

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.sectorplanrechtsgesleerdheid.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