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## **The human face of the European Union:**

### **Are EU law and policy humane enough? An introduction**

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#### 1. Popular perceptions and common debates

The European Union (EU) has experienced throughout its history varying levels of popular support and has revealed different levels of capacity to deal with crises. A range of factors may account for these variations and differences, but one thing is certain: the current circumstances, namely financial pressures, budgetary cuts, social instability and the present geographical and policy scope of the EU, require serious introspection and 'soul searching'. What can be done to ensure that the EU does not perish but, hopefully, becomes more a part of the solution than of the problem?

A significant part of this issue relates to the fact that the EU is continually being criticised for being an organisation that has not been able to distance itself sufficiently from its roots in economic integration. Sectors of both academic and popular discourses also promote the idea that the EU consistently favours market

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values over social interests and human rights. To what extent these discourses contain an element of truth is, however, a matter of contention. Increasingly, academics have been dealing with relevant aspects of this debate, most commonly in relation to individual policy fields such as labour law,<sup>1</sup> social welfare,<sup>2</sup> freedom, security and justice,<sup>3</sup> minority rights,<sup>4</sup> and neighbourhood and external policies.<sup>5</sup> Some academics do strive for a more encompassing approach, by dealing with notions of justice and solidarity,<sup>6</sup> EU human rights policies,<sup>7</sup> and socio-economic models more generally,<sup>8</sup> whilst also adopting moral and philosophical approaches,<sup>9</sup> and using particular areas for ‘case studies’.<sup>10</sup> Non-academic and civil society movements, such as the occupy (or the 99%) movement, have also contributed to the debate about progressing towards a society which is socially and economically more egalitarian.

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<sup>1</sup> Marc de Vos (ed.), *European Union internal market and labour law: friends or foes?* (Mortsel: Intersentia, 2009).

<sup>2</sup> Michael Dougan and Eleanor Spaventa (eds.), *Social welfare and EU law* (Oxford: Hart, 2011).

<sup>3</sup> Hans Lindahl (ed.), *A right to inclusion and exclusion? Normative fault lines of the EU's Area of Freedom, Security and Justice* (Oxford: Hart, 2011); Steve Peers, *EU Justice and Home Affairs Law*, 3rd edn (Oxford: Oxford University Press, 2011).

<sup>4</sup> Tawhida Ahmed, *The impact of EU law on minority rights* (Oxford: Hart, 2011); Kyriaki Topidi, *EU law, minorities and enlargement* (Mortsel: Intersentia, 2010).

<sup>5</sup> Urfan Khaliq, *Ethical dimensions of the foreign policy of the European Union: a legal appraisal* (Cambridge: Cambridge University Press, 2008); Päivi Leino and Roman Petrov, ‘Between “common values” and competing universals: the promotion of the EU’s common values through the European neighbourhood policy’ (2009) 15(5) *European Law Journal* 654-671.

<sup>6</sup> On justice, see, for example, Sionaidh Douglas-Scott, ‘The problem of justice in the European Union: values, pluralism, and critical legal justice’, in Julie Dickson and Pavlos Eleftheriadis (eds.), *Philosophical foundations of European Union law* (Oxford: Oxford University Press, 2012), pp. 412-448; on solidarity, see, for example, Andrea Sangiovanni, ‘Solidarity in the European Union: problems and prospects’, in Dickson and Eleftheriadis (eds.), *Philosophical foundations*, pp. 384-411.

<sup>7</sup> Giacomo Di Federico (ed.), *The EU Charter of Fundamental Rights: from declaration to binding instrument* (Dordrecht and New York: Springer, 2011); Sybe de Vries, Ulf Bernitz and Stephen Weatherill (eds.), *The protection of fundamental rights in the EU after Lisbon* (Oxford: Hart, 2013).

<sup>8</sup> For example, Marie-Ange Moreau (ed.), *Before and after the economic crisis: What implications for the ‘European Social Model’?* (Cheltenham: Elgar, 2011); Dagmar Schiek, Ulrike Liebert and Hildegard Schneider (eds.), *European economic and social constitutionalism after the Treaty of Lisbon* (Cambridge: Cambridge University Press, 2011).

