when fighting special interests
- ***Legislating to Address Climate Change: Some Lessons from the Field*, 3 ENVTL. & ENERGY L. & POL’Y J. 236 (2008)** –discussed the history of setting and implementing environmental policies in the US, applying this history as lessons toward how to set and implement climate change policies
- ***Beyond Cost-Benefit Analysis*, 32 HARV. ENVTL. L. REV. 433 (2008) (with Sidney A. Shapiro)** – discussed the flaws inherent in CBA and proposed another mechanism, pragmatism, for use in regulatory analysis
- ***Some Notes on a Principled Pragmatism*, 95 CAL. L. REV. 1703 (2007)** –discussed his ideas on principled decision making and how this change would affect thoughts of precedence and using past cases, based on the ideas of his teacher, Paul Mishkin

- **California, Climate Change and the Constitution**, 35 ENVTL. L. REP. NEWS & ANALYSIS 10653 (2007), reprinted in 25 ENVTL. FORUM (2008) –discussed California’s attempts at stricter GHG emission laws and the problems faced, including the constitutionality and federal preemption issues, leakage and linking with foreign standards

CPR

- **Perspective**
 - **The Precautionary Principle**
- **Blog**
 - **Midnight Regulations: Congress Lends a Hand**, CPRBlog, February 25, 2009, <http://www.progressivereform.org/CPRBlog.cfm?fkScholar=41> -discussed the history of outgoing presidents' midnight regulations, the two midnight regulations of the Bush administration against EPA, and the steps taken by both Congress and the Obama administration to repeal these regulations

Other

- Named Assistant Attorney General for the Office of Legal Policy by President Obama
- **What Congress Gets to Know: How to End the Standoff on Executive Privilege and the U.S. Attorney Scandal**, Slate.com (2007) (with Walter Dellinger) –discussed the executive privilege to withhold information in terms of how much can be withheld, what Congress is entitled to know, and when is information withholding appropriate
- **The Purse Isn't Congress' Only Weapon**, New York Times, March 14, 2007 (with Walter Dellinger) –argued that Congress is not as pigeon-holed into support of the Iraq War as it may seem, since Congress has the power to limit troop size, and cutting funds would not leave soldiers unarmed and unfinanced

Forthcoming

- **“Public Choice and Environmental Policy: A Review of the Literature,”** in *Handbook on Public Law and Public Choice* (Dan Farber & Anne Joseph O’Connell eds., Elgar) –described the writings on public choice, highlighting the recent two-part shift in models toward citizen collective action and principled commitments, and explored how public choice can support environmental policy tools

Sidney Shapiro

Subjects: tort law, preemption, OSHA, CBA, public health

Book

- ***The People's Agents and the Battle to Protect the American Public: Special Interests, Government, and Threats to Health, Safety, and the Environment* (University of Chicago Press, 2010)(with Rena Steinzor)** – takes a hard look at the web of problems leading to catastrophes overseen by the five major protector agencies, and how a lack of funding, communication, and political attacks on the agencies have led to the dire situation
 - Select critical acclaim: “An urgent and compelling appeal to renew America’s best traditions of public service.” –UMB News

Book chapters

- “The Necessity of Procedural Reform,” in *Beyond Environmental Law: Policy Proposals for a Better Environmental Future* (David M. Driesen & Alyson C. Flournoy, eds., Cambridge University Press, 2010)
- “Occupational Safety and Health,” in *Labor and Employment Law and Economics* (Kenneth G. Dau-Schmidt, Seth D. Harris & Orly Lobel eds. 2009)(Edward Elgar Publishing)
- “Data Protection in the EU,” in *Administrative Law in the EU* (George A. Bermann, Charles H. Koch, Jr. & James T. O’Reilly eds., 2008)

Articles

- ***Administrative Law Inside-Out*, 65 MIAMI L. REV. 577 (2010)(with Ronald Wright)**
- ***The Social Costs of Dangerous Products: An Empirical Investigation*, 18 CORNELL J.L. & PUB. POL’Y 775 (2009) (with J. Paul Leigh & Ruth Ruttenberg)** –analyzed the true cost of three dangerous products, using a cost of injury approach, expanded with some of the costs traditionally left out of COI
- ***“Political” Science: Regulatory Science After the Bush Administration*, 4 DUKE J. CONST. L. & PUB. POL’Y 31 (2009)** –discussed political interference in scientific evidence, the administrative process designed to minimize this interference, and the lessons that can be learned from the actions of the Bush administration
- ***Beyond Cost-Benefit Analysis*, 32 HARV. ENVTL. L. REV. 433 (2008) (with Christopher H. Schroeder)** –discussed the flaws inherent in CBA and proposed another mechanism, pragmatism, for use in regulatory analysis
- ***Eight Things Americans Can’t Figure Out About Controlling Administrative Power*, 60 AD. L. REV. (2008) (with Richard W. Murphy)** –analyzed the balance of administrative power between the branches of the US government, finding that none is specifically in charge and there is a tension between democratizing ideals and judicial control
- ***Capture, Accountability, and Regulatory Metrics*, 84 TEX. L. REV. 1741 (2008) (with Rena Steinzor)** –discussed the use of the internet to publish when agencies are effectively enforcing environmental standards as a means for promoting compliance and accountability
- ***OMB and the Politicization of Risk Assessment*, 37 ENVTL. L. 1083 (2007)** –discussed the potential for politicizing science in its role in regulation and OMB’s role in making guidelines for risk assessment

CPR

- **White Papers**
 - ***The Truth About Torts: Defensive Medicine and the Unsupported Case for Medical Malpractice “Reform”*** (with Thomas McGarity, Nicholas Vidargas and James Goodwin) **White Paper #1203, Washington, D.C.: Center for Progressive Reform (2012)** – discussed the trend toward capping damages in malpractice cases, how the limits against victims does not actually reduce health care costs or malpractice occurrences, and the limitations of the study often cited to promote that myth
 - ***Saving Lives, Preserving the Environment, Growing the Economy: The Truth About Regulation*** (with Ruth Ruttenberg and James Goodwin) **White Paper #1109, Washington, D.C.: Center for Progressive Reform (2011).**
 - ***Setting the Record Straight: the Crain and Crain Report on Regulatory Costs*** (with Ruth Ruttenberg and James Goodwin) **White Paper #1103, Washington, D.C.: Center for Progressive Reform (2011).**
 - ***The BP Catastrophe: When Hobbled Law and Hollow Regulation Leave Americans Unprotected*** (with William Andreen, et al.) **White Paper #1101, Washington, D.C.: Center for Progressive Reform (2011).**
 - ***From Ship to Shore: Reforming the National Contingency Plan to Improve Protections for Oil Spill Cleanup Workers*** (with Rebecca Bratspies, et al.) **White Paper #1006, Washington, D.C.: Center for Progressive Reform (2010)** - analyzed the actions of OSHA and NIOSH in both preparation for, and in reaction to, the BP oil spill, and recommended five actions for future preparedness: requirement of Regional Response Teams by EPA and the Coast Guard, inclusion of OSHA into Regional Contingency plans for disasters, requirement of a NIOSH Health Hazard Evaluation for cleanup workers, consultation with workers of past spills and appropriation of executive funds for OSHA for its role in response to the oil spill
 - ***Workers at Risk: Regulatory Dysfunction at OSHA*** (with Thomas McGarity, Rena Steinzor and Matthew Shudtz), **White Paper #1003, Washington, D.C.: Center for Progressive Reform (2010)** –discussed the lack of resources and staff that have led to the dysfunction at OSHA, especially in the area of enforcement, and how these problems could effectively be remedied
 - ***“Fifty FDAs”: An Argument for Federal Preemption of State Tort Law That is Less than Meets the Eye*** (with William Buzbee et al.), **White Paper #911, Washington, D.C.: Center for Progressive Reform (2009)** –put to rest the unhelpful and disingenuous “Fifty FDAs” argument that proponents of federal regulatory preemption have trumpeted the last few decades
 - ***The Truth About Torts: Regulatory Preemption at the Federal Railroad Administration*** (with Tom McGarity, et al.), **White Paper #910, Washington, D.C.: Center for Progressive Reform (2009)** –discussed the reasons why a complementary system of federal regulatory standards and state common law is the best way to achieve railroad safety
 - ***Regulatory Dysfunction: How Insufficient Resources, Outdated Laws, and Political Interference Cripple the “Protector Agencies,”*** with Rena Steinzor & Matt Shudtz, **White Paper #906, Washington, D.C.: Center for Progressive Reform (2009)** –analyzed the current state of FDA, OSHA, CPSC, NHTSA and EPA on their insufficiencies to protect consumers, and proposed ways to improve the regulatory efficacy of these agencies
 - ***A Return to Common Sense: Protecting Health, Safety and the Environment through ‘Pragmatic Regulatory Impact Analysis,’*** (with Amy Sinden, et al.), **Washington, D.C.: Center for Progressive Reform (2009)** – proposed an alternative to cost-benefit analysis

- ***Congress’s Authority to Correct the Courts’ Preemption Decisions (with Buzbee et al.) White Paper #905, Washington, D.C.: Center for Progressive Reform (2009)*** – discussed the major Supreme Court cases where preemption has been used and whether Congress has authority to amend the interpretation of preemption to make its intent clearer, finding that Congress, indeed, has this power and should utilize it
- ***The Truth about Torts: Rethinking Regulatory Preemption and Its Impact on Public Health (with Buzbee et al.) White Paper #902, Washington, D.C.: Center for Progressive Reform (2009)*** –sixth paper in the series, describing the state of torts and preemption in the US; urged Congress to create anti-preemption legislation for clarity in future court cases, specifically define the word “requirements” in the legislation, and write cross-cutting legislation to ensure proper balance between agencies; urged President Obama and the Executive Branch to review the changes enacted by the Bush administration, and revise Executive Order 13132 to reign preemption back in to its original intention and ensure proper procedures are established to protect federalism
- ***Reinvigorating Protection of Health, Safety and the Environment: The Choices Facing Cass Sunstein (with John S. Applegate et al.), White Paper #901, Washington, D.C.: Center for Progressive Reform (2009)*** –discussed the need for regulatory reform from the Obama administration, suggesting an end to most cost-benefit analyses, more funding for oversight agencies, and a more active role for OIRA in coordinating regulatory agencies; discussed Sunstein’s views on, and CPR’s responses to, CBA, CBA’s vulnerability to challenge or manipulation, discounting, the precautionary principle, grouping agencies under the executive branch, OSHA’s Constitutionality and climate change legislation
- ***Limiting Federal Agency Preemption: Recommendations for a New Federalism Executive Order (with Thomas McGarity et al.) White Paper #809, Washington, D.C.: Center for Progressive Reform (2008)*** –urged President Obama to create a new executive order to replace 13132, outlining the benefit of multiple levels of government: preventing agencies from abusing the power of preemption, discouraging ceiling preemption, separating state positive law and state tort law, encouraging state tort laws to allow consumers to sue agencies if regulations are not enforced, and providing a more effective way to monitor regulation enforcement
- ***The Truth about Torts: Regulatory Preemption at the Consumer Product Safety Commission (with Thomas McGarity et al.) White Paper #807, Washington, D.C.: Center for Progressive Reform (2008)*** –discussed the push by agencies like FDA and NHTSA to use preemption to prevent consumers from being able to sue them under tort law; found that a blend of tort law and regulatory standards best protect consumers and that preemption would allow corporations to have weak regulation without fear of legal proceedings, putting consumers at great risk
- ***Protecting Public Health and the Environment by the Stroke of a Presidential Pen: Seven Executive Orders for the President’s First 100 Days (with Rebecca M. Bratspies, et al.) White Paper #806, Washington, D.C.: Center for Progressive Reform (2008)*** – proposed seven executive orders for the incoming administration – 1. reduction of the federal government’s carbon footprint; 2. consideration of climate change in agency decision-making; 3. taking children into account in toxics regulation; 4. New environmental justice legislation; 5. promotion of transparency in regulatory review; 6. prevention of preemption; and 7. a policy on sustainable public land use
- ***The Truth About Torts: Regulatory Preemption at the National Highway Safety Administration (with Thomas McGarity et al.) White Paper #804, Washington, D.C.:***

- Center for Progressive Reform (2008)** – discussed how car manufacturers are claiming preemption to dismiss claims in courts by injured consumers, and urged the continuation of tort law, since NHTSA is very underfunded to keep up with regulations, tort law allows for the legal system to provide compensation when regulations are not met, and transparency and providing product information are better achieved through tort law
- ***The Truth About Torts: Using Agency Preemption to Undercut Consumer Health and Safety (with William Funk, David Vladeck, and Karen Sokol) White Paper #704, Washington, D.C.: Center for Progressive Reform (2007)*** –discussed the problems inherent for consumers if preemption prevents claims, and presented recommendations for each branch of the government to prevent these problems; suggested that Congress should provide more oversight of agencies and clarification of its anti-preemption wording, that the Judicial Branch should return to pre-Bush administration interpretation of preemption laws and tendency toward allowing tort claims, and that the Executive Branch should push for its agencies to stop abusing preemption in courts
 - ***“Reforming the Occupational Safety and Health Act,” CPR for the Environment: Breathing New Life in the Nation’s Major Environmental Statutes, A Legislative Sourcebook of Progressive Ideas for Members of Congress and Staff (Alyson Flournoy and Matthew Shudtz, Eds.), White Paper #701, Washington, D.C.: Center for Progressive Reform, 2007*** –assessed OSHA and suggested reforms, focusing on providing the public a means of enforcement, similar to those presented in other environmental protection statutes, allowing citizens to file a claim against any agent in violation of OSHA
 - **Testimony**
 - **On the Regulatory Accountability Act**, before the House Judiciary Committee, October 25, 2011
 - **On the benefits of regulation**, before the House Oversight and Government Reform Committee, February 10, 2011
 - **On agency capture**, before the Senate Judiciary Committee’s Administrative Oversight and the Courts, August 3, 2010
 - **On the Federal Advisory Committee Act of 2008**, before the Information Policy, Census and National Archives of the U.S. House Committee on Oversight and Government Reform
 - **Conferences**
 - ***Conference on Regulatory Preemption, December 17, 2008***
 - **Comments**
 - comments submitted to OIRA on **Obama regulatory review process, March 16, 2009 (with Applegate, et al., collectively as the CPR Board)**
 - **Perspectives**
 - ***The Federal Committee Act***
 - ***Information Quality***
 - **Blogs**
 - ***Limiting the Rights of Medical Malpractice Victims: House GOP Leaders Make a Bad Idea Worse***, CPRBlog, March 20, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=2FC26A9D-E1B9-4C79-5440F57BC0150195> – the push for the dissolution of the Independent Payment Advisory Board, despite the flawed research used as the motivation for this bill

