Preface

In 2011, two of us – Sanne and Bart – published the edited volume *Law and Method: Interdisciplinary Research into Law*, which gave an introduction to various interdisciplinary approaches to law. In our introductory chapter, we discussed several challenges that legal researchers who engage in interdisciplinary research face. Some of these may be obvious: how to read statistics without proper training, for example. Others may be more hidden: for instance, how to interpret familiar concepts which have a different meaning in another discipline. One of the more fundamental problems we addressed was the fact–value separation. According to some legal scholars, such as Hans Kelsen, a distinction can be drawn between empirical sciences that are concerned with facts, on the one hand, and normative disciplines that deal with values, on the other. Empirical sciences, among which are the natural sciences, observe how things are, whereas normative sciences such as ethics and legal scholarship are concerned with how things should be. This strict fact–value separation is rejected by scholars adhering to other, non-positivist scientific approaches, in particular hermeneutics and pragmatism. According to the pragmatist philosopher Hilary Putnam, knowledge of facts presumes knowledge of values and, vice versa, knowledge of values presupposes knowledge of facts. In his hermeneutical philosophy of law, Ronald Dworkin also rejects a strict fact–value distinction. According to him, statements about what the law is, have both a factual and an evaluative dimension, because they have to fit the existing system of law while, simultaneously, presenting it in the most attractive way.

Following the publication of this volume, the issue of the fact–value distinction kept returning in our discussions on the limits and possibilities of interdisciplinary research. We took different positions in the debate: Sanne stressed, in line with the pragmatist position, the continuity and interrelations between facts and norms, whereas Bart, from a positivist point of view, tried to keep them separate as much as possible. However, we shared the conviction that, with the growing popularity of multi- and interdisciplinary approaches to law, it became more and more important to reflect on this issue, precisely because these different positions influence research approaches in different disciplines. We therefore kept

pondering questions like the following: To what extent is or should the law be open to factual claims from empirical disciplines, such as sociology, psychology or economics? Can one derive normative claims about how the law ought to be from factual descriptions of how things are sociologically, psychologically or economically speaking? How can a meaningful exchange be established between law and normative disciplines such as ethics or political theory? In what way do normative opinions influence (our view of) the current state of affairs?

In order to stimulate the debate, we invited several authors within the international community of legal and social theorists, who we expected to be interested in this topic, to write a chapter for a new book. We were happy that they all responded very positively to our request. Some of these chapters we discussed in two workshops, the first at the IVR World Congress in Frankfurt, Germany in 2011 and the second at the IVR World Congress in Belo Horizonte, Brazil in 2013. We thank all the participants in those workshops for their ideas and feedback on the project. We then invited Wouter de Been to join the editorial team, to share his knowledge on pragmatism and legal realism and to use his broad intellectual expertise to give editorial comments on the draft chapters. We are very grateful for his support and editorial assistance, without which this book project would have dragged on much longer. The three of us would very much like to thank the authors who have contributed to this volume for their inspiring texts as well as their patience. We also thank Nienke de Munck and Claudia de Haan for their assistance with the preparation of the manuscript, in particular for helping us with the references. Moreover, we would like to thank the publisher for making this book project possible, in particular Ben Booth and Iram Satti.

The discussions that we had with the authors, based on their chapters, very much helped us to consider and reconsider the fact–value distinction and its consequences for interdisciplinary research into law. As a result, Bart even revised his original position and now defends a more relaxed view on the relation between the normative and the factual, as the chapter he wrote together with Oliver W. Lembcke will show. We hope that the current volume will inspire the community of legal scholars to engage in interdisciplinary research more often or more fully, and to reflect on its methodological challenges.

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