<sup>9</sup> Andrew Williams, *The ethos of Europe: values, law and justice in the EU* (Cambridge: Cambridge University Press, 2010).

<sup>10</sup> For instance, migration, company law and healthcare in the case of Schiek, Liebert and Schneider (eds.), *European economic and social constitutionalism*, and services of general interest and social security in the case of Niklas Bruun, Klaus Lörcher and Isabelle Schömann (eds.), *The Lisbon Treaty and social Europe* (Oxford: Hart, 2012).

A common thread for many of those authors who adopt a legal approach to their subject-matter seems to be the focus on the duality of social and economic values; they thus confine their analyses to this duality and concentrate on values as such – in other words they focus on abstract notions. Other authors examine abstract (human) rights without sufficiently considering individuals’ contexts, communities and relationships. Yet, such a focus on (human) rights contributes to the danger of pitting opposing rights and, therefore, individuals and entities, against each other. This, several scholars have argued, fuels a society of conflict and selfishness (as opposed to dialogue, peaceful coexistence and cooperation), and points to the limitations of a socio-legal system based exclusively or mostly on (individual, human) rights.<sup>11</sup> Also, the ‘legalism, individualism and statism’ into which human rights have fallen have deprived them of much of their radical, creative and resistance potential, reflecting a ‘limited idea of humanity’.<sup>12</sup> Rights and conflicts do retain an important role in society, as they allow individuals their essential space of autonomy, expression and self-esteem. The possibility of claiming rights should, therefore, be upheld under all circumstances, but they should not dominate social and legal lives – room needs to be found for experimentation with alternative and complementary frameworks. At any rate, the current human rights check undertaken by EU institutions in their law and policy-making activities is beset by several shortcomings, and is not sufficient to provide humane outcomes across the board.<sup>13</sup>

One key question is: where do ordinary human beings, in all their complexity and inter-connectedness, feature in these debates? How do these values and rights actually affect individuals and the communities in which they live? Should law not

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<sup>11</sup> See, for example, Wiktor Osiatyński, *Human Rights and their Limits* (Cambridge: Cambridge University Press, 2009), pp. 196 ff, and scholars discussed therein.

<sup>12</sup> Illan rua Wall, *Without model or warranty* (London and New York: Routledge, 2012), pp. 15 and 43.

<sup>13</sup> Israel De Jesus Butler, ‘Ensuring compliance with the Charter of Fundamental Rights in legislative drafting: The practice of the European Commission’ (2012) 37(4) *European Law Review* 397-418.

exist *for* people, for the *sake* of people? Can we not think of a more imaginative and just way of ‘doing’ law and justice, in order to offer a system more inclusive of all voices? Since law is a social, regulatory tool aimed at improving relationships between human beings for the sake of a ‘good’ society, what values should law promote? And how could these values become rooted in personal ways of life? Placing more emphasis on individuals and their contexts, and how individuals (individually and in their relationships) should be treated and considered more generally, can generate a number of refreshing insights and policy recommendations. Treating the legal and the ethical as an integrated whole forms the rationale of this book.

## 2. Beyond social *versus* economic, beyond individual *versus* corporate, beyond rights

Placing more emphasis on the complexity of the lives of people whilst analysing the quality of EU law and policy can be described as a human-centred analysis – one that moves away from the orthodox socio-economic dialectics and rights-centredness in the debates about the adequacy and effectiveness of EU law and policy. But one should strive to go beyond this and characterise that human-centredness. What type of human-centredness are we concerned with? The answer is a ‘humane’ human-centredness. Indeed, the ‘yearning for a more humane society in which (...) inhumanities are diminished or abolished dominates [our common] consciousness’ and ‘[h]umaneness is the corrective of humanity when it is not at its best’.<sup>14</sup> Humaneness in law and outside it is not a complete novelty, as it is a known concern

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<sup>14</sup> H. S. Broudy, ‘Criteria for a humane society’ (1977) 8(1) *Educational Studies* 37-50 at 37-38.

particularly with regard to humanitarian law and economics.<sup>15</sup> More generally, humaneness, particularly in the form of empathy and compassion, has been the object of Schweitzer's ethical human consciousness model in his philosophy of 'Reverence for Life'<sup>16</sup> and Rifkin's 'soft-wired' empathic civilisation vision of a collaborative and caring world.<sup>17</sup> Yet, the concern with humaneness has, to our knowledge, never explicitly been voiced with regard to EU law and institutions overall. May 'becoming more humane' and less 'elite dominated' and 'power centred' be the answer for EU law?