- ***The Regulatory Freeze Bill: Cynical Political Posturing That Would Harm the Economy***, CPRBlog, March 19, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=2B246471-BB4C-5C0E-C5B4E4A52D3538A5> – the bill’s aim at saving jobs, despite the research suggesting that regulation does not negatively affect job numbers
- ***New CPR Paper Takes on Defensive Medicine Myths and the Unsupported Case for Medical Malpractice ‘Reform,’*** CPRBlog, March 8, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=F2EAFE20-FD92-FB84-212E8BBBBAB1AF8C> – described the new CPR white paper on medical malpractice and the myths surrounding the reduction of health care costs by instituting malpractice limits
- ***What Does It Mean that the Public Overwhelmingly Supports Specific Types of Regulation, But Questions ‘Regulation’ in General?*** CPRBlog, February 28, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=C45B0016-9CD5-E70B-89811402257460C3> – discussed the Pew study’s conflicting results, which indicate that Americans are discouraged by the inefficacy of the government, while they overwhelmingly support current, as well as some strengthening, of specific regulations
- ***The Regulatory Accountability Act: Putting the Screws to Health, Safety and Environmental Regulation***, CPRBlog, September 23, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=96DCA235-B443-1BC2-070FC641BE6E3AFD> - how the proposed amendments would further slow the rulemaking process and hinder necessary regulations by changing the regulators’ burden of proof, expanding the types of rules needing formal rulemaking procedures, and changing the judicial review standard for most rules
- ***Chairman Issa’s NLRB Subpoena: An Unprecedented Effort to Thwart the Legal Process***, CPRBlog, August 10, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=B451CBFC-B715-914F-7D1E07CABC1EDB63> - discussed the subpoena brought against the NLRB to provide the documentation about the Boeing case, and how this unprecedented measure defies the legal rights of the NLRB
- ***Congress Considers Higher OSHA Penalties (Again)***, CPRBlog, March 19, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=769A4E55-9296-D990-5A44E0E7A14081E4> – discussed the hearing and its necessity due to the inadequacies of the OSH Act of protecting workers
- ***Déjà vu All Over Again: OSHA’s Inability to Stop Violators on Display in New Hampshire Foundry***, CPRBlog, December 15, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=92DE9B5D-0AF8-CD54-5187413BE97C9D53> –described the numerous OSHA violations of the Franklin Non-Ferrous Foundry, OSHA’s reluctance to enforce high fines on repeat violators, and the lack of budgeting that forces OSHA to settle enforcement cases for small amounts
- ***Toyota Cars and Automobile Regulation, Still Defective: Recall Could Miss a Million Faulty Cars. Congress Should Investigate.*** CPRBlog, November 25, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=2CC1A9C1-9683-EB92-8D27CAA4CD381C73> -suggested that Congress should investigate the Toyota surge claims and NHTSA's recalls, citing that if the typical amount of consumers follow the recall, over a million cars will not be fixed
- ***Defective: Toyota Cars and Automobile Regulation***, CPRBlog, November 12, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=E9191326-F12C-CC4D->

- AEAECA6B83EBB3B1** –discussed the recent recall of Toyota cars for unexpected surges, the history of such complaints, the slow action by NHTSA to pursue the complaints, and the political and industrial motivations that caused this slow response
- **'Sound Science' Attack on OSHA Nominee David Michaels Is Drenched in Irony, CPRBlog, Oct. 6, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=1BCF27F3-B699-DA87-298F6EF7309688D9>** – discussed the legal basis of sound science, the inherent flaws of the system, and how special interests manipulate these flaws to their advantage in chemical testing cases
 - **New York Governor Channels Ronald Reagan: Governor Paterson's Flawed Plan to Review Regulations, CPRBlog, August 12, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=10A616CD-0421-5534-E901F99F16FAEA7D>** -described the history of regulatory look-backs since the Reagan administration, and the detriments caused by such look-backs, such as the break of progression forward for government workers and agencies that have to stop their current work to fulfill the look-back requirements
 - **'Curiouser and Curiouser!' Cried Alice... A Tale of Regulatory Policy in the Obama Administration, CPRBlog, July 30, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=CBFBF17D-B18C-CFD7-AA4AE2F6486185D0>** - discussed the nomination of Cass Sunstein as the head of OIRA, and the vacillating balance between transparency and secrecy in writing the Obama Executive Order on regulatory impact analysis
 - **Reviving OSHA: The New Administrator's Big Challenge, CPRBlog, July 30, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=CDBB7421-06FB-4707-371C4CB2BA3307A0>** - described the lagging recent history of OSHA policies, the relatively high number of injuries, and the low amount of penalties imposed by violations, even those resulting in death
 - **President Obama's FOIA Order, CPRBlog, February 2, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=28560AB2-1E0B-E803-CA7B5D0ABACD0640>** - described the order and its tendency to favor openness and disclosure that more aligned with the policies of the Clinton administration
 - **An Executive Order to Restore Transparency to Government, CPRBlog, November 17, 2008, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=AAC2602F-1E0B-E803-CA8336531C39FBD4>** –discussed the three main proposals by CPR for the Obama administration's executive order on government transparency, including favoring disclosure, maintaining federal advisory committees and creating transparency in regulatory processes
 - **Why Do the Courts Not Respect Congressional Intent? CPRBlog, July 30, 2008, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=7460AA47-1E0B-E803-CA29154A2D0CD137>** –discussed Congressional intent behind savings clauses and the courts' resistance to follow such intent in favor of preemption
 - **Getting Started, CPRBlog, July 27, 2008, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=6737344E-1E0B-E803-CAF66E3BB08646DC>** –proposed questions to other bloggers as to the importance of discussing preemption

Testimony/op-eds

Last Updated May 8, 2012

- **Sidney Shapiro** - April 2, 2008: before the Subcommittee on Information Policy, Census and National Archives of the U.S. House Committee on Oversight and Government Reform, on the Federal Advisory Committee Act of 2008
- **“Beware Dangers of Roof-crush Rule,” (with William Funk and Nina Mendelson); op-ed in Winston-Salem Journal, August 4, 2008** –discussed how the rule would allow for preemption against future claims about roof strength, despite the relatively small amount of consumer protection offered in the rule

Forthcoming

- *Paul Verkuil and Pragmatic Adjustment in Government*, ___ CARDOZO L. REV. ___ (2011)(in press)
- *Cost-Benefit Analysis: An Organizational Design Perspective*, ___ NYU ENV'T L. REV. ___ (2010)(in press)

Amy Sinden

Subjects: CBA, climate change, human rights

Book chapters

- **“The Abandonment of Justice,” and “Toward Distributional Justice” (with Carl Cranor) in *Economic Thought and U.S. Climate Change Policy* (David M. Driesen, ed., MIT Press 2010)**
- **“An Emerging Human Right to Security from Climate Change: The Case Against Gas Flaring in Nigeria,” in *Adjudicating Climate Change: State, National, and International Approaches* (W.C.G. Burns & H.M. Osofsky eds., Cambridge University Press, 2008)** –described the ruling of the Federal High Court of Nigeria against Shell for violating human rights by allowing gas flares in the Niger Delta, and how this model of holding multinationals responsible for climate change actions can be used in later cases
- **“The ‘Preference for Pollution’ and Other Fallacies, or Why Free Trade Isn’t ‘Progress’,” in *Progress in International Law* (R. Miller & R. Bratspies eds., Martinus Nijhoff, 2008)** – discussed the level-playing field in globalized environmental laws and how free trade should depend on a united increase in environmental protection
- **“The Power of Rights: Imposing Human Rights Duties on Transnational Corporations for Environmental Harms,” in *The New Corporate Accountability: Corporate Social Responsibility and the Law* (McBarnet et al., eds., Cambridge University Press, 2007)** –discussed the legal reasoning behind holding multinational corporations responsible for violating human rights when creating environmental harms and treating them more like a state than an individual, due to the companies’ vast amounts of power and money

Articles

- ***Shifting the Domestic and International Logjams on Climate Change: A New Defense of Cap and Dividend*, 19 TULANE INTL. & COMP. L. 79 (2010)**
- ***Revenue-Neutral Cap and Trade*, 39 ENVTL. L. REP. 10944 (2009)**
- ***Allocating the Costs of the Climate Crisis: Efficiency Versus Justice*, 85 WASH. L. REV. 293 (2010)** - analyzed the who-should-pay issue of greenhouse gas emission reduction on a global scale, finding that, through a lens of justice, the payment should be made on a per capita basis
- ***The Missing Instrument: Dirty Input Limits*, 33 HARV. ENVTL. L. REV. 65 (2009) (with David Driesen)** –discussed how the use of DIL’s in US policy would aid in pollution reduction, after analyzing DIL’s in other global regulation systems
- ***Cost-Benefit Analysis: New Foundations on Shifting Sand*, 3 REG. & GOVERNANCE 48 (2009) (reviewing Adler & Posner’s *New Foundations of Cost-Benefit Analysis* (Harvard University Press 2006)) (with Douglas Kysar & David Driesen)** –discussed the book’s attempt to lay a theoretical foundation for CBA, highlighting its merits and pointing out the weak areas in the theory, ultimately determining that another mechanism for regulatory control could work better in real world situations
- ***Climate Change and Human Rights*, 27 J. LAND RES. & ENVTL. L. 255 (2007)** – discussed climate change as a moral issue where laws will need to protect human rights, and how these rights have already been compromised by those who stand to gain something from climate change
- ***The Tragedy of the Commons and the Myth of a Private Property Solution*, 78 U. COLO. L. REV. 533 (2007)** –discussed how privatization, as opposed to government regulation, of the tragedy

of the commons may work theoretically, but would be overrun with problems in the real world because of the dynamic nature of the environment

CPR

- **White Papers**
 - ***Twelve Crucial Health, Safety, and Environmental Regulations: Will the Obama Administration Finish in Time?* (with Rena Steinzor, Matthew Shudtz, James Goodwin, Yee Huang and Lena Pons) White Paper #1106, Washington, D.C.: Center for Progressive Reform (2011).**
 - ***Six Myths About Climate Change and the Clean Air Act* (with Dan Farber) White Paper #1105, Washington, D.C.: Center for Progressive Reform (2011).**
 - ***Regulatory Blowout: How Regulatory Failures Made the BP Disaster Possible, and How the System Can Be Fixed to Avoid a Recurrence* (with Flournoy, et al.) White Paper #1007, Washington, D.C.: Center for Progressive Reform (2010).**
 - ***Obama's Regulators: A First-Year Report Card* (with Rena Steinzor, Shana Jones and James Goodwin), White Paper # 1001, Washington, D.C.: Center for Progressive Reform (2010) - reviewed the work of CPSC, EPA, FDA, NHTSA, OSHA, as well as the impact of the White House Office of Information and Regulatory Affairs, issuing agency-by-agency grades, for the administration's first year, giving an overall grade for the administration a B-**
 - ***A Return to Common Sense: Protecting Health, Safety and the Environment through 'Pragmatic Regulatory Impact Analysis,'* (with Sidney Shapiro, et al.), White Paper #909, Washington, D.C.: Center for Progressive Reform (2009) – proposed an alternative to cost-benefit analysis**
 - ***The Hidden Human and Environmental Costs of Regulatory Delay*, with Catherine O'Neill & Rena Steinzor, White Paper #907, Washington, D.C.: Center for Progressive Reform (2009)– presenting three case studies showing how regulatory delay has harmed human health and the environment**
 - ***Reinvigorating Protection of Health, Safety and the Environment: The Choices Facing Cass Sunstein* (with Applegate et al.), White Paper #901, Washington, D.C.: Center for Progressive Reform , 2009 –discussed the need for regulatory reform from the Obama administration, suggesting an end to most cost-benefit analyses, more funding for oversight agencies, and a more active role for OIRA in coordinating regulatory agencies; discussed Sunstein's views on, and CPR's responses to, CBA, CBA's vulnerability to challenge or manipulation, discounting, the precautionary principle, grouping agencies under the executive branch, OSHA's Constitutionality and climate change legislation**
 - ***Protecting Public Health and the Environment by the Stroke of a Presidential Pen: Seven Executive Orders for the President's First 100 Days* (with Rebecca M. Bratspies, et al.) White Paper #806, Washington, D.C.: Center for Progressive Reform (2008) – proposed seven executive orders for the incoming administration – 1., reduction of the federal government's carbon footprint; 2., consideration of climate change in agency decision-making; 3., taking children into account in toxics regulation; 4., new environmental justice legislation; 5., promotion of transparency in regulatory review; 6., prevention of preemption; and 7., a policy on sustainable public land use**
- **Comments**
 - **comments submitted to OIRA on OMB's annual report to Congress on **the costs and benefits of regulation**, November 5, 2009 (with Rena Steinzor & James Goodwin)**

