



ESELS

Welcome to the ESELS bi-annual newsletter

As of 2024, the European Society for Empirical Legal Studies publishes its newsletter twice a year. The aim is to inform ESELS members about the Society's activities and conferences as well as highlight the work of ESELS members.

In this first edition, we introduce a new candidate for at-large **board member** and a candidate for **ESELS President**. We also highlight the launch of the **European Journal for Empirical Legal Studies** and remind you that you have until **15 February** to submit your abstract for the ESELS 2024 Annual Conference in Elche. Finally, **Julien Bétaille** (Associate Professor, Toulouse Capitole University Law School and Member of the Institut universitaire de France) sheds a light on the critical role of empirical research in environmental law.

Happy reading!

Do you have ideas, suggestions or questions about this newsletter? Please contact the ESELS Newsletter editor [Kyra Wigard](#)

Introducing a new candidate for at-large board member



Yonathan Hasson is a research associate at the Oxford Centre for Criminology, Faculty of Law, and the Centre for the Study of Crime, Law, and Society. His doctoral research focused on judicial decision-making in criminal courts. As part of this, he conducted a quantitative empirical study, was a visiting fellow at Erasmus Centre for Empirical Legal Studies, and a visiting student at Institute of Law and Economics of the University of Hamburg, following his previous fellowship at Cornell Law School.

Introducing Professor Tilmann Altwicker, candidate for ESELS President 2024-2025



I hold the Chair of Legal Data Science and Public Law at the Faculty of Law of the University of Zurich as Associate Professor, and also head the [Center for Legal Data Science \(CLDS\)](#).

At present, Empirical Legal Studies (ELS) in Europe is at an exciting moment, with several initiatives around Europe gaining momentum. Yet, the full promise of ELS for European law schools, scholarship, and legal practice often remains untapped. I am convinced that ELS not only furthers legal knowledge but also plays a critical role in forging a just legal order and a more equitable society. I

aim to contribute to ELS in Europe by stimulating discourse on the value ELS adds to both academia and society at large.

My particular goals for ESELS are:

- Increase the visibility of ELS research (and activities) carried out by members of ESELS through the newsletter
- Establish thematic sub-groups within ESELS to provide venues for networking
- Increase ties with other regional societies / conferences on ELS
- Promote early career scholars by creating a database on available funding and scholarship opportunities in the field of ELS

Launch of the European Journal for Empirical Legal Studies

The European Journal for Empirical Legal Studies (EJELS) is a fully open access peer-reviewed journal devoted to the empirical study of law and legal systems. It aims to bridge the substantive domain of law and the empirical approaches broadly conceived, ranging from quantitative to qualitative methods. The Journal is committed to fostering a methodologically pluralist, intellectually open, and disciplinarily inclusive academic culture. EJELS is not restricted to any particular field of law nor any particular legal system, but particularly welcomes submissions of relevance to a European audience.



EJELS

EUROPEAN JOURNAL FOR
EMPIRICAL LEGAL STUDIES

[More information and article submissions](#)

ESELS 2023 conference: 20-21 June 2024 in Elche, Spain



After a successful inaugural conference in Warsaw, preparations are in full force for our 2024 conference. We are delighted to invite you to our 2024 Conference which will be hosted at the **Universidad Miguel Hernández of Elche** (Alicante, Spain) on 20-21 June, 2024.

The city of Elche, located in the province of Alicante (Spain), is also known for being “the city of the Lady”, since in 1897 an Iberian sculpture was found in the archaeological site of La Alcludia that represents a lady, richly dressed, whose face shows perfect features, made of limestone between the 5th and 4th centuries BC.

In addition, it is the only city that has been granted three World Heritage Sites by UNESCO, which are El Palmeral (The Palm Grove of Elche), a green oasis that houses thousands of date palm trees, some over a thousand years old; the Misterid'Elx, that its is a liturgical drama about the Assumption of the Virgin Mary, whose theatrical representation takes place in the Basilica of Santa María along August and the School Museum of Puçol, where you can learn about the educational history of the region.

If you come to Elche you can immerse yourself in the local culture by exploring the old town, with its cobbled streets and welcoming squares, where historical architecture blends with modern life. You will be able to sample the exquisite Elche cuisine, combining Mediterranean flavours with Arab influences and local traditions.

