Preface

This magisterial work on energy law in the low-carbon transition aims to define and explore the variety of legal pathways that developed and developing jurisdictions have set upon or charted to deal with the climate crisis. The notion of a legal pathway, initially formulated by Gerrard and Dernbach, provides an organizing conceptual frame for the book’s comparative, multi-layered approach which aims to discern similarities, differences and connections across regional, national and local scales.

The volume highlights the significance of institutional contexts, with a view to better informing the legal feasibility of low-carbon transition scenarios. As the editors point out in the Introduction, feasibility analyses of low-carbon transition scenario modelling that rely on indicators obscure the reality of context-dependent and geographically differentiated legal pathways. As a result, institutional feasibility concerns are significantly greater than technological or economic feasibility concerns.

A context-sensitive approach is required, one that examines the texture of the institutional landscape shaping legal pathways, i.e. the specific allocation of competences across institutional levels, including the degree of centralisation or decentralisation of energy mandates; the relative balance between legislative, executive, judicial and regulatory powers, which determines which tools and decision-making procedures become available for low-carbon transition reforms; the manner in which climate institutions and rules interact with other parts of the legal system; the plurality of legal orders; and the dominant legal interpretive practices. By emphasising the significance of institutional context, the volume therefore pitches for a contribution to multi-, inter- and transdisciplinary studies on the feasibility of low-carbon transition scenarios.

The Handbook is largely successful in these twin aims and its coverage of institutional contexts is impressive. In particular, developing country experiences come to the fore in a variety of ways.

The section on energy markets, for example, includes Chisanga’s analysis of trade-offs around nuclear energy in the context of Kenya and Zambia’s recent moves to set up institutions, planning frameworks and environmental assessment procedures for nuclear power, while Chege argues that South Africa and Kenya already possess the appropriate institutional infrastructure to take advantage of green hydrogen for production and export. Mitkidis’ contribution on greening global value chains (GVCs) in this section is particularly helpful because she tackles a central fault-line in greenhouse gas accounting: National greenhouse gas inventories fail to address the scope 3

Tracy-Lynn Field is Professor in the Wits School of Law, University of the Witwatersrand, Johannesburg, South Africa.

https://doi.org/10.1515/9783110752403-002
emissions that are predominantly produced in developing countries. Her argument for taking GVCs as a basic unit of analysis is well taken, and her analysis of the procurement, reporting, and market-based measures that can be used to decarbonize GVCs is a seminal contribution (albeit that arguments relating to the moral and legal right of developing countries to prosper from scope 3 emissions is not a central focus of this chapter, although explored in another work).

A number of contributions articulate the decarbonisation challenge of the Global South. As Addaney points out in the section on regional experiences, in Africa policy-and decision-makers not only contend with the global imperative of decarbonisation, but also with the critical need to address poverty, famine, and gender inequality. This is not a national or even regional concern, but a global one. As Bhullar points out in her valuable contribution on the diverse meanings of energy justice in the low-carbon transition, in the coming decades developing countries will account for over two-thirds of the world’s energy demand. National accounts of legal pathways toward decarbonisation in Brazil, India, Indonesia, and Mexico illustrate some of the difficulties developing countries are facing as they try to balance competing policy demands. Although there is no express treatment of the topic, one should add that these difficult balancing acts occur in a context where developed countries have failed to honour their $100 billion per annum commitment to climate finance, which is likely to be one of the most contentious issues on the COP27 agenda. Accounts of the regional experience in Africa and South America nevertheless highlight the further critical importance of investment frameworks.

The volume’s focus on energy law is justified on the basis that a low-carbon transition depends on technological and economic transformations in energy generation, transport and use. And while this is especially true of contexts where high-carbon energy generation, transport, and use are already well-entrenched, it bears repeating that large swathes of the developing world are already “low carbon”. The transition work in these contexts is profoundly different from developed nations, and the focus should arguably fall on upscaling the institutions necessary to deal with energy access, droughts, and floods, or how well energy transitions address the nexus of energy, water, food and sanitation. Du Plessis and Moyo, in their contribution on the role of cities in the low-carbon transition, point to the scholarly work that needs to be done in this area. But much work remains to be done. The recent floods inundating a third of Pakistan which UN Secretary-General António Guterres described as the worst climate carnage he had ever seen, the floods that caused billions of rand’s worth of damage in South Africa’s Kwa-Zulu Natal province, and even Europe’s current worst-in-500-year drought underscore the urgency of the work needed on the water and nature transitions that must unfold alongside a low-carbon transition in the coming decades.

The editors and authors of the Handbook must nevertheless be congratulated on a timely and valuable comparative contribution on energy law in the low-carbon transition that illuminates the diversity of legal pathways to a low-carbon future. It
amply illustrates the variety of institutional contexts in which legal decision-making must take place and will serve students, policy makers, and legal decision-makers the world over.