

INTRODUCTION: TOWARDS A JURISPRUDENCE OF CONSEQUENCES

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Does anybody know, when we have a case..., where we can go to find light on what the practical consequences of these decisions have been? ... I don't know to what extent these things can be ascertained. I do know that ... they ought not to be left to the blind guessing of myself and others only a little less uninformed than I am. (Frankfurter, cited in Miller, 1965, p. 374)

THE NEGLECT OF THE LEGAL AFTERMATH

The judge hits the gavel, the parties shake hands with their lawyers and the doors of the courtroom are closed. The court case is over, but what happens next? Has the conflict been resolved? Is the court ruling fully complied with? And what are the broader social and economic effects of the case? The honest, and somewhat astonishing, answer to these questions is: we do not know. Scholars have studied the start of legal disputes (see, e.g., Felstiner et al., 1981) and, for example, the level of perceived procedural justice during a court case (see, e.g., Thibaut & Walker, 1978; Tyler, 1988), but the effects of court decisions often remain a black box. This “neglect of the legal aftermath” (see Von Benda-Beckmann, 1987, p. 27) applies not only to ‘small’ everyday cases about consumer problems or landlord issues, but also to the social, political and economic aftermath of landmark climate cases like the Urgenda-ruling of the Dutch Supreme Court¹ and the Swiss Grannies decision of the European Court of Human Rights.² Not knowing the true impact of judicial decisions is frustrating not only for the parties involved and for legal scholars studying these cases but (as the words of US Supreme Court Justice Felix Frankfurter at the top of this chapter illustrate) sometimes also for judges themselves. Moreover, the neglect of the legal aftermath applies not only to court decisions but also to many laws and regulations. Despite numerous implementation, evaluation and compliance studies (see, e.g., Sager et

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1. Rechtbank Den Haag 24 juni 2015, ECLI:NL:RBDHA:2015:7145, AB 2015/336, noot C.W. Backes (Klimaatzaak Urgenda).
 2. EHRM 9 April 2024, 53600/20, ECLI:CE:ECHR:2024:0409JUD005360020 (*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*).

al., 2024; Van Rooij & Sokol, 2021), many questions about the social, economic or administrative effects of new legislation still remain unanswered.

This ambiguity about the legal aftermath is, of course, not a new problem. Over half a century ago, Arthur S. Miller (1965) signalled the same issue in a seminal paper. According to Miller, this knowledge gap calls for the development of a new ‘jurisprudence of consequences’. In his view, this means that both scholars and legal practitioners should pay more attention to the consequences of laws and court decisions. Although in more recent years the level of scholarly attention to the social effects of law has substantially increased, this has not yet amounted to the radical breakthrough in legal thinking that Miller was advocating. As a result, the project aimed at developing a new ‘jurisprudence’ has more or less come to a halt. At the same time, however, a new type of legal research has emerged under the heading of ‘Empirical Legal Studies’ (ELS). Over the past few years, ELS research has quickly become more popular in law schools, both in the United States and in Europe (see, e.g., Kritzer, 2021; Van Boom et al., 2018). Moreover, it is no exaggeration to say that “the Netherlands is at the vanguard of this development” (Mascini, 2025, p. 1). Many of these studies are doing exactly what Miller was arguing for. ELS scholars study the effects of court decisions and other legal actions, using research methods from law and other disciplines like sociology, economics and political science.

Considering this rapidly growing new body of literature, this volume will use ELS research to revisit (and possibly revive) the idea of a ‘jurisprudence of consequences’. More specifically, this volume will consider the following two questions:

- How does ELS research help us to understand the social effects of law?
- How does ELS research help us to understand how judges, legislators and other legal practitioners may (or may not) use empirical findings in legal decision-making?

