EJELS
EUROPEAN JOURNAL OF EMPIRICAL LEGAL STUDIES

EJELS 2(1) (2025)
https://doi.org/10.62355/ejels.24724

RESEARCH ARTICLE

A Case Study of the Advent of Empirical Legal Studies in the Netherlands: The Narrow Pathway of Instrumentalism

Peter Mascini*

Article History

Submitted 31 May 2024. Accepted 28 October 2024.

Keywords

empirical legal studies, instrumental law, legal pluralism, law and society, the Netherlands

Abstract

This study examines how Empirical Legal Studies (ELS) gained a foothold in the Netherlands, particularly in the context of the country's long tradition of empirical socio-legal research. It is based on participatory observation and content analysis. It is argued that the way in which ELS has developed in the Netherlands fits into a much longer intellectual tradition in which the instrumental study of law is central. This tradition largely ignores alternative approaches, also prevalent in the Netherlands, in which the relationship between law and other normative systems ('legal pluralism') or between law and society is central. While these differences in the empirical study of law, which previously divided the Dutch L&S community to the bone, have become more or less invisible with the hospitable reception ELS has received from the L&S community, substantive differences remain. Bringing these differences back to the fore may help to avoid misunderstandings that arise from ignorance of the coexistence of different empirical approaches to the study of law and may facilitate the conscious choice of a particular approach.

1 Introduction

In recent years there has been a growing interest in Empirical Legal Studies (ELS) in Europe, following the example set by the United States. It would be no exaggeration to say that the Netherlands is at the vanguard of this development. In recent years, a number of initiatives have been implemented in the Netherlands to launch ELS. These include measures to enhance funding and the organization of and training and education in ELS. Efforts have also been made to stimulate ELS in a European context, particularly through establishing the *European Society for Empirical Legal Studies* and launching the *European Journal of Empirical Legal Studies.* The plans for latter achievements were made at the international ELS conference organized at the Free University in Amsterdam in 2022. The Netherlands' pioneering role makes it an ideal case study for a better understanding of the European trend toward the empirical study of law. Other countries that are currently exploring the potential of ELS may find the Dutch case to be a valuable resource. However, it is crucial to recognize that each

* Erasmus School of Law and Erasmus School of Social and Behavioural Sciences, mascini@essb.eur.nl, https://orcid.org/0000-0001-7232-2779.

country has its own intellectual traditions and institutional setup, which may influence the interpretation of the relationship between law and empirics and the strategies that may be employed to alter this relationship (Alexander 2002; Holtermann and Madsen 2021).

In this article, the rise of ELS in the Netherlands will be placed in the context of the country's long tradition of empirical socio-legal research by the Law and Society (L&S) community. The reason for this is that the criticisms levelled at an earlier stage within the L&S community against the empirical approach to law that also dominates within the ELS community have largely faded away, while the alternative approaches to empirical legal research from which these criticisms originated still persist. This means that the different approaches to the empirical study of law are still recognizable in existing research, but that awareness of these differences has faded into the background because they are no longer openly discussed, at least not until a recent special issue was published on the barriers of ELS and ways to overcome them (Anwar et al. 2024). The aim of this article is to bring these principled differences back to the fore in order to raise awareness of the fact that there are empirical legal researchers in the Netherlands who have a different approach to empirical legal research than that which is common among researchers who identify with the ELS community. This is important because the history of socio-legal research has shown that these different approaches are not necessarily compatible. Raising awareness of these differences and tensions in empirical approaches to the study of law need not lead to a revival of the bitter conflicts that have divided the community of socio-legal scholars in the past. Rather, it may help to avoid misunderstandings that arise from ignorance of the coexistence of different empirical approaches to the study of law and to facilitate the conscious choice of a particular approach. As a result of the focus on the relationship between the ELS and L&S research communities, the significant contributions of certain disciplinary research to the development of ELS in the Netherlands, in particular criminology, fall outside the scope of this article. This is despite the fact that both the ELS and L&S communities are populated by researchers from a variety of disciplines.

The case study of the development of ELS in the Netherlands in the context of the older L&S tradition is based on participatory observations in both research communities and content analysis of the archive of *Recht der Werkelijkheid: Journal of Empirical Research on Law in Action* and its predecessor: The *Nieuwsbrief voor Nederlandstalige Rechtssociologen* (NNR, Newsletter for Dutch-speaking sociologists of law).[1] The author's participatory observations within the ELS community are based on his positions held between 2013 and 2021, namely as co-director of the Rotterdam-based research program *Behavioral Approaches to Contract and Tort* (BACT), member of the management team of the *Erasmus Center for Empirical Legal Research* (ECELS), and forerunner within *the National ELS Platform*. His observations within the L&S community are based on his role as editor (between 2015–2021) and member of the editorial board (since 2021), respectively, of the leading Dutch journal for disciplinary social science study on law in the Netherlands, *Recht der Werkelijkheid*, and as an active member of the association whose purpose is to contribute to the practice of socio-legal research, the *Vereniging voor de Sociaalwetenschappelijke bestudering van het recht* (VSR, Dutch Law and Society Association) since 2000.

There are limitations to both empirical methods. The author has participated in both research communities without the intention of making observations for this study. This means that his observations are based on memories that may be biased towards confirming the claims made in the analysis. The content analysis of the articles published in Recht der

[1] The archival repository of RdW can be accessed via the website https://rechtensamenleving.nl/archief-rdw/.

Werkelijkheid has limitations because these publications cover only a small part of the total research carried out by the L&S community in the Netherlands. In addition, only those articles from the archive that seemed relevant for the analysis were scrolled through or read. To compensate for the limitations of both methods, the data from both sources were triangulated by looking for matches between personal observations and the content of publications that are part of the archive. However, it is still possible that the analysis is colored by the personal views of the author.

The following section provides an overview of local and national initiatives to promote ELS in the Netherlands. This description focuses on the constituencies, methods and mission of the Dutch ELS community (cf. Suchman and Mertz 2010). Section 3 will argue that the empirical approach to law that prevails in the ELS community corresponds in essential respects to the approach of part of the longer-established L&S community. At the same time, it is argued that this empirical approach to law has been controversial within the L&S community, and that the criticisms of researchers within the L&S community who advocated different empirical approaches to law have not been openly voiced since the acceptance of ELS by the L&S community. Section 4 brings these differences between empirical approaches to law back to the fore by situating them within longer research traditions. It situates the research of ELS and part of the L&S community within the intellectual tradition that prioritizes an instrumental approach to law and contrasts it with approaches that focus on the relationship between law and other normative systems (legal pluralism) or law and society. The article concludes with a summary and discussion of the findings.

2 ELS in the Netherlands

2.1 Local Initiatives

Before coordinated action was taken at the national level to launch ELS, local research groups were already active and pioneering in the promotion of empirical legal research. Some of these groups operated as research institutes and others as research centers in law schools.

Two multidisciplinary research institutes in particular were active in initiating empirical legal research. The first institute is the *Wetenschappelijk Onderzoeks- en Documentatie Centrum* (WODC, Research and Data Center of the Ministry of Justice and Security, https://www.wodc.nl/). WODC researchers typically conduct evaluation studies of justice and security legislation in-house or engage the services of external researchers to conduct commissioned research in this area. The goal of the WODC is to provide evidence for the policy making of the Ministry of Justice and Security. The connection between WODC and ELS is exemplified by the publication of a special issue, entitled "*Empirisch-juridisch onderzoek: toekomstmuziek of werkelijkheid?*" (Empirical Legal Research: Futurism or Reality?) in the journal *Justitiële Verkenningen* (2016), which is published by the WODC. In 2023, Bijleveld contributed an article on ELS to *Justitiële Verkenningen* in a special issue dedicated to the 50th anniversary of the institute (Bijleveld 2023). Both publications undertook a comprehensive examination of the current state of ELS and its purported expanding potential. The second institute to play a role in the development of ELS is the *Nederlands Studie Centrum voor Criminaliteit en Rechtshandhaving* (NSCR, Netherlands Institute for the Study of Crime and Law Enforcement, https://nscr.nl/). The NSCR engages in fundamental scientific research on crime and law enforcement, operating at the nexus of theoretical, policy, and practical considerations. One of the institute's research areas is ELS. The NSCR played a pivotal role in the *Nationale Stimuleringsactie ELS* (National Stimulus Campaign for ELS, https://nscr.nl/nationale-

stimuleringsactie-empirical-legal-studies/) and its subsequent initiative, which will be described in greater detail below.

Three research centers at Dutch law faculties played a key role in the inception of ELS. The first of these centers, BACT, was established in 2008 at the Erasmus School of Law in Rotterdam as a collaboration between the Rotterdam Institute of Law and Economics and the Rotterdam Institute of Private Law. BACT utilized a grant from the Board of Erasmus University Rotterdam to appoint internationally renowned empirical legal researchers, including Christoph Engel (Max Planck Institute for Research on Collective Goods Bonn), John Klick (Penn Law School), and Jeff Rachlinsky (Cornell Law School). The program served as a flagship for international and interdisciplinary research at the Erasmus School of Law until the reorganization of the Law Faculty in 2020. The second research center to pioneer with ELS was the *Utrecht Center for Accountability and Legal Liability* (Ucall). One component of Ucall is the collaborative research project "*Empire*," which focuses on the empirical and interdisciplinary study of accountability and liability law. To date, the project has yielded two published volumes. The first volume, edited by Giesen et al. (2019), focuses on identifying and testing the factual assumptions that courts implicitly or explicitly make. The second volume, edited by De Jong et al. (2022), examines the use of societal views by courts.

