

Anthony Moffa
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ACADEMIC APPOINTMENTS

University of Maine School of Law, Portland, ME

Associate Professor of Law 2019-

Visiting Associate Professor of Law, 2016-2019

Law Teacher of the Year, 2018 (selected by vote of the 3L class)

EDUCATION

Yale Law School, New Haven, CT

Juris Doctor, 2012

Activities: Yale Environmental Law Association (Curriculum Coordinator), Yale Journal on Regulation (Senior Editor, Lead Editor)

Georgetown University Law Center, Washington, D.C.

Juris Doctor candidate, transferred after first year, 2009-2010

Honors: Top 1%, Dean Scholar, CALI Awards – Torts, Property, Contracts, International Law

The Wharton School, University of Pennsylvania, Philadelphia, PA

Bachelor of Science, *magna cum laude*, in Economics, May 2009

Concentration: Environmental Policy and Management Minor: Music

PUBLICATIONS

Anthony L. Moffa, *Environmental Indifference* (work in progress)

For decades, homeowners in the United States have feared the presence of radon gas in their residences. Industries have developed providing testing and remediation services for buyers and sellers of homes; in many areas of the country the results of such tests prove necessary to any real estate transaction. This is for good reason – epidemiological studies conducted the world over have linked radon exposure to lung cancer incidence. Millions of Americans, however, reside not in their own houses or apartments, but in state and federal penal institutions. Thousands more work in these facilities every day. Perhaps unsurprisingly, the environmental risks they face, from radon and other potential hazards, have gone largely unstudied and unpublicized. This work will begin to fill that gap by identifying areas of risk, gathering information, empirically analyzing the data collected, and presenting strategies for disseminating and utilizing the conclusions. The dangers of exposure to hazardous substances has long been at the core of environmental and land use law. Toxic torts have prompted some of the largest and most famous civil awards and settlements in history. Criminal justice reform has recently risen to prominence in the American social conscience. The larger project, which this work contributes to, will combine all three topics in an effort to expose a problem and work towards a solution.

Anthony Moffa, *Uniform Climate Control*, 54 Univ. Rich. L. Rev. ____ (forthcoming 2020)

The efforts of subnational governments to tackle widespread environmental harms, in particular climate change, have drawn increased media and scholarly attention since the United States declared its intention to withdraw from the Paris Accord. In truth, the trend towards so-called “environmental federalism” predates the election of President Donald J. Trump. We are ushering in the next generation of environmental laws, and those laws will largely be authored not by

federal legislators, but by state and local officials. Where do these lawmakers look for guidance? A growing body of model codes and ordinances could provide the answer. This work aims to draw attention to those resources, and then, importantly, to critically examine how well the uniform law paradigm fits the evolving environmental legal landscape.

Anthony Moffa, *Word Limited: An Empirical Analysis of the Relationship between the Length, Resiliency, and Impact of Environmental Regulations*, 20 NEV. L. J. 733 (2020)

Since the dawn of the administrative state, it seems that regulations have grown, and continue to grow, increasingly complex and lengthy to read, adding pages to the Federal Register at higher rates each year. This project first seeks to empirically confirm the existence of such a trend. However, that movement towards longer and more detailed regulations could be rational, and largely unproblematic. Thus, the project proceeds to empirically test two such rational explanations: (1) “the insulation hypothesis” and (2) “the socially beneficial hypothesis.” First, the insulation hypothesis posits that it makes sense for policymakers to include more detailed legal and scientific support in new regulations, and thereby increase their length relative to previous regulations, because the additional detail provides more insulation from judicial review. Second, the socially beneficial hypothesis posits that devoting relatively more time and resources to each new rule is appropriate because newer regulations produce more net social benefits. This piece will test these hypotheses, at least in the context of environmental regulations, by analyzing data compiled by the Office of the Federal Register and QuantGov; the words in the regulatory texts themselves; regulatory impact and cost benefit analyses prepared by the Environmental Protection Agency (EPA); and United States Circuit Courts of Appeal and United States Supreme Court opinions in cases reviewing EPA regulations.

