

# Chapter 1

## Setting the Agenda



*A return to principles and values, inspired by Europe's cultural, religious and humanist heritage, [...] would imbue the integration project with meaning beyond the technocratic and the market, and might enhance the connection between the rule setters and the rule takers, i.e. the companies and citizens of Europe.*

René Smits, *The Invisible Core of Values in the European Integration Project* (Smits 2018, 221).

### 1.1 Point of Departure

In European Union (EU) law, we can find more and more references in different legal documents to non-legal concepts such as ethics and morality.<sup>1</sup> This phenomenon, observed at both the national<sup>2</sup> as well as the EU level,<sup>3</sup> has been described as an “ethicalization” of law.<sup>4</sup> The term of ethicalization can refer to opening clauses (references to non-legal concepts), ethics codices, as well as ethics committees,<sup>5</sup> thus including standards, procedures and institutions in law, which themselves are not part of the legal system.<sup>6</sup>

So far, at EU level, literature on EU law and ethics has covered selected sectoral topics such as research and patenting of human embryonic stem cells,<sup>7</sup> biotechnol-

---

<sup>1</sup>A first step in this regard has been high lightened by Frischhut (2015).

<sup>2</sup>For an ethicalization of national private law and public international law, see Paulus and Schneider (2013).

<sup>3</sup>Fowkes and Hailbronner (2013, p. 395) even refer to a “global trend”.

<sup>4</sup>Vöneky et al. (2013, VI).

<sup>5</sup>For an intriguing overview of ethics committees, see Hermerén (2009).

<sup>6</sup>Gruschke (2013, p. 41).

<sup>7</sup>Herrmann and Rowlandson (2008); stressing different approaches in different Member States in this regard (p. 251).

ogy,<sup>8</sup> science at large,<sup>9</sup> or world politics.<sup>10</sup> Some authors have focussed on the role of the European Commission (EC)’s key<sup>11</sup> ethics advisory board, the European Group on Ethics in Science and New Technologies (EGE),<sup>12</sup> while others have also concentrated on the references of the Charter of Fundamental Rights of the EU (CFR<sup>13</sup>) to moral norms.<sup>14</sup> However, we can still observe a gap, as we lack a comprehensive analysis of which approach EU law<sup>15</sup> in general takes with regard to ethics and morality.<sup>16</sup>

In enacting legal provision, the EU is bound to the ‘rule of law’ (Art 2 TEU<sup>17</sup>). According to the EC’s recent Communication,<sup>18</sup> one (formal<sup>19</sup>) element of the rule of law is legal certainty,<sup>20</sup> which, according to the Court of Justice of the EU (CJEU<sup>21</sup>), requires amongst other things that “legislation must be clear and predictable for those who are subject to it”.<sup>22</sup>

This applies to both, whether law refers to legal concepts, or to non-legal concepts. References from one discipline (law) to another (see Fig. 1.1) can create certain chal-

---

<sup>8</sup>Tallacchini (2015).

<sup>9</sup>Wilms (2013).

<sup>10</sup>Manners (2008).

<sup>11</sup>For another ethics advisory body, which recently issued an opinion on ethics and digitalization, see Ethics Advisory Group (2018).

<sup>12</sup>Busby et al. (2008), Mohr et al. (2012), Plomer (2008), Tallacchini (2015).

<sup>13</sup>Consolidated version: OJ 2016 C 202/389.

<sup>14</sup>Waluchow (2012, p. 193); “it can nonetheless be true that the EU and its Member States share a set of common *values* [...] *to which* the EU *Charter makes reference* and which its authors intended to place front and centre in the minds of those required to exercise public power *in accordance with its moral demands*” (p. 194; emphases added).

<sup>15</sup>For simplicity’s sake, in the following, reference will always be made to today’s terminology; e.g. European Union instead of European (Economic) Community. In case fundamental rights have previously been decided as ‘general principles of law’, reference will also be made to the relevant provision of the CFR. On the EU courts, see *infra* note 21.

<sup>16</sup>In the explanatory notes to what is now Art 2 TEU, the ‘praesidium’ of the European Convention has also taken a broader approach (i.e. surpassing Art 2 TEU and also taking into account the objectives of Art 3 TEU, the CFR, etc.) when referring to “the Union’s ‘ethic’”; CONV 528/03 of 6 February 2003, p. 11.

