

EDITORIAL

# Breaking Path Dependencies through Transnational Environmental Law

## 1. Introduction

Environmental problems are often the result of a variety of decisions the effects of which accumulated over time. Take plastics pollution, for instance. Awareness of the scope of the problem has grown rapidly, with studies highlighting the huge amounts of plastic being produced and ending up in our environment.<sup>1</sup> In response, we have seen the emergence of national legislation targeting single-use plastics in many jurisdictions,<sup>2</sup> as well as the launch of (still ongoing) negotiations on a global plastics treaty.<sup>3</sup> However, plastics pollution far predates our awareness of the problem; it is the result of many decisions taken across several decades. Plastics were introduced in the 20<sup>th</sup> century because they had several unique properties that were considered societally beneficial, including their durability and low cost of production.<sup>4</sup> Subsequent decisions – including the approval of petrochemical production facilities, the licensing of oil extraction, providing subsidies for polymer production, and the distribution of free plastic bags at supermarkets (something that only recently has become less common) – have further contributed to plastics pollution. Taken together, these decisions have produced a ‘path dependency’<sup>5</sup> that has hampered the development of effective legal responses to tackle the problem.<sup>6</sup>

<sup>1</sup> R. Geyer, J.R. Jambeck & K.L. Law, ‘Production, Use, and Fate of All Plastics Ever Made’ (2017) 3(7) *Science Advances*, article e1700782; United Nations Environment Programme (UNEP), *Drowning in Plastics: Marine Litter and Plastic Waste Vital Graphics* (UNEP, 2021).

<sup>2</sup> UNEP, *Legal Limits on Single-Use Plastics and Microplastics: A Global Review of National Laws and Regulations* (UNEP, 2018). See also H. Johnson et al., ‘Conceptualizing the Transnational Regulation of Plastics: Moving Towards a Preventative and Just Agenda for Plastics’ (2022) 11(2) *Transnational Environmental Law*, pp. 325–55.

<sup>3</sup> At the time of writing, negotiations had not yet been concluded, with the 5<sup>th</sup> session of the Intergovernmental Negotiation Committee in Busan (South Korea) (25 Nov to 1 Dec. 2024) ending without an agreed text: UNEP, ‘Fifth Session (INC-5)’, available at: <https://www.unep.org/inc-plastic-pollution/session-5>.

<sup>4</sup> A.L. Andradý & M.A. Neal, ‘Applications and Societal Benefits of Plastics’ (2009) 364(1526) *Philosophical Transactions of the Royal Society B*, pp. 1977–84.

<sup>5</sup> P. Pierson, ‘Increasing Returns, Path Dependence, and the Study of Politics’ (2000) 94(2) *American Political Science Review*, pp. 251–67.

<sup>6</sup> See G. Nagtzaam et al., *Global Plastic Pollution and Its Regulation: History, Trends, Perspectives* (Edward Elgar, 2023), p. 313 (suggesting that plastics pollution is an area ‘where well-organized industry actors and industry lobby groups have concentrated wealth and authority as well as the motivation to resist the passage of laws that would support effective regulation in the broader public interest’). In the climate change context, the concept of ‘carbon lock-in’ was put forward by Unruh, with other researchers distinguishing between ‘infrastructure/technological’, ‘institutional’, and ‘behavioural’ types of lock-in: G. Unruh, ‘Understanding Carbon Lock-in’ (2000) 28(12) *Energy Policy*, pp. 817–30; P. Erickson

Path dependency works, among other ways, through institutions and rules that, once created, leave a lasting imprint on social, political, economic, and legal processes.<sup>7</sup> Compounded by the problem of regulatory capture, path dependencies can lead to the locking in of socially and environmentally harmful behaviour even when better alternatives present themselves.<sup>8</sup> While path dependencies shape the law,<sup>9</sup> the law can also play a role in *breaking* path dependencies. New legislation or treaties, innovative private standards, groundbreaking court rulings – all of these have the potential to disrupt the status quo. However, whether they can do so depends on choices made at ‘critical junctures’ – that is, periods marked by rapid institutional change, during which path dependencies may be broken and new ones created.<sup>10</sup>

This dual role of the law vis-à-vis path dependencies is at the heart of the various articles in this issue of *Transnational Environmental Law (TEL)*. The articles – which cover a variety of topics, geographies, and time periods – are divided into three groups. The first four articles illustrate how law, including but not limited to environmental law, can be complicit in causing socio-environmental problems. The second set of articles shows how institutions and rules underpinning global value chains can create path dependencies, and how polycentric governance approaches could help to break such path dependencies. The last two articles reveal the role of science and epistemic communities in both creating and overcoming path dependencies.