Directors of BACT, Van Boom, and Ucall, Giesen, along with Verheij, all three private law professors, undertook the mission of establishing "civilologie," the empirical approach of private law, as an independent dimension within private law. The editors of two encyclopedic volumes invited contributing authors to provide an overview of empirical research conducted within various legal domains of private law. These domains included persons and family law, contract law, liability law, commodity law and finance, insurance law, corporate and securities law, litigation and dispute resolution (Van Boom, Giesen, and Verheij 2008, 2013). In the introductory chapter of the first volume, the editors set forth their primary objective as the promotion of law as responsive as possible to social reality through the encouragement of empirical research into the tenability of behavioral presuppositions employed by legislators and judges in private law. In other words, the objective of civilologie is not to contribute to the discourse of other disciplines that provide empirical insights but to serve legal practice. The objective is to encourage lawyers to adopt behavioral presumptions and decisions that are informed by empirical insights. The editors acknowledge that empirical research is often surrounded by considerable uncertainty and requires translation before it can be applied in legal practice. Moreover, they argue that lawyers are not absolved of the responsibility to make their own normative choices in light of findings from other disciplines.

The third center was the *Amsterdam Center for Law and Economics* (ACLE). In 2016, ACLE convened the inaugural European conference on ELS. This conference was closely aligned with its American counterpart, the *Society for Empirical Legal Studies* (SELS), with a particular emphasis on quantitative research.

Within the local institutes (WODC and NSCR) and research centers (ACLE, BACT and Ucall), researchers with social science and legal backgrounds pioneered the conduct of empirical legal research. The emphasis was on evaluation research, using quantitative and/or qualitative methods or literature reviews to test whether the behavioral presumptions underlying laws and regulations were tenable. The aim was to make legal practice more empirically based. Although BACT attracted foreign researchers and had links with the American associations for empirical legal research, the LSA and the SELS, most of the research carried out in the various research groups focused on the national context. Alongside these commonalities, there were also differences in emphasis between these local hubs of empirical legal research, with, for example, NCSR focusing on basic research in addition to practice-oriented

research, and ACLE focusing methodologically on quantitative research rather than methodological pluralism.

2.2 National Initiatives

The local initiatives facilitated the implementation of coordinated action at the national level with the objective of promoting ELS.

The first noteworthy initiative at the national level was the National Stimulus Campaign for ELS, as previously mentioned. The objective was to stimulate interest among lawyers in empirical research and to demonstrate the value of utilizing the findings of such research. The event occurred in 2016/7 and was financed by the *Dutch Research Council* (NWO). As part of the National Stimulus Campaign for ELS, researchers from NSCR were commissioned to conduct a comprehensive review of ELS in Dutch law faculties, including its integration into dissertations and academic curricula and its application in legal practice (Elbers et al. 2018). The study revealed that a minority of the dissertations at Dutch law faculties that contained empirical research were written by lawyers. Secondly, the study demonstrated that legal scholars did not consistently justify and report on the use of empirical methods in their research. Thirdly, the study demonstrated that empirical research has only a limited impact on legal practice. For instance, the researchers discovered that the 2015 legislative proposals put forth by the Dutch Ministry of Justice and Security made minimal reference to empirical research. Moreover, in-house counsel, judges, and lawyers reported that they read minimal empirical legal literature and seldom apply empirical findings. The researchers concluded that further work was necessary to institutionalize ELS.

The second driver for ELS at the national level was *the Sector Plan for Dutch Law Schools*. The Ministry of Education guaranteed the funding of the sector plan for the period 2019-2024, which was later extended to 2025 due to the Covid-19 pandemic. Furthermore, the Ministry promised to continue funding the sector plan on a structural basis after this period, contingent on the results (https://www.sectorplanrechtsgeleerdheid.nl/). The objective of the sector plan was to facilitate the repositioning of law in society in response to societal developments such as globalization, privatization, digitization, ecological crises, and public health crises through inter-faculty partnerships. In the sector plan ELS was given a prominent role. Some of the key performance indicators of ELS are to establish a coherent research group of substantial size; to make ELS an integral part of the faculty's distinctive research profiles; to have societal impact and participate in public debate; and to integrate ELS into educational programs (BA, MA, PhD). To achieve the aforementioned key performance indicators, the five law faculties that had selected ELS as a foundation of their research programs (Rotterdam, Utrecht, Amsterdam, Leiden, and Groningen) resolved to initiate a collaborative endeavor, *the National ELS Platform*, which would also be accessible to the other Dutch law schools.

One of the initiatives of the National ELS Platform was to commission a follow-up study into the integration of ELS at Dutch law faculties, which was carried out as part of the National Stimulus Campaign for ELS. The objective of the follow-up study was to survey ELS in education at Dutch law faculties at the bachelor's, master's, and postgraduate levels. The results of this survey were utilized for the further development of ELS (Pannebakker et al. 2022). At the bachelor's and master's levels, it was reported that the mandatory curricula of regular programs did not include substantial training in empirical legal research methods, with the exception of new bachelor programs dedicated to empirical legal research or interdisciplinary bachelor programs with a specific focus on the interaction between law and other disciplines. Moreover, ELS education was more prevalent in master's specializations,

minors, honors programs, and electives. Conversely, at the doctoral level, empirical legal research methods training was provided in almost all law schools. Such training frequently took the form of a dedicated course or a series of courses that build upon each other. Following this follow-up study, the National ELS Platform developed a policy that facilitates the exchange of doctoral students enrolled in graduate school courses.

In 2019, the National ELS Platform also established *the Netherlands Academy for Empirical Legal Studies* (https://elsacademy.nl/). As an inter-university research school, the Academy's objective is to provide training and support for researchers engaged in empirically investigating questions relevant to legal scholarship. The objective is to stimulate and reinforce empirical legal research and its applications. The Netherlands ELS Academy propagates an inclusive methodological approach by emphasizing the usefulness and complementarity of qualitative and qualitative methods. On some occasions at the Academy, the inclusiveness of this approach has been contrasted with ELS in the United States as a predominantly positivist, quantitatively oriented movement. Since 2019, the national platform has also organized an annual conference, during which PhD students play an important role in presenting their results. Furthermore, from 2021 onwards, the annual pre-conference for PhD researchers has been held in collaboration with the VSR. The VSR is dedicated to advancing the practice of empirical socio-legal research and publishes its own journal, *Recht der Werkelijkh*eid, which will be discussed in greater detail later. In 2022, the inaugural international ELS conference, organized by the national platform, was held at the VU. At this conference, *the European Society for Empirical Legal Studies* was established, and plans were made to launch *the European Journal of Empirical Legal Studies*.

The national initiatives built on the existing local infrastructure for empirical legal research, in which law schools and scholars with a legal background played a prominent role. The targeted funding demonstrated a sense of urgency at the administrative level to stimulate and develop empirical legal research. One of the reasons for this was that, as a result of less well-defined research methods, it was believed that legal scholars would be better able to compete for research grants with researchers from other disciplines in the humanities and social sciences if they adopted research methods commonly accepted in the social sciences. Intensifying training and the use of empirical methods were seen as important means of achieving this goal. In addition, investment at the national level was driven by the ambition to increase the contribution of legal scholarship to addressing current wicked social problems. This ambition dovetailed perfectly with the strong and consistent focus of local initiatives on research questions and empirical findings relevant to legal practice. In section four, it will then be argued that these features are all consistent with an instrumental approach to the study of law. Before doing so, the genesis of empirical socio-legal research as the precursor of ELS in the Netherlands will be described. It will be argued that the ELS movement shares this instrumental approach to the study of law with one part of the L&S community, while another part of the L&S community distances itself from this approach.

3 Empirical Socio-legal Research

3.1 The L&S Community

Several decades before the dawn of ELS, there were already researchers in the Netherlands who studied law from an external, initially mostly sociological, perspective. At the end of the 1970s, these sociologists of law joined forces. In 1979, three editors founded the *Nieuwsbrief voor Nederlandstalige Rechtssociologen* (NNR, Newsletter for Dutch Sociologists of Law). The modest mission of the newsletter, as stated in the editorial, was "to promote mutual communication" among sociologists of law (Griffiths, Roos, and Smits 1979). In an editorial, Bruinsma (2004) described three steps in the development of the informal newsletter by and for sociologists of law into a scholarly journal for the disciplinary social science study of law. After the newsletter had become the official publication of the VSR in 1981, the editors considered the time ripe for further professionalization by transforming the newsletter into an academic journal in 1985: *Recht der Werkelijkheid*. The title of the new journal was taken from the inaugural lecture of the jurist Hijmans. It was chosen because it responded to the call for a more disciplinary social science approach to the study of law and legal practice, in which the social reality of law, rather than the reality of the lawyer, was central. The broadening of the scope of the journal, which was originally intended exclusively for sociologists of law, was articulated by the editors in what they saw as the journal's raison d'être: "the need for publication venues for sociological, legal anthropological, and legal psychological articles and, more generally, for a scholarly forum for these disciplines". In 2001, the editors of *Recht der Werkelijkheid* ushered in another new phase by announcing a further broadening of the disciplinary base to include legal history, public administration, and law and economics, an expansion of the editorial board, and a more structured and anonymous review process.