To answer these questions, this volume will present a collection of empirical legal studies from the Netherlands that were all conducted as part of the Law Sector Plan in the period 2019 to 2025. The Law Sector Plan³ is a research programme funded by the Dutch government to facilitate innovative legal research through inter-university collaboration. As part of this programme, five universities in the Netherlands – Leiden University, Erasmus University Rotterdam, Groningen University, Utrecht University and Vrije Universiteit Amsterdam – have committed themselves to further developing and advancing ELS research in the Netherlands. The aim of this volume is to showcase this new

3. <https://www.sectorplanrechtsgелеerdheid.nl>.

research. The contributions to this volume use both quantitative and qualitative research methods to study the effects of court decisions and legislation in various fields of law, including civil law, criminal law, administrative law and EU law. Based on these contributions, this volume examines how ELS research can help us to understand the limits and possibilities of a 'jurisprudence of consequences'.

In the remainder of this introduction, we will first revisit Miller's concept of a 'jurisprudence of consequences' (Section 2). In addition, we will further introduce the field of empirical legal research and discuss several parallels with Miller's project (Section 3). Next, we will present the contributions to this volume, which will be organised into two sections. The first section looks at the effects of law (court decisions and legislation) in the real world. The second section looks at how judges, legislators and other legal practitioners may use empirical findings in legal decision-making (Section 4). In the conclusion, we will identify several common threads in the contributions and discuss some suggestions for future research (Section 5).

2 JURISPRUDENCE OF CONSEQUENCES

In 1965, Arthur S. Miller published his article 'On the Need for "Impact Analysis" of Supreme Court Decisions'. In it, Miller argues that court actions should be judged not only in legal dogmatic but also in societal terms. Or, as he puts it, "constitutional law degenerates into theology and barren exegeses upon the sacred text of the Constitution unless and until it is tested by its consequences" (Miller, 1965, p. 393). Therefore, the purpose of his article is "to suggest *one* added dimension which should be considered in an evaluation of judicial decisions, namely, "impact analysis" of the societal effects of Supreme Court decisions" (Miller, 1965, p. 367; emphasis in original). According to Miller (1965, p. 368), more "systematic and comprehensive attention [for] the social impact of Court decisions" requires the introduction of a completely new approach to legal research and legal practice, which he calls a 'jurisprudence of consequences'.

In his view, this new approach has two facets: first, "an evaluation by commentators of the effect of judicial decisions"; and, second, "an appreciation by judges of the consequences of their decisions" (Miller, 1965, p. 368). Yet Miller also points to some of the difficulties of this undertaking. With regard to the first element, he reflects on the fact that most lawyers may not have the skills to analyse the impact of court decisions and therefore that

lawyers will have to be privy to the insights of such disciplines as economics and sociology and political science if they are to be able to comment meaningfully upon Court decisions. (Miller, 1965, p. 368)

Second, he also emphasises that “[f]or judges to weigh the consequences of [their decisions] is a far more difficult job than to apply rules or principles in given cases” (Miller, 1965, p. 373). He then concludes:

It will not be an easy task, for it calls for a level of competence and expertise on the part of both judge and commentator that is rare indeed. But it is necessary. (Miller, 1965, p. 401)

Since the publication of Miller’s article, there has been a strong surge in the output of ‘judicial impact studies’, focusing mostly on the US Supreme Court (see, e.g., Canon & Johnson, 1998; Hall, 2017; Rosenberg, 1991; Wasby, 1970). Yet, despite the increased attention to the impact of court decisions, these studies have not yet resulted in a full-fledged ‘jurisprudence of consequences’. With regard to the first aspect of this new jurisprudence (an evaluation by commentators of the effect of judicial decisions), judicial impact studies have reached somewhat of an impasse. As one observer notes,

[f]or decades, research on judicial impact has supported two seemingly contradictory propositions. Courts are persistently viewed as weak institutions that lack implementation tools and powerful political actors that influence numerous social outcomes.

In his view, these contradictory outcomes illustrate the “schizophrenic state of the impact literature” (Hall, 2017, p. 461). With regard to the second aspect of Miller’s idea of a new jurisprudence (an appreciation by judges of the consequences of their decisions), most studies have emphasised the limitations of courts using empirical data. Rather than studying everyday legal practice, these studies often focus on the (philosophical and methodological) difficulties of bridging the fact-value gap (see, e.g., Hume et al., 1995; Lawless et al., 2010; Taekema & Van Klink, 2011). Consequently, “[a]fter many years and hundreds of impact investigations, neither of Miller’s hopes have been completely realized” (Brown & Crowley, 1979, p. 55).