## 2. The Complicity of Law

Legal acts can create path dependencies that lead to social and environmental harm. The idea that law is an innocent bystander in the unfolding of social and environmental injustices has been criticized by various scholars in recent years, who suggest that the time is ripe for rethinking some of the core norms underpinning the legal response to environmental problems.<sup>11</sup> Specifically, Viñuales has suggested:

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et al., ‘Assessing Carbon Lock-in’ (2015) 10(8) *Environmental Research Letters*, article 084023; K.C. Seto et al., ‘Carbon Lock-In: Types, Causes, and Policy Implications’ (2016) 41 *Annual Review of Environment and Resources*, pp. 425–52.

<sup>7</sup> B.J. Richardson, *Time and Environmental Law: Telling Nature’s Time* (Cambridge University Press, 2017), pp. 91–2.

<sup>8</sup> Ibid.

<sup>9</sup> Although the common law’s adherence to *stare decisis* may suggest that path dependency is to be expected particularly in such legal systems (see O.A. Hathaway, ‘Path Dependence in the Law: The Course and Pattern of Legal Change in a Common Law System’ (2001) 86(2) *Iowa Law Review*, pp. 101–65), civil law systems may similarly display path dependency with the adoption of legislation constraining future decision making. For a comparative law discussion of path dependence see J. Bell, ‘Path Dependence and Legal Development’ (2013) 87(4) *Tulane Law Review*, pp. 787–810.

<sup>10</sup> See Pierson, n. 5 above, p. 263; Hathaway, n. 9 above, pp. 140–2.

<sup>11</sup> See, e.g., L.J. Kotzé, L. Du Toit & D. French, ‘Friend or Foe? International Environmental Law and Its Structural Complicity in the Anthropocene’s Climate Injustices’ (2021) 11(1) *Oñati Socio-Legal Series*, pp. 180–206; R.E. Kim & K. Bosselmann, ‘International Environmental Law in the Anthropocene: Towards a Purposeful System of Multilateral Environmental Agreements’ (2013) 2(2) *Transnational Environmental Law*, pp. 285–309.

[examining] fundamental legal categories, such as ‘causality’, ‘subject’, ‘obligation’, ‘property’, ‘responsibility/liability’, ‘legal personality’, ‘corporation’, ‘constitution’, ‘sovereignty’ to understand how they may have played (and may still play) a role in prompting and sustaining the Anthropocene, as well as how they may be adjusted or perhaps replaced in the law of more resilient and more respectful human societies.<sup>12</sup>

Heeding this call is Paul Govind in his contribution ‘Evaluating the Ethical Responsibility of Environmental Planning Law in Perpetuating Settler Colonialism Using a Transnational Legal Lens’. Govind critically analyzes environmental planning law in the Australian state of New South Wales (NSW), arguing that its legal system continues to marginalize Aboriginal legal culture.<sup>13</sup> In doing so, he employs a twofold transnational legal lens: firstly, Govind suggests that interactions between First Nations and settler colonial legal systems should be viewed as transnational; secondly, he draws lessons from planning law in Canada to inform the Australian context. Govind challenges Western colonial notions of law, including state sovereignty and the legal subject/object binary. He demonstrates how core assumptions made in the development of planning law – notably ‘the assumption that First Nations legal systems did not exist, and the land was not subject to a system of management’<sup>14</sup> – continue to influence the functioning of environmental planning law in NSW. The article also looks forward with a view to finding ways in which environmental planning law may disrupt the settler colonial mindset that influenced it in the first place. Concretely, Govind argues for adopting a landscape approach that considers the complex ways in which Indigenous cultures relate to the land and that accounts for the cumulative loss of Aboriginal cultural heritage in impact assessments.