A recurring question from members of the VSR was what the purpose of the journal *Recht der Werkelijkheid* should be. On one side were scholars who wanted to serve the legal profession as "social engineers" and thus make a constructive contribution to solving pressing social problems (e.g., Huls 2001). Their main fear was that social scientists would alienate themselves from lawyers by focusing on solving cognitive puzzles and theoretical problems. A justified fear, according to legal scholar Van der Ploeg: "If the sociologist of law does not know what is going on legally, then his contribution will remain too far removed from the legal reality in which most lawyers find themselves" (Van der Ploeg 1999: 97/8). On the other side were academics who advocated a study of law that was more independent from legal scholarship and legal practice. They wanted to prevent the central purpose of social science — to arrive at general statements about social phenomena on the basis of a coherent theory — from being sacrificed to the goal of helping to solve problems for legal practitioners (Van Manen 2000: 118/9). Indeed, according to one of the most outspoken critics of a policy-oriented empirical approach to law, John Griffith, policymakers are incapable of asking the right scientific questions, while science, in his view, has only one task: to make or test theories. For this reason, policy relevance as a requirement and policymakers as evaluators had to be removed from the bodies and processes in and through which sociological and other scientific research on law is funded and conducted. "If this is not done, we will see more and more indigestible answers to dumber and dumber questions piling up on all fronts" (Griffiths 1984: 261, translation from Dutch). Schwitters (2001) was much less blunt, but nevertheless identified three specific risks associated with the identification with research questions posed by policy makers, legislators and the consultancies surrounding them: first, overestimating the possibilities of using law to provide adequate regulatory intervention; second, ignoring the voices of marginalized populations who are subject to policy interventions; and third,

ignoring the possibility of developing new ways of looking at society that cast problems in a different light and thus suggest alternative — also non-legal — solutions to those problems.

These identity issues regularly led to heated debates and bitter conflicts. While, with a few exceptions, the reviews by lawyers who discussed the work of colleagues were positive, the same could be said for only about half of the book reviews that appeared in *Recht der Werkelijkheid* (Bruinsma 2004: 2). There were beleaguered scholars who tried to take revenge in the journal after their work had been filleted. For example, Bruinsma (1990) called his colleague Griffiths a "vinegar pisser" after the sour review of his empirical research at the Supreme Court (Griffiths 1989), and Huls (2001) lashed out at his colleague Van Manen after a scathing review of his inaugural lecture (Van Manen 2000). Both sought to defend themselves against allegations that they had uncritically absorbed the internal perspective of the legislative lawyers and judges and were offering solutions to practical problems using empirical research that was methodologically unsound and not placed in a more general social science theoretical framework. Schuyt, who wrote the first Dutch textbook on the sociology of law, compared the tumultuous and heated debates about the identity and goal of the empirical socio-legal research community during the annual conferences to the proverbial "*Poolse landdagen*" that is, the contentious and time-consuming meetings of parliamentarians in the Kingdom of Poland between 1600 and 1700 (Benda-Beckmann and Weyers 2018: 14). Clearly, the members of the VSR were part of a heterogeneous community divided between researchers who wanted to stay close to traditional doctrinal legal research and serve legal practice, on the one hand, and researchers who wanted to keep a critical distance to legal scholarship and legal practitioners and to use empirical findings for generating and testing social theories in the study of law, on the other.

Two summary conclusions can be drawn from this description of the community of empirical socio-legal research that preceded the emergence of ELS in the Netherlands. First, even though this community was initially dominated by sociologists, later to be supplemented by scholars from other social science disciplines such as history, psychology, economics, and public administration, rather than by legal scholars engaged in empirical research as is predominantly the case in ELS, there was still a significant part that shared with the ELS movement an orientation toward research aimed at answering questions relevant to the law. Another part, however, focused on developing and testing social theories in the study of law in society and maintaining independence from legal scholarship and practice. The second conclusion is that the positions of the representatives of both categories towards each other were sometimes hostile and irreconcilable.

3.2 ELS: Fad, Feud or Fellowship?

Next, it will be argued that while the hostility between some members of the empirical socio-legal research community in its earlier stages contrasts with their welcoming reception of the arrival of ELS on the scene, substantive differences remain.

Soon after ELS initiatives began to take off at the national level in the second decade of the twenty-first century, the community of empirical socio-legal research became acutely aware of them. Not least because some of the leaders of the National ELS Platform were also embedded in the community of empirical socio-legal research. This awareness led to reflections on the relationship between empirical socio-legal research and ELS. In general, these reflections on the newcomer ELS were welcoming and tolerant, despite the fact that the L&S community continued to include researchers with a different empirical approach to law from that which dominated the ELS community. To give three examples of the hospitable reception of the ELS community by the L&S community.

First, in 2017, the VSR organized its annual conference in Rotterdam under the title "*Empirical Legal Studies: fad, feud or fellowship?*" The conference concluded with a panel discussion that addressed questions such as: What is driving the rise of ELS in the Netherlands? Is it different from ELS in the US or socio-legal studies in the UK? What are its main characteristics? Who is part of it? How does ELS relate to legal studies, the L&S movement and (New) Legal Realism? What does the emergence of the ELS movement mean for established institutional relations within the field? As an outgrowth of the conference, a special issue of the *Erasmus Law Review* (Mascini and Van Rossum 2018) and an editorial in *Recht der Werkelijkheid* were dedicated to the question raised in the title of the conference: fad, feud, or fellowship? In the editorial, Grootelaar (2017) did not hesitate to choose "fellowship" as the answer. Contrasting ELS with legal scholarship rather than empirical socio-legal research, Grootelaar argued that legal scholarship and empirical legal research need each other. While classical legal scholars could benefit from increased attention to empirical research by being more transparent and accountable for their methodological choices, empirical scholars could benefit from legal scholars' normative insights, legal frameworks, and careful analysis of texts and documents.

A second example that illustrates the collaborative attitude of the community of empirical socio-legal research towards the growth of ELS is the introduction to the special issue of *Recht der Werkelijkheid* 2020, dedicated to its 40th anniversary. In it, the editor-in-chief, Doornbos, and the secretary, De Winter, imagined how the editorial board would look back 40 years later, in 2060, on the initial phase of the coexistence of empirical socio-legal research and ELS (Doornbos and De Winter 2020: 4-5). They playfully mention that, in retrospect, the board would find it difficult to imagine that there was some initial reluctance to accept ELS on the playground.[2] After all, the community of empirical socio-legal research soon had to admit that ELS's arrival on the scene had brought valuable innovations and that ELS publications had enriched education. Once united, there was a multiplier effect, or so the future editorial board would conclude.

A third example of this partnership approach was the VSR's decision to allow the National ELS Platform to organize a pre-conference program during the annual VSR conference starting in 2021. The President of the VSR, Danielle Chevalier, opened and participated in the first of these pre-conferences. In her capacity as editor of *Recht der Werkelijkheid*, she also reflected on the rise of ELS (Chevalier 2021). In her editorial, she welcomes the emergence of ELS, but in contrast to the first two examples, her appreciation is conditional. First, she emphasizes that the systematic study of law, using empirical methods generally accepted in the social sciences, is not an end in itself, but rather a tool for achieving theoretical ambitions. Behind the label of empirical legal studies lies a whole range of disciplinary perspectives, each with its own strong theoretical traditions. Second, she also argues that using empirics as a common denominator may obscure the fact that there is a wide variety of opinions and assumed truths about research methods that are not automatically shared. In Chevalier's view, this polyphony of theoretical and methodological voices can result in a deep, full chorus rather than a cacophony, provided that those involved have knowledge and understanding of their interlocutors. As long as people know each other's ontological and epistemological starting points, misunderstandings can be avoided and learning from each other is possible on substantive grounds (Chevalier 2021).

In sum, the tone may have shifted from contentious to cooperative, but Chevalier's editorial rightfully suggests that differences in approaches to the empirical study of law still

[2] The authors do not explicate which "initial reluctance" they have in mind.

abound. However, it is precisely because of the rather uncritical reception that ELS has received from the L&S community that the differences in empirical legal research that previously divided that community internally to the bone have become rather invisible. This runs the risk of creating the very cacophony that Chevalier sought to avoid. The 2024 special issue of *Recht der Werkelijkheid* made a start on reflecting on the variability of perspectives on ELS and developing ways to move beyond the perceived dominance of the positivist and instrumental approach to ELS (see for instance Anwar et al. 2024; Eleveld 2024; Kiewiet 2024). The second part of this article is devoted to bringing back to the fore the different approaches to the empirical study of law that prevail in the L&S community. It will argue that ELS in the Netherlands did not come out of the blue; like the section of L&S scholars whose main goal is to serve the legal profession as "social engineers", it is part of a much longer tradition in which the instrumental approach to the study of law is central. This instrumental approach is to be distinguished from two other approaches — "legal pluralism" and "law and society," — which are based on substantially different principles and which criticize different aspects of the instrumental approach to the study of law. These two alternative approaches represent the part of the empirical socio-legal research community that predominantly propagates the use of social science theory and maintaining a critical distance to legal scholarship and legal practice. In the following, it will be explained what these approaches entail and how they relate to each other.

4 Empirical Approaches to Law

4.1 Law as an Instrument

The instrumental approach to law has a long history dating back to the early twentieth century. It originated as a critique of an internal legal perspective in which law is understood as a formal system that operates independently of society.

In the instrumental approach, the law is seen primarily as an instrument for behavioral or social change. The starting point of the instrumental approach is the observation that there is often a big difference between what the law says ("law in books") and what happens in practice ("law in action"). This distinction was introduced by the American jurist Pound. He saw gaps between "law in books" and "law in action" as warning signals that the law in books did not conform to prevailing social norms and that the law should be adjusted accordingly. In his time, for example, Pound saw a problem in the fact that strict divorce laws did not match the increasing social acceptance of divorce and stressed the need to remove legal barriers to the dissolution of marriages. Pound hoped that his research would make a positive contribution to legal practice by showing how the law could be made more consistent with practice. He also believed that the difference between law and practice could only be revealed with an external perspective on the law. For this reason, he called his approach "sociological jurisprudence".

Pound's work has been sharply criticized by American scholars known as "legal realists". Their criticism was not based on a rejection of the principles of Pound's research (Hunt 1978). Like Pound, many realists had legal backgrounds and focused on problems they considered relevant to legal practice. In other words, the realists themselves took an instrumental approach to law. The main criticism of the realists was that they felt that Pound's reform ideas did not go far enough. They were primarily driven by the desire to improve the social position of marginal and disadvantaged groups through the mobilization of law (Blocq and Van der Woude 2018). The realists also believed that empirical research was helpful to their reform

agenda because it could show what legal reforms were needed and what obstacles stood in the way of the changes deemed necessary.