- comments submitted to OIRA on **Obama regulatory review process, March 16, 2009 (with Applegate, et al., collectively as the CPR Board)**
- **Perspective**
 - *The Annual OMB Report to Congress*
- **Blogs**
 - *Sore Losers: Two House Subcommittee Chairs Want to Discount the Lives of Seniors in Last-Ditch Effort to Downplay Benefits of Clean Air Regulation*, CPRBlog, November 17, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=B24FE70F-09F1-90B2-DE742523542B92F0>
 - *Auto Dealers Group Wrong About How EPA Considers Costs in Vehicle Efficiency Standards*, CPRBlog, September 29, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=B55B676B-035A-0287-90BD9708C8338239>
 - *Top Regulatory Opponents Tout Story Claiming EPA Wants to Make 230,000 New Hires; Turns Out Agency Was Arguing Specifically Against It*, CPRBlog, September 27, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=ADE10FEA-A096-CFC5-DFFD064240AF5E36>
 - *White House Flouts Agency Heads, Rolls Out Backroom Deal on Fuel Economy Standard*, CPRBlog, July 29, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=7426C8E2-CF0F-8446-72B4F05FF595E94B> – discussed the reduced version of the fuel economy standard proposed by the Obama administration
 - *OIRA's Annual Report to Congress on the Benefits and Costs of Regulation: Sunstein Rips Another Page from the Republican Playbook*, CPRBlog, June 30, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=DE62404B-05A6-BEA2-457A5CAFO48E4B11> – the exaggerated regulatory analysis presented by OIRA
 - *Administration's Regulatory 'Look-Back' Announcement Panders to Industry, Focuses Primarily on Eliminating Regs, Diverts Agencies from Crucial Work*, CPRBlog, May 26, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=2D505F83-93E3-AD07-DF54BE28B9460526> –
 - *Six Myths About Climate Change and the Clean Air Act*, CPRBlog, April 18, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=68BE7145-007E-57C3-F7C8F71FA123A98C> –
 - *EPA Punts on Cooling Water Rule; Despite Facts on the Ground, Decides Technology That Would Prevent Massive Fish Kills No Longer Feasible*, CPRBlog, March 29, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=02379780-DF52-032F-99AA85F227808C92> –
 - *EPA Appears Poised To Give Troubling Role to Cost-Benefit Analysis in Setting Rules on Power Plant Cooling Water*, CPRBlog, March 4, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=81ACF041-C074-3E55-D823ADA3CA8EE261> –
 - *EPA Carbon Regulations Clear First Hoop in D.C. Circuit*, CPRBlog, December 14, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=E56C63E1-E1C7-746B-1293CCA6A0B1FDEB> -
 - *Fifth Circuit's Ruling Puts Next Steps on Cooling Water Regulation and Cost-Benefit Analysis in Hands of Obama EPA – and OIRA*, CPRBlog, August 5, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=426BE370-09E0-9C70->

- B0E2CAD6D7DA57D1** – discussed the progress of regulation of cooling water intake operations and the recent ruling for EPA’s regulation, which could include interference by Cass Sunstein’s OIRA
- ***CPR’s Comments on OMB’s Draft Report on Costs and Benefits of Regulations: Why More of the Same?*** CPRBlog, November 5, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=C4CD95C2-B979-F5B0-73168CCD7DD06229> –discussed the overall lack of progress in the 2009 report, which still relied almost fully on CBA as “indispensible knowledge,” while recognizing the flaws in the system
 - ***Obama’s Frank Talk on Climate at the U.N.: More Please***, CPRBlog, September 22, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=E370C653-ADA8-ECC4-719A49216CA00998> –discussed President Obama’s recent speech before the UN, his more realistic approach to the vast, volatile and extremely dangerous problem of climate change, and how this less-than-rosy speech style is more appropriate and necessary, offering specific talking points on which the President should continue to focus
 - ***What Will the Entergy Ruling Bring?*** CPRBlog, April 1, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=63D79808-1E0B-E803-CAC01114B61539A9> –discussed the ruling’s favor toward cost-benefit analysis in environmental regulation, which benefits industry but harms regulatory power and the environment, as well as the aspects of the ruling that will benefit regulation
 - ***By the Stroke of a Presidential Pen: Executive Orders on Climate Change***, CPRBlog, November 10, 2008, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=842D6EB8-1E0B-E803-CAF662E1986B34B4> –recommended two executive orders for improving climate change regulation: having agencies reduce their carbon footprint, and including climate change in their decision-making explorations

Other

- ***“The cost-benefit dodge,”*** op-ed in the *Philadelphia Inquirer*, May 12, 2009 (with Catherine O’Neill) –discussed the use of CBA in environmental regulation in light of Cass Sunstein’s nomination for “regulatory czar” in the Obama administration
- **Brief of *Amicus Curiae* OMB Watch in Support of Respondents, *Entergy Corp. v. EPA, et al.*, Nos. 07-588, 07-589, & 07-597 (Consolidated) (U.S. Oct. 6, 2008)**

Forthcoming

- ***Formality and Informality in Cost-Benefit Analysis***

Katherine Squibb

Subjects: uranium in veterans, toxics research

Book chapters

- “Basic Science at Risk: Protecting the Independence of Research,” in *Rescuing Science From Politics* (Cambridge University Press, 2007)
- “Exposure and Health Surveillance in Gulf War Veterans Exposed To Depleted Uranium” in *Depleted Uranium: Properties, Uses, and Health Consequences*, (with Melissa McDiarmid) (Miller, A., ed., CRC Press, 2007)
- “Organelles as Tools in Toxicology,” in *Principles and Methods of Toxicology, 5th edition* (with B.A. Fowler, M.L. Haasch and A.W. Hayes) (Raven Press, 2007)

Articles

- **Biological Monitoring for Depleted Uranium Exposure in U.S. Veterans, 6 ENVTL. HEALTH PERSP. 953 (2009) (with Carrie D. Dorsey et al.)** –displayed results of continuing medical surveillance after exposure in the Gulf War, finding that future problems will probably not arise due to their exposure
- **Surveillance results of depleted uranium-exposed Gulf War I veterans: sixteen years of follow-up, 72 J. OF TOXICOLOGY AND ENVTL. HEALTH 14 (2009)** –studied 35 of 77 veterans and displayed the results, showing that the veterans studied still “excrete elevated concentrations” of uranium in their urine but show few other symptoms
- **Elevated Ambient Air Zinc Increases Pediatric Asthma Morbidity, 116 ENVTL. HEALTH PERSP 826 (2008) (with Jon Mark Hirshon et al.)** –found that asthma-related hospital visits occurred in children living in urban areas on the first day after an increased level of ambient air zinc
- **Health surveillance of Gulf War I veterans exposed to depleted uranium: Updating the cohort. Health Phys. 93: 60-73, 2007**
- **Surveillance of Gulf War I veterans exposed to depleted uranium: 15 years of follow-up, 12 EUR. J. ONCOL. 235 (2007) (with Melissa McDiarmid et al.)**

Rena Steinzor

Subjects: toxics, CBA, Cass Sunstein nomination, climate change, sound science

Books

- ***The People’s Agents and the Battle to Protect the American Public: Special Interests, Government, and Threats to Health, Safety, and the Environment* (University of Chicago Press, 2010)(with Sid Shapiro)** – takes a hard look at the web of problems leading to catastrophes overseen by the five major protector agencies, and how a lack of funding, communication, and political attacks on the agencies have led to the dire situation
 - Select critical acclaim: “An urgent and compelling appeal to renew America’s best traditions of public service.” –UMB News
- ***Mother Earth and Uncle Sam: How Pollution and Hollow Government Hurt Our Kids* (University of Texas Press, 2007)** –discussed the harmful effects of under-regulated toxics on children, focusing on mercury, perchlorate and ozone contamination, and the role of dysfunctional government mechanisms that allowed the regulatory slip; proposed ways in which the government could stop these practices and move forward into more proactive protection of children’s health

Book chapters

- **“The Constitution and Our Debt to the Future,”** in ***Beyond Environmental Law: Policy Proposals for a Better Environmental Future* (Alyson Flournoy & David Driesen, eds., Cambridge University Press, 2010)** –discussed the use of the General Welfare Clause of Article 1, Section 8 as the constitutional groundwork for next generation proposals, which would give states “police power” to protect the general welfare of their citizens

Articles

- ***Lessons from the North Sea: Should “Safety Cases” Come to America?* 38 B.C. ENVTL. AFF. L. REV. 417 (2011)**
- ***High Crimes, not Misdemeanors: Deterring the Production of Unsafe Food,* 20 HEALTH MATRIX 175 (2010)**
- ***Capture, Accountability, and Regulatory Metrics,* 84 TEX. L. REV. 1741 (2008) (with Sidney Shapiro)** –discussed the use of the internet to publish when agencies are effectively enforcing environmental standards as a means for promoting compliance and accountability
- ***Will Superfund Rise Again?* 23 ENVTL. F. 28 (2007)**

CPR

- **White Papers**
 - ***Opportunity Wasted: The Obama Administration’s Failure to Adopt Needed Regulatory Safeguards in a Timely Way is Costing Lives and Money,* CPR Issue Alert 1204, March 2012 (with James Goodwin)** – discussed the current status of the regulatory issues described in the Twelve Crucial Regulations paper
 - ***Protecting the Public from BPA: An Action Plan for Federal Agencies* (with Tom McGarity, Noah Sachs, Aimee Simpson and Matthew Shudtz) White Paper #1202, Washington, D.C.: Center for Progressive Reform (2012).**

- ***Back to Basics: An Agenda for the Maryland General Assembly to Protect the Environment*** (with Yee Huang) White Paper #1110, Washington, D.C.: Center for Progressive Reform (2011).
- ***Opening the Industry Playbook: Myths and Truths in the Debate Over BPA Regulation*** (with Matthew Shultz and Lena Pons) White Paper #1107, Washington, D.C.: Center for Progressive Reform (2011).
- ***Twelve Crucial Health, Safety, and Environmental Regulations: Will the Obama Administration Finish in Time?*** (with Amy Sinden, Matthew Shultz, James Goodwin, Yee Huang and Lena Pons) White Paper #1106, Washington, D.C.: Center for Progressive Reform (2011).
- ***Missing the Mark in the Chesapeake Bay: A Report Card for the Phase I Watershed Implementation Plans*** (with William Andreen, Robert Glicksman and Yee Huang) White Paper #1102, Washington, D.C.: Center for Progressive Reform (2011).
- ***Regulatory Blowout: How Regulatory Failures Made the BP Disaster Possible, and How the System Can Be Fixed to Avoid a Recurrence*** (with Flournoy, et al.) White Paper #1007, Washington, D.C.: Center for Progressive Reform (2010).
- ***From Ship to Shore: Reforming the National Contingency Plan to Improve Protections for Oil Spill Cleanup Workers*** (with Rebecca Bratspies, et al.) White Paper #1006, Washington, D.C.: Center for Progressive Reform (2010) - analyzed the actions of OSHA and NIOSH in both preparation for, and in reaction to, the BP oil spill, and recommended five actions for future preparedness: requirement of Regional Response Teams by EPA and the Coast Guard, inclusion of OSHA into Regional Contingency plans for disasters, requirement of a NIOSH Health Hazard Evaluation for cleanup workers, consultation with workers of past spills and appropriation of executive funds for OSHA for its role in response to the oil spill
- ***Workers at Risk: Regulatory Dysfunction at OSHA*** (with Thomas McGarity, Sidney Shapiro and Matthew Shultz), White Paper #1003, Washington, D.C.: Center for Progressive Reform (2010) –discussed the lack of resources and staff that have led to the dysfunction at OSHA, especially in the area of enforcement, and how these problems could effectively be remedied
- ***Obama’s Regulators: A First-Year Report Card*** (with Amy Sinden, Shana Jones and James Goodwin), White Paper # 1001, Washington, D.C.: Center for Progressive Reform (2010) - reviewed the work of CPSC, EPA, FDA, NHTSA, OSHA, as well as the impact of the White House Office of Information and Regulatory Affairs, issuing agency-by-agency grades, for the administration’s first year, giving an overall grade for the administration a B-
- ***A Return to Common Sense: Protecting Health, Safety and the Environment through ‘Pragmatic Regulatory Impact Analysis,’*** (with Amy Sinden, et al.), Washington, D.C.: Center for Progressive Reform (2009) – proposed an alternative to cost-benefit analysis
- ***The Hidden Human and Environmental Costs of Regulatory Delay***, with Catherine O’Neill & Amy Sinden, White Paper #907, Washington, D.C.: Center for Progressive Reform (2009)– presenting three case studies showing how regulatory delay has harmed human health and the environment
- ***Regulatory Dysfunction: How Insufficient Resources, Outdated Laws, and Political Interference Cripple the “Protector Agencies,”*** with Rena Steinzor & Matt Shultz, White Paper #906, Washington, D.C.: Center for Progressive Reform (2009) –analyzed the current state of FDA, OSHA, CPSC, NHTSA and EPA on their insufficiencies to protect consumers, and proposed ways to improve the regulatory efficacy of these agencies

- ***How Gaps in EPA's Main Toxicological Database Weaken Environmental Protection, White Paper #904, Washington, D.C.: Center for Progressive Reform (2009) (with Wendy Wagner & Matt Shudtz)*** –discussed the history of the IRIS and its applications, and analyzed the gaps in IRIS; suggested that the interagency review process be eliminated and that EPA should expand IRIS to include the dangerous chemicals omitted
- ***Reauthorizing the Chesapeake Bay Program: Exchanging Promises for Results, White Paper #903, Washington, D.C.: Center for Progressive Reform (2009) (with Shana Jones)*** –analyzed the current state of the program and made suggestions as to its improvement, including strict enforcement of the TMDL by the Administrator of EPA and concrete consequences of violation of the TMDL
- ***Reinvigorating Protection of Health, Safety and the Environment: The Choices Facing Cass Sunstein (with Applegate et al.), White Paper #901, Washington, D.C.: Center for Progressive Reform, 2009*** –discussed the need for regulatory reform from the Obama administration, suggesting an end to most cost-benefit analyses, more funding for oversight agencies, and a more active role for OIRA in coordinating regulatory agencies; discussed Sunstein's views on, and CPR's responses to, CBA, CBA's vulnerability to challenge or manipulation, discounting, the precautionary principle, grouping agencies under the executive branch, OSHA's Constitutionality and climate change legislation
- ***An Accountability Mechanism for the Chesapeake Bay: Interview Findings, White Paper #808, Washington, D.C.: Center for Progressive Reform (2008) (with Shana Jones)*** –displayed the results of interviews with eleven players in the Chesapeake Bay program where interviewees were asked general questions about improving accountability in the program; enumerated the strengths and weaknesses of the program, the potential sources of accountability, and concerns, as compiled through the interviews
- ***Protecting Public Health and the Environment by the Stroke of a Presidential Pen: Seven Executive Orders for the President's First 100 Days (with Rebecca M. Bratspies, et al.) White Paper #806, Washington, D.C.: Center for Progressive Reform (2008)*** – proposed seven executive orders for the incoming administration – 1., reduction of the federal government's carbon footprint; 2., consideration of climate change in agency decision-making; 3., taking children into account in toxics regulation; 4., new environmental justice legislation; 5., promotion of transparency in regulatory review; 6., prevention of preemption; and 7., a policy on sustainable public land use
- ***Saving Science from Politics: Nine Essential Reforms of the Legal System, White Paper #805, Washington, D.C.: Center for Progressive Reform (2008) (with Wendy Wagner & Matthew Shudtz)*** –enumerated nine recommended reforms: a level playing field between public and private research, disclosure of sponsor-controlled research, reporting of adverse effects, science and policy separation, whistleblower protection, cause of action for harassed scientists, reformed peer review process, prevent confidential business information from hurting the public, and establish a registry of environmental science; proposed mechanisms by which these reforms could be implemented
- ***Cooperative Federalism and Climate Change: Why Federal, State and Local Governments Must Continue to Partner (with Robert Glicksman et al.), White Paper #803, Washington, D.C.: Center for Progressive Reform (2008)*** –discussed the growing concerns of addressing climate change in environmental law, ultimately suggesting that the US continue to utilize state and local governments, as opposed to federal preemption