Elche is a destination that enchants all who have the privilege of visiting, offering an unforgettable experience that blends history, nature, and unparalleled hospitality. Whether you're exploring its impressive heritage, savouring local cuisine, or relaxing on nearby beaches, this city has much to offer conference attendees. Some of the most outstanding places to visit in Elche are Altamira Palace, The Palm Grove of Elche, the Municipal Park and the beaches.

Furthermore, after the Conference, visitors can also partake in the festivities of the Night of San Juan, a celebration taking place in Alicante. “Las Hogueras” of Alicante, also known as 'Les Fogueres de Sant Joan', are celebrated every year

from the 20th to the 24th of June. During these four days the city lives with intensity and joy its official festival. The Bonfires of Alicante come to an end on the 24th of June, the night of San Juan, with the burning of all the monuments made for this festivity ("ninots"). From 00:00 hours, the bonfires will burn all over the city.

Let's hope that the stay in Elche and surroundings of the conference participants will be pleasant and that we will have a fruitful conference.

Submit your abstract before 15 February

The Critical Role of Empirical Research in Environmental Law

by Julien Bétaille, Associate Professor, Toulouse Capitole University Law School & Member of the Institut universitaire de France

After more than half a century of existence, environmental law –considered as the set of legal rules with the explicit purpose to protect the environment – is facing a paradox: while environmental legal norms have never been so sophisticated, especially in the EU, ecological crises have never been so acute. This gives rise to some other authors not hesitating to deduce outright that environmental law is ineffective^[1]. Although this kind of conclusion is certainly too hasty, it has the merit of bringing to the front the methodological challenges of Empirical Legal Research (ELR):how can the question of the effectiveness of environmental standards be addressed? What methods could be used to better understand the influence of legal factors on environmental quality? Environmental law cannot - one could argue – be studied only doctrinally as its explicit aim – protecting the environment – is so paramount. The empirical issue of whether environmental law actually contributes to this aim is the backdrop of any doctrinal question.

The effectiveness question

Of course, this broader effectiveness question is not the only one that ELR is able to address. It makes it possible to test sub-hypotheses formulated in the literature. For example, are criminal sanctions useful in reducing environmental damage? Do environmental impact assessments really prevent environmental damage? Does constitutionalizing the environment or granting rights to nature really matter, and are its "symbolic" effects real? Is the *Urgenda* climate case really historic, a landmark case? Etc.

However, in the end, the effectiveness question is central in this field. Indeed, the function of environmental law is not simply to maintain social peace and settle conflicts, but to respond to one of the most important challenges ever faced by mankind: the threat of its own extinction! Environmental Law only exists because it has such a clear purpose: to protect the environment. Whether it corresponds to traditional doctrinal methods or not, environmental legal scholars cannot but think about this question of effectiveness. However, many remain locked into methods that sometimes lead to speculative statements. But facts – such as on the extent to which CO2 emission have been reduced, whether threatened species are rebounding in marine reserves, whether poaching is reduced – are of paramount importance in any environmental law study.

An interdisciplinary research field

On the other hand, although the measurement of environmental quality provides information on the state of the environment, it does not provide information on the factors that help or hinder the achievement of the objective of protecting the environment, and even less on the specific role of legal factors in relation to extra-legal factors. The fact that it is not easy to assess such causal mechanisms explains why, although many people have an opinion on the impact of environmental law, there is little hard empirical knowledge about the actual influence of legal standards on environmental quality.

In fact, there is a world of research to be explored here. Drawing on the empirical methods of the social and natural sciences, research could contribute to a better understanding of “socio-ecological systems” in the interdisciplinary perspective outlined by E. Ostrom^[2], by understanding some of the relationships between the 'governance' system and other sub-systems. And, without necessarily being aware of it, many scientific disciplines have already entered this field. Examples include economics^[3], computer science^[4], political science^[5], medicine^[6], geography^[7] or conservation biology^[8]. Very often, when these disciplines study the effect of public intervention in the environmental field, they are in fact studying the effect of environmental law, without labeling it as such.