The next article examines how path dependencies were created in the development of international climate change law.<sup>15</sup> In their article ‘Is Enhanced Transparency the “Backbone” of the Paris Agreement? A Critical Assessment’, Max van Deursen and Aarti Gupta carry out a critical analysis of how rules on transparency – i.e., reporting and review – have evolved in the international climate regime. In doing so, they investigate the claim that transparency is the ‘backbone’ of the Paris Agreement,<sup>16</sup> which helps to ensure that the treaty is effective even in the absence of the legally binding emissions target that characterized its predecessor, the Kyoto Protocol.<sup>17</sup> As Van Deursen and Gupta demonstrate, the rules on transparency are closely related to earlier decisions about the nature of mitigation commitments in the international climate regime. As such, they argue, transparency cannot address the shortcomings

<sup>12</sup> J.E. Viñuales, *The Organisation of the Anthropocene: In Our Hands* (Brill, 2018), p. 10.

<sup>13</sup> P.J. Govind, ‘Evaluating the Ethical Responsibility of Environmental Planning Law in Perpetuating Settler Colonialism Using a Transnational Legal Lens’ (2025) 14(1) *Transnational Environmental Law*, pp. 12–40.

<sup>14</sup> *Ibid.*, p. 24.

<sup>15</sup> M. van Deursen & A. Gupta, ‘Is Enhanced Transparency the “Backbone” of the Paris Agreement? A Critical Assessment’ (2025) 14(1) *Transnational Environmental Law*, pp. 41–68.

<sup>16</sup> Paris (France), 12 Dec. 2015, in force 4 Nov. 2016, available at: [https://unfccc.int/sites/default/files/english\\_paris\\_agreement.pdf](https://unfccc.int/sites/default/files/english_paris_agreement.pdf).

<sup>17</sup> Kyoto Protocol to the United Nations Framework Convention on Climate Change, Kyoto (Japan), 11 Dec. 1997, in force 16 Feb. 2005, available at: <http://unfccc.int/resource/docs/convkp/kpeng.pdf>.

arising from voluntary climate pledges (the nationally determined contributions under the Paris Agreement). Instead, they posit, ‘transparency is likely to be most meaningful and transformative when the targets themselves are prescriptive and mandatory’.<sup>18</sup> Transparency, rather than being a means of strengthening global climate action, has thus become a site of political contestation itself.<sup>19</sup> The outcomes of this contestation vary: as Van Deursen and Gupta clearly demonstrate, while the stringency of reporting and review rules has increased for developing countries, they have, in fact, regressed for developed countries.

The following article, ‘Looking to Livestock: Gauging the Evolution of the EU’s Agri-Climate Law and Policy’ by Rebecca Williams, concerns path dependencies in the land-use sector, focusing on the global greenhouse gas footprint of European agriculture.<sup>20</sup> Williams recounts the troubled history of the European Union’s (EU) Common Agriculture Policy (CAP), with each attempt to green the CAP failing to produce the desired results. Although recent reform efforts seem more promising, she cautions that ‘historical path dependencies of past CAP periods characterized by protection of the livestock sector remain visible’.<sup>21</sup> Nevertheless, Williams offers a moderately positive assessment of EU agri-climate governance. She claims, firstly, that ‘the evolution of existing EU agricultural policies (such as the CAP) in addition to newer developments in agri-climate governance (such as Farm to Fork) demonstrates the EU’s ongoing drive to meet its technical climate responsibilities for the livestock sector’.<sup>22</sup> Secondly, she commends the EU for adopting a food systems approach towards livestock emissions. However, institutional lock-in (for example, the decades of financial support that the agricultural sector has received) combined with behavioural lock-in (such as the challenge of bringing about dietary changes) mean that even the EU as a frontrunner still has some way to go.

International investment law is another area where rules developed in the past have begun to pose significant hurdles for effectively addressing contemporary environmental crises.<sup>23</sup> This is clearest in the context of the transition away from fossil fuels.<sup>24</sup> One of the most (in)famous international investment agreements in this regard, the Energy Charter Treaty (ECT),<sup>25</sup> has come under fire for allowing investors to challenge

<sup>18</sup> Van Deursen & Gupta, n. 15 above, p. 67.