- ***Mother Earth and Uncle Sam: How Pollution and Hollow Government Hurt Our Kids*, White Paper #801, Washington, D.C.: Center for Progressive Reform (2008)** – summarized the research presented in her book of the same title (see above)
- ***Sequestered Science: Secrets Threatening Public Health*, White Paper #703, Washington D.C.: Center for Progressive Reform (2007) (with Matthew Shudtz)** – described the trend toward secrecy of scientific information in government, and how this lack of disclosure puts citizens in harm’s way and causes lawsuits to compensate victims after the fact when preventable issues arise
- **“Reforming the Comprehensive Environmental Response, Compensation, and Liability Act” in *CPR for the Environment: Breathing New Life in the Nation’s Major Environmental Statutes, A Legislative Sourcebook of Progressive Ideas for Members of Congress and Staff* (Alyson Flournoy and Matthew Shudtz, Eds.), White Paper #701, Washington, D.C.: Center for Progressive Reform, 2007** –assessed CERCLA and suggested improvements, including maintaining the successful liability scheme, employ the Superfund tax for non-compliance, and simplifying the voluntary cleanup provision
- **Testimony**
 - **On industry’s efforts to delay EPA’s toxic chemical risk assessments for the IRIS database**, July 14, 2011
 - **On Environmental Regulation and the Economy**, before the House Energy & Commerce Committee’s Subcommittee on Environment and Economics, February 15, 2011
 - **On clean science and regulatory issues**, before the House Science and Technology Committee’s Subcommittee on Investigations and Oversight, April 30, 2009
- **Conferences**
 - ***State Summit on Climate Change and Preemption*, March 25, 2009** – with the National Association of Clean Air Agencies
 - ***ACS Conference: The Mechanics of Quick Change*, January 8, 2009** – with the American Constitutional Society for Law & Policy
- **Comments**
 - comments submitted to OIRA on OMB’s annual report to Congress on **the costs and benefits of regulation**, November 5, 2009 (with Amy Sinden & James Goodwin)
 - comments submitted to Dr. John Holdren on **clean science**, May 13, 2009 (with Matthew Shudtz)
 - comments submitted to OIRA on **Obama regulatory review process**, March 16, 2009 (with Applegate, et al., collectively as the CPR Board)
 - comments submitted on **DOL’s Proposed Risk Assessment Rulemaking**, Sept. 29, 2008 (with Matthew Shudtz)
- **Letter**
 - to the Chairman of the Administrative Conference of the United States, Paul Verkuil, on the event with the Chamber of Commerce about the “incorporation by reference” regulatory policy, April 27, 2012 (with Thomas McGarity)
- **Perspectives**
 - ***Emissions Trading***
 - ***Clean Science* (with Wendy Wagner)**
 - ***Preventing Mercury Pollution* (with Lisa Heinzerling, former member, & Catherine O’Neill)**
 - ***Secrecy***
- **Blogs**

- ***The Pander Games: Obama Administration Sells Out Kids Doing Dangerous Agricultural Work, Breaks Pledge to Ensure Welfare of Youngest Workers***, CPRBlog, April 27, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=F4950EDF-0720-49B3-E9CF944947AD8F5C> – the pulling of regulations to protect children working on farms, which is considered the most dangerous form of work for children under 16
- ***BP Spill: Perp Walk for Underling Shouldn't Satisfy Anyone***, CPRBlog, April 26, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=EEE484C3-FE7C-7CDF-D8B3EDBBD3A8930D> – the obstruction of justice case against Kurt Mix, DOJ's assumption that starting from the ground up will lead to other indictments, and DOJ's record of little to no criminal charges in other large-scale disasters that occurred during Eric Holder's leadership
- ***The Age of Greed: Regulatory Look-Back In Action – Speeding Up the Line and Endangering Workers at Poultry Processing Plants***, CPRBlog, April 6, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=87F494FB-D7B2-94E6-9F13323E1277BC49> – the possibility of eliminating government regulators in lieu of industry regulators in the poultry industry, and how this could lead to an even more dangerous work environment for factory workers, as well as possible *E. coli* contamination outbreaks in the country
- ***Obama Administration's Latest Sop to the Anti-Regulatory Crowd: Buying the Cumulative Burden Pitch***, March 20, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=31F773EB-C8E1-8B68-DF478F58EAE23343> – the memorandum by the administration, and why accounting for cumulative costs is inherently one-sided, as it does not account for benefits and makes heavily regulated industries appear more heavily burdened, even if they simply create more causes for regulation
- ***CPR Issue Alert: Administration's Failure to Adopt Needed Safeguards in a Timely Way is Costing Lives and Money***, CPRBlog, March 2, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=D41CAA8D-DF04-7FDE-AACE9ED2AD72682D> – analyzed the regulatory actions that have been delayed under the Obama administration and why they are necessary in the protection of workers and the environment
- ***The Age of Greed: What the Chemical Industry Doesn't Want You to Know***, CPRBlog, February 22, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=A6AD4D3F-062F-BF4F-D11E21C560D5F320> – CBI claims in the chemical industry and the problems this protection of industry could cause
- ***The Economist Recycles Old Right-Wing Ideas to Gut Public Protections***, CPRBlog, February 17, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=8D246548-D0E9-4EFF-EFD718CA253562E6> – the use of an improperly determined and considerably exaggerated number in the magazine's article
- ***Bureaucracy Bashing, Obama Style***, CPRBlog, February 9, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=628A2D9D-A41B-5375-55E9C817BAE20418> -
- ***The Age of Greed: Science Drowned by Politics***, CPRBlog, January 25, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=1607A9F5-D173-A250-0A4784FA7961A8D6> – the status of science in policy as modeled by the current example of climate change

- **Landry Calls Civil Servants the “Gestapo”: Who Should Apologize??** CPRBlog, September 21, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=8C133500-0EEC-1EBB-6015F1E7FB35F585> - the circumstances surrounding the use of the inappropriate and offensive rhetoric, and the bigger picture that one cannot claim to love the government and talk terribly of it at the same time
- **Sunstein to Outline Regulatory Review Plans; Industry Yawns; Public Health and Safety Agencies Lose out from Diverted Resources**, CPRBlog, May 25, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=28106B87-972F-2AB8-8537941E67FA329E> - discussed the regulatory look-backs promised by Sunstein and the inability of groups opposing regulation to produce an example of a current rule that should illicit a look-back.
- **Lisa Jackson Steps Back (Again) on Boiler MACT: One of the Top 12 Rules Now in Indefinite Limbo. Delay Violates the CAA**, CPRBlog, May 18, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=C1645794-E21C-B329-5C8964526DA31C68> - the delay in the ruling, the benefits of regulation, and how the delay violates CAA as opposed to following APA, as EPA contends.
- **Olympia Snowe, Deregulation, and Her 'Small' Business Cover**, CPRBlog, May 3, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=B615F5EA-C048-78E2-640CD5455B66F84D> - discussed Snowe's attempt to add her amendment onto another rule, creating the possibility for agencies' funding to be cut if the Inspector General believes a rule was incorrectly reviewed
- **EPA Delivers on TMDL, Raps Chesapeake Bay States**, CPRBlog, Sept. 24, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=45565EB8-AE4F-C328-98B58B1E1779B973> - discussed the new TMDL draft, and how it signals a change in the regulation of Chesapeake Bay states' actions
- **Rescuing the Chesapeake by Anchoring the Goal Posts and Making Rules for the Game**, CPRBlog, Sept. 24, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=4447DD0E-B1F2-9F24-07DA2AA14D155498> - discussed the need for, and the proposal by EPA, of TMDL's and WIP's for more effective restoration of the Chesapeake Bay
- **OMB Nominee Jacob Lew, Meet Broken Regulatory State**, CPRBlog, September 16, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=1A88219B-F6A0-E131-CA820C349522F530> – discussed Lew’s nomination, the current regulatory mishaps of the BP oil spill, eggs with traces of salmonella, Toyota brake issues, the coal mining disasters and so on, the inappropriately low budget for protector agencies, OIRA’s continuing role in minimizing actions against coal ash and toxics, and the need for Lew to fix the regulatory failures of the current system
- **OIRA’s Fuzzy Math on Coal Ash: A Billion Here, a Billion There**, CPRBlog, July 13, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=CD428D4F-DCDE-9091-533F4195CE25C5E4> – discussed the overstated value of the “stigma effect” cost to coal ash in comparison to the grossly understated benefits, like cancer reduction, that cannot match the overstated cost
- **Eye on OIRA: Regulation Goes Opaque**, CPRBlog, June 22, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=5C7955F2-A0D9-B017-5A5D963250256AAF> – discussed the lack of transparency in OIRA under the Obama administration, especially with the EPA coal ash proposal

- ***Sending Don Blankenship to Jail: A Legal Argument***, CPRBlog, May 20, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=B68DE1A6-9AB3-AADA-66B5526294951E8F> – assessed the role of Massey Energy CEO Don Blankenship’s role in the mining accident causing 29 workers’ deaths
- ***Eye on OIRA: Sunstein Says Ambitious Efforts to Revamp Regulatory Review Tabled for the Time Being. What Does It Mean? Not Much. Just Ask Oscar the Grouch***. CPRBlog, March 12, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=52D5FC2E-F9E4-2834-4EEF1A5EB76DA41B> – described Sunstein’s appearance at the Brookings Institute where he announced a delay in reforming the OIRA regulation process, as well as the inaction against Coal Ash regulation and the continued interference by industry
- ***Toyota: Should Someone Go to Jail?*** CPRBlog, March 1, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=19B81FB9-D0C9-3EC0-D936A11E2018E1A1> – discussed the sudden unintended acceleration issue in Toyota cars, the connection to and lack of regulation of electronic controls, and the continuing role of NHTSA in fixing, and preventing, such events from happening again
- ***Eye on OIRA: King Coal***, CPRBlog, February 26, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=0AC46556-0CD0-3C38-F6315D6C70BBA03C> – discussed the history of coal ash and spills, the interference by OIRA in Jackson’s proposed rule, and the need for regulation of coal ash disposal
- ***The Toyota Fiasco: Where Were the Regulators?*** CPRBlog, February 22, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=F6DE2E28-F005-A7E9-DF1A6ADA50DD728F> – discussed the use of electronic controls in cars, NHTSA’s history of inaction in regulating or investigating them, and their role in the widespread recent Toyota incidents
- ***Eye on OIRA: The 121st Day and Coal Ash Still Going to Pits in the Ground***, CPRBlog, February 12, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=C3858DAF-B077-FDB46FDDBC6D> – discussed the end of OIRA’s review period, and how it is unlikely that action will be taken against coal ash anytime soon
- ***Eye on OIRA: Coal Ash Visits by Regulation Foes Up to 28; OIRA’s Open Door Policy Creates Double Standard for Special Interests, Flouting Obama Ethics Initiatives***, CPRBlog, February 10, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=B8651FEC-A7FA-21C6-83D00F5752204D7F> – catalogued the industry meetings with OIRA about coal ash
- ***The Human Costs of Pander, Take 3: Parents Beware the Incredibly Shrunk Consumer Product Safety Commission***, CPRBlog, February 2, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=8F37C5C7-AA02-FF4D-DCE6A4FDDFDC985D> - discussed the current state of CPSC, its financial and FTE restraints, and the danger posed to American consumers by the shortcomings of the agency and the influx of imported goods
- ***The Human Costs of Pander, Take 2: Obama Budget Shortchanges FDA and Food Safety***, CPRBlog, February 1, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=8B3A2AD6-CFFE-70A8-4EE4CF1313971B7F> - discussed the financial shortcomings of the FDA and the biggest problems faced by the agency, especially from imported foods
- ***EPA’s New NO₂ Rule: A Tale of OMB Interference***, CPRBlog, January 29, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=7B6070A2-E4D9-CEE5-4D6EF5DF5B19FB12> - discussed the weakening of the NO₂ rule by increasing the