<sup>17</sup>Consolidated version: OJ 2016 C 202/13.

<sup>18</sup>EC ‘A New EU Framework to Strengthen the Rule of Law’, COM (2014) 158 final 11.3.2014, p. 4 and Annex 1.

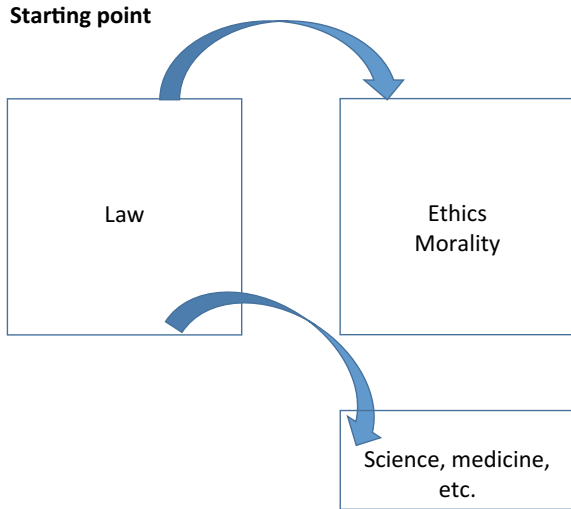
<sup>19</sup>Craig (1997, p. 467); “the clarity of the ensuing norm (was it sufficiently clear to guide an individual’s conduct so as to enable a person to plan his or her life, etc.)”.

<sup>20</sup>Addressing challenges of opening clauses against the background of legal certainty: Gruschke (2013, p. 42).

<sup>21</sup>This abbreviation refers to the Court of Justice of the EU in the sense of Art 19(1) TEU, which comprises not only the Court of Justice (CJ; this also includes the abbreviation ECJ), but also the General Court (GC). When in the following reference is made to the GC, this should be understood as also comprising the formerly Court of First Instance.

<sup>22</sup>CJEU judgment of 12 November 1981, *Meridionale Industria Salumi*, 212 to 217/80, EU:C:1981:270, para 10. See also Venice Commission, Report on the Rule of Law,

**Fig. 1.1** References of law to non-legal concepts



lenges, which we already know from the interface of law and science in general,<sup>23</sup> as well as from EU law using concepts, which require the import of medical knowledge into the legal sphere.<sup>24</sup> Finally, this is also true if EU law refers to ethics, thus importing concepts of practical philosophy (i.e. normative ethical theories)<sup>25</sup> into law, a phenomenon, which we can increasingly observe since the 1990s.<sup>26</sup>

In 2009, Williams has identified a “lack of ideal constitution for the EU”, as “values have not been taken seriously”<sup>27</sup>; hence, he addressed the question “whether

---

CDLAD(2011)003rev, 10 et seq.; and European Court of Human Rights (ECtHR) judgment of 29 April 2014, *L.H. versus Latvia*, 52019/07, para 47 (“the rule of law, which [...] means that the domestic law must be formulated with sufficient precision and must afford adequate legal protection against arbitrariness”).

<sup>23</sup>This issue of responsibility and ethics in the life sciences is described by Jasanoff (2007, pp. 26–27) as follows: “A major function of policymaking for the life sciences is to create and maintain *boundaries* that correspond to people’s *preexisting* ethical and social sensibilities concerning the products of biotechnology [...] politically significant boundary work also takes place in a multitude of more *specialized forums* that are less transparently in the business of boundary maintenance than *legislatures or courts*, such as *expert advisory committees*, parliamentary commissions, ethics review boards, and nongovernmental organizations”; emphases added.

<sup>24</sup>CJEU judgment of 12 July 2001, *Smits and Peerbooms*, C-157/99, EU:C:2001:404, para 92 (“what is considered normal according to the state of international medical science and medical standards generally accepted at international level”); see also paras 94 and 98. On an intriguing project of importing non-legal (medical) concepts in the legal sphere (VBE research group on ‘science and proven experience’, <https://www.vbe.lu.se/>) see Wahlberg and Persson (2017).

<sup>25</sup>As von Savigny (1951, p. 48) has emphasized in his book on legal methodology, every systematic approach leads to philosophy (“*Alles System führt auf Philosophie hin.*”).

<sup>26</sup>See *infra* Sect. 4.2.1; Busby et al. (2008, pp. 806–808), Frischhut (2015, p. 550).

