

ENVIRONMENTAL LAW AND POLICY ANNUAL REVIEW

TOP 20 ARTICLES OVERVIEW CHART 2022-2023

AUTHOR(S)	TITLE	CITATION AND URL	TOPIC	THE BIG IDEA
Anderson, Jerry L. Vaughan, Amy Grace	<i>Environmental Penalties: Discretion and Disparity</i>	42 STAN. ENV'T L.J. 3 https://law.stanford.edu/wp-content/uploads/2023/02/1_Anderson-Vaughan_web_2-20.pdf	Governance (enforcement and compliance)	U.S. Environmental Protection Agency (EPA) data demonstrate wide disparities in median penalties imposed for violations of federal environmental laws—including from state to state, between states and EPA, and among EPA regional offices—and this lack of uniformity should be addressed through a range of regulatory, policy, and judicial reforms that would promote deterrence and fairness while also preserving enforcement discretion.
Angelo, Mary Jane Lancaster, Megan	<i>The Insect Apocalypse: Legal Solutions for Protecting Life on Earth</i>	49 ECOLOGY L.Q. 1 https://www.ecologyawquarterly.org/wp-content/uploads/2022/10/49.1_Angelo_Lancaster-1.pdf	Toxic Substances (pesticides)	The U.S. Environmental Protection Agency should change its interpretation and application of the Federal Insecticide, Fungicide, and Rodenticide Act by: 1) requiring more robust data on the risks and benefits of a pesticide to support its evaluation of environmental, economic, and social considerations; 2) exercising discretion to ensure imperiled species and ecosystem services are given the weight they deserve; 3) considering integrated pest management techniques as alternatives; 4) eliminating the treated article exemption for seeds treated with systemic insecticides to allow for enforceable warnings and risk reduction language on labels; and 5) including label restrictions on pesticides that require insecticide-free on-farm habitats to be maintained.
Börk, Karrigan	<i>Water Right Exactions</i>	47 HARV. ENV'T L. REV. 63 https://journals.law.harvard.edu/elr/wp-content/uploads/sites/79/2023/04/HELR-Vol.-47.1-Bork.pdf	Water (quantity)	Permitting entities should impose exactions directly on new and existing water right holders to offset the external costs associated with water rights and associated infrastructure, thereby internalizing costs and encouraging more rational water use, improved efficiency, and better maximization of the societal benefits of water use.

Brewster, Rachel	<i>Enabling ESG Accountability: Focusing on The Corporate Enterprise</i>	2022 WIS. L. REV. 1367 https://wlr.law.wisc.edu/wp-content/uploads/sites/1263/2023/01/14-A_Brewster-Camera-Ready-1367%E2%80%931406-PDF-.pdf	Governance (private governance)	Congress should pass legislation that reshapes corporate enterprise law to increase parent corporations' responsibilities to supervise their subsidiaries through a set of ground rules for all corporations and, in so doing, empower corporate leaders who want to achieve environmental, social, and governance goals.
Cecot, Caroline	<i>Efficiency and Equity in Regulation</i>	76 VAND. L. REV. 361 https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=4844&context=vlr	Governance (administrative law)	Understanding distributional effects and considering equity in regulation is long overdue but is not inconsistent with and should not displace cost benefit analysis, efficiency, or economic thinking—and when equity and efficiency conflict, the following rules of thumb should be used to determine whether and how funding and subsidy programs should be deployed to achieve equitable outcomes: (1) agency action should not leave society, in the aggregate, worse off; and (2) agency action should avoid leaving disadvantaged groups worse off, especially in the context of pursuing equality in regulatory benefits.
Diamond, Danielle Ashwood, Loka Franco, Allen Kuehn, Lindsay Implay, Aimee Boutwell, Crystal	<i>Agricultural Exceptionalism, Environmental Injustice, and U.S. Right-To-Farm Laws</i>	52 ENV'T L. REP. 10727 https://animal.law.harvard.edu/wp-content/uploads/Diamond.pdf	Land Use (agriculture)/ Governance (liability)	States should repeal right-to-farm laws (RTFLs) and allow common law nuisance doctrine to evolve because RTFLs enable industrial agribusiness to evade accountability while harming small and medium farmers and rural communities, and the outcomes are inconsistent with the fundamental purpose of the laws and enables rural environmental injustices.