<sup>19</sup> A. Gupta & H. van Asselt, ‘Transparency in Multilateral Climate Politics: Furthering (or Distracting From) Accountability?’ (2017) 11(2) *Regulation & Governance*, pp. 1–17; see also T. Aganaba-Jeanty & A. Huggins, ‘Satellite Measurement of GHG Emissions: Prospects for Enhancing Transparency and Answerability under International Law’ (2019) 8(2) *Transnational Environmental Law*, pp. 303–26.

<sup>20</sup> R. Williams, ‘Looking to Livestock: Gauging the Evolution of the EU’s Agri-Climate Law and Policy’ (2025) 14(1) *Transnational Environmental Law*, pp. 69–93.

<sup>21</sup> *Ibid.*, p. 83.

<sup>22</sup> *Ibid.*, p. 88.

<sup>23</sup> For a critical history of international investment law see N.M. Perrone, *Investment Treaties and the Legal Imagination: How Foreign Investors Play by Their Own Rules* (Oxford University Press, 2021).

<sup>24</sup> K. Tienhaara, ‘Regulatory Chill in a Warming World: The Threat to Climate Policy Posed by Investor-State Dispute Settlement’ (2018) 7(2) *Transnational Environmental Law*, pp. 229–50.

<sup>25</sup> Lisbon (Portugal) 17 Dec. 1994, in force 16 Apr. 1998, available at: <https://www.energycharter.org/fileadmin/DocumentsMedia/Legal/ECTC-en.pdf>.

measures to phase out fossil fuels.<sup>26</sup> The treaty has faced mounting criticism, not just from civil society organizations but also from member states. Following a string of withdrawals, notably by the EU and its Member States, the remaining members agreed on a ‘modernization’ of the ECT at the end of 2024.<sup>27</sup> Endrius Cocciolo and Leonie Reins’ article ‘A Critical Review of the Energy Charter Treaty from an Earth System Law Perspective’<sup>28</sup> adds to the body of scholarship that is critical of the ECT. Specifically, the authors examine whether the treaty is fit for purpose in the age of the Anthropocene. Cocciolo and Reins adapt the analytical framework of ‘Earth system law’, developed by Kotzé and Kim,<sup>29</sup> to examine various elements of the treaty, including its environmental provision and its investor-state dispute settlement system. They find, on balance, that the ECT ‘cannot meet contemporary socio-ecological challenges’.<sup>30</sup> The modernization process, albeit aimed at mitigating some of the criticisms, does little to alter their main finding. Indeed, they argue, the very ‘term “modernization” proves misleading, as the proposed changes still allow tribunals to undermine climate action and potentially prioritize private interests over those of a public nature’.<sup>31</sup> Underscoring how path dependencies operate in this area of law, Cocciolo and Reins observe that the ECT ‘was originally formulated to generate governance mechanisms for the international energy sector, and its provisions embody a particular vision of that industry’.<sup>32</sup> Given the socio-environmental impacts of fossil fuels, it has become clear that such a vision is no longer apposite.

### 3. Path Dependencies in Rules and Institutions Governing Global Value Chains

The next set of articles considers path dependencies in the context of rules and institutions governing global value chains. Such value chains are commonly regulated by a set of transnational rules and institutions. These rules and institutions have their own path dependencies,<sup>33</sup> but their historical development may also influence decisions made elsewhere.<sup>34</sup> In addition to exploring path dependencies in the context of value chains, the articles also hint at the potential of polycentric governance in breaking

<sup>26</sup> As Cocciolo and Reins put it, ‘the ECT has fossil resources in its DNA’: Cocciolo & Reins, n. 28 below, p. 95.

<sup>27</sup> Energy Charter Treaty Secretariat, ‘The Energy Charter Conference Adopts Decisions on the Modernisation of the Energy Charter Treaty’, 3 Dec. 2024, available at: <https://www.energycharter.org/media/news/article/the-energy-charter-conference-adopts-decisions-on-the-modernisation-of-the-energy-charter-treaty>.

<sup>28</sup> E. Cocciolo & L. Reins, ‘A Critical Review of the Energy Charter Treaty from an Earth System Law Perspective’ (2025) 14(1) *Transnational Environmental Law*, pp. 94–120.

<sup>29</sup> L.J. Kotzé & R.E. Kim, ‘Earth System Law: The Juridical Dimensions of Earth System Governance’ (2019) 1(1) *Earth System Governance*, article 100003.