<sup>27</sup>Williams (2009, p. 552) also states that “existing philosophy of EU law rests upon a *theory of interpretation* at the expense of a *theory of justice*” (no emphases added). “Perhaps the most impor-

an alternative philosophy, as a first step towards constructing a more just institution, can be achieved in the context of the EU and its current law”.<sup>28</sup> He has also argued that although it might not be satisfactory, however, “some form of philosophy *does* exist”.<sup>29</sup> Such a ‘philosophy of EU law’ can either be identified from within,<sup>30</sup> or at the interface of law and philosophy, that is to say where EU law refers to non-legal concepts of ethics and morality (i.e. partly from the outside).<sup>31</sup> Thus, the focus of this book is on the ‘import’ of non-legal concepts of ‘ethics’ and ‘morality’<sup>32</sup> into EU law.

In the following, this term of EU law comprises different ‘layers’ (in the sense of the hierarchy of EU law), which comprises EU primary law, EU secondary law, EU tertiary law, as well as, in between primary and secondary law, international agreements concluded by the EU<sup>33</sup> (i.e. a vertical perspective<sup>34</sup>).

From a horizontal perspective,<sup>35</sup> in terms of different ‘areas’ of EU law, this book will mainly take into account the legislative output of the EU institutions (i.e. EU secondary and tertiary law). Due to the importance of the EU’s legal system, this book will also include the CJEU’s approach when dealing with ethics and morality. Beyond the legislative output, this book will also cover the question of ethics in law making concerning the sensitive issue of lobbying, as well as the ethical approach of the EGE in its opinions.

As EU secondary law also comprises EU directives (referring to ethics and morality), which require implementation into national law, also the different approaches of selected MS in implementing these EU directives into national law will be covered.<sup>36</sup>

These different (vertical) layers and (horizontal) areas of EU law covered in this book are displayed below in Fig. 1.2.

---

tant consequence of such a diagnosis is the evaluation that whatever else the ECJ may have done, particularly through its development of general principles, it has singularly failed to countenance ‘justice’ as a clear ethical commitment in its own right.” (p. 572).

<sup>28</sup>Williams (2009, p. 576).

<sup>29</sup>Williams (2009, p. 551); no emphasis added.

<sup>30</sup>For a philosophy of EU law based on EU integration itself, see Walker (2015), Williams (2009).

<sup>31</sup>On this ethicalization from outside versus an ethicalization from inside, see Gruschke (2013).

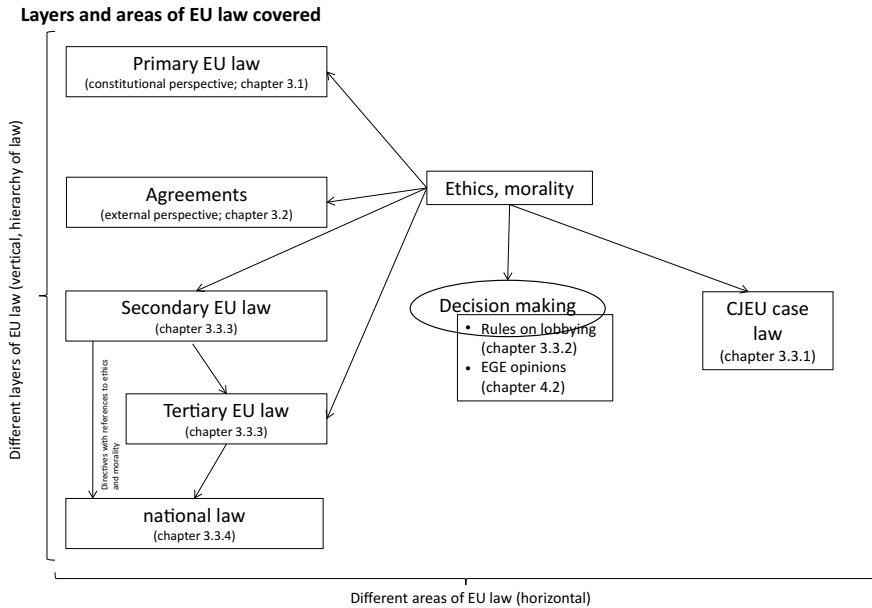
<sup>32</sup>This also comprises related terms, such as “ethical”, “moral”, etc. and, in the following, includes references to ethics and/or morality.