'Humane' may be defined in different ways, including compassionate, kind, sympathetic, tolerant, benign and humanitarian.<sup>18</sup> Western ethics have engaged with the concept of humaneness, namely by placing emphasis on cultivating empathy and compassion globally,<sup>19</sup> as well as the need to consciously choose a humane moral code of conduct to protect our common humaneness.<sup>20</sup> Broudy, for example, suggests that the criteria for assessing how 'humane' a society is should consist of idealisation (in relation to new borders of individual achievement), justice (in the sense of fair sharing of rewards and sacrifices), and compassion (with regard to those individuals 'failed' by their characteristics).<sup>21</sup> Levinas, perhaps more than any other Western philosopher, has convincingly argued in favour of a more humane and empathic

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<sup>15</sup> In humanitarian law, see, for example, Theodor Meron, 'The humanisation of humanitarian law' (2000) 94 *American Journal of International Law*, 239; in economics, see, for example, Ernst Friedrich Schumacher, *Small is beautiful: A study of economics as if people mattered* (London: Blond and Briggs, 1973).

<sup>16</sup> Albert Schweitzer, *The decay and the restoration of civilization*, 2nd edn (London: Black, 1932); Albert Schweitzer, *Civilization and ethic*, 3rd edn (London: Black, 1946).

<sup>17</sup> Jeremy Rifkin, *The empathic civilization: The race to global consciousness in a world in crisis*, 1st edn (New York: Tarcher, 2009).

<sup>18</sup> Maurice Waite (ed.), *Oxford Paperback Thesaurus*, 4th edn (Oxford: Oxford University Press, 2012).

<sup>19</sup> Karen Armstrong, *Twelve Steps to a Compassionate Life* (London: The Bodley Head, 2010).

<sup>20</sup> Abraham Olivier, 'Phenomenology of the human condition' (2011) 30(2) *South African Journal of Philosophy* 184-196 at 192-193. See, also, Bernward Gesang, 'Utilitarianism with a human face' (2005) 39 *The Journal of Value Inquiry*, 169-181.

<sup>21</sup> Broudy, 'Criteria for a humane society', 39.

approach to ethics.<sup>22</sup> Non-Western cultures, however, seem to have made a more sophisticated use of the notion of ‘humaneness’ in broader contexts up to the present day. So, to avoid the mistake of cultural narrowness, it is crucial to seek what other cultures may have to offer us on this notion. Indeed, ‘[t]he more one is able to leave one’s cultural home, the more easily is one able to judge it, and the whole world as well, with the spiritual detachment *and* the generosity necessary for true vision. The more easily, too, does one assess oneself and alien cultures with the same combination of intimacy and distance.’<sup>23</sup>

Chinese traditional culture, through the Confucian notion of ‘jen’ (pronounced ‘ren’), places enormous value on humaneness, as a way of achieving balance, empathy and *the* moral standard. The definition of ‘jen’ is a topic in itself, as it can be translated as humanity, (universal) love or, perhaps most accurately, humaneness.<sup>24</sup> Whatever the definition, it is certain that ‘jen’ has remained a central concept of Confucianism for more than 2,000 years, and that, although it can refer to particular virtues, it is also meant as the basic virtue of a comprehensive ethical doctrine, ‘the moral standard governing one’s entire life’.<sup>25</sup> The beginning of ‘jen’ lies in the ‘empathic heart’, thus completely interweaving humaneness, empathy and (universal) love, all applicable equally to individuals and governments.<sup>26</sup> Although essentially a moral consciousness, ‘jen’ is a productive and contextual notion as well, to the extent that it is a tool for practical activity and its interpretation may vary depending on the context.<sup>27</sup> Along these lines, Chen sees ‘jen’ (as humaneness) as something inherent

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<sup>22</sup> See, for example, Emmanuel Levinas, *Time and the other: And additional essays* (translation by Richard A. Cohen) (Pittsburgh, PA: Duquesne University Press, 1987, 1997 printing).