3 EMPIRICAL LEGAL STUDIES

While in recent years judicial impact studies may have been less productive, a new field of legal research has quickly become more popular. Since the first decade of the 21st century, we have seen the emergence and rapid development of Empirical Legal Studies (ELS) (see, e.g., Heise, 2011; Kritzer, 2021). This ELS movement started in the United States but has also spread to Europe and many other parts of the world. As a result, “[e]mpirical legal scholarship is arguably the next big thing in legal intellectual thought” (George, 2006, p. 141). In short, empirical legal research is “a new way of looking at law” (Van den Bos, 2020, p. 3), which can be

defined as “the systematic collection of data based on observing what is going on in the legal world” (Van den Bos, 2020, p. 6).

ELS research has two important goals that strongly overlap with Miller’s original plan for a ‘jurisprudence of consequences’. First, ELS research aims to study “the effects of the law in the real world” (Bijleveld, 2023, p. 8). Second, the findings of ELS research “must be of relevance to lawyers or legal practice” (Bijleveld, 2023, p. 5), and ELS scholars should also consider the “implications for law, legal norms and the legal system” (Bijleveld, 2023, p. 12). For example,

ELS findings may advise judges about the general properties of cases such as the current case, trends in the interpretation of legal norms, or on the effectiveness in general of measures such as may be chosen from. (Bijleveld, 2023, p. 10)

Considering these interesting parallels between both bodies of literature, this volume will use ELS research to revisit the idea of a ‘jurisprudence of consequences’. In this volume, we will broaden Miller’s original project in two ways. We will first consider not only the effects of court decisions but also the social consequences of legislation. We will then not only look at judges, but also at how the legislature and other public officials may use empirical findings in legal practice.

4 OVERVIEW OF THE CONTRIBUTIONS TO THIS VOLUME

The contributions to this volume are organised into two sections. The first section looks at the effects of law (court decisions and legislation) in the real world. The second section looks at how judges, legislators and other legal practitioners may use empirical findings in legal decision-making. All chapters have a similar structure, first outlining the central research question and the empirical research methods, before discussing the key findings and the conclusion.

4.1 *Effects of Law in the Real World*

Chapters 2 and 3 focus on the effects of court decisions and legislation in the field of civil law.

In Chapter 2, ‘A jurisprudence of consequences as impact assessment in light of legal principles: evaluating the “Deliveroo judgement”’, **Anja Eleveld and Erik Wesselius** critically assess the extent to which the Dutch Supreme Court’s Deliveroo ruling provides clarity in classifying work relations of platform workers as either employment or self-employment. Drawing on oral diaries and qualitative interviews, the authors explore the lived experiences and working conditions of platform workers employed by hotels and restaurants in roles such

as waiters, hosts and cooks. They highlight issues such as stress, lack of control over working hours and limited professional autonomy. Based on these empirical findings, Eleveld and Wesselius argue that the court decision offers insufficient clarity regarding the employment status of platform workers. Furthermore, when evaluated against the internal values of labour law, they conclude that the Supreme Court ultimately fails to uphold important societal goals, which are reflected in the two fundamental principles of Dutch labour law.

In Chapter 3, 'Noise in open norms: an underestimated risk to legal certainty and equality', **Jessie Pool, Niek Strohmaier, Jan Adriaanse and Marc Broekema** study the impact of open norms on legal uncertainty and inequality in the context of bankruptcy cases. Using empirical insights from behavioural sciences, the authors introduce the concept of 'noise', which they define as the unwanted variability in decision-making. Next, they use a survey among members and fellows of INSOLAD (Dutch association of insolvency lawyers) to analyse the magnitude of noise among bankruptcy trustees, when they try to balance societal interests with the interests of the bankrupt company's joint creditors. Their study shows that when the legislature provides little guidance, the interpretation and application of a norm can vary significantly. Based on these findings, the authors make several recommendations to reduce the level of noise in new legislation.