<sup>33</sup>In case of so-called ‘mixed agreements’, also by the MS.

<sup>34</sup>This vertical perspective concerns the hierarchy of EU law as such, but not the relationship of EU law in relation to the Member States; the latter issue will be covered in Sects. 3.1, 3.3.4 and 5.1 (see *infra*) of this book.

<sup>35</sup>For the application of the ‘separation of powers’ to the EU, see *infra* notes 48 and 49.

<sup>36</sup>See *infra*, Sect. 3.3.4.



**Fig. 1.2** Layers and areas of EU law covered (The vertical axis refers to the hierarchy of law, the horizontal axis to the separation of powers. The orientation of these arrows refers to the import of these non-legal concepts of ethics and morality into EU law; however, in the sense of references of EU law to them, the arrows could also be depicted in the opposite direction)

## 1.2 Objective and Limitations

Hence, this book is based on comprehensive research, identifying those references of EU law to the non-legal concepts of ethics and morality. While the legal order of EU law can be seen as autonomous,<sup>37</sup> it shall nevertheless respect principles of justice<sup>38</sup> (i.e. ‘relative autonomy’).<sup>39</sup>

As this book will also look at this interface of law and philosophy from a legal lens,<sup>40</sup> one important issue is the question, whether the references of legal texts to non-legal concepts are sufficiently determined regarding their content, so that the subject of law has enough information about the legal situation. In addition, looking

<sup>37</sup>CJEU judgment of 6 March 2018, *Achmea*, C-284/16, EU:C:2018:158, para 33 (autonomy with regard to both the MS and international law).

<sup>38</sup>CJEU judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, para 30.

<sup>39</sup>In this context, the CJEU also emphasizes the role of national courts: CJEU judgment of 25 July 2018, *LM*, C-216/18 PPU, EU:C:2018:586, para 50.

<sup>40</sup>This book will use the notion of ‘lens’ and not the one of ‘frame’ [also described as perspectives; Matthes (2014, p. 9)], as it often also has a negative connotation in the sense of being very selective and not putting an emphasis on facts; Wehling (2016, 43, 45).

at the different layers or areas of EU law, it will also be important to answer the question, of whether there is a common underlying pattern, i.e. if the references to ethics can be attributed to one (or more) particular normative theory(ies).

Based on where (in which particular sectoral fields, e.g. health, technology, finance) and to which extent we can find references to ethics and morality in EU legal documents, this book will strive to answer the following questions:

- First, are those references to ethics and morality determined in their content, or are they used without providing sufficient clarification (i.e. objective 1)?
- Second, when it comes to the implementation of relevant EU directives in national law, how have selected MS dealt with ethics and morality in the way they implemented these directives (i.e. objective 2)?
- Third, which role does the CJEU play in shaping the notion of ethics and morality in its case-law? Can we observe a phenomenon, which has been called a ‘*gouvernement des juges*’,<sup>41</sup> or does the CJEU rather take a more reluctant approach, a so-called ‘judicial self-restraint’<sup>42</sup> (i.e. objective 3)?<sup>43</sup>
- Finally, can we identify a certain common horizontal (or rather a specific<sup>44</sup>) pattern in referring to these terms of ethics and morality, and can we thus identify an ethical spirit<sup>45</sup> based on an analysis of these legal texts, or do we have to ascertain a gap, which has to be filled by other means (i.e. objective 4)?
- Questions to be answered are the following:
  - In EU law’s references to ethics, can we identify any philosophical theory at all (question No 1)?
  - If yes, does this comprise one or more philosophical theories (question No 2)?
  - If yes, should this be understood as an unconditional reference to one or more philosophical theories, or only as pointing towards a certain idea (question No 3)?<sup>46</sup>

---

<sup>41</sup>Lambert (1921, p. 8), with further reference to a US study from 1911. According to Montesquieu, Charles de Secondat, Baron de (1927, p. 159), “*les juges de la nation ne sont, comme nous avons dit, que la bouche qui prononce les paroles de la loi*”.

<sup>42</sup>Frischhut (2003, pp. 339–340), Rensmann (2005, 64–65).

<sup>43</sup>Theoretically, also objective 1 could refer to the CJEU; however, as we will see, in this case it is an integral part of objective 3.