For example, in the realist research tradition, studies have concluded that judicial decisions are more likely to result from incentive structures and judicial bias than from the application of rules to facts (Frank 1931). Another example is the influential study in which Galanter (1974) argued that powerful parties, the "haves", often have an advantage in legal proceedings over weaker parties, the "have-nots", even though their position under the law is equal. Several realists prided themselves on their pragmatism, emphasizing that social science theories are useful only insofar as they can contribute to a better understanding of the dysfunction of parts of legal practice. They focused more on the development of sophisticated social science methods and techniques that could expose abuses than on theorizing (Hunt 1978).

In many ways, the emergence of ELS in the Netherlands can be seen as a continuation of the principles first put on the map by Pound. This is true, first, because the scope of empirical research is limited to legal rules backed by the state and the actors, institutions, and processes involved in or interacting with state law (Van den Bos 2020: 24; Kritzer 2021).

Second, there is continuity, because the focus is once again on questions or problems relevant to legal practice. According to the editors of the Dutch Encyclopedia of Empirical Legal Studies, this is where ELS differs from law and economics, sociology of law or criminology. While ELS is primarily about learning more about law, the other sub-disciplines are more about testing economic, sociological or criminological theories (Smit et al. 2020: 12). At an ELS conference at the Dutch Supreme Court, Van Dijck also expressed that empirical research should be connected to the experience of legal practitioners if lawyers are to understand its importance (Grootelaar 2017: 3). As we have seen, a similar view is shared by a significant part of the empirical socio-legal research community. This focus on the relevance of empirical research to legal practice also explains why most ELS studies focus on specific areas of law, such as administrative, civil, and criminal law, rather than on behavioral or contextual problems that cut across legal domains (Van Boom, Giesen, and Verheij 2008: 31; as also remarked by Schwitters 2014).[3]

Third, there is continuity because the added value of ELS with respect to the legal scholarship is usually sought more in the use of social science research methods (both quantitative and qualitative) than in social science theory (Arnoldussen, Knegt, and Schwitters 2016). Indeed, empirical methods are predominantly seen as complementary to *legal* theory rather than as a tool for generating and testing *social* theory. For example, while systematic content analysis of case law is held up as an excellent way to enrich doctrinal analysis with empirical research methods (Verbruggen 2021), the possibility that this method can also enrich social science theories is completely overlooked.

Fourth, there is continuity in the sense that ELS also emphasizes the study of how presumptions underlying legal rules ("*law in books*") play out in practice ("*law in action*"). The reconstruction of the presumed behavioral consequences underlying legal interventions (a) and the study of the functioning of legal practice (b) and its consequences (c) are together conceived as the so-called "trias Elsica" (Bijleveld 2023). There is far too much research in the Netherlands that meets the criteria of the Trias Elsica to give a comprehensive overview. Much of it is published in the volumes referred to in this article. However, to give an impression of some of the topics covered, I will give a few examples. Presumptions have been

[3] For instance, the Encyclopedia of ELS (Bijleveld et al. 2020) and civilology (Van Boom, Giesen, and Verheij 2008, 2013) are also organized by area of law.

tested, for example, of procedural justice (Grootelaar and Van den Bos 2018; Ansems 2021), alternative dispute resolution (Wever 2020) and appeal procedures (Marseille & Wever, 2023) in administrative law, compliance (Van Rooij & Fine, 2021), revision in criminal matters (Nan, Holvast, Lestrade, Mevis, & Mascini, 2019), the legibility of consumer contracts (Van Boom, Desmet, & Van Dam, 2016) and judgments (Van der Bruggen, Pander Maat, & Van Lent, 2023), and financial or relational compensation in personal injury litigation. (Hulst and Akkermans 2011; Huver et al. 2007; Reinders Folmer, Mascini, and Leunissen 2019; Reinders Folmer, Desmet, and Van Boom 2019). A particularly good illustration of the application of the Elsica trias is the WODC-commissioned comparative evaluation of the plans, processes, and effects of community courts implemented in different cities in the Netherlands in recent years that is being conducted in 2024-2025 by a consortium of researchers from Utrecht and Leiden Universities.

To summarize, the specific characteristics of the instrumental approach to law are that law is understood as an instrument to achieve goals, empirical research is limited to state law, researchers adopt a serving attitude toward legal practice, and the emphasis is on social science research methods rather than social science theories. As argued above, part of the empirical socio-legal research community shares an instrumental approach to the study of law with the ELS movement, while other parts do not. The latter can be divided into two socio-legal research traditions, 'legal pluralism' and 'law and society' each associated with a specific critique of the instrumental approach to the study of law. What characterizes these other two approaches?

4.2 Legal Pluralism

The legal pluralism approach has criticized the central role assigned to state law ("monism") in the instrumental approach. The premise of this approach is that not only prevailing state law but also other social norms can be perceived by citizens as binding obligations and can function as such. For example, the anthropologist Malinowski (1922) found that binding moral obligations existed among tribes that lacked a formal legal order. These arose from feelings of reciprocity fostered by the exchange of gifts. Gossip and insults ensured that these norms of reciprocity were felt to be binding. This means, first, that a formal legal order is not a necessary condition for creating or maintaining social order. Moreover, informal rules can have at least as strong a binding character as state law. This is so, on the one hand, because social control of compliance with informal rules may be coercive, for example, if it is accompanied by ostracism, and, on the other hand, because authorities may deliberately choose not to enforce compliance with laws and regulations. The latter can include administrative tolerance or the use of out-of-court dispute resolution (Griffiths 2017). Finally, although the legal pluralism approach also considers law to be important, it does not attribute this to legal rules as the cause of social change, as the instrumental approach assumes. Rather, law is seen as important in complex societies as a form of social control that each group exercises over its members. It is by maintaining social limits on the exercise of individual choice that collective goods can exist (Griffiths, 1979).

The legal pluralist approach criticizes the limitation of the definition of law to a system of formal rules whose observance can be enforced on the basis of the state's monopoly on the use of force. This definition of law is criticized because it *a priori* assigns a higher status to rules that count as law than to rules that do not, even though — supposedly — formal rules do not necessarily play a more important role in everyday life (Schiff Berman 2023). This can lead to an overestimation of the influence of formal rules and an underestimation of the importance of informal rules. For example, focusing only on which parts of indigenous rights

are recognized by government legislation completely ignores the part of indigenous law that is not officially recognized while indigenous people can act on it (Davies 2010). Defining law broadly as normative systems of binding moral obligations creates room for empirical questions about how authoritative or influential parallel normative systems (think of indigenous law, church law, or certain strong cultural norms) are, some of which are called law and some of which are not, and how these normative systems relate to one another. These are precisely at the heart of the legal pluralism approach.[4]

An important starting point for legal pluralism is the distinction introduced by Ehrlich (1936) between official law ("*Rechtssatz*") and what he called "living law" ("*Rechtsleben*"). By living law he meant the norms that citizens experience as binding even though they are not established by law. According to Ehrlich, living law limits the scope of official law because laws and case law never exist in a normative vacuum. Moore (1973) extended this thesis both theoretically and empirically. She argues that the operation of the law depends on its interaction with the informal rules that prevail in so-called semiautonomous social fields. A semiautonomous social field is characterized by the ability of those within it to generate their own rules and to punish those who do not abide by those rules with social exclusion as the ultimate sanction. Social fields are usually not completely autonomous because applicable law and other external factors can influence the operation of informal rules and because participants in social fields can themselves mobilize applicable law from within. A complete absence of autonomy is also difficult to imagine because even implementing practices in which law is central — such as the prosecutor's office, courts, or parliaments — develop their own codes, cultures, and routines.

Moore illustrates the importance of semiautonomous social fields by showing that a collective bargaining agreement was not well enforced because of prevailing informal rules in New York City sewing workshops, and that local customs frustrated the effective implementation of socialist legislation in the Chagga clan in Tanzania. Since then, numerous researchers in the Netherlands have shown that the operation of official laws and regulations is constrained and influenced by the informal rules that prevail in specific social fields. A seminal study was Van den Bergh's (1980) ethnographic study of norms and their enforcement in the orthodox Protestant community of the Dutch village Staphorst. Following on from this study, other studies of orthodox Protestant attitudes to equality law have shown how much the normative framework within this group — in which homosexuality is considered a sin and women have a specific biblical place — hinders the effectiveness of state law (Oomen 2011: 23). At the same time, a recent study has shown that the current equal treatment legislation in the appointment policy of homosexual teachers in orthodox Protestant schools does manage to penetrate this semiautonomous social field (Rijke 2020). The reason for this is that meanwhile religious, cultural, and social norms have come into full discussion in this field.

The functioning of semiautonomous social fields has also been studied in the Netherlands in relation to the effectiveness of legislation in other areas such as euthanasia legislation (Van Tol 2005), port theft (Hoekema 1973), smoking bans (Weyers 2009) and more recently, Internet governance. The latter study convincingly demonstrates that the government's ability to remove child pornography images from the Internet through legislation depends largely on the prevailing private rules that hosting companies must abide by and the prevailing implementation practices within this industry (Van der Voort, Boon, and Wegberg 2024). Weyers (2018) has built on what Griffiths (2003) has called the contours of a proto-theory of

[4] For a discussion of the pros and cons of a broad versus a narrow definition, and ways out of the stalemate between proponents of each definition, see Davies (2010).

the social workings of legal rules, deriving from several of the case studies a set of testable hypotheses about the effects of legal rules in semi-autonomous social domains.