<p>Dominioni, Goran</p> <p>Esty, Daniel C.</p>	<p><i>Designing Effective Border Carbon Adjustment Mechanisms: Aligning the Global Trade and Climate Change Regimes</i></p>	<p>65 ARIZ. L. REV. 1</p> <p>https://arizonalawreview.org/pdf/65-1/65arizlrev1.pdf</p>	<p>Climate Change/ Governance (trade/international)</p>	<p>To prevent carbon leakage, protect domestic industries, and incentivize collective climate action, border carbon adjustment (BCA) mechanisms, which assess the carbon emissions embedded in imported products and impose a tariff on imports from countries with less ambitious climate policies, are needed, and they should take the form of “effective” BCA mechanisms, which credit a wide range of climate policies in order to yield greater emissions reductions globally, garner broader political support, and sync with World Trade Organization law, as compared to explicit BCA mechanisms, which only credit carbon taxes and emission trading schemes.</p>
<p>Gouzoules, Alexander</p>	<p><i>Going Concerns and Environmental Concerns: Mitigating Climate Change Through Bankruptcy Reform</i></p>	<p>63 B.C. L. REV. 2169</p> <p>https://lira.bc.edu/work/ns/a9230b7f-58ad-43e4-98b8-26aa64a8bfla</p>	<p>Climate Change/ Governance (bankruptcy)</p>	<p>To mitigate climate change and speed the adoption of renewable energy, Congress should amend the Bankruptcy Code to: mandate liquidation under Chapter 7 of certain types of insolvent fossil in lieu of reorganization under Chapter 11; require courts and trustees to consider climate change mitigation, including through decreasing emissions from fossil fuel production, when considering the public interest; and provide for appointment of environmental trustees to weigh the interests of creditors against the public interest in climate change mitigation.</p>
<p>Hirokawa, Keith H.</p> <p>Carlarne, Cinnamon P.</p> <p>Börk, Karrigan S.</p> <p>Ziaja, Sonya</p>	<p><i>Mapping Ecosystem Benefit Flows To Normalize Equity</i></p>	<p>54 ARIZ. ST. L.J. 819</p> <p>https://arizonastatelawjournal.org/wp-content/uploads/2023/02/Bork_-_Publication.pdf</p>	<p>Natural Resources/ Governance (environmental justice)</p>	<p>Mapping ecosystem services benefit flows can provide critical information about resource distribution, access, and control that should be used to promote equitable outcomes in land use planning, exactions that consider ecosystems services impacts, environmental justice mappings, and environmental impact statements under state and federal law.</p>

<p>Martinez, Veronica Root</p>	<p><i>Public Reporting of Monitorship Outcomes</i></p>	<p>136 HARV. L. REV. 757 https://harvardlawreview.org/wp-content/uploads/2023/01/136-Harv.-L.-Rev.-757.pdf</p>	<p>Governance (enforcement and compliance)</p>	<p>To increase transparency, at the conclusion of all corporate monitorships, the public should receive a report outlining whether the company engaged in a successful remediation effort, and this requirement can be achieved through: (1) a U.S. Securities and Exchange Commission periodic disclosure requirement; and (2) a new Office of Management and Budget policy.</p>
<p>Mormann, Felix</p>	<p><i>Climate Choice Architecture</i></p>	<p>64 B.C. L. REV. 1 https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=2666&context=facscholar</p>	<p>Climate Change/ Governance (private governance)</p>	<p>A greater reliance on nudges in both public and private governance would lead to more climate-friendly-decisions by institutions and individuals across a wide range of contexts, and policymakers and practitioners should adopt a functionally derived taxonomy that groups the tools of choice architecture into three categories— decision information, decision structure, and decision assistance—to help them identify the type of nudges that best advance their climate objectives.</p>
<p>Ochoa, Christiana Cook, Kacey Weil, Hanna</p>	<p><i>Deals in the Heartland: Renewable Energy Projects, Local Resistance, and How Law Can Help</i></p>	<p>107 MINN. L. REV. 1055 https://minnesotalawreview.org/wp-content/uploads/2023/01/02-Ochoa_MLR.pdf</p>	<p>Energy (alternative energy)/Governance (public participation)</p>	<p>The U.S.’s transition to renewable energy depends on the consent of increasingly reluctant rural communities to host wind farms, and, therefore, the following empirically informed measures should be adopted by private parties and governments: publicly acknowledge the burden wind turbines place on communities; improve the project design process (by registering interest and reporting on progress, inviting engagement and participation, fostering robust sharing of information, and allowing opportunities for fully voicing concerns); and assure that local communities receive financial benefits such as permanent fund dividends and grants.</p>