<sup>23</sup> Edward W. Said, *Orientalism* (London: Penguin, 1987), p. 259.

<sup>24</sup> Wing-Tsit Chan, ‘Chinese and Western interpretations of jen (humanity)’ (1975) 2 *Journal of Chinese Philosophy*, 107-129 at 120.

<sup>25</sup> *Ibid.*, 107-8.

<sup>26</sup> Hongxing Chen, ‘Reproduction, familiarity, love, and humaneness: How did Confucius reveal “humaneness”?’ (2010) 5(4) *Frontiers of Philosophy in China* 506-522.

<sup>27</sup> Chan, ‘Chinese and Western interpretations of jen (humanity)’ 124-126.

in birth, but that needs to be fully aroused and cultivated as part of one's personal development and fulfilment in life, as part of one's 'Way of Humaneness'.<sup>28</sup> The 'golden mean' – an average between 'excesses' and 'deficiencies' – is something for which all individuals and organisations should perpetually strive to refine their 'humaneness'.<sup>29</sup> In that sense, it is an ideal notion to assess practical initiatives, such as EU legal and policy tools, a conclusion reinforced by the fact that Confucius's emphasis on leadership with integrity is still bearing fruit today.<sup>30</sup>

Confucian philosophy has been deeply ingrained in Chinese culture for many centuries and has contributed to it in many positive ways. Although Confucianism is often criticised for stifling individual rights and autonomy, it can in fact be seen as a philosophy that 'conceives a fully human life in terms of relationship to others, structured by a set of duties to them that realize the self rather than constrain it'.<sup>31</sup> Indeed, Confucian thought has ingrained in it the notions of equality, respect and legitimate claims against wrongdoings.<sup>32</sup> This is very close to Western philosophies that focus on rights and the individual. Indeed, Confucianism seems to acknowledge that individual rights need viable communities to make good use of moral agency and democratic institutions, the same way as communities need to be aware of the need to protect individual rights in order for the common good to be safeguarded.<sup>33</sup> Being able to find inspiration in Far Eastern philosophy to gain insights into Western policies shows that building cultural and political bridges between these two geo-

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<sup>28</sup> Chen, 'Reproduction, familiarity, love, and humaneness' 520-521.

<sup>29</sup> Ibid., 520.

<sup>30</sup> Patrick Kim Cheng Low and Sik Liang Ang, 'The theory and practice of Confucian value of integrity: The Brunei case study' (2012) 7(14) *International Journal of Business and Management* 114-124.

<sup>31</sup> Kwong-loi Shun and David B. Wong, 'Introduction', in Kwong-loi Shun and David B. Wong (eds.), *Confucian ethics: A comparative study of self, autonomy, and community* (Cambridge: Cambridge University Press, 2004), p. 2.

<sup>32</sup> Craig Ihara, 'Are individual rights necessary? A Confucian perspective', in Shun and Wong (eds.), *Confucian ethics: A comparative study*, pp. 11 ff.

<sup>33</sup> David B. Wong, 'Rights and community in Confucianism', in Shun and Wong (eds.), *Confucian ethics: A comparative study*, pp. 31 ff.



political areas of the world is possible. The concept of 'jen' has been contributing to these bridges since Confucius's main works began to be translated into European languages in the seventeenth century.<sup>34</sup> Perhaps a sign of the impact of Confucius's works is that the 'Western sense of consciousness' – one that nowadays entails an awareness of the relational and global consciousness connecting the whole human race – has slowly come to resemble the Asian one, despite having taken different paths to arrive at its final destination.<sup>35</sup>