We have seen that the instrumental approach has a narrower scope than the legal pluralist approach, in the sense that the instrumental approach is limited to the study of how state law is put into practice, whereas the legal pluralist approach focuses on the study of the interaction between systems of norms (some of which are officially recognized as law and some of which are not). Another difference between the instrumentalist and pluralist approaches to law is that the former looks top-down at what does or does not end up in practice according to the legislator's intentions, while the latter looks bottom-up at what people who are part of social relations do or do not do with the legal rules that apply to them (Griffiths 2017). Such an approach requires shifting attention from formal legal processes and institutions to the subjects who are the targets of legal action. This research requires researchers to resist "Pull of the Policy Audience" (Sarat and Silbey 1988: 141/2), which means "leav[ing] the state behind [to] go to the periphery, to small towns, to rural places, to working-class neighborhoods and look at the way that people in those places … construct their own universe of legal values and behaviors." In the Netherlands, Hertogh (2024) is at the forefront of research on legal awareness ("*rechtsbeleving*"): citizens' knowledge and evaluation of the law. From this research it can be concluded that Dutch citizens have little knowledge of the applicable law, that there are huge differences in the extent to which they recognize themselves in the law, and that the legitimacy of the law is no longer taken for granted among them.

In short, the premise of the legal pluralist approach is to study different normative systems in relation to each other, without *a priori* assigning a privileged status to state law and from the bottom-up. In this way, it is possible to avoid overestimating the role of the legal order and underestimating the role of other normative systems, and to examine how the operation of legal rules is influenced by other social norms prevailing in the context in which the legal rules are applied.

4.3 Law and Society

The law and society approach has criticized the instrumental approach's view of law as a neutral, independent agent of social change. The premise of this approach is that the search for legal solutions to social problems obscures the coercive power of law by "thingifying" legal constructs and giving them an aura of correctness and acceptability (Dagan 2017). For example, Pound's assumption that the task of law is to "balance interests" is criticized for resting on the unstated premise that "the law and its institutions are 'value neutral,' that the machinery of law stands above society weighing in its scales the conflicting interests of members of society" (Hunt 1978: 23). Sarat (1985) generally associates studies that take an instrumental approach with overly optimistic expectations because of this view of law as a neutral force that autonomously affects society. According to her, these misguided expectations can only be overcome by recognizing the power of institutions to create self-reinforcing ways of thinking that are themselves claims to power. It seems obvious to Sarat that to the extent that injustice is embedded in the law itself, the usefulness of research that proposes to close the gap between "law in books" and "law in action" by introducing more or better legislation is limited. Moreover, it distracts scholars from considering the many ways in which law is highly effective in maintaining existing relations of status, wealth and power (Abel 1980: 822).

This critique of the view of law as a neutral instrument that autonomously causes social change is linked to an alternative approach to the empirical study of law that goes back to the founders of sociology. In their efforts to understand the place and significance of law in

modernizing societies, they explained law as the outcome of social relations or cultural conceptions to which law itself then contributes. For example, in explaining the rise, development and anticipated demise of the capitalist market economy, Marx sought to discover the role of law in the reproduction of social inequality. Throughout his work, he does this by showing that law not only reflects, but also disguises, enables and legitimizes the structurally unequal relations of production that he sees as characteristic of the capitalist market economy (Van Oorschot 2018).

Subsequently, many other Marxist studies have shown that elites use their privileged positions through alliances with political leaders, lawyers, and experts to make legal interventions that allow them to maintain and strengthen their positions (Calavita 2010). For example, in their influential study, Rusche and Kirchheimer (1939) showed that the economic interests involved in the dominant system of production in a society (feudalism, slave economy, mercantilism, or capitalism) determine which forms of punishment are prevalent. The dominant form of punishment subsequently supports the economic system that helped to establish it. Another study explains the invention of the legal construct of vagrancy in feudal England in the 14th century to combat labor shortages and rising labor costs (Chambliss 1964). What these studies show is that over time a situation emerges in which the structure of law and the economy are closely linked.

However, just as the instrumental approach has been criticized for its romantic view of law as a neutral and independent force in society, so mechanistic theories in which law is seen simply as part of the superstructure that perpetuates capitalism and exploitation have been criticized for promoting a "vulgar materialism" (Omari, Rueda-Saiz and Wilson 2024: 5). The depiction of law as pure power, interest, or politics is rejected as reductive, because law imposes real, if elusive, constraints on the choices of legal decision-makers and thus on the subsequent implementation of state power (Dagan 2017: 7). Consequently, Bourdieu (1987) developed his theory of the legal field in order to free the study of law not only from positions that emphasize the absolute autonomy of law from social reality, but also from theories that see law as merely a reflection or instrument in the hands of dominant groups. He argues that the rules and procedures used by legal professionals in their struggle for the correct interpretation of legal disputes exist by virtue of their acceptance by the social environment. This means that lawyers' own idea of the absolute autonomy of law is in fact an illusion created by the social dynamics within and between social fields.

Bourdieu's theory of the legal field is representative of a law and society approach to the empirical study of law based on the "principle of simultaneity" — that law, politics and society cannot be reduced to one another because they interact simultaneously (Suchman and Mertz 2010). Nourse and Shaffer (2009: 123) use this principle to argue that "when courts engage in legal reasoning and develop legal doctrine, they are responding to the positions of advocates with particular ends. Courts' discourse, in turn, has a normativity that feeds back into political processes. Jurisprudence is, in this way, not only context-dependent but also context-productive." This means that what constitutes "the law" in any given era "represents the crystallization of the social forces that produced it through competition over the direction of legal and social change" (Omari, Rueda-Saiz and Wilson 2024: 50). The main goal of empirical researchers who adhere to this principle is supposedly to identify the conditions under which legal institutions reproduce social hierarchies (e.g. white supremacy, class exploitation, gender inequality, etc.) and when they facilitate egalitarian initiatives (human rights, democratic participation, pluralism) (Omari, Rueda-Saiz and Wilson 2024).

In the Netherlands, a small but significant contingent of studies also focuses on the recursive relationship between law and society. Chevalier (2018) is most outspoken about her choice of this approach in her ethnographic study of local bylaws in a neighborhood

shopping square in a provincial town. Chevalier shows that shopkeepers and shoppers who perceived harassment from two groups of social actors, Somalis and young people of different ethnic backgrounds, successfully used two incidents that attracted media attention to pressure the mayor to enact the bylaws restricting the use of the square and including bans on gatherings of three or more people and on the use of psychoactive substances, and closed-circuit television (CCTV) surveillance. However, the targets of the bylaws adapted their behavior to the rules, but did not disappear from public space. The case study shows, firstly, that "it is not only law impacting present-day life; it is also present-day life impacting law. The dynamic is not one-directional, but rather circular" (Chevalier 2018: 94). Second, the study shows the power plays involved in the law. These include the attempt to exclude those who fall outside the acceptance of the dominant group whose claims are made in the books, the resistance of the targeted group, and the mediating role of the officials who are supposed to enforce the bylaws. Chevalier concludes that law and power struggles are mutually constitutive.

A second example of Dutch empirical legal research using the principle of simultaneity as a starting point is Horii and Bouland's (2023) discourse analysis of the preparatory documents for the reform of rape law in the Netherlands. The reform reflects a broader European trend of moving from coercion-based to consent-based definitions of rape in criminal law. The study shows, first, that the changing of the "social norm" regarding unwanted sex is both the main justification and the main goal of the legal reform. In other words, the law is seen not only as a reflection of the "social norm" but also as a creator of the new norm. Second, it shows that there is remarkably little attention in the Netherlands to the problem of gender inequality, and that feminist understandings of rape as an instrument of patriarchy are being pushed aside in favor of more liberal feminist understandings of autonomy and consent as choice. Rape law reform thus demonstrates that the law is both a reflection and reinforcement of socio-cultural norms and values, and a manifestation of gendered power inequalities.

A last example of the law and society approach to studying law is Schwitters' (1991) research on how the introduction in 1901 of a no-fault based system of compensation for the victims of accidents at work in the Netherlands could be explained in terms of cultural and social transformations in the course of the nineteenth century. Transformations that made that accidents were no longer attributed to workers' own lack of care, but increasingly seen as the collateral damage of risk-taking that was generally deemed to be beneficial to the entire society. The introduction of a system based on strict liability was also advantageous for employers. One of the reasons being that the elimination of the fault-issue could avoid that they had to defend themselves in court against the claims of their workers that they were responsible for miserable and dangerous work conditions. Conversely, the implementation of the no-fault based system reduced the intensity of the class conflict between workers and employees that prompted the demand for the legal reform in the first place. As such, the study also illustrates the mutually constitutive role of law and society.

In short, the law and society approach understands the interplay between the two as the influence of social forces (e.g., interests, values, social differentiation) on law, which in turn shapes social forces. With this approach, it is possible to avoid overly optimistic expectations that arise from ignoring the dominant structures that may lie behind the purposes of law, or the hegemonic effects of these norms as they are deployed in social and political life (Gould & Barclay, 2012: 329).

5 Conclusion and Discussion

This study analyzed the emergence of ELS in the Netherlands in the context of the country's long tradition of empirical socio-legal research by the L&S community. It shows that ELS researchers share an instrumental approach to the empirical study of law with a significant part of the L&S community, but also that they differ from L&S researchers who adopt a legal pluralist or law and society approach. Moreover, while these differences in the empirical study of law, which previously divided the L&S community to the bone, have become more or less invisible with the welcome of ELS on the scene, substantive differences remain.

The instrumental approach has been criticized for its tendency to sacrifice the formulation and testing of social theory to methodological rigor and the service of legal practice, for overlooking the importance of informal normative systems by focusing on state law, for adopting a top-down rather than a bottom-up approach, and for speaking to power rather than challenging it. Despite these criticisms, instrumental research has shed light on many legal practices and helped to identify pathways through which law can have an impact (Gould & Barclay, 2012). Moreover, researchers using an instrumental approach often seem willing to make compromises in order not to alienate legal scholars from empirical research and to maximize the chances of their research having an impact on legal practice.