Okoh, Michele	<i>Forgotten Waters</i>	111 GEO. L.J. 723 https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2023/06/GT-GGLJ230013.pdf	Water (Safe Water Drinking Act)/ Governance (environmental justice)	To address historical discrimination against “peri-urban” communities (i.e., unincorporated communities proximate to municipalities that typically house poor, majority-minority populations) and the concomitant lack of water quality, Congress should utilize the cooperative model embodied in the Rural Electrification Act to affordably subsidize the inclusion of these well-dependent peri-urban communities into bordering municipalities’ existing public water systems, providing residents with regulatory protection under the Safe Drinking Water Act.
Owen, Dave	<i>The Negotiable Implementation of Environmental Law</i>	75 STAN. L. REV. 137 https://review.law.stanford.edu/wp-content/uploads/sites/3/2023/01/Owen-75-Stan.-L.-Rev.-137.pdf	Governance (enforcement and compliance)	Contrary to conventional accounts, negotiation is a pervasive feature of environmental law implementation and, therefore, regulatory agencies should “enhance and channel” negotiation-based systems through reforms to: (1) increase transparency by revising regulations, handbooks, and guidance documents to specify negotiable terms and limitations and disclose outcomes of negotiations where possible; (2) foster efficiency by dedicating additional resources to negotiation training; and (3) advance equity by providing funding and technical support to community groups.
Regan, Shawn Stoellinger, Temple Wood, Jonathan	<i>Opening the Range: Reforms to Allow Markets for Voluntary Conservation on Federal Grazing Lands</i>	2023 UTAH L. REV. 197 https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1344&context=ulr	Land Use (public lands)/Natural Resources	To overcome federal legal and institutional barriers that preclude markets for voluntary conservation on federal grazing lands, Congress and federal agencies could adopt a range of legislative and administrative reforms to: 1) rescind substantial grazing use regulations; 2) maximize flexibility under outcome-based grazing authorizations; 3) authorize conservation use; 4) remove requirements to own livestock and base property; 5) grant agencies administrative retirement authority; 6) recognize grazing privileges as formal property rights; 7) expand targeted regional approaches to resolve specific conflicts; and 8) use exchange authorities to facilitate voluntary conservation transactions.

<p>Rossi, Jim Ruhl, J.B.</p>	<p><i>Adapting Private Law for Climate Change Adaptation</i></p>	<p>76 VAND. L. REV. 827 https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=4850&context=vlr</p>	<p>Climate Change/ Governance (courts)</p>	<p>Private law (torts, property, and contracts) will play an increasingly important role in solving disputes stemming from efforts to adapt to climate change, and several guideposts should be used to evaluate when doctrinal changes may be needed, such as modifying the central principle of “foreseeability” which, given the increasing inability to predict the future based on prior data, should incorporate a “foreseeability of nonstationarity” principle that may expand the scope of private law climate adaptation obligations.</p>
<p>Ryan, Erin</p>	<p><i>Privatization, Public Commons, and the Takingsification of Environmental Law</i></p>	<p>171 U. PA. L. REV. 617 https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9807&context=penn-law_review#:~:text=Binding%20environmental%20policymaking%20discretion%20through.conservations%20oriented%20leadership%20takes%20office.</p>	<p>Natural Resources/ Governance (constitutional law)</p>	<p>Courts should adopt a modified regulatory takings test for public commons (i.e., air, water, public lands, energy, and biodiversity resources) based on a set of narrowly tailored changes to existing “legal infrastructure,” including modest adjustments to the three prongs of the <i>Penn Central</i> test, in order to better account for the balance between public and private interests—a necessary step in light of the increasing “takingsification” of environmental law whereby property rights become a tool for entrenching environmental deregulation and undermining public rights in natural resource commons.</p>
<p>Sassman, Wyatt G.</p>	<p><i>Prioritizing Proximity in Phasing Out Oil and Gas Extraction</i></p>	<p>55 CONN. L. REV. 749 https://digitalcommons.lib.uconn.edu/cgi/viewcontent.cgi?article=1569&context=law_review</p>	<p>Climate Change/ Governance (environmental justice)</p>	<p>In phasing out oil and gas extraction to address climate change, policies should prioritize: (1) stopping new extraction closest to people; (2) monitoring continued extraction closest to people; (3) plugging and reclaiming wells closest to people; and (4) matching proximity-based phaseouts with decarbonization.</p>

<p>Stern, Stephanie M.</p>	<p><i>Climate Transition Relief: Federal Buyouts for Underwater Homes</i></p>	<p>72 DUKE L.J. 161 https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4132&context=dlj</p>	<p>Climate Change/ Natural Resources (natural disasters)</p>	<p>Buyout laws and programs, such the Federal Emergency Management Act’s Hazard Mitigation Grant Program, which funds government acquisitions of flood-impacted homes, are incentivizing “buy ins” to flood zones by subsidizing flood risk-taking and should instead adopt a “climate transition relief” model built on a presumption against homeowner buyouts to curb high-risk housing choices— but should also include a carve-out for low-income residents who face severely constrained housing choice, unaffordable flood insurance, and high marginal costs from property loss.</p>
<p>Welton, Shelley</p>	<p><i>Neutralizing the Atmosphere</i></p>	<p>132 YALE L.J. 171 https://www.yalelawjournal.org/pdf/132.1/Welton_h5rtb5xy.pdf</p>	<p>Climate Change/ Governance (environmental law and policy/ governance)</p>	<p>The role of private companies in addressing climate change should be restructured away from net-zero targets and toward a “reduce and support” model in which companies commit to: (1) obtain an emissions-reduction goal; (2) declare any residual emissions; and (3) contribute to a global fund at a level commensurate with nonabateable emissions.</p>