In the African context, the notion of 'ubuntu' has served as the gateway through which humaneness similarly infiltrates all aspects of society, including law and policy, namely by focusing on participation, reconciliation, reciprocity, co-responsibility, interdependence, respect and equality. A concept cultivated for centuries in African customary legal systems, 'ubuntu' has been translated in many different ways (most commonly humaneness), but it can be said to possess even more wide-ranging and contextual connotations.<sup>36</sup> Besides being commonly accepted as a concept that should inform areas as wide-ranging as business management,<sup>37</sup> theology and culture more generally, 'ubuntu' has also become a constitutional value and has thus permeated law across the board, from public law (constitutional, criminal and administrative) to private law (property, family, delict and contract).<sup>38</sup> Remarkably similar to the Confucian 'golden mean' notion, 'ubuntu' also aims to lead people to live the 'right way', a way that sees the individual as a member of the community and living in a civil, respectful, dignified, harmonious and compassionate way.<sup>39</sup> As a

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<sup>34</sup> Chan, 'Chinese and Western interpretations of jen (humanity)', 117-118.

<sup>35</sup> Jeremy Rifkin, *The European dream: How Europe's vision of the future is quietly eclipsing the American dream* (Cambridge: Polity, 2004), p. 377.

<sup>36</sup> T. W. Bennett, 'Ubuntu: an African equity' (2011) 14(4) *Potchefstroom Electronic Law Journal* 30-61, at 30-31.

<sup>37</sup> Mzamo P. Mangaliso, 'Building competitive advantage from *ubuntu*: management lessons from South Africa' (2001) 15(3) *Academy of Management Executive* 23-33.

<sup>38</sup> Bennett, 'Ubuntu: an African equity', 31-46.

<sup>39</sup> *Ibid.*, 47-48.

holistic and overarching norm, 'ubuntu' is undoubtedly in a privileged position to render South Africa's law and policy more humane and caring.

In the Western context, the feminist movement has contributed to the development of a critique of male-centred thinking and knowledge, and has had a profound impact on all areas of academic study and policy-making. This has had the indirect effect of, in an unprecedented way, eventually bringing up in public discourse notions related to the core of 'jen' and 'ubuntu'. By looking at the development of morality and notions of justice from a gender perspective, Gilligan's seminal work, *In a different voice*, propelled individuals researching and working in a range of fields to look differently at their subject-matters.<sup>40</sup> It slowly became commonplace to pay closer attention to gender dimensions in the construction of theories and models, namely by considering that relationships and caring occupy an important role in people's lives – a role often neglected by male-dominated notions of justice and rights. This ethic-of-care analytical approach across fields also inevitably had ramifications in relation to legal scholarship. West, for example, has become a stalwart defender of law-makers and law-adjudicators tempering the dominance of the ethic-of-justice (characterised by universal rules, consistency, reason, rights, the public sphere and masculine virtues) with the ethic-of-care (characterised by particularity, context, affect, relationship, the private sphere and femininity) – in other words, demanding the acknowledgement that 'justice must be caring if it is to be just, and that caring must be just if it is to be caring'.<sup>41</sup> More recent work on the ethic-of-care and law has reflected the extent of the impact that such ethics can have across a range of legal fields at a domestic level, including family, medical and tort law.<sup>42</sup>

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<sup>40</sup> Carol Gilligan, *In a different voice: Psychological theory and women's development* (Cambridge, Massachusetts: Harvard University Press, 1982).

<sup>41</sup> Robin West, *Caring for justice* (New York and London: New York University Press, 1997), p. 24.

<sup>42</sup> Jonathan Herring, *Caring and the law* (Oxford: Hart, 2013).

There is no reason why such analysis could not also be carried out across the policies within the remit of the EU.

The extent to which the much more recent Western and feminist-inspired ethic-of-care resonates with the notions of ‘jen’ and ‘ubuntu’ is striking. Indeed, a ‘jen’ approach requires a human-oriented concern in everything one does, and even (political and business) leaders are required to be caring.<sup>43</sup> In addition, Confucianism more generally advocates particularistic and affectionate approaches to people, as well as the inseparability of the familial (private) and political (public) self.<sup>44</sup> Moreover, in a similar way to the ethic-of-care, Confucianism and ‘jen’ in particular require that reason and abstract justice are to be tempered with (but not eclipsed by) moral feeling and particularistic considerations.<sup>45</sup> The potential synergy between the ethic-of-care and Confucian philosophy has not gone unnoticed: Pang-White has rightly observed that Western feminist care ethics models would gain more from allying themselves to Confucian ethics – namely ‘jen’ – than to Kantian or Aristotelian philosophy.<sup>46</sup> Most importantly, and also according to Pang-White, this alliance between the ethic-of-care and Confucian thought leads to a ‘humane care approach to ethics [that] is not only intrinsically valuable but also makes the management of a political state more humane and less costly for all parties involved’.<sup>47</sup> The same undoubtedly applies to larger political entities, such as the EU.