The next two chapters (Chapters 4 and 5) examine the effects of court rulings and legislation in criminal law.

In Chapter 4, 'Comparing behavioural and legal perspectives: an empirical-legal analysis of cases of addiction, accountability and prior fault', **Michiel van der Wolf and Anna Goldberg** discuss the social and legal effects of the landmark ruling of the Dutch Supreme Court in the *Thijs H.* case. In this case, the court has formulated new criteria for insanity. The authors study how these criteria relate to the assessment framework used in cases of addiction and prior fault. Moreover, they are interested in how well behavioural and legal practitioners remain within their disciplinary boundaries (and thus 'stay in their lanes'). To analyse this, Van der Wolf and Goldberg have conducted a structured case law analysis and an empirical analysis of behavioural expert reports. Their chapter shows that the current legal approach to prior fault does not match behavioural findings related to mental disorder and addiction or the recent case law on non-accountability from the *Thijs H.* case.

In Chapter 5, 'Investigating and prosecuting criminal activity committed outside the EU: the ability of EPPO to act and the MS of forum', **Andrew Zuidema** examines the effects of the EPPO Regulation. The European Public Prosecutor's Office (EPPO) is an independent body of the EU. It has the competence to

investigate and prosecute PIF offences (financial crimes against the Union). However, the Union did not create a new criminal legal system but requires the EPPO to use national criminal law systems. This means that the EPPO is required to determine the member state in which the EPPO will investigate and prosecute: MS of forum. Based on interviews with experts, the author investigates how EPPO officials interpret the rather vague legal terms of the Regulation whenever it wishes to handle a case. The findings show that, in general terms, their understanding of how to implement the Regulations is similar to the interpretation by most legal scholars. However, while legal scholars have wondered whether there will be issues that can arise with EPPO being unable to determine an MS of forum based on the Regulation, the EPPO does not consider this an important obstacle.

Chapters 6 to 10 focus on the effects of administrative law.

In Chapter 6, 'Fit for the purpose? The use of administrative law against organised crime', **Albertjan Tollenaar and Benny van der Vorm** examine the effectiveness of administrative law in fighting organised crime. More specifically, they study the implementation of the Dutch Integrity Screening Act (Wet Bibob). Based on an empirical analysis of primary and secondary data on the use of this act, the chapter shows that this legislation is not as effective in combatting organised crime as the legislature expected. Administrative authorities struggle to apply the act effectively for want of capacity and expertise. The authors argue that the most important explanation for this shortcoming is the absence of a uniform and supportive network that actively assists authorities in implementing the act.

In Chapter 7, 'The consequences of administrative decisions in regulating markets with public interests: the effects of open norms in administrative law', **Marin Coerts** examines the effects of open legal norms in legislation on the way in which administrative bodies use their discretionary power to impose obligations on private parties in regulated markets. Coerts focuses on three specific areas: telecommunications law, public transport law and electricity law. Based on semi-structured interviews with representatives of government organisations and licence and concession holders, the chapter demonstrates that administrative bodies use their discretionary power to further specify the content of conditions and impose additional obligations through subordinate regulation and individual licence and concession conditions, aiming to serve specific public interests. Considering these findings, the author identifies specific focus areas for administrative bodies when imposing obligations on private parties and discusses how the empirical insights can inform legislative decision-making by identifying whether additional statutory guidance is needed to clarify the scope of administrative discretion when imposing obligations.

In Chapter 8, 'Individual needs and family obligations: consequences of household means testing in German and Dutch social assistance', **Barbara Brink and Mira Holzmann** discuss the legal and social consequences of the ways in which social assistance schemes in the Netherlands and Germany define 'the household'. Drawing on insights from family law and an empirical analysis of legal texts and policy documents, they explore the role of various household definitions in calculating entitlement and benefit levels for individuals seeking support. Their chapter shows that the so-called 'household means test' in social assistance schemes reflects and reinforces normative ideas about family, care and mutual support and caring responsibilities. However, the present legal framework does not capture the complexity of contemporary household structures and dynamics.