Anthony L. Moffa & Sean Flaherty, *Conserving a Vision: Acadia, Katahdin, and the Pathway from Private Lands to Park Lands*, 71 MAINE L. REV. 38 (2019).

Although a century separates the official designations, the strategies required to ensure federal protection of Maine’s two National Park Service areas – Acadia National Park and Katahdin Woods and Waters National Monument -- closely track one another. In both cases, a handful of enterprising conservationists shared the vision for conservation. Both areas depended on the private acquisition, and donation, of title to the numerous parcels that comprised them before the land could garner federal protection. Politics in the two very different eras nonetheless managed to rear its ugly head in opposition to efforts to protect Maine’s wilderness early in the 20th and 21st centuries. This work tells the stories in parallel, highlighting and analyzing four strands of similarity to not only deepen our understanding of these particular areas in Maine but also to guide future conservationists aiming to convert privately held land to federally managed and protected land.

Anthony Moffa, *Environmens Rea*, 122 PENN ST. L. REV. 299 (2018).

Many policymakers remain willfully blind to the moral implications of environmental harm abetted by governmental action (or inaction) and do not adequately consider how the criminal law deals with similar immoral behavior in other contexts. Building from Lisa Heinzerling’s thought-provoking essay *Knowing Killing and Environmental Law*, 14 NYU ENV’T L. J. 521 (2006), I use the lens of criminal law, specifically the concept of intent, to examine the choices we, both as individuals and as a society, make in designing environmental policy. This perspective will be informed not only by the basic principles of criminal law but also by recent developments in criminology, the law of corporate and environmental crime, and relevant historical precedent. I will then apply this theoretical framework to environmental policy decisions currently challenging our government. Ultimately, I will make the case that this mode of analysis could prove useful to policymakers and communicators.

Anthony L. Moffa, *The Oil Sands of Time: Pipelines and Promises*, 22 OCEAN & COASTAL L. J. 111 (2017) (invited piece).

The Albertan oil sands provide the battlegrounds for the most recent iteration of the centuries-old conflict between the rights of indigenous peoples and the economic priorities of colonizing Europeans in North America. In the Pacific Northwest United States, that conflict has played out in a series of federal court cases stretching back to the 1970s. In the “Culverts Case” of 2016, the Ninth Circuit Court of Appeals upheld a grant of injunctive relief against the state of Washington, which had been found to violate several tribes’ treaty-protected fishing rights by constructing and maintaining culverts that impede river flow. After comparing the treatment of, and protection for, indigenous rights in the United States and Canada, I examine how the Culverts Case can provide a model for the resolution of the ongoing conflicts between indigenous rights and oil sands development in Canada.

Anthony L. Moffa, *Traditional Ecological Rulemaking*, 35 STAN. ENVTL. L. J. 102 (2016).

Finalist for selection in the 2017 *Land Use and Environmental Law Review*, a peer-selected compendium of the five best land use and environmental law articles of the year.

Traditional Ecological Knowledge (TEK) passed down through generations of indigenous peoples has the potential to inform environmental governance from an entirely new perspective. In the United States, the responsibility for setting environmental policy largely falls with administrative agencies, whose actions are routinely challenged in the public forum and the court system. I analyze the opportunities presented by increased reliance on TEK by the environmental administrative state, as well as the inevitable challenges to TEK-based actions, both practical and legal. Not only do I examine where Chevron deference would provide agencies with discretion to consider TEK, but I also consider whether reliance on TEK might render an agency action vulnerable to “arbitrary and capricious” review under the Administrative Procedure Act or constitutional invalidation under the Establishment Clause.

