## Contents

Pre	face t	o the Paperback Edition	V
Preface			
List of Contributors			
1.		al Doctrine: Which Method(s) for What Kind of Discipline? k Van Hoecke	1
	I.	Historical Developments	1
	II.	What Kind of Discipline is Legal Doctrine?	4
	III.	Which Methodology for Legal Research?	11
	IV.	Conclusion	17
2. The Method of a Truly Normative Legal Science  Jaap Hage			19
	I.	Preliminaries	20
	II.	The Possibility of a Normative Science	28
	III.	The Method of a Truly Normative Legal Science	40
	IV.	Conclusion	43
3.	Explanatory Non-Normative Legal Doctrine. Taking the Distinction between Theoretical and Practical Reason Seriously  Anne Ruth Mackor		
		Introduction	45
	II.	Theoretical and Practical Reason	46
		Explanatory Legal Doctrine	48
		Normative Legal Doctrine	58
		Conclusion	69
4.	A World without Law Professors  Mathias M Siems		71
	I.	Introduction	71
	II.	Legal Training and Education	72
	III.	Legal Research and Writing	78
	IV.	Analysis: What Next?	85
5.	Ope	n or Autonomous? The Debate on Legal Methodology as a	
	Refle	ection of the Debate on Law ine C Westerman	87
	I.	Introduction	87
	II.	The Problem of the Lacking Third	88
	III.	Legal System as Theoretical Framework	90

## xvi Contents

	IV. V.	Legal Doctrine and Legal Science The Quest for Ongoing Abstraction	94
		Empty Autonomy	97
		Revenge of Reality	101
		The Need for an Empirical Orientation	105
		An Empirical Legal Doctrine?	108
6.	Meth	nodology of Legal Doctrinal Research: A Comment on	
	West	erman	111
	Jan V	Iranken	
	I.	Introduction	111
	II.	The Identity of Subject and Theoretical Framework:	
		Four Objections	114
	III.	Methodological Consequences	118
7.		Epistemological Function of 'la Doctrine' tia Muir Watt	123
	I.	On the Choice, as a Topic, of the Epistemological Function Played Out in French Legal Tradition by 'la Doctrine'	123
	II.	The Current Debates over the Existence and Future of 'la Doctrine' and why they are Significant	125
	III.	How the Emergence of 'la Doctrine' is Linked to the Decline of the Code and the Massification of 'la Jurisprudence'	126
	IV.	How the Changing Relationship between Law and the other Social Sciences is Relevant to the Rise of 'la Doctrine' and	
	V.	to the Subsequent Shaping of Legal Knowledge Why 'la Doctrine' is Threatened Today in its Interpretative	128
		Function	129
	VI.	Why the Current Crisis may be for the Better – and may be Good for Comparative Legal Research	131
8.	Map	s, Methodologies and Critiques: Confessions of a Contract	
	Lawy	rer r Brownsword	133
	I.	Introduction	133
	II.	An Ideological Understanding of Adjudication and of	
		Contract Law	135
	III.	The Rationality of Contract Law	137
	IV.	The Underlying Ethic of Contract Law	139
	V.	The Fit between Doctrine and Business Organisation	143
	VI.	The Consent-Based Nature of Contractual Obligation	145
	VII.	The Mission of Protecting Reasonable Expectations	146
	VIII.	Contract and the Larger Regulatory Environment	148
	IX.	Conclusion	152

		Contents	xvii
9.	Legal Research and the Distinctiveness of Comparative Law John Bell		
	I.	Introduction: Legal Research as a Normative Social Science	155
	II.	Hermeneutic Approach to Legal Research	158
	III.	The Institutional Character of Law	161
	IV.	The Interpretative Character of Law	164
	V.	Implications for Comparative Law	167
	VI.	Conclusion	175
10.	One	One Need an Understanding of Methodology in Law Before Can Understand Methodology in Comparative Law? Frey Samuel	177
	I.	The Problem of Interdisciplinarity	178
	II.	Methodology and the Status of Comparative Law	182
	III.	Methodology and Epistemology in the Social Sciences	188
	IV.	Methodology and Epistemology in Law	192
	V.	Positivism (Causality) Versus Hermeneutics	194
	VI.	Positivism (Causality) Versus Dialectics	198
	VII.	Positivism versus Actionalism and Objectification	200
	VIII.	Paradigm Authoritarianism Versus Comparative Studies	205
11.	Comparative Law, Legal Linguistics and Methodology of Legal Doctrine 2 Jaakko Husa		
	I.	Introduction	209
	II.	Background of Functionalism	212
	III.	From Rabel to Zweigert and Kötz	215
		Legal Languages and Functionalism	223
	V.	Conclusion	227
12.	Doin	g What Doesn't Come Naturally. On the Distinctiveness of	
		parative Law rice Adams	229
	I.	'Doing' Law is Immutably Comparative	229
	II.	'And Yet it Moves!'	230
	III.	Explanatory Comparative Law and Interdisciplinarity	235
	IV.	To Conclude	239
	Promises and Pitfalls of Interdisciplinary Legal Research: The Case of Evolutionary Analysis in Law Bart Du Laing		
	I. II.	Introduction Contemporary Evolutionary Approaches to Human Behaviour	241
		and Evolutionary Analysis in Law	244
	III.	Taxonomising Evolutionary Analyses in Law: Three Questions	248

## xviii Contents

14.	Behavioural Economics and Legal Research  Julie De Coninck			257
	I. II. IV.	Introduction Behavioural Economics Behavioural Law and Economics Closing Remarks	7	<ul><li>257</li><li>258</li><li>262</li><li>275</li></ul>
15.	Theory and Object in Law: the Case for Legal Scholarship as Indirect Speech  Bert Van Roermund			277
	I. II. III.	Legal Scholarship Pre-Determined by the Law it Investigates? Theoretical Language as Meta-Language? Some Implications		278 282 284
Index			287	