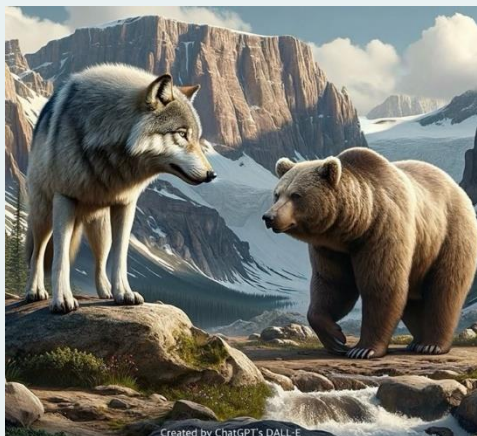
So, could not environmental legal scholars simply read this type of research, draw from this evidence? Indeed, greater involvement of legal scholars in such research would make it possible to refine hypotheses, test new ones, propose alternative explanations, better interpret results, and so on. If not essential, the participation of legal scholars is at least relevant to better explain the functioning of environmental law, and ultimately to understand the reasons for the successes and failures of environmental legal regulation. But this is not sufficient. Environmental ELR is necessary, as a free-standing subdiscipline, not only to test empirically how laws contribute to protecting the environment, and where obstacles arise but – most importantly – to translate findings back to the legal field and to the society, to recommend how laws could possibly be adapted to become effective. Only legal scholars can do that. The legal academy would then produce strong knowledge which, by informing political

deliberation, would be genuinely useful to society and to our future on this planet.

Mapping Empirical Legal Research

Even though important work has been done, Empirical Legal Research has been more or less ignored by the majority of environmental legal scholars in Europe, a situation in contrast to the one in the United States^[9]. At best, some European scholars are really concerned with the evidence provided by other disciplines, one being Michael Faure^[10] and others are trying to build legal indicators, such as Michel Prieur^[11]. At worst, legal scholars remain in a speculative posture on this type of question and a minority, not so much scholars as activist lawyers, take advantage of the absence of empirical work, or their ignorance of it, to promote a form of ideology^[12].

There are, however, increasing signs of a positive trend. Unsurprisingly, in continental Europe, the Netherlands and Belgium are ahead of the game! For example, Lorenzo Squintani's work on public participation^[13] and Carole Billiet's on sanctions^[14]. There are also major research projects, such as the ERC project Effective Nature Laws^[15] and the interdisciplinary Claws & Laws project^[16], which focuses on the effectiveness of nature conservation law. An interesting example within the latter project is the Courts& Conservation project that documents and analyzes litigation as a conservation tool in the European Union. It maps the extent, scope, nature, and outcome of public interest litigation for species protection in the EU - with a special focus on large carnivores - where members of the public, typically non-governmental organizations, take legal actions against local or governmental authorities. The data, collected across EU Member States, will be made available in a publicly accessible database^[17].



So: things are moving, and the European Society for ELS will be an important platform for exchange and opportunities. It is worth noting that a session was dedicated to environmental issues at the International Empirical Legal Studies Conference in Amsterdam already in September 2022. Parallel to this, also within the arena of traditional environmental legal scholarship things are

moving. Indeed, the UICN Academy of Environmental Law, a worldwide organization bringing together environmental legal scholars from all over the world, has begun thinking about “non-doctrinal” methods[18], and dedicated a keynote lecture to empirical legal research at its last conference in July2023[19].