<sup>30</sup> Cocciolo & Reins, n. 28 above, p. 118.

<sup>31</sup> *Ibid.*, p. 119.

<sup>32</sup> *Ibid.*, p. 120.

<sup>33</sup> See, e.g., in the context of transnational fisheries governance, S. Renckens & G. Auld, ‘Structure, Path Dependence, and Adaptation: North-South Imbalances in Transnational Private Fisheries Governance’ (2019) 166 *Ecological Economics*, article 106422.

<sup>34</sup> S.L. de Vasconcellos et al., ‘Effects of Path Dependence on Capabilities in Captive Global Value Chains’ (2015) 12(4) *Brazilian Administration Review*, pp. 384–402.

path dependencies.<sup>35</sup> Building on the seminal work by the Ostroms,<sup>36</sup> the idea underpinning polycentric governance is that multiple, independent units co-govern socio-environmental problems under an overarching set of rules.<sup>37</sup> In a polycentric governance setting, experimentation by various governance units is expected to lead to innovation through a process of learning. As such, polycentric governance can help to overcome deadlocked institutions.<sup>38</sup>

The article by Clément Lasselin, Sébastien Barot, and Anouk Barberousse zooms in on the bioenergy production value chain.<sup>39</sup> In ‘Value Chains and Environmental Impact Assessments: Lessons from Two French Legal Cases on Bioenergy Facilities’, the authors explore two recent cases that concerned the question of whether and how impacts in other parts of the value chain should be taken into account in an environmental impact assessment (EIA). This question has received particular attention recently in the context of integrating end-use (‘Scope 3’) emissions in EIAs for fossil-fuel projects.<sup>40</sup> However, as Lasselin, Barot and Barberousse explain, similar questions also arise when authorities in one country approve a bioenergy project that may lead to harmful social and environmental impacts in a third country associated with the production of biomass, its conversion to energy, and the distribution of bioenergy. Value chains, they argue, thus pose fundamental challenges to long-standing EIA laws, which generally seek to strike a careful balance between keeping things simple (for a project developer) and preventing and/or mitigating social and environmental harm. Even though the two French cases thus challenged a path-dependent institution (i.e., traditional EIA laws), the ultimate outcome of both cases did not disrupt the status quo. However, as Lasselin and his co-authors note, it is likely that cases similar to the

<sup>35</sup> See, e.g., K.W. Abbott, ‘Strengthening the Transnational Regime Complex for Climate Change’ (2014) 3(1) *Transnational Environmental Law*, pp. 57–88; V. Heyvaert, ‘The Transnationalization of Law: Rethinking Law through Transnational Environmental Regulation’ (2017) 6(2) *Transnational Environmental Law*, pp. 205–36; J. van Zeben, ‘Facing the Legitimacy Challenge: Law as a Disciplining Force for Transnational Environmental Governance’, in V. Heyvaert & L.-A. Duvic-Paoli (eds), *Research Handbook on Transnational Environmental Law* (Edward Elgar, 2020), pp. 145–57.

<sup>36</sup> V. Ostrom, C.M. Tiebout & R. Warren, ‘The Organization of Government in Metropolitan Areas: A Theoretical Enquiry’ (1961) 55(4) *American Political Science Review*, pp. 831–42; E. Ostrom, ‘Beyond Markets and States: Polycentric Governance of Complex Economic Systems’ (2010) 100(3) *American Economic Review*, pp. 641–72.

<sup>37</sup> See, e.g., D. Cole, ‘From Global to Polycentric Climate Governance’ (2011) 2(3) *Climate Law*, pp. 395–413; A. Jordan et al. (eds), *Governing Climate Change: Polycentricity in Action?* (Cambridge University Press, 2018); J. van Zeben & A. Bobic (eds), *Polycentricity in the European Union* (Cambridge University Press, 2019).

<sup>38</sup> It should be added that polycentric governance systems may themselves be subject to path dependencies; see D.M. McLaughlin, J.M. Mewhirter & M. Lubell, ‘Conflict Contagion: How Interdependence Shapes Patterns of Conflict and Cooperation in Polycentric Systems’ (2022) 32(3) *Journal of Public Administration Research and Theory*, pp. 543–60.