Anthony L. Moffa & Stephanie L. Safdi, *Freedom from the Costs of Trade: A Principled Argument Against Dormant Commerce Clause Scrutiny of Goods Movement Policies*, 20 NYU ENVTL. L. J. 344 (2014).

Two of the fastest growing theoretical camps in the environmental movement – environmental federalism and environmental justice – bolster creative, sub-national goods movement policies that aim to reduce emissions to combat global warming and improve public health. However, the Dormant Commerce Clause threatens to cripple that promising area of environmental policy innovation. We argue that Dormant Commerce Clause doctrine, in its contemporary iterations, fails to account for, and requires reexamination in light of, the gross environmental and social externalities now known to be associated with contemporary goods movement. Although the Supreme Court’s creative jurisprudence has managed to protect certain regulations from Dormant Commerce Clause strictures, it has underscored rather than resolved the incoherence of the doctrine. Scholars have drawn out two motivating principles behind the doctrine – (i) protection of political process and federal stability, and (ii) promotion of unfettered free trade – yet, we find, the Dormant Commerce Clause is an inappropriate tool for vindicating these values in the context of state goods movement policies. As such policies grow in number and popularity, the Court’s Dormant Commerce Clause jurisprudence grows increasingly misaligned with contemporary democratic impulses and with the social, economic, and environmental exigencies that they respond to. Lacking a coherent operative principle, the Dormant Commerce Clause should give way to state policies that encourage diverse local economies and protect social and environmental interests jeopardized by the mass movement of goods.

Anthony L. I. Moffa, *Wasting the Planet: What a Storied Doctrine of Property Brings to Bear on Environmental Law and Climate Change*, 27 J. ENVTL. L. & LITIG. 459 (2012).

To many, sustainability is nothing more than another legally ineffectual buzz word manufactured by the modern environmental movement. However, such a narrow view of the concept ignores a tremendous amount of historical precedent and jurisprudence underlying it. Specifically, the doctrine of waste in Anglo-American property law has long been a vehicle for those with an interest in the future to restrict resource-depleting activities in the present, rendering it the manifestation of sustainability as a concrete legal obligation. It is through this doctrine, then, that the rich concept of sustainability as it applies to climate change policymaking can be best understood. I explore the early history and development of the doctrine of waste in England and the United States, as well as the philosophical discourse surrounding equitable obligations to future generations, to provide much-needed non-partisan legal and moral grounding for environmental policymaking.

Daniel C. Esty & Anthony L. Moffa, *Why Climate Change Collective Action has Failed and What Needs to be Done Within and Without the Trade Regime*, 15 J. INT'L ECON. L. 777 (2012).

It has become quite evident that more effective global environmental governance will be needed to adequately address climate change. The devil lies in the details. A new environmental regime must be constructed with institutional capacities designed to respond to global-scale collective action problems in general and the specific challenges of climate change in particular. To begin to define exactly what those capacities would look like, we provide a diagnostic profile of the current environmental regime's failure. We group the elements of institutional failure into three categories: (i) political economy considerations, (ii) negotiation roadblocks, and (iii) structural deficiencies with regards to ensuring adherence to shared commitments (i.e. lack of discipline on free riding). Ultimately, we propose a robust, yet lean, Global Environmental Organization (GEO) that would function with support from other international bodies, most notably the World Trade Organization (WTO).

Anthony L. I. Moffa, *Two Competing Models of Activism, One Goal: A Case Study of Anti-Whaling Campaigns in the Southern Ocean*, 37 YALE J. INT'L L. 201 (2012).

In the Southern Ocean, two types of environmental campaigns have targeted the whaling industry. One approach, which exemplifies what I define as "protest" activism, utilizes consumer boycotts and protests to encourage divestment from the industry. The other approach, which exemplifies what I define as "interventionist" activism, uses a fleet of ships to directly intervene in and obstruct whaling operations in the Southern Ocean. Through the case study method, I demonstrate that the lawmaking function of activism and the effect it has on international behavioral norms change depending on the model employed. I conclude that, despite serious drawbacks, there are certain circumstances under which interventionist activism should be used to enforce international environmental law.