- minimum number of citizens per monitored city to 500,000, despite the proposed 350,000 from EPA's scientific review
- ***The Human Costs of Pander*, CPRBlog, January 27, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=71BFEE95-002E-C194-BE7D2B723165425B>** – discussed the budgetary freeze announced by Obama in his State of the Union address, and how it negatively effects the already underfunded protector agencies and the most at-risk low income citizens
 - ***Coal Ash First Real Test of Obama Commitment to Health and Safety Regulation*, CPRBlog, January 20, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=4C358214-ECA4-12C3-CBAEC38CB709FB56>** – discussed the EPA coal ash rule, its history and the continuing interference by OMB
 - ***Obama's Regulators Earn a B- for Year One in New CPR Report*, CPRBlog, January 14, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=29E47421-DF63-BE3C-4901B1396D844F74>** – discussed the progress of regulation under the Obama administration in its first year, praising the increased resources to parts of the five protector agencies, but also highlighting the areas in which little or no progress was made, such as in CPSC's response to toxic drywall and OSHA's inaction against toxic chemicals in the workplace
 - ***EPA's Proposed Rulemaking on Runoff and CAFOs Good News for Chesapeake Bay*, CPRBlog, January 13, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=2945C4F5-FC7D-9D0C-FD0BD0651EFEDC3B>** –discussed Lisa Jackson's announcement that EPA would propose regulations to improve urban and suburban stormwater and concentrated animal feeding operations' runoff
 - ***Regulatory Highs and Lows of 2009: 'The Adults Are Back in Charge,'* CPRBlog, December 29, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=DB18FF4A-EF82-DF21-F7DE42564C679470>** –discussed the author's view of EPA's endangerment finding on climate change as the high point in regulation for the year, as well as the delayed regulation of mercury until 2011, and the price American women and children have paid since the 90's because of the delay, as the lowest point
 - ***Sunstein Watch: What Progressives Expect from OIRA: An Open Letter to Cass Sunstein*, CPRBlog, December 11, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=7B9364C0-C179-D1C0-CF81E205A340F9A9>** –discussed the work of OIRA, both positive and negative, under the Obama administration, reminding Sunstein of the major issues of Lutter's appointment, inappropriate meetings with industry and OIRA's unchanging stance on CBA
 - ***Sunstein Watch: Randall Lutter to OIRA?* CPRBlog, December 2, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=50229EA2-F753-A87A-B78036364E23EAB8>** –described the possible appointment of Lutter to OIRA and his extremely conservative views on CBA, environmental justice, regulation, and most disturbingly, children's health
 - ***Sunstein Watch: OMB Says It Will Leave EDSP to the EPA Experts*, CPRBlog, November 19, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=0CDDFFE8-DE4E-FDAF-876C0D06A34CAA68>** - discussed the letter from OMB Director Peter Orszag enumerating OMB's intention to restore clean science and stay out of scientific investigations by EPA, specifically in the area of EDSP

- ***Sunstein Watch: Old Habits Die Hard on the Regulatory Killing Ground; Don't OMB Economists Have Better Things to Do Than Channel Industry Opposition to EPA Science?*** CPRBlog, October 19, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=6CF7B939-E944-7F3A-87079D9AC7723E9C> –discussed the Bush administration-style actions of OIRA staff in the time between Sunstein's nomination and his appointment, particularly in their criticism of EPA's stance on 1,2,3-trichloropropane regulation, based on tumors found in non-human homologous organs of rats
- ***Newly Confirmed Regulatory Czar Needs to Close OIRA's Backdoor for Special Interests***, CPRBlog, September 10, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=A5A5C027-9B89-4397-28CB9A0C3F660D1B> –encouraged Sunstein to work against the now common practice of allowing industry the chance to argue further against regulation to OIRA
- ***Climate Change Schizophrenia: Cash for Coal Clunkers, Anthems for Natural Gas, and Delaying Regulation of Hydraulic Fracturing Won't Win this Epic Battle***, CPRBlog, September 2, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=7BA5C6DD-B134-142C-8A6356296A597D81> –discussed the situation where, despite frightening scientific evidence, the US government has continued to resist climate change legislation, citing reasons such as the collapsed economy and lack of spending for issues outside of the immediate future, the disproportionately worse affect on the developing world by climate change, and environmentalists focusing energy on areas that are more sidelines of regulation; also described the CAP report praising natural gas and expansion of its use, and delaying regulation of fracking, despite EPA having already studied the topic
- ***Obama EPA Takes Strike One on Atrazine***, CPRBlog, August 25, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=51CEBDF4-A478-BA4A-7BA9B0DFA781321E> –discussed the history of Atrazine study and level determination, the current state of EPA's lack of regulation against the chemical, the tendency toward warning citizens to avoid exposure as opposed to regulating it, and the harms to humans associated with the chemical
- ***The Grassley Crusade against Medical Ghostwriting: Let's Not Burn Witches at the Stake***, CPRBlog, August 21, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=3D3B2856-FC6B-940F-7DF0B2AA65CB67E3> –discussed the unethical practice of signing off on medical research without disclosing the special interest groups with which the researcher was associated, and how Charles Grassley has taken to this issue by searching out the individual scientists, not the corporations that have given the individuals their kickbacks
- ***Cass Sunstein and Change We Can Believe In; Bush Administration Traditions Continue at OMB; Rocket Fuel in Drinking Water and Interagency Review***, CPRBlog, August 14, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=194FFA22-B6BF-7D29-50E4FB4010F9E935> –discussed the recent closed doors meetings concerning the presence of perchlorate in water, the lack of EPA regulation, and how the nomination of Cass Sunstein could play into this regulatory battle
- ***Regulatory Czar Sunstein's First Days***, CPRBlog, July 27, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=BCC29500-A4D8-7017-ECD4FAFB9DAEB60> –discussed Sunstein's penchant for CBA and proposed three methods by which he could live up to Obama's promises for change: streamlining the regulatory process for agency efficacy, reversing midnight regulations set by Bush, and

- allowing climate change scientists to fully display their findings without pressure or interference from industry
- **Wanted: A Wise Latina**, CPRBlog, July 22, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=A3FC135D-C88C-408A-C6648D15C7E340D7> –discussed the rise of workplace injuries and deaths in the Hispanic community over the past seventeen years, and how OSHA could, and is attempting to, fix the widespread problems of language barriers, fear of deportation, lack of training, etc. for Hispanic workers
 - **Sunstein Watch: The Nominee Breaks Silence to Placate Cattle Ranchers; He Isn't Sonia Sotomayor**, CPRBlog, July 14, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=7A32DCA4-F0AF-51CC-80395B6FEA970E40> –discussed the Sunstein nomination's hold by Chambliss and the cattle ranchers, due to Sunstein's writings on animal rights, the transition from ideological academia to government agency control, and the difficulties created when such nomination holds occur
 - **Responsibility Without Accountability: Failed Cleanup in the Chesapeake Bay**, CPRBlog, July 2, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=2AA1B34A-1E0B-E803-CAB2D7373D94CD54> - described the Chesapeake Bay Program, its structure, and its failures to produce progress in the Bay's cleanup
 - **Sunstein Nomination Approved by Senate Committee**, CPRBlog, July 2, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=61095D35-1E0B-E803-CAA5002B4CDD0A4B> –discussed Sunstein's approval and his promises of soft variables in CBA and following statutory standards
 - **Big Trouble on Climate Change: President Obama and the Loss of Momentum**, CPRBlog, June 12, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=D4C0A1EC-15C5-EA6D-34A26A2B827155A3> –discussed a piece in the New York Times Magazine by Matt Bai on the dangers of relying on Obama's popularity to further bills, how climate change will probably not be addressed until after health care reform, and how democrats need to come out stronger, with more specific plans and arguments for climate change if the new reform is to ever occur
 - **Sunstein Nomination Approved by Senate Committee**, CPRBlog, May 21, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=61095D35-1E0B-E803-CAA5002B4CDD0A4B> –discussed Sunstein's nomination, voted against by Tom Coburn, and his promises for regulatory review
 - **Cass Sunstein Hits the Senate and Climate Change Hits the Media Fan**, CPRBlog, May 13, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=38155B38-1E0B-E803-CA91A6BBC1F011CD> –discussed Sunstein's nomination and viewpoint, and the leak of a document that showed EPA proposing to name greenhouse gases as "pollutants" under CAA
 - **Sunstein at the Helm**, CPRBlog, May 13, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=3ABDF912-1E0B-E803-CA2FD430174C3387> -discussed the "regulatory czar" nominee and his views, and how these views might influence his actions
 - **What I Will Be Listening For at the Cass Sunstein Confirmation Hearing**, CPRBlog, May 6, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=1675B1A4-1E0B-E803-CA71AA924F43F1ED> - described the author's questions she hoped to be answered concerning Cass Sunstein's approach to regulation

- ***The First 100 Days: On the Environment, a President to be Proud of; An Agenda Just Beyond Reach***, CPRBlog, April 28, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=ED4C83CA-1E0B-E803-CA594191B90D191E> –discussed the Obama administration’s overall push for climate change reform and smaller steps toward the goal, including statements on transparency and disclosure, and the road still left for the administration to actually put their ideas on climate change into policy
- ***Reacting to Cass Sunstein’s Nomination***, CPRBlog, April 20, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=C56DFFA8-1E0B-E803-CA51354CCED59BC4> –raised the author’s initial questions as to Sunstein’s heavy reliance on CBA for regulatory decisions and how this might affect the actions of OMB under him
- ***The People’s Agents: Rewarding Polluters with a Plaque on the Wall***, CPRBlog, April 14, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=A10DDBA3-1E0B-E803-CA29CFF108AED26E> - described the Performance Track award system of the EPA and how it rewards businesses that may have other facilities in violation of environmental codes
- ***Still Your Grandma’s Cost-Benefit Analysis: Well-meaning Effort by Resources for the Future Falls Short of the Mark***, CPRBlog, March 31, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=5A7A5399-1E0B-E803-CAB096297DE92870> –described the history and theory of CBA and three areas in which the Bush administration errantly applied it, namely in cooling water intakes, mercury control and the Clean Air Interstate rule
- ***The People’s Agents: Sulfur in the Home, Brought to You by Drywall from China***, CPRBlog, March 27, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=481B1E0D-1E0B-E803-CA3C46C4319DE791> –discussed the general problem of consumer protection and the specific issue of Chinese drywall, which expelled noxious fumes into residents’ homes and caused both medical and property damages; also discussed the overwhelming job of the CPSC amid its continual drop in funding and staff, while the US population and imported goods have grown
- ***The People’s Agents: When the Fox Guards the Hen House... and is Paid by Perdue***, CPRBlog, March 20, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=143DD3F8-1E0B-E803-CA27582C24DA8938> –discussed the lax inspection process of the peanut factories that resulted in mass recalls for Salmonella contamination, which caused at least nine deaths and thousands of illnesses, and compared this lack of oversight to that which led to the economy’s downfall
- ***Delivering Health, Safety, and a Clean Environment: CPR Submits Comments for New Executive Order on Regulatory Review***, CPRBlog, March 17, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=14B2DEFC-1E0B-E803-CA06CE0C7377E8EE> –discussed CPR’s recommendations for the Obama administration’s OMB, including ending the use of CBA and returning to more direct regulation and oversight
- ***The People’s Agents: Rescuing the Occupational Safety and Health Administration***, CPRBlog, March 6, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=DAFE4753-1E0B-E803->

- CA8CCCA36C8F7A26** –discussed the deficiencies of OSHA and how these could be improved
- **OMB Seeks Public Input on New Executive Order on Regulatory Review, CPRBlog, February 27, 2009,**
<http://www.progressivereform.org/CPRBlog.cfm?idBlog=B5AA1F40-1E0B-E803-CAABBC52B2E60000> –discussed OMB’s decision to allow an 18-day public comment period on the new order, given the height of public concern, and the need for a longer public comment period once a draft has been written
 - **Cass Sunstein's "Yes We Can," CPRBlog, February 10, 2009,**
<http://www.progressivereform.org/CPRBlog.cfm?idBlog=5D5DA84D-1E0B-E803-CA9C935116A0E1AD> - discussed areas of regulation gaps, like children's toys, Obama's promises for progress in transparency and regulation, and how the Sunstein nomination could help, or inhibit, the progress promised by Obama
 - **Cass Sunstein and OIRA, CPRBlog, January 26, 2009,**
<http://www.progressivereform.org/CPRBlog.cfm?idBlog=1024E113-1E0B-E803-CA21979C057DC516> –discussed the history and application of CBA in regulation, and how the Obama administration could fix it, but the appointment of Sunstein could prevent a solution from being implemented
 - **The Sunstein Appointment: More Here Than Meets the Eye, CPRBlog, January 9, 2009,**
<http://www.progressivereform.org/CPRBlog.cfm?idBlog=BCC5AF38-1E0B-E803-CA9222BEA379D45D> –discussed the Sunstein appointment in terms of his ability to restore regulatory power to the protective agencies because of his stance on CBA
 - **Regulators Cozying Up to Regulated Industry, CPRBlog, January 6, 2009,**
<http://www.progressivereform.org/CPRBlog.cfm?idBlog=AA83AB65-1E0B-E803-CA50FE32EF250213> -discussed the mis-regulation of beryllium, the history of the effects of the chemical and standards set by OSHA and DOE, and OSHA's resistance in setting a more stringent standard because of industry lobbying
 - **Time for EPA to Ride in the Front Seat, CPRBlog, December 12, 2008,**
<http://www.progressivereform.org/CPRBlog.cfm?idBlog=2BA63A3C-1E0B-E803-CA5310040FF4120D> - discussed the history of agency and industry interference with EPA science in the Clinton and Bush administrations, especially in reference to perchlorate
 - **A New Washington For Our Kids, CPRBlog, November 12, 2008,**
<http://www.progressivereform.org/CPRBlog.cfm?idBlog=9121A529-1E0B-E803-CAF4B8201E204954> - discussed the need for the Obama administration to promote children's welfare through regulation by amending former President Clinton's executive order on children's health and by ending the use of discounting in children's health CBA
 - **Rays of Sunshine, CPRBlog, August 19, 2008,**
<http://www.progressivereform.org/CPRBlog.cfm?idBlog=DB3EFBFB-1E0B-E803-CA307492CD2AC67D> –discussed the role of scientific evidence in regulation and how it can be distorted by politics, citing specific examples where this problem occurred in the Bush administration, but also urged scientists and politicians to step up and try to prevent it from happening again

Testimony

- **Rena Steinzor** - April 30, 2009: before the House Science and Technology Committee’s Subcommittee on Investigations and Oversight on clean science and regulatory issues