<sup>44</sup>This question can be answered both with regard to different layers and areas of law (does the EU follow a different approach in EU secondary law, than for instance the CJEU in its case-law), or different sectoral policies (e.g. a different approach in the field of health, compared to the financial or technology sector).

<sup>45</sup>In CJEU judgment of 5 February 1963, *Van Gend en Loos*, 26/62, EU:C:1963:1, p. 12, the Court has referred to the “spirit” of EU law (the EEC Treaty at the time, more precisely), “the general scheme and the wording of the Treaty”, when identifying the principles of primacy and direct effect. However, Williams (2009, p. 561) emphasizes that this reference to the spirit was limited by also addressing the legal objective of the Treaty.

<sup>46</sup>This question (concerning the philosophical lens) is separate from the other question (concerning the legal lens) of whether these notions shall be imported in an unaltered way (i.e. absolute approach), or whether they shall be imported by placing them in the legal context (i.e. relative approach).

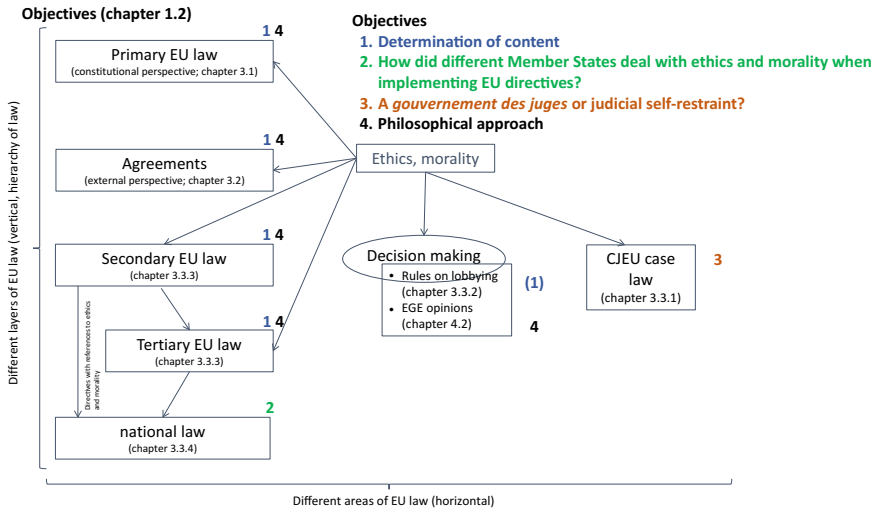


Fig. 1.3 Objectives

The relationship of these objectives to the different layers and areas of EU law covered in this book (see above Fig. 1.2) is visualized above in Fig. 1.3.

It is clearly no objective of this book to create an inventory of all the examples of EU law, which reference ethics and/or morality. Based on a comprehensive empirical research (database research in EUR-Lex and other databases), the objective of this book is rather to answer the above-mentioned questions, especially if there is a coherent ethical spirit which, thus, can be identified in EU law.

In order to guarantee a manageable scope and length of this book, certain limitations have to be emphasized.

- While the book will take a look at the law enacted by the EU<sup>47</sup> institutions in the sense of EU secondary law (by the European Parliament [EP] as well as the Council of Ministers) and EU tertiary law (by the EC), it will remain in this legislative field from the perspective of Montesquieu’s<sup>48</sup> ‘separation of powers’.<sup>49</sup> While the judiciary (i.e. the CJEU) will briefly be covered in terms of relevant case-law, the administrative branch in the sense of all the policy decisions of the EU institutions (mainly the EC) will be clearly excluded from this book, as the amount of decisions and documents to be analysed would require one or several distinct book(s).

<sup>47</sup>While it is clearly beyond the scope of this book, it would be equally interesting to do the same research for the Council of Europe.

<sup>48</sup>Montesquieu, Charles de Secondat, Baron de (1927, pp. 152–162).

<sup>49</sup>While the EU is clearly not a nation state and accepting that there are certain differences when applying this state related concept, we can still use it to differentiate the legislative from the administrative and the judiciary branch.