<sup>39</sup> C. Lasselin, S. Barot & A. Barberousse, ‘Value Chains and Environmental Impact Assessments: Lessons from Two French Legal Cases on Bioenergy Facilities’ (2025) 14(1) *Transnational Environmental Law*, pp. 121–44.

<sup>40</sup> *R (on the application of Finch on behalf of the Weald Action Group) v. Surrey County Council and Others* [2022] EWCA Civ 187 (Court of Appeal), [2024] UKSC 20 (Supreme Court). See generally B. Mayer, *Environmental Assessment as a Tool for Climate Change Mitigation* (Oxford University Press, 2024).

French examples will emerge across the world. In a polycentric setting, lessons can therefore be learned from one jurisdiction to another. One such lesson they identify is that courts should consider the indirect contributions of large-scale facilities in value chains by examining ‘the influence of project proponents in organizing supplies and outlets’.<sup>41</sup> Importantly, lessons may also be learned with regard to the regulation of other value chains, with the authors suggesting that this may lead to the development of a ‘chain-based approach to EIA’.<sup>42</sup>

In the next article, Zhang Min and Fernando Romero Wimer examine the extent to which polycentric governance can help to overcome path dependencies in the context of telecoupled systems, focusing on the soybean value chain.<sup>43</sup> Soybean production in South America has increased dramatically, driven mainly by demand from other parts of the world, initially from Europe – where soybeans have been used as feed for animal farming – and more recently also from China. While this may have led to positive economic impacts in South America arising from the increase in exports, the demand for soybean has led to major social and environmental pressures, including but not limited to deforestation. In ‘Transnational Governance of Soybean Land Use in South America: A Polycentric Approach’, Min and Romero Wimer examine the traditional international law response (which includes the multilateral biodiversity and climate change treaties), unilateral regulation by the EU (notably the Deforestation Regulation<sup>44</sup>), and non-state initiatives (such as the Amazon Soybean Moratorium and the Round Table on Responsible Soy). However, their sobering conclusion is that each of these governance approaches displays shortcomings, which ‘eventually render the whole governance mechanism fragmented and dysfunctional’.<sup>45</sup> The existing governance system, in their view, thus falls short of the ideals of polycentric governance. To overcome these limitations, Min and Romero Wimer suggest that China and Brazil, as the two main soybean trading nations, should become more involved in soybean governance in the future. Moreover, they posit that states can help to drive non-state governance by developing ‘meta-standards’ and overseeing non-state governance initiatives. Lastly, they claim that improved knowledge sharing among different governance units is essential for an effective polycentric governance response.

#### 4. The Role of Science and Epistemic Communities in Breaking Path Dependencies

Path dependencies in transnational environmental law are created – and can be broken – by a variety of actors involved in decision making, including states and non-state actors.

<sup>41</sup> Lasselin, Barot & Barberousse, n. 39 above, p. 142.

<sup>42</sup> *Ibid.*, p. 144.

<sup>43</sup> Z. Min & F. Romero Wimer, ‘Transnational Governance of Soybean Land Use in South America: A Polycentric Approach’ (2025) 14(1) *Transnational Environmental Law*, pp. 145–70. As Min and Romero Wimer put it, the telecoupling framework ‘explain[s] the relationship between interaction factors in distant places’: *ibid.*, p. 152.

<sup>44</sup> Regulation (EU) 2023/1115 on the Making Available on the Union Market and the Export from the Union of Certain Commodities and Products Associated with Deforestation and Forest Degradation and Repealing Regulation (EU) No 995/2010 [2023] OJ L 150/206.

<sup>45</sup> Min & Romero Wimer, n. 43 above, p. 162.

However, in an area marked by evolving scientific insights on the causes and impacts of environmental problems, scientific and expert communities play a particularly prominent role. Their importance is underscored in the two final articles in this issue.