Last Updated May 8, 2012

- **Rena Steinzor** - October 17, 2007: before the Subcommittee on Superfund and Environmental Health of the U.S. Senate Environment and Public Works Committee, on the Bush Administration's failure to pursue Superfund cleanups

Forthcoming

- ***The Truth About Regulation***, ___ HARV. L. & POL'Y REV. (forthcoming 2011)
- ***The Case for Abolishing Centralized White House Regulatory Review***, ___ MICH. J. OF ENVTL. & ADMIN. L. (forthcoming 2011)
- ***Too Big to Obey: Why BP Should Be Debarred***, ___ WILLIAM & MARY ENVTL. L. & POL'Y REV. (forthcoming 2011)(with Anne Havemann)

A. Dan Tarlock

Subjects: water management, water supply in the American west, the Klamath Basin

Book

- ***Water War in the Klamath Basin: Macho Law, Combat Biology, and Dirty Politics* (Island Press, 2008) (with Holly Doremus)** – described the water management crisis of 2001, a drought year in which the Klamath Basin was closed for water transfer in order to preserve endangered species; applied the lessons learned in this specific situation to the dangerous problem of water use in the American west

Book chapter

- **“Biodiversity Conservation: An Unrealized Aspiration,”** in *Agenda for a Sustainable America*, (John Dernbach, ed) (Earth Island Press, 2009)
- **“Equitable Apportionment of Water Resources Among States,”** in *Encyclopedia of the Supreme Court of the United States* (2008)

Articles

- ***The Legacy of Schodde v. Twin Falls Land and Water Company: The Evolving Reasonable Appropriation Principle*, 42 ENVTL. L. 37** – “basic argument is that the sensitive way in which courts have applied Schodde illustrates that courts can satisfactorily balance the protection of individual expectations about the use of resources of property with changing conceptions about the best use of resources, without the straightjacket of the Fifth Amendment”
- ***Do Water Law and Policy Promote Sustainable Water Use?* (symposium), PACE ENV'T L. REV. (2011)**
- ***The Legal-Political Barriers to Ramping Up Hydro* (symposium), CHICAGO-KENT L. REV. (2011)**
- ***Environmental Law: Then and Now*, 32 WASH. U. J.L. & POL'Y 1 (2010)** - explained the history of and need for environmental regulation, through analysis of the CAA, CWA, ESA, TSCA and NEPA, and establishes one of the main concepts throughout the articles: the need for a more dynamic approach to environmental law in light of current research and climate change
- ***Four Challenges for International Water Law*, TULANE ENVTL. L.J. (2010)**
- ***Water Demand and Energy Production in a Time of Climate Change*, ENVTL. & ENERGY L. & POL'Y J. (2010)**
- ***The International Joint Commission and Great Lakes Diversions: Indirectly Extending the Reach of the Boundary Waters Treaty*, WAYNE L. REV. (2009)**
- ***Fat and Fried: Linking Land Use Law, The Risks of Obesity, and Climate Change*, 3 PITT. J. ENVTL. PUB. HEALTH L. 31 (2009)** –discussed how the use of spatial planning and land laws could combat the growing problems of obesity and climate change in the US, without impeding the basic right to live where one chooses
- ***The International Joint Commission and Great Lakes*, 54 WAYNE L. REV. 1671 (2009)** –discussed the history, roadblocks and successes of the International Joint Commission of the Boundary Waters Treaty between Canada and the US, and how this group has been able to work efficiently between the two countries
- ***Western Growth and Sustainable* 38 ENVTL. L. REP. NEWS & ANALYSIS 10582 (2008) (with Sarah Bates)** –suggested a closer look at water supplies should be taken by the western states as the

population expands, and how water planning could be accomplished to allow the projected growth to continue

- **Water Security, Fear Mitigation and International Water Law**, 31 *HAMLIN L. REV.* 703 (2008) – discussed the possibility that, in the light of lowering water supplies, international armed conflict could result from these tensions, finding that although fears may arise and may be presented by governments, war is not likely to happen over water supplies, even in middle east “hot spots”; cautioned that conflict is not discountable, however
- **Professor Joseph L. Sax, Visionary Lawyer**, 14 *HASTINGS W.-N.W. J. ENVTL. L. & POL’Y* 17 (2008) – recounted the life and influence of Joe Sax, especially his acknowledgment of the need for law to change as the relationship between humans and the environment evolves
- **Growth Management and Western Water Law: From Urban Oases to Archipelagos**, 14 *HASTINGS W.-N.W. J. ENVTL. L. & POL’Y* 93 (2008) (with Sarah B. Van de Wetering) –discussed the need for new water allocation laws and growth management in the west due to the rapid population boom, the current competition for water, and why Westerners believe there is a need for new water laws
- **Putting Rivers Back in the Landscape: The Revival of Watershed Management in the United States**, 14 *HASTINGS W.-N.W. J. ENVTL. L. & POL’Y* 1059 (2008) –discussed the recent movement toward cooperative watershed management practices because of the larger number of stakeholders and preservation of local resources, as well as the issues that led to the degradation of watershed management to begin with
- **A Brief Examination of the History of the Persistent Debate about Limits to Western Growth**, 14 *HASTINGS W.-N.W. J. ENVTL. L. & POL’Y* 1309 (2008) –discussed the ideas of limitations to growth in the western states in terms of space and water, referencing four specific authors whose ideas lost favor, and drew lessons from those authors that can be applied to western growth today
- **Land Use Regulation: the Weak Link in Environmental Protection**, 82 *WASH. L. REV.* 651 (2007) – highlighted the vast work and influence brought to environmental law by Professor William Rodgers, discussed the causes of the gap in land use regulation, and sought to apply Rodgers’ approach of law to this subject
- **Are Shared Benefits of International Waters** 18 *COLO. J. INT’L ENVTL. L. & POL’Y* 523 (2007) (with Patricia Wouters) –analyzed the use of shared benefits in the Columbia River basin and the Amu Syr Darya basins as opposed to traditional allocation mechanisms, and highlighted the benefits and shortcomings of this approach in the specific cases
- **The Great Lakes**, 40 *U. MICH. J.L. REFORM* 995 (2007) –discussed the reasons environmental laws should be incorporated to the anti-diversion laws for the Great Lakes, namely that the lakes are a common heritage for all people, environmental laws can cover more of the scope of protective laws needed for the area, and environmental laws can protect the area from free-market trade
- **Ecosystem Services in the Klamath Basin: Battlefield Casualties or the Future?** 22 *J. LAND USE & ENVTL. L.* 207 (2007) –discussed the potential outcome and lessons learned if ecosystem services were used in the Klamath Basin, the three major limitations of this theory and the mechanism that would be most effective for the area

CPR

- **White Paper**
 - **Making Good Use of Adaptive Management** (with Holly Doremus, et al.) White Paper #1104, Washington, D.C.: Center for Progressive Reform (2011).

- **Letter**
 - to EPA Administrator, Lisa Jackson on the **North American Commission for Environmental Cooperation (with Bratspies, et al.)**, March 29, 2012
- **Blogs**
 - ***The First 100 Days: At Interior, Several Positive Developments, but the Jury is Still Out***, CPRBlog, April 29, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=F2C7D9F1-1E0B-E803-CA0BBBB904BDC17A> –discussed the initial actions by Salazar and the DOI, and roadblocks the department will face throughout the Obama administration
 - ***Taking Claims in the Klamath Basin***, CPRBlog, February 3, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=3B1B6133-1E0B-E803-CA8E10296103077D> –described the use of the takings clause by the irrigators in Klamath Basin in the case that was then being tried in the Oregon Supreme Court
 - ***Bush Record on Biodiversity and Endangered Species***, CPRBlog, January 19, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=ECAFC2F7-1E0B-E803-CA9725C1E82FB452> –described the administration’s policies in regard to biodiversity, including the reduction of critical habitat for endangered species and continuation of grazing on public land

Forthcoming

- ***Is a Non-Positive, Substantive Environmental Law Possible?*** ___ MICH. J. ENVTL. & ADMIN. L. ___ (2011)
- ***The Legacy of Schodde v. Twin Falls Land and Water Co.: The Evolving Reasonable Appropriation Principle***, ___ ENVTL. L. J. ___ (2011)

Joseph P. Tomain

Subjects: justice, dirty energy, the iUtility

Books

- ***Dirty Energy Policy: Prelude to Climate Change* (Cambridge University Press, 2011).**
- ***Creon's Ghost: Law, Justice, and the Humanities* (Oxford University Press, 2009)** –analyzed the connection between law and the moral code of humans on delicate legal issues, such as same-sex marriage, and combined current legal texts with classical texts in order to enhance the reader's understanding of the issue
 - -selected critical acclaim for *Creon's Ghost*: "Creon's Ghost is learned, wise, and most of all challenging. It challenges us to confront a central question of any legal system: What is the relation between the limits of human law and the desire for justice under higher law? The book explores the responses to this challenge given in law, philosophy, and literature, from Plato and Aquinas to Holmes and Martin Luther King. Lawyers, humanists, and all thoughtful citizens will be engaged by its narrative and analysis and pressed to examine their own beliefs about law and justice." --Jay M. Feinman, Rutgers University School of Law, Camden

Book chapters

- **"The iUtility," in *Beyond Environmental Law: Policy Proposals for a Better Environmental Future* (David M. Driesen & Alyson C. Flournoy, eds., Cambridge University Press, 2010).**
- **"Rethinking Energy Law and Policy," in *Climate Change: A Reader* (William Rodgers, ed., Carolina Academic Press, 2010).**
- **"Dirty Energy Policy," in *Economic Thought and U.S. Climate Change Policy* (David Driesen, ed., MIT University Press, 2009).**
- **"The iUtility," in *The New Environmentalism* (Alyson Flournoy, ed., Cambridge University Press, 2009).**

Articles

- ***"Steel in the Ground:" Greening the Grid with the iUtility*, 39 ENV'T. L. 931 (2009)**
- ***Narrating Justice*, 77 U. CIN. L. REV. 783 (2009)** –written as part of a law and literature symposium on narration and the poetry of Lawrence Joseph; discussed the ever-changing nature of narration versus the fixed information of a narrative, in reference to legal literature
- ***Building the iUtility*, 146 PUB. UTIL. FORT. 28 (2008)**
- ***To A Point*, 52 LOY. L. REV. 1201 (2007)** –discussed the Traditional Energy policy and how its use has come into question in light of such events as Hurricane Katrina, proposed a soft path approach, and highlighted the current political atmosphere preventing a policy shift

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White Paper

- ***Regulatory Blowout: How Regulatory Failures Made the BP Disaster Possible, and How the System Can Be Fixed to Avoid a Recurrence* (with Flournoy, et al.) White Paper #1007, Washington, D.C.: Center for Progressive Reform (2010).**

Blogs

Last Updated May 8, 2012

- **Tomain on Obama Energy/Environment Team, CPRBlog, December 16, 2008,**
<http://www.progressivereform.org/CPRBlog.cfm?fkScholar=47> –discussed the announcement of the energy team and the implications of Obama’s remarks as to the goals of the team

Robert R. M. Verchick

Subjects: Hurricane Katrina, environmental justice, Gulf region

Book

- ***Facing Catastrophe: Environmental Action for a Post-Katrina World* (Harvard University Press, 2010)** - argued for a new perspective on disaster law that is based on the principles of environmental protection, boiling down his criticisms to three simple commands: Go Green, Be Fair, and Keep Safe; listed as a CHOICE Outstanding Academic Title of 2010
 - Select critical acclaim: “The book is an important attempt to, among other things, take the ‘lessons of Katrina’ and make from them a new kind of national policy: one that can calculate the economic value of ‘natural infrastructure’--like Louisiana's coastal wetlands, which help to diminish the ferocity of incoming hurricanes--and can use that calculation to make saner cost-benefit decisions about our environment.” --Harry Shearer (*Huffington Post*)
 - “In unraveling the engineering, social, and political debacles that created the catastrophic aftermath of Hurricane Katrina, Verchick proposes fundamental reforms in disaster policy and environmental law for coping effectively and ethically with future natural disasters. His analysis of this complex tragedy is masterful and lucid, and his prudent prescriptions are compelling...Anyone concerned with human and environmental well-being should read this important synthesis about proactive disaster preparation, particularly in light of the ongoing warming of the atmosphere and rising sea levels.” --P. R. Pinet (*Choice*)
- ***Disaster Law and Policy* (WoltersKluwer/Aspen Books, 2d ed. 2009) (in press)(with Jim Chen, Dan Farber & Lisa Grow Sun)**

Book chapters

- “Adaptive Justice,” in ***Climate Change: A Reader* (William Rodgers, et al. eds., Carolina Academic Press, 2011)**
- “Adaptation, Economics, and Justice,” in ***Economic Thought and U.S. Climate Change Policy* (MIT Press)(David Driesen, ed., 2009)**
- “Preemption and Theories of Federalism,” in ***Preemption Choice: The Theory, Law, and Reality of Federalism's Core Question* (with Nina Mendelson) (William Buzbee, ed., Cambridge University Press, 2009)** –discussed when and why preemption is legally supported, and how judicial decision making on preemption is influenced, particularly in three areas: “cases involving asserted preemption by agency action, cases involving areas of traditional federal or state concern, and cases involving statutory ‘savings’ clauses”

Articles

- ***Tales from the Back Bench*, 78 UMKC L. Rev. 1111 (2010)** – described the “secret” student paper at Harvard Law and the memories associated with the paper
- ***Katrina, Feminism, and Environmental Justice*, 13 CARDOZO J.L. & GENDER 791 (2008)** –discussed the role of distributional fairness in government policies, using the events of Hurricane Katrina for discussion
- ***Afterword: The Economics of Infrastructure*, 52 LOYOLA L. REV. 933 (2007)**

