

Contents

<i>Preface</i>	viii
Introduction: a discipline in crisis?	1
1. An identity crisis	1
2. Legal science at the crossroads	4
3. A rediscovery of the legal approach?	6
4. Structure of the argument	7
I Legal science: a typology	8
1. Introduction	8
5. Four types of legal scholarship	8
2. Descriptive legal science	11
6. Introduction	11
7. Description: the doctrinal approach	13
8. Systematization	15
9. Normative consequences of systematization	17
10. An internal perspective	20
11. Description in legal science: alternative approaches	21
12. Sociological description of law	22
13. Economic description of law	23
14. Historical description of law	24
15. Comparative description of law	25
3. Empirical legal scholarship	28
16. Research on the effects of law	28
4. The theoretical perspective	32
17. Research about law	32
5. What is next?	34
18. Continuing the debate	34

II	The <i>Homo juridicus</i>: towards a redefinition of normative legal science	35
1.	Introduction	35
19.	Course of the argument	35
2.	What makes an academic discipline?	35
20.	Academic disciplines	35
21.	Requirements of an academic discipline	37
22.	Requirements of (descriptive) legal science	39
3.	Normative legal science: in search of the <i>Homo juridicus</i>	41
23.	The legal perspective	41
24.	Away from the normative haze	43
25.	The need for an external normative perspective	44
26.	Other normative disciplines	47
4.	Law as spontaneous order	48
27.	Theoretical background	48
28.	Some consequences	51
29.	What is next? What is legally required?	57
III	Methodology of normative legal science	58
1.	Law as the discipline of conflicting arguments	58
30.	Introduction	58
31.	Structure of this chapter	59
32.	Searching for the stone of wisdom	60
33.	What ought to be? The doctrinal approach	61
34.	What ought to be? The role of Law and Economics	62
35.	What ought to be? The empirical approach	66
36.	What ought to be? Fundamental rights as cornerstones	70
37.	Intermediate conclusion: normative uncertainty is both inevitable and desirable	73
2.	Towards an empirical-normative approach	74
38.	Are personal preferences decisive?	74
39.	The empirical-normative method	76
40.	An argumentative discipline	81
41.	Example: the Draft Common Frame of Reference for European Private Law	83

42.	Legal science not about finding universal principles	85
43.	When should there be uniformity of law?	88
44.	Emphasis on deciding cases; practical wisdom	91
45.	The importance of legal doctrine	93
46.	Which argument prevails? Comparison without a <i>tertium</i>	95
3.	Conclusions	97
47.	Summary	97
48.	Normative scholarship as an academic discipline	98
IV	Organization of the legal-academic discourse	100
1.	Introduction	100
49.	Debate about organization	100
2.	Innovation in legal science	101
50.	The importance of creativity	101
51.	Innovative research: many types	104
52.	Is there progress in legal science?	106
3.	Legal science and methodology	109
53.	Introduction	109
54.	Research methods and law	110
55.	Making choices explicit	114
56.	A need for an explicit research question?	116
57.	Methodological pluralism	119
4.	The research culture in legal academia	122
58.	Introduction	122
59.	Research programmes	123
60.	The market and the importance of fundamental research	127
61.	An alternative approach	133
62.	Consequences for legal education	141
Synopsis		149
63.	Four claims	149
<i>References</i>		152
<i>Index</i>		175