It is fair to acknowledge that some scholarly work does already go beyond the social *versus* economic, the individual *versus* corporate, and the rights debates, thus touching upon some of the aspects entailed in ‘jen’, ‘ubuntu’ and the ethic-of-care. Sen’s and Nussbaum’s work is especially known for focusing squarely on the human

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<sup>43</sup> Low and Ang, ‘The theory and practice of Confucian value of integrity’, 116.

<sup>44</sup> Pang-White, ‘Reconstructing modern ethics’, 211 and 219ff.

<sup>45</sup> *Ibid.*, 216ff.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*, 211.

being by developing a human capabilities approach to policy-making, especially at an economic and developmental level.<sup>48</sup> With regard to the EU in particular, Williams, for example, has argued in several of his works for a more (socially) just EU, namely one that follows a human rights based approach.<sup>49</sup> Other authors, such as Mückenberger, even use the adjective ‘humane’, but mostly limited to the perspective of the ‘human dignity’ of individual workers and with the struggle between social and economic rights as the main background.<sup>50</sup> ‘Humanisation’ has also been conceived as an interpretative EU law principle, but only in relation to the limited remit of the working time regulatory framework.<sup>51</sup> This is undoubtedly very positive and commendable, but the approach we are arguing for goes beyond justice, rights, the social *versus* economic, and the individual *versus* corporate approaches, and their application to limited areas of EU law. We are arguing for a humanistic philosophy and for humaneness to be the benchmark against which the adequacy and enforcement of EU law and policy across the board should be analysed – hence promoting a compassionate, empathic, inter-connected and caring ‘right way’ of doing and living politics and norms. We are therefore adopting an (areligious) ethicist framework in this book, an ethics informed by Western (feminist) ethics-of-care, Confucian philosophy and African customary law, which offers a valuable tool to improve the current EU state of affairs.

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<sup>48</sup> Amartya Sen, *Inequality Reexamined* (Oxford: OUP, 1992); Amartya Sen, *Development as Freedom* (New York: Anchor Books, 2000); Martha Nussbaum, *Frontiers of Justice* (Cambridge, Mass. and London: Belknap, 2006).

<sup>49</sup> Andrew T. Williams, ‘Taking values seriously: towards a philosophy of EU law’ (2009) 29(3) *Oxford Journal of Legal Studies* 549-577; Andrew T. Williams, ‘Promoting justice after Lisbon: Groundwork for a new philosophy of EU law’ (2010) 30(4) *Oxford Journal of Legal Studies* 663-693; Williams, *The ethos of Europe*.

<sup>50</sup> Ulrich Mückenberger. ‘Towards a post-Viking/Laval Manifesto for social Europe’ (2011) 1 *CELLS Online Paper Series*, 9-10.

<sup>51</sup> See, for example, Stephen Hardy, ‘Harmonising European working time in an enlarged EU: A case of failed “humanisation”?’ (2006) 22 *International Journal of Comparative Labour Law and Industrial Relations* 543; and Alan Bogg, ‘Of holidays, work and humanisation: A missed opportunity?’ (2009) 34(5) *European Law Review* 738-753.