In the United States, the ELR movement does indeed appear to have established a stronger basis for influencing policy practice than research emanating from the L&S and New Legal Realism (NLR) movements (Chambliss 2008). The tendency of ELR researchers in the US to use advanced statistical methods seems to work in their favor in this respect. In the Dutch context, however, it has been noted more than once that even empirical legal research with an instrumental approach does not guarantee that it will be taken up by policy practice. The previously cited report by Elbers et al. (2018), which shows that the knowledge and application of ELS in the Netherlands leaves much to be desired, is not the only or the last publication to come to this conclusion (Bijleveld 2016; Doornbos et al. 2020; Van Gestel and Van Lochem 2018). Possible explanations for the lack of impact are that empirical results are often surrounded by considerable uncertainty, do not provide ready-made solutions to policy problems, and cannot be translated one-to-one into normative recommendations. Since it is already difficult to achieve impact when using an instrumental approach, it may be even more difficult to do so when using an alternative empirical approach.

At the same time, it is important to recognize that the characterization of instrumentalism as a naive policy view seldom occurs in its pure form, and is moreover capable of adapting to advancing knowledge (Van Aeken 2003). Evolutionary instrumentalism involves, for example, broadening the question of what becomes of legislative intentions in practice to include an examination of the discrepancies between the expectations of different stakeholders and the reality of the law, exchanging the assumption that every rule achieves its goal without any problem for the premise of the uncertainty that dominates the political arena and society as a whole and the consequent impossibility of programming the future according to certain parameters; and a broadening of the focus from legislation to the many other forms of social governance that exist alongside or above legislation, such as permits, covenants or passive action through the promotion of self-regulation.

These counter-arguments to the criticisms leveled at the instrumental approach do not detract from the fact that the alternative approaches of legal pluralism and law and society are indeed complementary to the instrumental approach and can also hold up a mirror to the instrumental approach in important respects. First, legal pluralists have clearly demonstrated that limiting research to formal legal institutions and the legal professionals involved in them can lead to an overestimation of the contribution that law can make to solving social

problems. By placing law in a broader social context, legal pluralist studies have shown that law often plays a less central role in social life than legal practitioners may assume. In particular, they have been able to provide a counterbalance by addressing the question of how authoritative or influential are parallel systems of norms, some of which are referred to as law and some of which are not, and how these systems of norms relate to each other. Such studies have also shown that the social impact of legislation depends on the influence of informal norms within the specific context in which they are implemented.

Second, researchers focusing on the interplay between law and society have substantiated their claim that an instrumental approach that focuses on the search for technical-legal solutions to social problems may inadvertently ignore the exercise of power that is inextricably linked to the use of rules, compliance with which can be enforced through the state's monopoly of violence (Dagan 2017). Empirical research based on the principle of simultaneity has shown that unequal social relations or dominant cultural attitudes can be reflected in law, and under what conditions law plays a role in maintaining, concealing or reinforcing inequality or exclusion, or in facilitating egalitarianism and inclusion.

In conclusion, this study has shown that the three empirical approaches to the study of law (instrumental, pluralist and law and society) are based on fundamentally different principles and that the choice of approach has far-reaching implications for the type of research questions, research settings and theoretical approaches adopted. Bringing these differences to the fore, in a consensual academic climate in which they may have receded into the background, can help to avoid misunderstandings that arise from ignorance of the co-existence of different empirical approaches to the study of law, and facilitate the conscious choice of a particular approach.

Finally, it is worth considering whether the case study of the emergence of ELS in the Netherlands can be generalized to other European countries. In the United States, ELS emerged several decades earlier than in the Netherlands. The results of the comparisons this has provoked about the differences and similarities between movements engaged in the empirical study of law — ELS, L&S, and NLR (e.g., Chambliss 2008; Nourse and Shaffer 2009; Suchman and Mertz 2010; Omari, Rueda-Saiz, and Wilson 2024), differ strikingly from the Dutch case in at least one respect. While the methodological debate between the positivist-minded quantitative ELS researchers and the epistemologically and methodologically more eclectic and NLR and L&S communities has received significant attention in the United States (see, e.g. Chambliss 2008; Suchman and Mertz 2010), this discussion plays a minimal role in the Netherlands. It is evident that the national ELS platform and the Netherlands ELS Academy have sought to avoid such a conflict by adopting a methodologically inclusive approach and emphasizing the equivalence and complementarity of quantitative and qualitative research.

Nevertheless, the case study also demonstrated that the distinctions between the movements engaged in the empirical study of law in the Netherlands are, in numerous other respects, analogous to the contrasts between such movements identified in the United States. These include the distinctions between applied and basic research, the emphasis on method versus theory, the dichotomy between monism and pluralism, the orientation towards top-down versus bottom-up studies, and the emphasis on speaking to power versus challenging power. This indicates that most distinctions between movements engaged in empirical legal studies are largely transnational, extending across the Atlantic. The active participation of English-speaking Dutch researchers in the international academic community, which is strongly Anglo-Saxon oriented, may contribute to the resemblance of these contrasts. This would indicate that the previously institutionalized differences in the United States are reproduced in the European context. However, previous comparative studies between

movements in the United States and Nordic countries, where there is also a long tradition of empirical legal research, and most researchers are also proficient in English suggest that this assertion is too simplistic. One study indicates that although the goals of legal realism were similar in both contexts (Alexander 2002), the strategies employed to bring about progressive change through the mobilization of law differed in both settings. Another study indicates that there are also significant differences between the two settings in epistemological terms (Holtermann and Madsen 2021). It is not surprising that differences between movements engaged in the empirical study of law in the United States may not simply be carried forward similarly in European countries. The discrepancies between common law and civil law countries, national educational systems, national intellectual traditions (Galtung 1981), or the centrality of the English language, may simply be too large for contrasting traditions in the empirical study of law to be replicated similarly across borders. This suggests that systematic comparative research is required to ascertain in what respects the case study of the emergence of ELS in the Netherlands can be taken as an exemplar for other European countries.

Acknowledgments

In addition to my gratitude for the valuable comments of the editor, the guest editor for this special issue, and the two reviewers, I would like to thank Rob Schwitters, who also provided valuable comments on an earlier version of this article.

References

Abel, R. (1980). Redirecting social studies of law. *Law and Society Review, 14*, 805–829. https://doi.org/10.2307/3053198.

Alexander, Gregory S. 2002. "Comparing the Two Legal Realisms: American and Scandinavian." *Cornell Law Faculty Publications*, Paper 455: 131–174. http://scholarship.law.cornell.edu/facpub/455.

Ansems, L. F. M. 2021. *Procedural Justice on Trial. A Critical Test of Perceived Procedural Justice from the Perspective of Criminal Defendants*. Utrecht: Universiteit Utrecht.

Anwar, Tasniem, Anna Goldberg, and Anna Pivaty. 2024. "Voorbij de barrières in ELS en op zoek naar de verbinding" (Beyond the Barriers in ELS and Looking for Connection). *Recht der Werkelijkheid* 45 (3): 3–9. https://doi.org/10.5553/RdW/138064242024045003001

Arnoldussen, Tobias, Robert Knegt, and Rob Schwitters. 2016. "Social Theory and Legal Practices," *Recht der Werkelijkheid* 37, no 3: 5–9.

Benda-Beckmann, Keebet von, and Heleen Weyers. 2018. "In Memoriam John Griffiths (1940-2017)," *Recht der Werkelijkheid* 39, no 2: 6–17.

Bergh, G. van den. 1980. *Staphorst en zijn gerichten: verslag van een juridisch-antropologisch onderzoek*. (Staphorst and Its Judgment Panels: Report of a Legal Anthropological Study.) Meppel: Boom.

Bijleveld, C., A. Akkermans, M. Malsch, B. Marseille, and M Smit. 2020. *Nederlandse Encyclopedie Empirical Legal Studies: Encyclopedie van 25 Jaar Empirisch Onderzoek in Nederland* (Dutch Encyclopedia of Empirical Legal Studies: Encyclopedia of 25 Years of Empirical Research in the Netherlands). Den Haag: Boom Juridische Uitgevers.

Bijleveld, Catrien. 2016. "De Wereld van de Wetenschapper En de Wereld van de Praktijk" (The World of the Scientist and the World of Practice), *Proces* 95, no 5: 36–40. https://doi.org/10.5553/proces/016500762016095005005.

Bijleveld, Catrien. 2023. *Research Methods for Empirical Legal Studies: An Introduction*. The Hague: Eleven.

Bijleveld, Catrien C J H. 2023. "Empirisch Juridisch Onderzoek" (Empirical Legal Research), *Justitiële verkenningen* 49, no 3. Koninklijke Boom uitgevers: 47–58. https://doi.org/10.5553/jv/016758502023049003004.

Blocq, Daniel, and Maartje van der Woude. 2018. "Making Sense of the Law and Society Movement," *Erasmus Law Review*, no. 2: 134–141. https://doi.org/10.5553/ELR.000105.

Bourdieu, P. 1987. "The Force of Law: A Sociology of the Juridical Field," *The Hastings Law Journal* 38, no 5: 805–853.

Bruinsma, Freek. 1990. "De Kif van Een Azijnpisser" (A Vinegar Pisser's Kif), *Recht der Werkelijkheid*, no. 1: 125–126.

Bruinsma, Freek. 2004. "Van de Redactie: 25 Jaar Recht Der Werkelijkheid" (From the Editor: 25 Years of Recht der Werkelijkheid), *Recht der Werkelijkheid*, no. 2: 1–9.