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- **White Papers**
 - ***Climate Change and the Puget Sound: Building the Legal Framework for Adaptation* (by Robert Glicksman, Catherine O'Neill and Yee Huang, with other CPR scholars) White Paper #1108, Washington, D.C.: Center for Progressive Reform (2011).**
 - ***Reinvigorating Protection of Health, Safety and the Environment: The Choices Facing Cass Sunstein* (with Applegate et al.), White Paper #901, Washington, D.C.: Center for Progressive Reform, 2009** –discussed the need for regulatory reform from the Obama administration, suggesting an end to most cost-benefit analyses, more funding for oversight agencies, and a more active role for OIRA in coordinating regulatory agencies; discussed Sunstein's views on, and CPR's responses to, CBA, CBA's vulnerability to challenge or manipulation, discounting, the precautionary principle, grouping agencies under the executive branch, OSHA's Constitutionality and climate change legislation
 - ***Protecting Public Health and the Environment by the Stroke of a Presidential Pen: Seven Executive Orders for the President's First 100 Days* (with Rebecca M. Bratspies, et al.) White Paper #806, Washington, D.C.: Center for Progressive Reform (2008)** – proposed seven executive orders for the incoming administration – 1., reduction of the federal government's carbon footprint; 2., consideration of climate change in agency decision-making; 3., taking children into account in toxics regulation; 4., new environmental justice legislation; 5., promotion of transparency in regulatory review; 6., prevention of preemption; and 7., a policy on sustainable public land use
- **Comments**
 - comments submitted to OIRA on **Obama regulatory review process, March 16, 2009 (with Applegate, et al., collectively as the CPR Board)**
- **Perspective**
 - ***Environmental Justice at Stake* (with Lisa Heinzerling, former member, et al.)**
- **Blogs**
 - ***The Good and the Bad in the BP Settlement, and the Main Course Still Ahead*, CPRBlog, April 23, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=DF81E14D-D06C-F828-A80345DFABD320CE>** – described the details of the settlement and the possible criminal and civil prosecution to come
 - ***After Partial Settlement, Oil Spill Case on a Slow Boil*, CPRBlog, March 5, 2012, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=E3388367-F4C2-3BD7-49BCCD49D82F7642>** – the settlement's details and the future litigation facing the government and BP
 - ***Fifth Circuit Mulls Katrina Flood Ruling*, CPRBlog, November 15, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=A7D54E31-DDAD-2CAB-E7001E23349D9A49>** - discussed the claims against the Army Corps of Engineers' immunity in the Katrina flooding aftermath by claiming Mr. Go was a navigation project, and the arguments for this potential ruling
 - ***Plan EJ 2014: Building a Foundation for Federal Environmental Justice Policy*, CPRBlog, September 21, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=88F70407-0CA8-3F2C-263185C81920B9BA>** - discussed the new policy and its three main goals: incorporating EJ into rulemaking, developing analytical tools to promote EJ and assisting other agencies with their EJ goals

- **U.S. House Targets Early Government Efforts to Help Citizens Prepare for and Cope With Effects of Climate Change**, CPRBlog, June 22, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=B78C20E1-B3F4-7880-A446B53D7E867D09> – Republican efforts to derail climate change legislation and amendments proposed to prevent some of the actions already in place from being enacted
- **Climate Change Meets the Little Mermaid**, CPRBlog, June 12, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=84290626-92F1-1098-FB645D76D7EE6A18> – sea level rise due to climate change and how some of the world's largest cities will be effected
- **Notes from the 2nd World Congress on Cities and Adaptation to Climate Change**, CPRBlog, June 5, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=60697592-98AA-FD8D-C7CB92A0AB7FA901> – discussed the meeting and how individual governments are writing climate change legislation in light of the US government's wavering on the issue
- **Next Steps for America's Great Outdoors**, CPRBlog, February 21, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=3A71681E-E6CA-1DE9-A2751E8ABB93D6E8> – the Obama administration's attempt to promote the Land and Water Conservation Fund
- **Peer Review Slams Corps's New Flood-Control Study in the Gulf**, CPRBlog, July 21, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=9DC90E7F-B704-7D36-60AC341AA89D9960> –described the National Research Council's criticism of the Corps's hurricane protection study and the 27 possible projects explained in the study with no indication as to which ones the Corps would be implementing, citing its own lack of authority; argued against the Corps's reasoning behind this assertion
- **Mr. Go is Gone (Almost)**, CPRBlog, February 9, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=5B1D0567-1E0B-E803-CA45DDF9103774FA> –discussed the history of the environmental and economic effects of the Mississippi River-Gulf Outlet, and the recent efforts to plug the channel
- **An Executive Order on Environmental Justice**, CPRBlog, November 13, 2008, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=949FA973-1E0B-E803-CA147255CC48C04F> –discussed Obama's ideas of a green economy, providing environmental jobs to people in distressed communities, and how the theories behind environmental justice can steer these ideas to an executive order

Forthcoming

- **Resilience 2.0: Battling Climate Change in New Orleans, New Delhi, and Shanghai**
- **"Coastal Protection,"** in *The Law of Adaptation to Climate Change* (ABA Publishing)(Michael B. Gerard and Katrina Kuh, eds., 2011)
- **Disaster Justice**, ___ ENV'T L. REP. ___ (2012)
- **Climate Change Adaptation and Geographic Scale**, ___ B.Y.U. L. REV. ___ (2011)

David Vladeck

Subjects: tort law, preemption

CPR White Papers

- ***The Truth about Torts: Rethinking Regulatory Preemption and Its Impact on Public Health (with Buzbee et al.) White Paper #902, Washington, D.C.: Center for Progressive Reform (2009)*** –sixth paper in the series, describing the state of torts and preemption in the US; urged Congress to create anti-preemption legislation for clarity in future court cases, specifically define the word “requirements” in the legislation, and write cross-cutting legislation to ensure proper balance between agencies; urged President Obama and the Executive Branch to review the changes enacted by the Bush administration, and revise Executive Order 13132 to reign preemption back in to its original intention and ensure proper procedures are established to protect federalism
- ***Limiting Federal Agency Preemption: Recommendations for a New Federalism Executive Order (with Funk et al.) White Paper #809, Washington, D.C.: Center for Progressive Reform (2008)*** – urged President Obama to create a new executive order to replace 13132, outlining the benefit of multiple levels of government: preventing agencies from abusing the power of preemption, discouraging ceiling preemption, separating state positive law and state tort law, encouraging state tort laws to allow consumers to sue agencies if regulations are not enforced, and providing a more effective way to monitor regulation enforcement
- ***The Truth about Torts: Regulatory Preemption at the Consumer Product Safety Commission (with Thomas McGarity et al.) White Paper #807, Washington, D.C.: Center for Progressive Reform (2008)*** –discussed the push by agencies like FDA and NHTSA to use preemption to prevent consumers from being able to sue them under tort law; found that a blend of tort law and regulatory standards best protect consumers and that preemption would allow corporations to have weak regulation without fear of legal proceedings, putting consumers at great risk
- ***The Truth About Torts: Regulatory Preemption at the National Highway Safety Administration (with Thomas McGarity et al.) White Paper #804, Washington, D.C.: Center for Progressive Reform (2008)*** – discussed how car manufacturers are claiming preemption to dismiss claims in courts by injured consumers, and urged the continuation of tort law, since NHTSA is very underfunded to keep up with regulations, tort law allows for the legal system to provide compensation when regulations are not met, and transparency and providing product information are better achieved through tort law
- ***More than Just Tort Myths; It is Immunity and Constitutional Myths, CPRBlog, July 29, 2008, <http://www.progressivereform.org/CPRBlog.cfm?fkScholar=49>*** –discussed the constitutionality of preemption, and the effect on the government structure, as well as the citizen, if preemption is favored in courts
- ***The Truth About Torts: Using Agency Preemption to Undercut Consumer Health and Safety (with William Funk, Sidney Shapiro and Karen Sokol) White Paper #704, Washington, D.C.: Center for Progressive Reform (2007)*** –discussed the problems inherent for consumers if preemption prevents claims, and presented recommendations for each branch of the government to prevent these problems; suggested that Congress should provide more oversight of agencies and clarification of its anti-preemption wording, that the Judicial Branch should return to pre-Bush administration interpretation of preemption laws and tendency toward

allowing tort claims, and that the Executive Branch should push for its agencies to stop abusing preemption in courts

- **Conferences**

- ***Conference on Regulatory Preemption, December 17, 2008***

Testimony

- **David Vladeck** - September 12, 2007: to the Senate Judiciary Committee on the Bush Administration's push for agency preemption of state tort laws
- **David Vladeck** - February 13, 2007: on EO 13422 before the Committee on Science and Technology Subcommittee on Investigations and Oversight, U.S. House of Representatives

Wendy E. Wagner

Subjects: toxics, environmental law, torts

Books

- ***Bending Science: How Special Interests Corrupt Public Health Research* (Harvard University Press, 2008) (with Thomas McGarity)**
 - -critical acclaim: *Bending Science* is so chock-full of ideas and insights...McGarity and Wagner's insight has large implications both for potential legal reforms and for public faith in the integrity of the scientific process...*Bending Science* is an immensely important book. It is one of quite a large number of books published recently on the manipulations of science by interest groups and the government. Yet even in this crowded field, *Bending Science* stakes out its own ground and makes an invaluable contribution to the debate over the role of science in public policy. --Lisa Heinzerling (*Texas Law Journal*)
 - -*Bending Science* is an intelligent and compelling blend of investigative journalism and theoretical analysis of the structural and functional flaws of the research enterprise, from the development of testable ideas to the use of its results for practical purposes...*Bending Science* an indispensable read for our current troubled times. All in all, this book is a must-read not only for researchers devoted to the scientific method but also for all who wish to become competent consumers of research that can influence their lives. The narrative is an eye-opener, which will provide the reader with tools to understand the research process and protect himself/herself from advocacy-based distortions. --Maura Pilotti (*Metapsychology*)
- ***Commons Ignorance: The Failure of Environmental Law to Provide the Information Needed to Protect Public Health and the Environment* (Vandeplas Publishing, 2007)** –discussed the data gap of information for regulation of potentially harmful industrial activities, the withholding or altering of available scientific information, and ways to prevent these practices from happening

Book chapters

- **“The Clean Air Interstate Rules’s Regulatory Impact Analysis: Advocacy Dressed Up as Policy Analysis,”** in *Reforming Regulatory Impact Analysis* (Winston Harrington, Lisa Heinzerling & Richard D. Morgenstern, eds., Resources for the Future press, 2009) –analyzed the CAIR RIA as producing self-promoting agency documents instead of true self-policing analysis, discussed the flaws inherent to the RIA process that allow for agencies to resist “public self-evaluation” and other problems with them, and suggested some improvements, if the system is even fixable

Articles

- ***Symposium: Revisiting the Impact of Judicial Review on Agency Rulemakings: An Empirical Investigation*, 53 WM. & MARY L. REV 1717 (2012)** – used the air toxic rules of EPA to analyze whether judicial review of agency rulemaking protects public interest, finding the opposite to be true in this specific case
- ***Rulemaking in the Shade: An Empirical Study of EPA’s Air Toxic Emission Standards*, 63 ADMIN. L. REV. 99 (2011)**(with Katherine Barnes & Lisa Peters)
- ***Misunderstanding Models in Environmental and Public Health Regulation*, 18 N.Y.U. ENVT. L.J. 293 (2010)**(with Elizabeth Fisher and Pasky Pascual), reprinted in *2011 Land Use and Environment Law Review* (A. Dan Tarlock & David Callies, eds.)
- ***Understanding Environmental Models in Their Legal and Regulatory Context*, 22 J. ENVT. L. 251 (2010)**(with Elizabeth Fisher & Pasky Pascual) – discussed the increasing use of models for environmental decision-making, and the need to understand the complexity of models when

utilizing them for decisions, ultimately urging politicians and scientists to carefully analyze the scope and applicability of the models when making decisions

- **Administrative Law, Filter Failure, and Information Capture**, 59 DUKE L.J. 1321 (2010) – discussed the problems of information capture and filter failure in administrative law, showing how too much information is typically provided, the effect on the regulatory system, and how these problems could be remedied; reprinted in **Environmental Law and Policy Annual Review**, 41 ELR 10732 (2011)
- **How Do You Retire a Person Like Melvyn?** 58 CASE W. RES. L. REV. 1011 (2008) –tribute to Melvyn Durchslag, Wagner’s teaching mentor and friend
- **Emerging Science, Adaptive Regulation, and the Problem of Rulemaking Ruts**, 86 TEX. L. REV. 1701 (2008) (with Lynn Blais) –discussed the difficulty in applying useful scientific knowledge into environmental law and proposed that the institutional roadblocks should be evaluated and eliminated, if possible, instead of just avoided
- **Using Competition-Based Regulation to Bridge the Toxics Data Gap**, 83 IND. L. J. 629 (2008) – discussed the use of incentives in chemical regulation, whereby a competitor could petition EPA to establish superiority of one chemical over another based on differences between their environmental or health risks
- **When All Else Fails: Regulating Risky Products Through Tort Litigation**, 95 GEO. L.J. 693 (2007) – argued in favor of the use of tort law for risky products as regulatory practices were slipping
- **The Science and the Law of Toxics**, 35 J.L. MED. & ETHICS 63 (2007) (with Thomas Sinks & Doug Farquhar, moderator) –discussed toxics from the points of view of a scientist, a legislator and a lawyer, with Wagner’s section focusing on the distortion of scientific information used in toxics law by special interest groups, and how this practice could be fixed
- **Children’s Health and Environmental Exposure Risks: Information Gaps, Scientific Uncertainty, and Regulatory Reform**, 17 DUKE ENVTL. L. & POL’Y F. 249 (2007) (with Lynn Blais) –proposed a “legal blind spot” method for identifying and regulating children’s health issues, which currently receive little attention in the prioritized regulation scheme