- Hence, the objective of this book is clearly not to cover any situation where EU law and/or policy have an ethical dimension or ethical implications, irrespective of whether there is a relevant EU document for this particular situation.
  - The way in which these documents are applied by the competent authorities (at EU or at national level) is also beyond the scope of this book.
- This book will not analyse a possible clash of ethics and law, which could lead to a discussion, as it took place between law and justice. According to the Radbruch formula, for the sake of legal certainty, in principle “positive law, secured by legislation and power, takes precedence even when its content is unjust and fails to benefit the people, unless the conflict between statute and justice reaches such an intolerable degree that the statute, as ‘flawed law’, must yield to justice”.<sup>50</sup> Radbruch’s formula was an attempt to challenge intolerable unjust law (for example, of the Nazi regime) by the principle of justice. Radbruch’s approach has to be seen against the background of legal positivism, whereby law and morality have been strictly separated.<sup>51</sup> However, as the objective of this paper is to depict and analyse the status quo of ethics and morality in EU law, this challenging task can be left aside.
  - In the legislative field, the book will focus on the documents that explicitly refer to ethics and morality, implicit references in other legal documents cannot be taken into account.<sup>52</sup>
  - One could also assess the ethical quality of any provision of EU law, even if it does not entail a direct (or even indirect) reference to ethics and morality. Such an analysis is also clearly beyond the scope of this book.
  - When analysing EU legal documents referring to ethics and morality, this book will focus on these legal documents, which are still in force.
  - While it could be interesting to address the question at which stage (right from the beginning in the Commission’s proposal or later on by Parliament or Council) of the law-making process references to ethics and morality have been inserted, it is beyond the scope of this book to address this question. Hence, only the finally adopted legal document will be taken into account.<sup>53</sup>
  - This book will also not examine how values come to matter in the EU institutions, as, for instance, it was analysed with regard to the EC.<sup>54</sup>

---

<sup>50</sup>Radbruch (2006, p. 7).

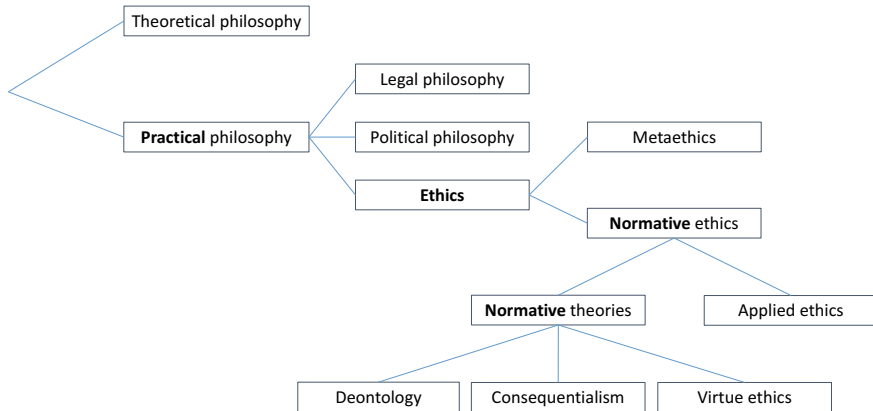
<sup>51</sup>Hart (1994, p. 268) put it this way “I argue in this book that though there are many different contingent connections between law and morality there are no necessary conceptual connections between the content of law and morality: and hence morally iniquitous provisions may be valid as legal rules or principles. One aspect of this separation of law from morality is that there can be legal rights and duties which have no moral justification of force whatever”.

<sup>52</sup>Concerning rules on lobbying (*infra*, Sect. 3.3.2), also implicit references will be taken into account. Such an implicit approach has also been observed by Tallacchini (2015, p. 166) with regard to nanotechnology.

<sup>53</sup>Concerning the CJEU (e.g. references to ethics addressed by referring national courts in preliminary ruling procedures, respectively the EC in infringement procedures, Advocates General, or the CJEU itself), see at the beginning of Sect. 3.3.1.1.

<sup>54</sup>Dratwa (2014).





**Fig. 1.4** Overview philosophy [The author would like to thank Bruno Niederbacher (University of Innsbruck | Department of Christian Philosophy) for this (non-exhaustive) overview]

- Sometimes, EU law (e.g. Directive 2001/20/EC,<sup>55</sup> now Regulation 536/2014<sup>56</sup> on clinical trials) foresees the establishment of ethics committees in the various MS. The work of these committees might have been initiated due to EU law, but is clearly beyond the objective of this book.
- While this book will cover international agreements concluded by the EU, it will not cover international law as such.<sup>57</sup>
- When this book also takes a philosophical lens, this only covers ethics as one part of practical philosophy, while theoretical philosophy is not covered. Within ethics, this book focuses on normative theories, thus not on meta-ethics and applied ethics (see Fig. 1.4).