James Hickling takes the reader back in time to shed light on the origins of one of the first international wildlife treaties, the 1900 Convention for the Preservation of Wild Animals, Birds and Fish in Africa.<sup>46</sup> For his contribution ‘The Role of Science and Historiography in the Development of Transnational Environmental Law: A New History of the 1900 London Convention for the Preservation of African Wildlife’,<sup>47</sup> Hickling revisits existing accounts of the origins of the Convention, which suggest that the treaty was made primarily by and for English aristocrats interested in game hunting. Through carefully documented archival research, he shows that these accounts do not tell the full story. Instead, Hickling recounts how several scientists, policymakers (and, in one case, a scientist-policymaker), inspired by Darwin’s insights on evolutionary biology, advocated the creation of wildlife sanctuaries alongside hunting restrictions. This epistemic community, in Hickling’s view, thus was instrumental in realizing one of ‘the first modern science-based law reforms for the preservation of biodiversity’.<sup>48</sup> At the same time, the 1900 London Convention can also be seen as a critical moment in which path-dependent institutions were created by colonial powers (without the involvement of local communities), which shaped wildlife preservation efforts for more than a century.

In the last article of this issue, ‘The Role of Epistemic Communities in Formulating EU Policy: The PrecisionTox Project’, Aleksandra Čavoški, Robert Lee and Laura Holden also explore the role of epistemic communities, but with a focus on EU chemicals regulation.<sup>49</sup> This field of transnational environmental law is currently at a critical juncture as policymakers seek to follow up on a commitment to limit reliance on animal testing in chemical risk assessments through so-called ‘new approach methodologies’ (NAMs). Such methodologies exist but there remain scientific uncertainties, for instance, with regard to their ability to show that exposure to chemicals leads to adverse effects on human health. Moreover, underscoring the path dependencies created by earlier decisions, for the uptake of these NAMs ‘many barriers are social and, in part, arise out of investments in and commitments to existing methodologies’.<sup>50</sup> The authors sketch how a group of scientists part of the EU-funded PrecisionTox Project engaged with stakeholders in EU chemicals regulation and, through a process of reflexive deliberation, helped to shed light on scientific uncertainties associated with NAMs and offered a way forward to reduce those uncertainties and thereby increase the uptake of NAMs. Moreover, Čavoški, Lee and Holden explain

<sup>46</sup> London (United Kingdom), 19 May 1900, not in force. Parliamentary Papers, Africa No. 5, Cmnd 101 (1900), pp. 8–13.

<sup>47</sup> J. Hickling, ‘The Role of Science and Historiography in the Development of Transnational Environmental Law: A New History of the 1900 London Convention for the Preservation of African Wildlife’ (2025) 14(1) *Transnational Environmental Law*, pp. 171–97.

<sup>48</sup> *Ibid.*, p. 173.

<sup>49</sup> A. Čavoški, R. Lee & L. Holden, ‘The Role of Epistemic Communities in Formulating EU Policy: The PrecisionTox Project’ (2025) 14(1) *Transnational Environmental Law*, pp. 198–223.

<sup>50</sup> *Ibid.*, p. 218.



how ‘the project experts acted as policy agents and advocated solutions for the wider uptake of NAMs’,<sup>51</sup> showing how scientists can play an active role in reforming the relevant regulatory framework and breaking path dependencies.

## 5. Conclusion

The various articles in this issue of *TEL* clearly suggest that decisions from the past may constrain the future. The concept of path dependency offers a helpful framework to account for the processes through which this happens, even though it arguably falls short of presenting a comprehensive explanation of why and how the status quo can be disrupted.<sup>52</sup> At any rate, what is evident is that putting transnational environmental law in its historical context can help to shed light on the root causes of dysfunctions that lead to environmental degradation and social injustice. Moreover, future inquiries could help to further uncover the ways in which transnational environmental law and the actors shaping and implementing it can help to break path dependencies resulting from traditional legal approaches. We look forward to continuing this dialogue with the *TEL* community.

## 6. TEL Best Article Prize 2024

Since 2022, the first issue of each new volume of *TEL* offers the exciting moment of announcing the winners of the annual *TEL* Best Article Prize for the most innovative and thought-provoking contribution published in *TEL* in the preceding year. The selection of the winning article and two honourable mentions is made by an annually rotating panel of *TEL* Advisory Board members, on the basis of a selection of contributions from each issue nominated by the *TEL* Editorial Board, to which the selection panel can add up to three ‘wildcards’ for articles they deem worthy of the prize but that were not previously shortlisted by the Editors. We are delighted and most grateful that Maria Lee and Benjamin Richardson agreed to judge the prize this year.