Esther F. Lardent & Anthony L. Moffa, *In-House Counsel: The New Face of Pro Bono*, in PRO BONO SERVICE BY IN-HOUSE COUNSEL (David P. Hackett, ed., 2010).

An increasing percentage of pro bono legal services are being provided by in-house corporate attorneys. Drawing on the literature concerning areas of need and the experience of innovators in this line of pro bono work, we provide principled guidance to corporate attorneys looking to give back.

OTHER PUBLICATIONS

Anthony Moffa, *Cruel Exposure in Unusual Times: COVID-19 and the Eighth Amendment*, NW. U. L. REV. OF NOTE, <https://blog.northwesternlaw.review/?p=1424>

Anthony Moffa, *The Statehouse, not the White House, for COVID-19 and Climate Leadership*, Maine Law Faculty Research Blog, May 11, 2020, <https://mainelaw.maine.edu/faculty/the-statehouse-not-the-white-house-for-covid-and-climate-leadership/>

Anthony Moffa, Greta Swanson, Minnie Degawan, & Kathy Hodgson-Smith, *Traditional Ecological Knowledge in Environmental Decisionmaking*, 49 ENV. L. REP. 10309 (2019).

Anthony Moffa, Op-Ed, *Monument remains under threat*, BANGOR DAILY NEWS, Dec. 4, 2018, at A5.

Anthony Moffa, *Building a climate-resilient Puerto Rico 'from scratch'*, THE HILL, Oct. 12, 2017, <http://thehill.com/opinion/energy-environment/355196-building-a-climate-resilient-puerto-rico-from-scratch>

Anthony Moffa, Robert B. Keiter, Sarah Schindler & Syma A. Ebbin, *Shrinking and altering national monuments: Experts assess Interior Secretary Zinke's proposals*, THE CHICAGO TRIBUNE, SAN FRANCISCO CHRONICLE, Sep. 28, 2017.

Anthony Moffa, *How the Traditional Knowledge of Native Americans Can Inform Environmental Policy*, SCHOLARS STRATEGY NETWORK (Sep. 19, 2017), <http://www.scholarsstrategynetwork.org/brief/how-traditional-knowledge-native-americans-can-inform-environmental-policy>

Anthony Moffa & Sarah Schindler, Op-Ed, *Zinke has only one legal option for Katahdin Woods and Waters: retain its monument status*, BANGOR DAILY NEWS, Aug. 16, 2017, at A7.

Anthony Moffa, *Why tax policy may be the planet's last best hope*, Maine Law Faculty Research Blog, Dec. 1, 2016, <https://mainelaw.maine.edu/faculty/tax-policy-may-planets-last-best-hope/>

COURSES TAUGHT

Climate Change Policy (fall 2016)
Criminal Procedure: Investigations (fall 2016; spring 2019)
Trusts and Estates (spring 2017, 2018, 2019, 2020)
Constitutional Law (spring 2020)

Natural Resources (spring 2017; fall 2017; fall 2019)
Environmental Law (fall 2017; fall 2018; fall 2019)
Torts (spring 2018, fall 2018)
Water Law Practicum (spring 2019, 2020)

OTHER TEACHING & RESEARCH INTERESTS

Environmental Litigation
Land Use
International Law
Torts

Administrative Law
Environmental Law
International Environmental Law

PRESENTATIONS, PANELS, & SCHOLARLY ACTIVITIES

WMPG 90.9FM, Appearance on the Blunt Youth Radio Project, , Aug. 13, 2019, *EPA Rule Changes*

University of Maine School of Law, Constitution Day Lecture/Debate (with Dmitry Bam), Sep. 17, 2019, *A Second Constitutional Convention?*