This approach, we argue, can help reinvent law on the basis of life experience and improve the societies in which we live, whilst also making great strides in offering the ‘cauterised Other’ a voice,<sup>52</sup> and fighting against what Derrida named the ‘original violence’.<sup>53</sup> Yet for this to happen, the use of such a framework should, undoubtedly, occur without falling into authoritarian, oppressive or communitarian traps. Indeed, the aim is not to lead the EU to become a ‘benevolent dictator’, but simply a more humane organisation at all levels, one within which all individuals are active participants and valued members of society, respected in their individuality. An approach to law and policy-making based on humaneness can also be important for addressing the limitations of the human rights discourses, as it may help to reach more consensual and generally agreeable solutions, less charged by conflict, even when addressing human rights conflicts. Conflict would not be completely precluded (and should not, as conflict needs to be acknowledged and may be productive), but the level of conflict would undoubtedly be reduced to more tolerable and manageable levels, especially in comparison with law and policy-making based mostly on a rights approach. Most importantly, and in common with Douzinas’s ‘non-metaphysical humanism’, the framework we propose would reflect the idea that:

(...) we have been destined to be near Being and to care for the human as well as the other entities in which Being discloses itself. (...) the overall form of the social bond would change from right and principles to being-in-common, to the public recognition and protection of the becoming-human with others, a

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<sup>52</sup> William Paul Simmons, *Human rights law and the marginalized Other* (Cambridge: Cambridge University Press, 2011).

<sup>53</sup> Jacques Derrida, ‘Force of Law: The “Mystical Foundation of Authority”’, in Drucilla Cornell, Michel Rosenfeld and David Gray Carlson (eds.), *Deconstruction and the possibility of justice* (New York: Routledge, 1992), pp. 3–67.

dynamic process which resists all attempts to hold humanity to an essence decided by the representative of power.<sup>54</sup>

Individual rights, and particularly a ‘floor of rights’, should retain a key role in any law and policy-making mechanism – yet they simply become one variable amongst others, all variables being considered to reach the most humane outcomes.

Bearing this framework in mind, how does one determine whether the EU is an organisation that lacks humaneness, in the sense of lacking compassion and sympathy for those affected by it and not giving enough consideration to people’s lives in all their complexity, interrelationships and dependences? Rifkin’s famous work has obliquely touched upon this question, by suggesting that the EU is particularly exceptional as a cooperative and networked space, where ‘[m]ultilevel governance networks are like giant laboratories for the exploration of empathy’.<sup>55</sup> Despite the cogent and extensive argumentation of Rifkin in support of seeing the EU as following an empathic paradigm of politics, does EU law and policy really achieve a synthesis of individual, social, economic and corporate interests in a humane way? This book aims to answer this question, by analysing the development of, and the state of affairs in a range of EU policy fields that affect people’s lives and have been the subject of much criticism.

### 3. Going about assessing ‘humaneness’

Assuming that the EU should be a humane organisation, one producing humane law and policy, how can one go about assessing whether that is generally already the case or whether there is scope for improvement? The aim of this book is precisely to carry

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<sup>54</sup> Costas Douzinas, *The end of human rights* (Oxford: Hart, 2000), pp. 215-216.

<sup>55</sup> Rifkin, *The European dream*, pp. 280 ff.

out this assessment, by drawing from a range of examples from EU law and policy and analysing them, bearing in mind the framework sketched out in the previous section. Such individual analyses will serve as the basis for a thorough analysis of the EU state of affairs from a ‘humaneness’ point of view. The analytical framework devised above remains purposefully flexible and open-ended, as exactly what ‘humane’ will look like in practice will depend on each policy field being considered – indeed, the framework offered is situational, relational and relies on a constructed, but still rational, notion of humaneness (as opposed to a natural, discovered, absolute and authoritarian notion).<sup>56</sup> We do not purport to have created a recipe to achieve the ‘right’ law and policy, but, instead, simply a tool to assist in the assessment and production of progressively better law and policy. The openness of the framework devised also has the advantage of rendering it adaptable to any field of competence of the EU and to the individual circumstances of any EU Member State.

The focus of the book is on EU (statutory and judicial) law, as law is a key instrument in pursuing and reflecting the EU’s objectives and values. Law is also a policy tool from which people are not able to escape, thus being subject to its effects to an extent that does not occur in relation to other policy instruments. Contributions, however, cover both hard and soft law instruments. The focus is placed on exploring the degree of humaneness that EU law reflects and promotes. Contributions dedicate special attention to the post-Treaty of Lisbon state of affairs, in order to grasp the impact (if any) that the new institutional, law-making and competence arrangements, as well as more recent instruments and initiatives, have had.