Calavita, Kitty. 2010. *Invitation to Law & Society: An Introduction to the Study of Real Law*. Chicago and London: University of Chicago Press.

Chambliss, William J. 1964. "A Sociological Analysis of the Law of Vagrancy," *Social Problems* 12: 46–67.

Chevalier, Danielle. 2018. "'A Continuous Process of Becoming': The Relevance of Qualitative Research into the Storylines of Law." *Erasmus Law Review* 11. Boom Uitgevers Den Haag. https://doi.org/10.5553/elr.000104.

Chevalier, Danielle. 2021. "De Empirische Bestudering van Het Recht" (The Empirical Study of Law), *Recht der Werkelijkheid* 42, no 3: 3–8.

Dagan, Hanoch. 2017. "Contemporary Legal Realism." In *Encyclopedia for Law and Social Philosophy*, edited by Mortimer Sellers and Stephan Kirste, 1-8. Dordrecht: Springer. https://doi.org/10.1007/978-94-007-6730-0_107-1.

Davies, Margaret. 2010. "Legal Pluralism." In *The Oxford Handbook of Empirical Legal Research*, edited by Peter Cane and Herbert M. Kritzer, 805-827. Oxford: Oxford University Press.

De Jong, Elbert, Lydia Dalhuisen, Tom Bouwman, and Ivo Giesen. 2022. *Opvattingen Onderzoeken. Een Verkennend Juridisch-Empirisch Onderzoek Naar Het Gebruik van Maatschappelijke Opvattingen in de Nederlandse Rechtspraak* (Examining Views. An Exploratory Legal-Empirical Study of the Use of Societal Views in the Dutch Judiciary). Den Haag: Boom.

Doornbos, Nienke, and Paulien de Winter. 2020. "(Ruim) Veertig Jaar Recht Der Werkelijkheid: Verleden, Heden En Toekomst" ((Over) Forty Years of Recht der Werkelijkheid: Past, Present and Future), *Recht der Werkelijkheid* 41, no 2: 3–14.

Doornbos, Nienke, Nieke Elbers, Marleen Kragting, and Marijke Malsch. 11-12-2020. "Laat Wetgever Kennis Beter Benutten" (Let Legislators Use Knowledge Better). *Nederlands Juristenblad*, no. 43: 3298–3304.

Ehrlich, E. 1936. *Principles of the Sociology of Law*. Translated by W. Moll. Harvard: Harvard University Press.

Elbers, N., M. Malsch, P. van der Laan, A. J. Akkermans, and C. Bijleveld. 2018. "Empirisch-Juridisch Onderzoek in Nederland: Bespiegelingen over de Stand van Zaken in de Rechtswetenschap, Het Juridisch Onderwijs en de Rechtspraktijk" (Empirical-Judicial Research in The Netherlands: Reflections on the State of the Law, Legal Education And Legal Practice), *Recht der werkelijkheid* 39, no 1: 30–42.

Eleveld, Anja. 2024. "Wat is kritisch empirisch-juridisch onderzoek?" (What Is Critical Empirical Legal Research) *Recht Der Werkelijkheid* 45 (3): 40–53. https://doi.org/10.5553/RdW/138064242024045003004.

Frank, Jerome. 1931. "Are Judges Human?," *University of Pennsylvania Law Review* 80: 233–267.

Galanter, Marc. 1974. "Why the 'Haves' Come out Ahead: Speculations on the Limits of Legal Change," *Law & Society Review* 9, 1: 95–160.

Galtung, Johan. 1981. "Structure, Culture, and Intellectual Style: An Essay Comparing Saxonic, Teutonic, gallic and Nipponic Approaches," *Theory and methods* 20, no 6: 817–856.

Giesen, I., S. N. P. Wiznitzer, A. L. M. Keirse, and W. S. de Zanger. 2019. *Assumpties Annoteren: Rechterlijke Veronderstellingen Empirisch en Juridisch Getoetst* (Assumptions Annotated: Judicial Assumptions Empirically and Legally Tested). Den Haag: Boom juridisch.

Griffiths, J. (1979). Is law important? *New York University Law Review, 54*(2), 339–375.

Griffiths, J. 1989. "Het Interessante van de Hoge Raad" (The Interesting of the Supreme Court), *Recht der Werkelijkheid*, no. 1: 80–99.

Griffiths, J. (2003). The social working of legal rules. *Journal of Legal Pluralism and Unofficial Law, 35*(48), 1–84.

Griffiths, J. 2017. "What Is Sociology of Law? (On Law, Rules, Social Control and Sociology)," *Journal of Legal Pluralism and Unofficial Law* 49, no 2: 93–142.

Griffiths, J., N. Roos, and R. J. Smits. 1979. "Redactioneel" (Editorial), *Nieuwsbrief voor Nederlandstalige Rechtssociologen* 1, 1.

Griffiths, John. 2003. "The Social Working of Legal Rules," *Journal of Legal Pluralism and Unofficial Law* 35, no 48: 1–84.

Grootelaar, H. A. M., and K. Van den Bos. 2018. "How Litigants in Dutch Courtrooms Come to Trust Judges. The Role of Perceived Procedural Justice, Outcome Favorability, and Other Socio-Legal Moderators," *Law and Society Review*, 234–268.

Grootelaar, Hilke. 2017. "Empirische Rechtswetenschap: Fad, Feud Or Fellowship?" (Empirical Legal Studies: Fad, Feud, or Fellowship?), *Recht der Werkelijkheid* 38, 1: 3-8.

Gould, J. B., & Barclay, S. (2012). Mind the gap: The place of gap studies in sociolegal scholarship. *Annual Review of Law and Social Science, 8*, 323–335. https://doi.org/10.1146/annurev-lawsocsci-102811-173833.

Hertogh, M. (2024). "Wat burgers weten en vinden van het recht" (What citizens know and feel about the law). In N. Holvast, W. Kortleven, P. de Winter, N. Doornbos, M. Hertogh & P. Mascini (Eds.), *Recht in het echt: Empirische inzichten voor juristen* (pp. 119–154). Den Haag: Boom Juridische Uitgevers.

Hoekema, A. J. 1973. *Rechtsnormen en Sociale Feiten: Theorie en Empirie Rond de Kleine Havendiefstal* (Legal Norms and Social Facts: Theory and Empiricism Around Small Port Theft). Rotterdam.

Holtermann, Jakob v. H., and Mikael Rask Madsen. 2021. "European New Legal Realism: Towards a Basic Science of Law." In *Research Handbook on Modern Legal Realism*, edited by Shauhin Talesh, Heinz Klug, and Elizabeth Mertz, 67-81. Cheltenham: Edward Elgar Publishing.

Horii, Hoko, and Annelien Bouland. 2023. "Drafting New Rape Law Dutch Legislators Talk About Sexual Consent," *Recht der Werkelijkheid* 44, no 1: 14–38. https://doi.org/10.5553/RdW/138064242023044001002.

Huls, Nick. 2001. "Zonder Recht Geen Rechtssociologie" (Without Law No Sociology of Law), *Recht der Werkelijkheid*, no. 2: 35–42.

Hulst, Liesbeth, and Arno Akkermans. 2011. "Can Money Symbolize Acknowledgment? How Victims' Relatives Perceive Monetary Awards for Their Emotional Harm," *Psychological Injury and Law* 4, no 3-4: 245-262.

Hunt, Alan. 1978. *The Sociological Movement in Law*. London and Basingstoke: Macmillan Press Ltd.

Huver, R. M. E., K. A. P. C. Van Wees, A. J. Akkermans, and N. A. Elbers. 2007. *Slachtoffers en aansprakelijkheid: een onderzoek naar behoeften, verwachtingen en ervaringen van slachtoffers en hun naasten met betrekking tot het civiele aansprakelijkheidsrecht. Deel I. Terreinverkenning* (Victims and Liability: An Examination of Needs, Expectations and Experiences of Victims and Their Significant Others Regarding Civil Liability Law. Part I. Field Exploration). Den Haag: WODC.

Justitiële, Verkenningen. 2016. "Empirisch-Juridisch Onderzoek: Toekomstmuziek of Werkelijkheid?" (Empirical Legal Research: Future or Reality?) 6.

Kiewiet, Jeroen. 2024. "Geen kloof maar context naar een herijking van het rechtsbegrip in ELS-onderzoek" (No Gap but Context Towards a Recalibration of the Concept of Law in ELS Research). *Recht Der Werkelijkheid* 45 (3): 54–66. https://doi.org/10.5553/RdW/138064242024045003005.

Kritzer, Herbert M. 2021. *Advanced Introduction to Empirical Legal Research*. Cheltenham: Edward Elgar.

Malinowski, Bronislaw. 1922. *Argonauts of the West-Pacific*. Waveland: Prospect Heights.

Marseille, B., & Wever, M. (2023). De bezwaarschriftprocedure (The Appeal Procedure). In B. Assink, A. Bots, R. Schlössels & L. Timmermans (Eds.), *Canon van het bestuursrecht: Een reis door het bestuursrecht in 30 vensters* (pp. 179–184). Nijmegen: Ars Aequi Libri.

Mascini, Peter, and Wibo van Rossum. 2018. "Empirical Legal Research: Fad, Feud or Fellowship?," *Erasmus Law Review*, no. 2: 89–92. https://doi.org/10.5553/ELR.000106.

Moore, Sally Falk. 1973. "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study," *Law & Society Review* 7, no 4: 719–746.

Nan, J., Holvast, N., Lestrade, S., Mevis, P., & Mascini, P. (2019). Evaluatie van de wet herziening herziening ten voordele (Evaluation of the Reform of the Beneficial Convictions Reform Act). *Nederlands Juristenblad,* (3), 184–192.