In Chapter 9, 'Access to justice or excessive litigation? No-cure-no-pay representation in administrative disputes', **Marc Weber, Heinrich Winter and Bert Marseille** discuss the inherent tension between the promotion of access to justice and the prevention of excessive litigation because of 'no cure, no pay' (NCNP) systems. While NCNP arrangements provide essential legal support to individuals who might otherwise be unable to afford representation, or in situations where the stakes are relatively low, such as in property tax disputes, they have also led to significant increases in administrative and procedural costs. To analyse the legal and social consequences of this system, the authors have combined a literature review and a case law analysis with several semi-structured interviews with practitioners. Based on their findings, they propose a different perspective on the role of 'no cure no pay' firms in administrative litigation. Rather than restricting their operations, courts and legislators should also explore ways to increase transparency in administrative decision-making and enable citizens to challenge administrative decisions that impact their rights and interests.

In Chapter 10, 'Limit cases: sovereign citizens and a jurisprudence of consequences', **Luuk de Boer** looks at a broad societal effect of law and court decisions: the emergence of sovereign citizens in the Netherlands. Sovereign citizens reject the legal system in its entirety. In practice, sovereign citizen-case activity occurs predominantly to avoid having to pay (income) tax, fines, insurance premiums or other payment obligations; to attack or obstruct government and institutional officials (often by challenging the judge); or to avoid prosecution in criminal cases. In the Netherlands, the number of court cases against sovereign citizens has sharply increased, especially since 2020. Based on an empirical analysis of these cases, the author traces the socio-economic background of sovereign citizens. Also, using insights from similar studies in Germany and the United States, the chapter discusses several hypotheses for future research.

Chapter 11 discusses the legal and economic effects of EU law.

In Chapter 11, 'Making microgrids work: an empirical-legal study of their transaction costs under EU Law', **Jamie Behrendt** examines how EU legislation affects the development and operation of decentralised electricity systems known as 'microgrids'. In a microgrid system users can produce and consume their own electricity, often from renewable sources. Using surveys and interviews with microgrid developers and operators, the author shows that despite their potential, existing EU regulation does not address microgrids, leaving system developers and users in a state of uncertainty. Some respondents face legal prohibitions, such as a ban on operating as an islanded system or on owning a private network. The chapter suggests that there is a mismatch between regulatory structures and the practical needs of microgrid stakeholders, which results in high transaction costs, in particular search and information costs. The author concludes that in order to ensure that microgrids can contribute effectively to the energy transition, EU regulation needs to be altered to minimise legal uncertainty and complexity.

4.2 *Use of Empirical Research in Legal Decision-Making*

Chapters 12 to 14 examine how judges, legislators and other legal practitioners may use empirical findings in legal decision-making.

In Chapter 12, 'Disease or decision? How different views towards addiction can affect legal responsibility', **Anna Goldberg** looks at the effects of different views on addiction on legal decision-making. To analyse the consequences of a 'brain disease perspective' versus a 'choice perspective', the author has used a vignette study among more than 100 active public prosecutors in the Netherlands. The study shows that accountability for the offence was judged significantly lower when participants were presented with a disease perspective on addiction. Based on these findings, the author concludes that societal perspectives on addiction (such as perceptions of choice or disease) have a strong effect on legal decision-making, and vice versa.

In Chapter 13, 'Instrumentalising effectiveness and empirical legal scholarship in human rights legal interpretation', **Jordan Dez** examines the role of effectiveness in human rights interpretation. She argues that, although the principle of effectiveness holds a powerful interpretative position with human rights legal analysis, the question of whether effectiveness is essentially an empirical one is not often discussed. Focusing on the protection of rights to political freedom, she shows how empirical legal research on how people 'use' rights is relevant for the analysis of effectiveness of judicial human rights interpretation. The author explores three moments in the process of treaty interpretation from the Vienna Convention on the Law of Treaties and shows how empirical data can inform the application of the principle of effectiveness in those instances.