Contributors to this book originate from a range of disciplines and institutions from several European countries, and include both academics with an established

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<sup>56</sup> Similarly in relation to the notion of morality, see Carla Bagnoli (ed.), *Constructivism in ethics* (Cambridge: Cambridge University Press, 2013).

international reputation and younger academics who are already beginning to make an impact in their field. This ensures that the book reflects the variety of existing opinions and research, and brings to the arena new ideas. Also, and despite the legal focus, contributions offer a cross-disciplinary and policy-oriented treatment of their subject-matter: legal, political science, sociological and philosophical perspectives are considered throughout the book, and contributors offer policy recommendations with a view to achieving a more humane EU law and the improved treatment of those affected by it.

The book is divided into three parts: the first part concentrates on how humaneness and related concepts have been or can be taken on board when pushing forward the European integration project. Dagmar Schiek leads these contributions to consider the EU's socio-economic constitution under the lens of humaneness, and argues that the EU's unique socio-economic constitution demands equilibrium of socio-economic integration instead of widening the gap between economic integration at EU levels and social integration at national levels. Dalvinder Singh zooms into the EU's response to the financial crisis and takes a wider normative approach to the European Stability Mechanism to ensure that 'critical social functions' are properly safeguarded. Noreen O'Meara considers the EU framework for protection of fundamental rights and questions how it can be rendered more humane. Finally, Aurelia Colombi Ciacchi and Adam McCann focus on European private law and, by using the right to health care as a case study, assess whether EU private law reflects a sufficient degree of humaneness.

The second part of the book looks at those fields in EU law and policy that, by their own nature, already have human beings at their centre, but may not afford them a sufficiently humane treatment. Agata B. Capik starts off by looking into the position



of individuals before the EU Courts, in particular with regard to cases related to the EU freedom, security and justice policies, and suggests how those particular courts could be reformed to enhance a more humane treatment of claimants. Two contributions focusing on EU citizenship follow, from different perspectives and focusing on different aspects, but both concerned with how humanely this legal status is interpreted and applied. Whilst Stephanie Reynolds assesses how this EU status has been interwoven, sometimes contentiously, with human rights discourses, Päivi Neuvonen looks at EU citizenship from the point of view of philosophical and political personalism, and considers to what extent citizens are recognised as people. Dora Kostakopoulou and I shift the attention to the discriminatory enforcement of free movement and citizenship more generally, using the Roma as a case study and evaluating the degree of humaneness in this field of law by dissecting the approach of the EU to discriminatory events involving the Roma. This part of the book concludes with two contributions on two aspects of EU law and policy where the degree of humaneness is a outstanding element to consider: asylum and statelessness. Dallal Stevens explores the EU's asylum policy and, in particular, discusses the potential of refocusing on 'the human' for the complex issues facing forced migrants. Julia Bradshaw looks at statelessness from an Arendtian philosophical perspective, and asserts alternative, more humane foundations for EU citizenship that could help stateless individuals.

The third and last part of this book looks outwards and explores whether the EU's external policies are sufficiently humane. Kamil Zwolski, Stephen Rozée and Christian Kaunert examine the EU's approach to international security and its degree of humaneness, or at least its potential degree of humaneness. Julia Schmidt's contribution focuses on crisis management tools and their impact on human rights and

humanitarian law, thus looking at this field from a humaneness point of view. Samantha Velluti reflects upon the EU's promotion of labour standards as human rights through its common commercial policy, and what this tells us about the humaneness of the EU. Finally, Päivi Leino assesses the humaneness of the EU's development aid policy, unpacking inconsistencies and shortcomings in this field.

Dora Kostakopoulou closes this edited collection with some reflections on guidelines that could frame a humanistic philosophy for (a more humane) European Union. We are conscious that such a path towards becoming a more humane organisation is a never-ending one. After all, 'because the humane society is a balance among trends that develop dialectically, that balance is always breaking down and social reform is always needed to restore it'.<sup>57</sup> We hope that this book will make a significant contribution to the unremitting process of socio-legal reform leading to a more humane EU.

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<sup>57</sup> Broudy, 'Criteria for a humane society', 50.