Vega v. Semple, No. 18-3176-pr (2d Cir.), Brief *Amicus Curiae* of the Human Rights Defense Center, in Support of Plaintiffs-Appellees, filed July 2, 2019

Cardozo School of Law, Moot Second Circuit Oral Argument for *Vega v. Semple*, Judge (with John Boston, Kate Levine, and Alex Reinert), Oct. 29, 2019

University of Maine School of Law, Juvenile Justice Panel: *AI v. State of Maine*, Moderator, Nov. 5, 2019

Environmental and Energy Law Society of the University of Maine School of Law, League of Conservation Voters, and Planned Parenthood, “*Brews and The Bench*”: *A discussion about the future of our federal courts, and what’s at stake*, Panelist (with Anisha Singh, Jamesa Drake, and Lena Zwarenstejn), Nov. 14, 2019

University of Denver Sturm College of Law, Rocky Mountain Land Use Institute Western Places/Western Spaces Conference, Scholarly Workshop, March 8, 2019, *America’s Gas Chambers: An Investigation of Environmental Hazards in Prisons*

Environmental Law Institute, Expert Panel on Traditional Ecological Knowledge (with Greta Swanson, Minnie Degawan, & Kathy Hodgson-Smith), October 31, 2018.

Columbia Law School, Sixth Annual Sabin Colloquium on Innovative Environmental Law Scholarship, May 31, 2018, *Word Limited*

Arizona State University, Sandra Day O’Connor College of Law, Fourth Annual Sustainability Conference of American Legal Educators, May 10, 2018, *The Sustainability of Traditional Ecological Knowledge*

University of Denver Sturm College of Law, Rocky Mountain Land Use Institute Western Places/Western Spaces Conference, Scholarly Workshop, March 9, 2018, *Word Limited*

Columbia Law School, Fifth Annual Sabin Colloquium on Innovative Environmental Law Scholarship, May 5, 2017, *Environmens Rea*

University of Maine School of Law, Panel, Nov. 15, 2016, *Election 2016: Implications & Impact*

EXPERIENCE

United States Environmental Protection Agency, Office of the General Counsel, Washington, DC
Attorney Advisor, 2014-2016

Provide legal guidance to program offices drafting new regulation and assist the Department of Justice in defending lawsuits against the agency.

The Honorable Kermit Lipez, U.S. Court of Appeals for the First Circuit
Law Clerk, 2013-2014

The Honorable F. Dennis Saylor IV, U.S. District Court for the District of Massachusetts
Law Clerk, 2012-2013

Yale Environmental Protection Clinic
Student Attorney, 2011-2012

Assisted my client in drafting and filing a complaint with the European Commission in regards to the salvage of a cruise ship wreck. Assisted in negotiating and crafting a Memorandum of Understanding between local government, fishermen, and my client establishing a Fisheries Protected Area in the Aegean Sea.

Yale LGBT Rights Litigation Clinic
Student Attorney, 2011

Researched and compiled information for public dissemination on funerary rights for same-sex partners in various states across the country.

Foley Hoag LLP, Boston, MA
Summer Associate, Summer 2011

Researched, advised clients and wrote memoranda on environmental and health regulatory matters.

Professor Daniel Esty, Yale Law School, New Haven, CT
Research Assistant, 2010 - 2013

Performed research on global environmental governance and co-authored a law review article on that topic.

Professor Joseph Page, Georgetown University Law Center, Washington, DC
Research Assistant, Summer 2010

Continued work on a proposed co-authored article tentatively entitled *The Elderly and the Hand Formula: What Nursing-Home Liability Rules Tell Us About the Standard of Care in Negligence Cases*.

Womadz, LLC, Washington, DC
Co-creator and Counsel, 2010-2012

Part of a team that conceived and launched a competition-based crowdsourcing platform for creative advertising content. Drafted legal documents related to competition rules, IP rights, and privacy.

BAR ADMISSIONS

Commonwealth of Massachusetts
United States District Court for the District of Massachusetts