***Private Environmental Nudges***

Anthony Moffa

University of Maine School of Law

*Abstract*

Imagine you are on a weekend getaway to the charming, seaside city of Portland, Maine. You step into a critically acclaimed local coffee shop and bakery. Excited to try a cup of coffee brewed from their meticulously curated and freshly roasted beans, you step up to the counter. The barista asks if you brought your own mug, to which you politely reply that it did not fit in your carryon luggage. They inform you that you may purchase a paper, disposable vessel from the shop for twenty-five cents. You think: Does coffee no longer come with a cup? You find out that the shop recently decreased the price of coffee by twenty-five cents and implemented the charge for a cup? What is this pricing scheme? It is a nudge – a private environmental nudge (PEN) to be precise.

Almost a decade ago, Professor Michael Vandenbergh brought the concept of “private environmental governance” (PEG) to environmental law scholarly discourse. In the nascency of PEG scholarship, Vandenbergh wrote that it was “easy to miss the significance of [private environmental governance activities] if we assume[d] government is the relevant actor for resolving collective action problems.” Now, as the strain of scholarship matures, it is easy to miss the significance of small firm private governance activities if we assume large corporations are the relevant actors for resolving collective action.

This presentation identifies a subset of PEG rooted in Richard Thaler and Cass Sunstein’s famous behavioral economics theory of “nudges.” Their basic insight was that the way choices are presented (“choice architecture”) greatly influences the quick valuation calculations and decisions humans make. The presentation will focus on how innovation by smaller private entities can lead the way on PEN, opening up theoretical discussion and the search for specific examples (like the one described above).