It is with great pleasure that we announce the winner of the *TEL* Best Article Prize 2024:

**Matthias Petel, ‘The Illusion of Harmony: Power, Politics, and Distributive Implications of Rights of Nature’<sup>53</sup>**

The judges motivated their decision by noting that ‘this article offers a brilliant, thought-provoking critique of the rights of nature movement that should make readers question its capacity to transform human-nature relationships into a utopian, “post-political” future. With consideration of legal reforms from New Zealand to Colombia, and their impact on Indigenous peoples, Petel shows that

<sup>51</sup> Ibid.

<sup>52</sup> See A. Kay, ‘A Critique of the Use of Path Dependency in Policy Studies’ (2005) 83(3) *Public Administration*, pp. 553–71; I. Greener, ‘The Potential of Path Dependence in Political Studies’ (2005) 25(1) *Politics*, pp. 62–72.

<sup>53</sup> M. Petel, ‘The Illusion of Harmony: Power, Politics, and Distributive Implications of Rights of Nature’ (2024) 13(1) *Transnational Environmental Law*, pp. 12–34.

rights of nature problematically tend to transform power relations between human communities rather than between people and the natural world. His article behoves us to look much more critically at the implications of rights of nature reforms for environmental justice’.

In addition, the selection panel awarded two honourable mentions:

**Birsha Ohdedar, ‘Law, Colonial-Capitalist Floods, and the Production of Injustices in Eastern India: Insights for Climate Adaptation’,<sup>54</sup>**

The judges awarded this article the first honourable mention because ‘it offers a beautifully composed and rigorously researched critique of the “hydro-social cycle” of a river valley in eastern India. Through his imaginative use of legal history, examining water regulation in colonial India, Ohdedar shows that river floods are very much a legacy of the law that affect future climate change adaptations. His paper provokes us to be more attentive to the political and historical contexts of flooding so that the law can enable better adaptation to climate change and address environmental injustices etched in the past’.

and

**Elen Stokes and Caer Smyth, ‘Hope-Bearing Legislation? The Well-being of Future Generations (Wales) Act 2015’,<sup>55</sup>**

The second honourable mention was awarded because the judges found this article ‘engages with one of the most pressing challenges for environmental law: how to safeguard the interests of posterity in decisions we make today. Making wide-ranging and sophisticated use of administrative and constitutional law scholarship to interpret Wales’ Well-being of Future Generations Act, Stokes and Smyth offer an innovative reassessment of the capacity of such legislation to be a game-changer. The ideal of “hope” they associate with such aspirational legislation introduces a novel way to reconceptualise the strengths and limitations of such landmark reforms’.

The author of the winning article will receive an award of £250 in Cambridge University Press books, and honourable mention authors receive £50 in books. In addition, each of the authors will receive permanent access to the full journal online archive (all content from volume 13 (2024) onwards is published Open Access).

We heartily congratulate Matthias as this year’s prize winner, and Birsha, Elen and Caer as the honourable mentions! It is a privilege to have so many excellent contributions to select from each year for the *TEL* Best Article Prize, and we are most grateful to our community of *TEL* scholars, reviewers, readers, and our wonderful editorial team, whose invaluable support enables *TEL* to continue to flourish.

<sup>54</sup> B. Ohdedar, ‘Law, Colonial-Capitalist Floods, and the Production of Injustices in Eastern India: Insights for Climate Adaptation’ (2024) 13(2) *Transnational Environmental Law*, pp. 264–85.

<sup>55</sup> E. Stokes & C. Smyth, ‘Hope-Bearing Legislation? The Well-being of Future Generations (Wales) Act 2015’ (2024) 13(3) *Transnational Environmental Law*, pp. 569–87.





## 7. TEL Editorial Board Announcements

We are delighted to announce a group of stellar new Assistant Editors who have joined the *TEL* family in the past months: Arianna Crosera, Luca Tenreira and Niklas Reetz (European University Institute, Florence (Italy)), Evan Hamman (University of Canberra (Australia)), and Louise du Toit (University of Southampton (United Kingdom)). With the inflow of submissions ever increasing, we are grateful to have such a talented and motivated team to help us in safeguarding *TEL*'s high quality standards.

*Editors-in-Chief*

Thijs Etty  
Josephine van Zeben

*Editors*

Harro van Asselt   
Leslie-Anne Duvic-Paoli   
Sébastien Jodoin   
Leonie Reins 

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