Nelken, David. 1984. "Law in Action or Living Law? Back to the Beginning in Sociology of Law," *Legal studies* 4, no 2: 157–174. https://doi.org/10.1111/j.1748-121X.1984.tb00439.x.

Nourse, Victoria, and Gregory Shaffer. 2009. "Varieties of New Legal Realism: Can a New World Order Prompt a New Legal Theory?," Cornell Law Review 95, no 61: 61–138. http://scholarship.law.cornell.edu/clr/vol95/iss1/8.

Omari, Jeffrey, Pablo Rueda-Saiz, and Richard Ashby Wilson. 2024. "New Legal Realism at 20: Rethinking Law in an Era of Populism and Social Movements," SSRN, https://ssrn.com/abstract=4771109.

Oomen, Barbara. 2011. "Wat Moet Iedere Jurist Weten over Rechtspluralisme?" (What Should Every Lawyer Know About Legal Pluralism?). In *Het Recht van Onderop*, edited by Marc Hertogh and Heleen Weyers, 79-98. Nijmegen: Ars Aequi Libri.

Pannebakker, E. S., H. Pluut, S. Voskamp, and W. S. de Zanger. 2022. "Empirical Studies in the Law School Curriculum in the Netherlands: What Is the State of the Art and Where We Go from Here?," *The Law Teacher*, 1–20. https://doi.org/10.1080/0309400.2021.2022391.

Reinders Folmer, Christopher P., Pieter T. M. Desmet, and W. H. Van Boom. 2019. "Beyond Compensation? Examining the Role of Apologies in the Restoration of Victims' in Simulated Tort Cases," *Law and Human Behavior* 43, no 4: 329–341.

Reinders Folmer, Christopher P., Peter Mascini, and Joost M. Leunissen. 2019. "Rethinking Apology in Tort Litigation: Deficiencies in Comprehensiveness Undermine Remedial Effectiveness," *Review of Law & Economics*, 1–27. https://doi.org/10.1515/rle-2018-0042.

Rijke, Niels. 2020. "Gelijkebehandelingswetgeving en benoemingsbeleid van Protestantse scholen over consistentie en het enkele feit" (Equal Treatment Laws and Appointment policies of Protestant Schools on Equality Law and the Single Fact), *Recht der Werkelijkheid* 37, no 2: 37–54.

Rusche, Georg., and Otto Kirchheimer. 1939. *Punishment and Social Structure*. New York: Columbia University Press.

Sarat, A. 1985. "Legal Effectiveness and Social Studies of Law: On the Unfortunate of Research Tradition," *Legal Studies Forum* 9, no 1: 23–32.

Sarat, Austin, and Susan Silbey. 1988. "The Pull of the Policy Audience." *Law & Policy* 10, no 2-3: 97-166. https://doi.org/10.1111/j.1467-9930.1988.tb00007.x.

Schiff Berman, Paul. 2023. "Applied Legal Pluralism: Processes, Driving Forces and Effects By Ghislain Otis, Jean LeClair, and Sophie Thériault, London: Routledge, 2022, 284 Pp., £130.00 (Book Review)," *Journal of Law and Society* 50, no 4. Wiley: 579–584. https://doi.org/10.1111/jols.12448.

Schwitters,, Rob. 1991. *De risico's van de arbeid: Het ontstaan van de Ongevallenwet 1901 in sociologisch perspectief* (The Risks of Labor: The Origins of the 1901 Accident Act in Sociological Perspective). Groningen: Wolters-Noordhof.

Schwitters, Rob. 2001. "Naar Een Sociologie van Het Recht" (Toward a Sociology of Law), *Recht der Werkelijkheid*, no. 2: 43–48.

Schwitters, Rob. 2014. "Civilologie: Op weg naar een zelfstandige benadering van het privaatrecht? (Towards an Independent Approach to Private Law?) Review of: W.H. van Boom, I. Giesen & A.J. Verheij (Red.), Capita Civilologie. Handboek empirie en privaatrecht (Capita Civilologie. Handbook of Empiricism and Private Law), Tweede Druk, Den Haag: Boom Juridische Uitgevers, 1198 Pagina's", *Recht der Werkelijkheid* 35, no 1: 120–127.

Smit, Monika, Bert Marseille, Arno Akkermans, Marijke Malsch, and Catrien Bijleveld. 2020. "25 Jaar Empirisch-Juridisch Onderzoek in Nederland" (25 Years of Empirical Legal Research in the Netherlands). In *Nederlandse encyclopedie Empirical Legal Studies: encyclopedie van 25 jaar empirisch juridisch onderzoek in Nederland*, edited by Catrien Bijleveld, Arno Akkermans, Marijke Malsch, Bert Marseille, and Monika Smit, 11-20. Den Haag: Boom Juridische Uitgevers.

Suchman, Mark C, and Elizabeth Ellen Mertz. 2010. "Toward a New Legal Empiricism: Empirical Legal Studies and New Legal Realism," *Annual Review of Law and Social Science* 6, no 1: 555–579. https://doi.org/10.1146/annurev.lawsocsci.093008.131617.

Van Aartsen, Constantijn W. 2020. *A Journey into Causes of Corporate Misbehaviour: Why Corporate Legal Disciplines and Regulation Need to Be Structurally Reformed*. University of Maastricht.

Van Boom, W. H., Desmet, P., & Van Dam, M. (2016). "If it's easy to read, it's easy to Claim"—The effect of the readability of insurance contracts on consumer expectations and conflict behaviour. *Journal of Consumer Policy, 39*(12), 187–197. https://doi.org/10.1007/s10603-016-9317-9.

Van Boom, W. H., I. Giesen, and A. J. Verheij. 2008. *Gedrag en privaatrecht: gedragspresumpties bij en gedragseffecten van privaatrechtelijke leerstukken* (Behavior and Private Law: Behavioral Presumptions At and Behavioral Effects Of Private Law Doctrines). Den Haag: Boom Juridische Uitgevers.

Van Boom, W. H., I. Giesen, and A. J. Verheij. 2013. *Capita Civilologie: handboek empirie en privaatrecht* (Capita Civilologie: Handbook of Empiricism and Private Law). Civilology Series. Den Haag: Boom Juridische Uitgevers. http://www.bju.nl/juridisch/catalogus/capita-civilologie-2#!.

Van den Bos, K. 2020. *Empirical Legal Research: A Primer.* Cheltenham: Edward Elgar.

Van der Bruggen, G., Pander Maat, H., & Van Lent, L. (2023). Recht spreken én schrijven: Hoe (on)tevredenheid over de communicatie de acceptatie van de rechterlijke beslissing beïnvloedt (Speaking and writing justice: How (dis)satisfaction with communication affects acceptance of court decisions). *Recht Der Werkelijkheid, 44*(1), 63–95. https:/doi.org/10.5553/RdW/138064242023044001004.

Van der Ploeg, Tymen. 1999. "Tussen recht en werkelijkheid: de onverzoenlijkheid tussen het juridisch en sociologisch denken" (Between Law and Reality: The Inconsistency Between Legal And Sociological Thought.), *Recht der Werkelijkheid*, no. 3: 85–100.

Van Rooij, B., & Fine, A. (2021). *The behavioral code: The hidden ways the law makes us better … or worse.* Boston: Beacon Press.

Van der Voort, Haiko, Simone van der Boon, and Rolf van Wegberg. 2024. "Co-regulering als er nog geen regels zijn: naar een reductie van ongewenste inhoud op het Internet" (Co-Regulation if There Are No Rules Yet: Toward a Reduction of Unwanted Content on the Internet.). In *Recht in Het Echt. Empirische Inzichten Voor Juristen*, edited by Nina Holvast, Willem-Jan Kortleven, Paulien de Winter, Nienke Doornbos, Marc Hertogh, and Peter Mascini. Den Haag: Boom.

Van Gestel, Rob, and Peter van Lochem. 2018. "Evidence-Based Regulation and the Translation from Empirical Data to Normative Choices: A Proportionality Test," *Erasmus Law Review* 2: 120–133. https://doi.org/10.5553/ELR.000103.

Van Manen, N. F. 2000. "Ohne Theorie Keine Wissenschaft" (Without Theory no Science), *Recht der Werkelijkheid*, no. 2: 115–120.

Van Oorschot, Irene. 2018. *Ways of Case-Making*. Rotterdam: Erasmus University Rotterdam.

Van Tol, D. 2005. *Grensgeschillen: een rechtssociologisch onderzoek naar het classificeren van euthanasie en ander medisch handelen rond het levenseinde* (Boundary Disputes: A Legal Sociological Study of Classifying Euthanasia and Other Medical Acts Around the End of Life). Groningen: Rijks Universiteit Groningen. https://research.rug.nl/en/publications/grensgeschillen-een-rechtssociologisch-onderzoek-naar-het-classif.

Verbruggen, Paul. 2021. "Methoden van systematische rechtspraakanalyse: een inleiding tot het veld" (Methods of Systematic Case Law Analysis: An Introduction to the Field). In *Methoden van systematische rechtspraakanalyse: tussen juridische dogmatiek en data science,* edited by P. W. J. Verbruggen, 7-26. Den Haag: BoomJuridisch.

Wever, M. 2020. *Kwaliteit van Bestuursrechtelijke Bezwaarprocedures* (Quality of Administrative Appeal Procedures). Groningen: University of Groningen. https://doi.org/10.33612/diss.145066501.

Weyers, H. 2009. "Rookverboden: surfen op golven van een veranderende maatschappelijke norm" (Smoking Bans: Surfing Waves of a Changing Societal Norm), *Recht der Werkelijkheid*, no. 1: 45–63.

Weyers, Heleen. 2018. "Verdergaan met de sociale-werkingsbenadering" (Continuing with the Social Working Approach), *Recht der Werkelijkheid* 39, no 2: 85–97. https://doi.org/10.5553/RdW/138064242018039002008.