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- **White Papers**
 - **How Gaps in EPA’s Main Toxicological Database Weaken Environmental Protection**, White Paper #904, Washington, D.C.: Center for Progressive Reform (2009) (with Rena Steinzor & Matt Shudtz) –discussed the history of the IRIS and its applications, analyzed the gaps in IRIS; suggested that the interagency review process be eliminated and that EPA should expand IRIS to include the dangerous chemicals omitted
 - **Protecting Public Health and the Environment by the Stroke of a Presidential Pen: Seven Executive Orders for the President’s First 100 Days** (with Rebecca M. Bratspies, et al.) White Paper #806, Washington, D.C.: Center for Progressive Reform (2008) – proposed seven executive orders for the incoming administration – 1., reduction of the federal government’s carbon footprint; 2., consideration of climate change in agency decision-making; 3., taking children into account in toxics regulation; 4., new environmental justice legislation; 5., promotion of transparency in regulatory review; 6., prevention of preemption; and 7., a policy on sustainable public land use
 - **Saving Science from Politics: Nine Essential Reforms of the Legal System**, White Paper #805, Washington, D.C.: Center for Progressive Reform (2008) (with Rena Steinzor & Matt Shudtz) –enumerated nine recommended reforms: a level playing field between public and private research, disclosure of sponsor-controlled research, reporting of

adverse effects, science and policy separation, whistleblower protection, cause of action for harassed scientists, reformed peer review process, prevent confidential business information from hurting the public, and establish a registry of environmental science; proposed mechanisms by which these reforms could be implemented

- **“Reforming the Toxic Substances Control Act” (with John S. Applegate) in *CPR for the Environment: Breathing New Life in the Nation’s Major Environmental Statutes, A Legislative Sourcebook of Progressive Ideas for Members of Congress and Staff* (Alyson Flournoy and Matthew Shultz, Eds.), White Paper #701, Washington, D.C.: Center for Progressive Reform (2007)** –assessed TSCA and suggested improvements, especially an effective licensing system, bringing US regulations more aligned with European regulations in REACH
- **Symposium**
 - ***Missing Information: The Scientific Data Gap in Conservation and Chemical Regulation, 2008*** – with the Indiana University School of Law-Bloomington
- **Perspective**
 - ***Clean Science* (with Rena Steinzor)**
- **Blogs**
 - ***The White House’s New Science Integrity Policy: A First Assessment*, CPRBlog, December 17, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=F68626ED-A636-DD8F-AF6B535726D9670F>** – discussed the policy memo’s goal of protecting science from politics, but shows some of the areas where the memo falls short
 - ***Steinzor-Shapiro Metrics on Display in EPA’s June 2010 Strategic Plan*, CPRBlog, June 28, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=70E1EC6F-BE5A-13C4-86B2308849E9F340>** – discussed the metrics posed in *The People’s Agents*, and how positive metrics are being employed by the EPA
 - ***EPA’s Lax Confidential Business Information Policy and the Importance of the Hampshire Associates Study*, CPRBlog, February 8, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=ADEB6E09-0FD8-1BF2-28CE65693EC3A80B>** – discussed abuse of EPA’s CBI program and pending investigation
 - ***A New Look at Science in Regulatory Policy*, CPRBlog, August 10, 2009, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=04787AB8-CAC2-CAC5-27353148D40FE62D>** –discussed the Bipartisan Policy Center’s Science for Policy Project report, which argued for a narrower definition of the required oversight in regulatory science, as well as offering incentives for more peer review and new science policy
 - ***Getting from Here to There(s)*, CPRBlog, August 23, 2008, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=F1399C15-1E0B-E803-CAABB9760C7451D4>** –discussed the debate between the need for more or less scientific input in regulations, and posed questions as to each side’s recommendations for implementing their theories
 - ***What Can Really Be Done about the Perversion of Science by Politics*, CPRBlog, August 18, 2008, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=D60BD042-1E0B-E803-CAB4BF454358565A>** –discussed CPR’s findings about the politicization of science and its recommendations in fixing said problems, as well as posing questions to other bloggers as to how these recommendations can truly be implemented and how the public can be made aware of the issues so as to elect an appropriate president

Other

- **“How to Save Science from Politics,” *Austin American-Statesman*, March 23, 2009 (with Rena Steinzor) [Also appears as “Rescuing Science from Politics,” *The Plain Dealer*, March 23, 2009 and as “Purifying Science,” *Baltimore Sun*, March 30, 2009] available at http://www.statesman.com/opinion/content/editorial/stories/03/23/0323wagner_edit.html -discussed the need for transparency, disclosure, oversight, expert advisory boards, protection of whistleblowers, and an overall ethical approach to scientific research within industry**

David Wirth

Subjects: *international law, hazards*

Book chapters

- "Hazardous Substances and Activities," in *Oxford Handbook of International Environmental Law* 394 (Daniel Bodansky, Jutta Brunee, Ellen Hey, eds., 2007) –described and evaluated the international bodies and rules governing the regulation of hazardous substances and activities

Articles

- *The International Organization for Standardization: Private Voluntary Standards as Swords and Shields*, 36 B.C. ENVTL. AFF. L. REV. 79 (2009) –discussed the role of private voluntary standards in the development of sustainable business practices, and how the International Organization for Standardization’s standards on eco-labeling can be proactive in increasing domestic requirements and protective in barring international rules from interfering with local mandates
- *Un regard extérieur: Back Impact of European Union Legislation on American Environmental Regulations*, in LES ECHANGES ENTRE LES DROITS, L’EXPERIENCE COMMUNAUTAIRE 107 (Bruylant 2008) (Proceedings of conference at L’Université du Littoral-Côte d’Opale, Boulogne-sur-Mer, France)

Other

- Contributions on International Trade Law to Green Paper entitled “Climate Change and Intergenerational Justice,” Climate Legacy Initiative (Tracy Bach & Burns Weston, eds., Vermont Law School 2009)
- *The EU’s New Impact on American Environmental Regulation*, 31 FLETCHER FORUM, Summer 2007, at 91 –discussed the trend in American environmental policy to adapt policies similar to those implemented by the EU, and explored the implications of REACH on both American industry and government

Forthcoming

- *The Role of Science in Trade Agreements* (tentative title) (with Jeffery Atik)

Chris Wold

Subjects: *international environmental law, free trade, climate change law*

Books

- *Climate Change and the Law* (2009)(with Hunter & Powers)

Articles

- *Taking Stock: Trade's Environmental Scorecard After Twenty Years of "Trade and Environment,"* 45 WAKE FOREST L. REV. 319 (2010)
- *Evaluating the NAFTA and Commission for Environmental Cooperation: Lessons for Integrating Trade and Environment in Free Trade Agreements,* 28 ST. LOUIS U. PUB. L. REV. 201 (2008)
- *World Heritage Species: A New Legal Approach to Conservation,* 20 GEORGETOWN INT'L ENVTL. L. REV. 337 (2008)

CPR Letter

- to EPA Administrator, Lisa Jackson on the **North American Commission for Environmental Cooperation (with Bratspies, et al.), March 29, 2012**

Sandra B. Zellmer

Subjects: *preemption, water management, natural disasters, public lands management, wildlife, adaptive management*

Book chapters

- “The Missouri River Basin,” in *Waters & Water Rights* (ed. Beck)(Lexis/Nexis 3rd ed. 2010)
- “When Congress Goes Unheard: Savings Clauses’ Rocky Judicial Reception,” in *Preemption Choice: The Theory, Law and Reality of Federalism’s Core Question* (William Buzbee ed., Cambridge University Press 2009)
- “The Emergence of Environmental Considerations in the U.S.,” in *The Evolution of the Law and Politics of Water* (Dellapenna and Gupta, eds., Springer, 2009)
- “The Law of Instream Flow Protection,” in *Instream Flows for Riverine Resource Stewardship* (Int’l Instream Flow Council 2009)
- “When Congress Goes Unheard: Savings Clauses’ Rocky Judicial Reception,” in *Preemption Choice* (ed. Buzbee)(Cambridge Press 2008)

Articles

- ***Wilderness, Water, and Climate Change*, 42 ENVTL. L. 313 (2012)** – analyzed the use of the Wilderness Act, in addition to federally reserved water rights, the Wild and Scenic Rivers Act, and CWA, to help preserve wilderness characteristics, finding that their protection is still very needed and that the laws are most effective when implemented in a complementary fashion
- ***Throwing Precaution to the Wind: NEPA and the Deepwater Horizon Blowout*, 2 G.W. J. E. & ENV. L. 1 (2011) (with Glicksman & Mintz)**
- ***Mudslinging on the Missouri: Can Endangered Species Survive the Clean Water Act?*, 16 DRAKE AG. L.J. 1 (2011)**
- ***Floods, Famines, or Feasts: Too Much, Too Little, or Just Right*, 24- WTR NAT. RESOURCES & ENV’T 20 (2010)** - discussed the possibility of ecosystem restoration as a strategy for dealing with flood and drought cycles, in order to create a more sustainable relationship with water; argued for national adaptive, ecosystem-based legislation, allowing the restoration of natural water processes, while providing necessary supplies of water
- ***Preemption by Stealth*, 45 Hous. L. REV. 1659 (2009)** – discussed the approach of the Rehnquist and Roberts Courts to statutory savings clauses, finding that, when it came to human health, safety, and the environment, the Rehnquist and Roberts Courts almost routinely held that protective state laws were preempted despite applicable savings clauses
- ***Why Resilience May Not Always Be a Good Thing: Lessons in Ecosystem Restoration from Glen Canyon and the Everglades*, 87 NEB. L. REV. 893 (2009) (with Lance Gunderson)** -discussed environmental restoration projects as viewed through an ecological resilience lens; compared the current projects ongoing in the Grand Canyon and the Everglades, finding the greatest progress in the adaptive management techniques of Glen Canyon, and analyzed the lessons learned from both of these projects
- ***Boom and Bust on the Great Plains: Déjà vu All Over Again*, 41 CREIGHTON L. REV. 385 (2008)** - reviewed two books, Tim Egan’s *The Worst Hard Time: The Untold Story of Those Who Survived the Great American Dust Bowl*, and William Ashworth’s *Ogallala Blue: Water and Life on the High Plains*, highlighting the books’ presentation of the plains’ boom and bust cycles throughout history, the laws applicable to soil erosion and water management, and the lessons learned over the years

- ***The Anti-speculation Doctrine and its Implications for Collaborative Water Management*, 8 NEV. L.J. 994 (2008)** -discussed the potential abuse of the prior appropriation system if water speculation were allowed, and how preservation of the anti-speculation doctrine also preserves the public interest in water
- ***Unbundling Property in Water*, 59 ALA. L. REV. 679 (2008) (with Jessica Harder)** -analyzed different approaches to water rights and whether surface water is subject to property rights, finding that in most cases, water should not be subject to the takings clause of the Fifth Amendment, but that water can be seen as some form of property for the purposes of other types of claims
- ***Mississippi River Stories: Lessons from a Century of Unnatural Disasters*, 60 SMU L. REV. 1471 (2008) (with Christine A. Klein)** -discussed the lessons learned from the Great Flood of 1927, the Midwest Flood of 1993, and Hurricanes Katrina and Rita of 2005, and how these disasters, when assessed together, point to the need for significant reform of the national flood insurance program and the Army Corps of Engineers' flood control management regime
- ***A Tale of Two Imperiled Rivers: Reflections from a Post-Katrina World*, 59 FLA. L. REV. 599 (2007)** -analyzed the importance of multi-level federal laws in inter-jurisdictional river management; proposed a federal Interior Rivers Ecosystem Organic Act for improvement of the Army Corps of Engineers' control over the Mississippi River Basin

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- **White Papers**
 - ***Reclaiming Global Environmental Leadership: Why the United States Should Ratify Ten Pending Environmental Treaties* (with Angelo, et al.) White Paper #1201, Washington, D.C.: Center for Progressive Reform (2012).**
 - ***Making Good Use of Adaptive Management* (with Holly Doremus, et al.) White Paper #1104, Washington, D.C.: Center for Progressive Reform (2011).**
 - ***Regulatory Blowout: How Regulatory Failures Made the BP Disaster Possible, and How the System Can Be Fixed to Avoid a Recurrence* (with Flournoy, et al.) White Paper #1007, Washington, D.C.: Center for Progressive Reform (2010).**
- **Conferences**
 - ***Resilience & Environmental Law Reform Symposium, 2009* – with the Nebraska Law Review**
- **Perspective: *Mountaintop Removal* (revised 2009)**
- **Blogs**
 - ***Species Conservation Efforts Only a Scapegoat in Missouri River Flooding*, CPRBlog, July 6, 2011, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=FF89EE40-9D72-F9E9-C4F7A76C22768561> (with John H. Davidson) – debunked the myth that the flooding was due to the Army Corps of Engineers' conservation of native wildlife species, and offering alternative explanations for the record flooding**
 - ***Atrazine, Syngenta's Confidential Data, EPA's Review, and the Five Stages of Grief*, CPRBlog, January 13, 2010, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=280A7142-D6A5-D9B8-E1DF58CEFB5DA8FF> – discussed her family's illnesses and death due to Atrazine exposure as farmers**

Other

- **"Fishermen are Entitled to Punitive Damages from Exxon," ACSblog (with Alexandra Klass), February 27, 2008, <http://www.acslaw.org/node/12177> –discussed the Supreme Court hearing**

of *Exxon Shipping Company v. Baker*, on which the Ninth District ruled that Exxon was liable for punitive damages, and the need for punitive damages for private citizens that were harmed in such cases

Forthcoming

- ***Mississippi River Stories: Lessons from a Century of Unnatural Disasters* (California Press, forthcoming) (with Christine Klein)** –described floods and hurricanes on the Mississippi from its headwaters to its delta, and exploring policy implications for areas including environmental justice, wetlands protection, agricultural policy, federal subsidies, flood control, flood insurance, and regulatory takings law
- ***Natural Resources Law* (with Laitos, Woods, Cole)(West 2006, 2nd ed. forthcoming 2012)**
- ***Comparative Environmental Law* (Carolina Academic Press, 2013)**
- **“Wilderness, Adaptive Management, and Resilience,” in *Resilience and the Law* (Columbia Univ. Press, forthcoming 2012)(ed. Garmestani & Allen)**
- ***Anti-Degradation Policies: Do They Work*, G.W. J. E. & Env. L. (forthcoming, 2012)(with Glicksman)**
- ***Water Law in a Nutshell* (with Amos)(West, forthcoming 2014)**
- ***Developing Professional Skills in Environmental Law* (West, forthcoming 2014)**