In Chapter 14, 'Public participation laws in action: Empirical insights from the energy transitions in the Netherlands and Nigeria', **Lorenzo Squintani, Edwin Alblas, Otelemate Dokubo and Maria Radulescu** look at public officials' perspectives on public participation processes related to energy transitions. The authors are interested in the way in which these officials make use of social scientific studies on the effectiveness of public participation. Based on semi-structured interviews with public officials, the chapter shows that public officials' perceptions on public participation generally align with the empirical insights from social sciences and with regulatory and policy frameworks in the Netherlands and Nigeria. In both countries, public officials recognise the relevance of empirical insights and have shown the willingness to implement them, despite specific regulatory or policy requirements on the subject matter. Moreover, officials highlighted the positive and negative experiences with integrating empirical insights into participatory practices and frameworks.

5 CONCLUSION

As Oliver Wendel Holmes famously wrote,

For the rational study of the law the black letter man may be the man of the present, but the man of the future is the man of statistics and the master of economics. (Holmes, 1897, p. 469)

This volume shows "that future is here" (Epstein & Martin, 2014, p. viii). All the contributions to this volume clearly illustrate the added value of empirical research for the study of law. There are three common threads in these chapters.

First, and contrary to Holmes' early prediction, not only is empirical legal research based on 'statistics' and 'economics', but the chapters in this volume use a wide variety of research methods to study the effects of law in the real world. These include both quantitative and qualitative approaches. Moreover, these include traditional research methods, like document analysis, surveys and semi-structured interviews but also innovative methods like the use of oral diaries to record people's personal experiences with the law, a vignette study among legal professionals, and the analysis of court cases to map the socio-economic characteristics of defendants.

Second, the contributions to this volume demonstrate that 'legal impact' is a much more complicated term than it first appears to be. In reality, it is more like an umbrella term which may include many different types of acts and decisions (see, e.g. Griffiths, 2003; Wasby, 1970). While some contributions focus on the 'direct' effects of court decisions and legislation (or the level of legal compliance), other studies also discuss the 'indirect' effects of law. Similarly, some contributions

focus on the ‘intended’ effects of court decisions or regulations, while other contributions also look at some of the ‘unintended’ consequences of law. Finally, several contributions to this volume not only record what law does but also what it fails to do.

Third, the contributions to this volume show the added value of empirical legal research for legal decision-making. Empirical studies provide valuable information about three important (and interconnected) subjects:

the assumptions about the real world on which laws are built, the operations in the real world of the legal system, and the effects of the law in the real world. (Bijleveld, 2023, p. 8)

A number of chapters demonstrate how this research can be applied in legal practice and may contribute to an appreciation by judges and lawmakers of the consequences of their decisions.

Although Miller (1965) introduced his idea of a ‘jurisprudence of consequences’ over half a century ago, his project is more relevant than ever. Since the publication of Miller’s article in the 1960s, an ongoing process of ‘juridification’ has become an important feature of modern society, and the number of laws and court decisions has increased dramatically (see, e.g., Blichner & Molander, 2008). As a result, both scholars and legal practitioners can no longer afford to ignore the legal aftermath. The chapters in this volume show that contemporary empirical legal studies can make an important contribution to a ‘jurisprudence of consequences’. On the other hand, this volume also illustrates some of the challenges of this endeavour. These include methodological and conceptual obstacles, such as the lack of appropriate data, the lack of clarity of major concepts and the lack of longitudinal studies to track the lasting effects of law (see Brown & Crowley, 1979). Moreover, it has been argued that most empirical legal studies are not well grounded in theory and that, therefore, their findings do not accumulate (Twining, 2009). Hence, it is important that future empirical research is grounded in a well-developed analytical framework based on, for example, theories from sociology of law, social psychology or public administration (Van den Bos, 2020, p. 130). To conclude, this volume highlights both the potential and the challenges of a much-needed revival of a ‘jurisprudence of consequences’. Or, to reiterate Miller’s (1965, p. 401) own words: “It will not be an easy task.... But it is necessary.”

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