- [1] David R. Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World*, ECW Press, 2017, p. xxxv, 143, 232; D. Bourg, « A quoi sert le droit de l'environnement ? », *Les cahiers de la justice*, Dalloz, n° 3, 2019, p. 407.
- [2] E. Ostrom, « A General Framework for Analyzing Sustainability of Socio-Ecological Systems », *Science*, 325, 2009, p. 419.
- [3] See e.g. J. J. Andersson, « Carbon Taxes and CO2 Emissions: Sweden as a Case Study », *American Economic Journal: Economic Policy* 2019, 11(4): 1–30.
- [4] See e.g. Boulet, R., Mazzega, P., Bourcier, D. (2010). *Network Analysis of the French Environmental Code*. In: Casanovas, P. et al. (eds) *AI Approaches to the Complexity of Legal Systems. Complex Systems, the Semantic Web, Ontologies, Argumentation, and Dialogue*. AICOL 2009, vol 6237, Springer.
- [5] See inter alia S. M. S. U. Eskander et S. Fankhauser, « Reduction in greenhouse gas emissions from national climate legislation », *Nature Climate Change*, 2020, 10 (8), 750–756; Sato M, Gostlow G, Higham C, Setzer J, Venmans F (2023) *Impacts of climate litigation on firm value*. Centre for Climate Change Economics and Policy Working Paper 421/Grantham Research Institute, Working Paper 397, LSE.
- [6] See e.g. H. Chen et al., « Living near major roads and the incidence of dementia, Parkinson's disease, and multiple sclerosis: a population-based cohort study », *The Lancet*, vol 389, Issue 10070, February 18, 2017, p. 718-726.
- [7] See Alex Putzer et al. (2022) *Putting the rights of nature on the map. A quantitative analysis of rights of nature initiatives across the world*, *Journal of Maps*, 18:1, 89-96.
- [8] P. F. Donald et al., « International Conservation Policy Delivers Benefits for Birds in Europe », *Science*, 2007, vol. 317, p. 810 ; F. J. Sanderson et al., « Assessing the Performance of EU Nature Legislation in Protecting Target Bird Species in an Era of Climate Change », *Conservation Letters*, July 2015, 0(0), p. 1.
- [9] See C. Coglianese et C. Courcy, *Environmental regulation*, in P. Cane et H. Kritzer (dir.), *The Oxford Handbook of Empirical Legal Research*, 2012, Oxford Handbooks, p. 680; R.L. Fischman et L. Barbarsh-Riley, « Empirical Environmental Scholarship », *Ecology Law Quarterly*, 2018, 44, p. 767; R. L. Glicksman et D. Earnhart, « The Comparative Effectiveness of Government Interventions on Environmental Performance in the Chemical Industry », 26 *Stan. Envtl. L.J.* 317 (2007).
- [10] Michael Faure (2012). *Effectiveness of environmental law: what does the evidence tell us?* *William & Mary Environmental Law and Policy Review*, 36(2), 293-336.
- [11] See M. Prieur et al., *Fostering Legal Indicators for Sustainable Development, Perspectives*, Issue n° 40, UNEP, May 2021; *Measuring the Effectivity of Environmental Law – Legal Indicators for Sustainable Development*, Peter Lang, 2021; O. Billant, *Freeing the oceans from plastic bag pollution through law: mirage or horizon? An experiment in numerical comparative law on the shores of the Atlantic Ocean*, doctoral thesis, Brest, 2022.
- [12] This is particularly true of most Rights of Nature advocates, who quite systematically use the argument of the supposed ineffectiveness of environmental law to propose replacing it with Rights of Nature.
- [13] G. Perlaviciute & L. Squintani, « Public Participation in Climate Policy Making: Toward Reconciling Public Preferences and Legal Frameworks », *One Earth* 2, April 24, 2020, p. 341.
- [14] See inter alia Billiet, C.M., Rousseau, S. *How real is the threat of imprisonment for environmental crime?*. *Eur J LawEcon* 37, 183–198 (2014).
- [15] See inter alia S. Kingston, *The Democratisation of EU Nature Governance: Making EU Nature Law more Effective?*, *Revue européenne du droit*, Issue 3, December 2021, p. 144.
- [16] See www.clawsandlaws.org/ ; Guillaume Chapron, Gavin Marfaing, Julien Bétaille, *Patterns of litigation in France during two decades of recovery of a large carnivore*, - bioRxiv 2022.10.11.511781; doi: <https://doi.org/10.1101/2022.10.11.511781>.
- [17] www.clawsandlaws.org/courts-conservation/
- [18] See Paul Martin et al. (ed.), *Non-doctrinal Research Methods in Environmental Law*, Elgar, 2023.
- [19] Julien Bétaille & Robert L. Fischman, *Environmental Empirical Scholarship: a Transatlantic Dialogue about Legal Methods applied to Environmental Law*, Research Workshop, IUCN AEL Colloquim, 31st July 2023.



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