### 1.3 Methodology

Ethics and morality<sup>58</sup> have not explicitly accompanied the EU integration process right from the beginning.<sup>59</sup> Instead, we can rather identify a process of increasing

<sup>55</sup>Directive 2001/20/EC of 4 April 2001 on the approximation of the laws, regulations and administrative provisions of the MS relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use, OJ 2001 L 121/34, as repealed by ‘Regulation clinical trials’ (=note 56) [Directive clinical trials].

<sup>56</sup>Regulation (EU) No 536/2014 of 16 April 2014 on clinical trials on medicinal products for human use [...], OJ 2014 L 158/1, as complemented by OJ 2017 L 238/12 [Regulation clinical trials].

<sup>57</sup>On the ethicalization of public international law see Vöneky (2013).

<sup>58</sup>On the terminology, see *infra* Sect. 1.5.

<sup>59</sup>For instance, there are no explicit references in the European Coal and Steel Community Treaty. However, the issue of values and fundamental rights has already been addressed even before the formal integration into the EU treaties; e.g. Hallstein (1979, 66–71 and 71–72). According to

references of EU law to ethics and morality since the 1990s.<sup>60</sup> Hence, there is no pre-determined and explicitly stated philosophical theory of ethics in the EU, which could be applied to specific topics in a deductive way. Thus, in terms of methodological approach, the above-mentioned research question (especially determination of content and possible identification of an ethical spirit of EU law) requires an indicative approach, evaluating the current situation of EU law in relation to ethics and morality, as it stands today.

Therefore, a comprehensive inductive database research, using primarily the open access EUR-Lex database, as well as Curia for the CJEU's case-law, was conducted. The language for this search was mainly English (as the most important factual working language of the EU institutions). However, also the German and French language versions were taken into account.<sup>61</sup>

- The first question, the determination of content (objective 1) of EU law (primary, secondary, tertiary and agreements), will be analysed by using the following inductively developed categories:
  1. References only as an argument against interference from the EU
  2. References only as a supportive argument for a certain legal solution
  3. References in order to create a parallel ethical assessment (besides the legal one)
  4. Determination via ethics committees, at EU or at national level
  5. Determination via codes of conduct, at EU or at national level
  6. Determination via references to other (international) documents
  7. Determination in document itself (some hints with regard to the content or understanding of ethics)
  8. No determination at all.
- As lobbying (i.e. influencing decision-making processes) is a topic, which is often perceived by many citizens in a very critical way, the book will analyse, if there are both explicit, as well as implicit references to ethical or moral behaviour concerning both actors and targets of lobbying.
- In terms of implementation of EU directives (objective 2), the book will analyse, how those EU directives referring to ethics and morality have been dealt with by selected MS. Have those countries been more or less ambitious, and can we observe a similar approach in these countries?
- Concerning the case-law of the CJEU (objective 3), the book will address the question, if we can observe a '*gouvernement des juges*', or rather a judicial self-restraint when dealing with ethics and morality in some sensitive fields (e.g. patentability of human life).

---

Calliess (2004, p. 1034), values—as part of the “magic triangle of values” (i.e. peace, economy and integration; own translation)—have been part of the integration process from the outset.

<sup>60</sup>See *supra* at note 26.

<sup>61</sup>Partially also Spanish and Italian.

- Finally, for the possible identification of a common pattern (objective 4), the book will put together the different findings of the above-mentioned layers and areas. In addition, it will analyse the opinions of the EGE, which has played an “influential role”<sup>62</sup> in EU law making in some sensitive fields, and whose role<sup>63</sup> and appointment of members<sup>64</sup> has been criticized in the past. Therefore, it will be essential to see if the group substantiates its ethical reasoning on certain normative ethical theories.<sup>65</sup>

By putting all these findings together, this inductive research will try to identify a general proposition, which can be derived from these specific examples. These findings will be analysed through two different lenses. First, these findings will allow to answer the question, if there is an underlying common normative ethical approach, and, if yes, if this can be referred to one (single or at least predominant) ethical normative theory (i.e. the philosophical lens). Second, these findings will also be placed in the legal context of the EU’s common values, human rights (CFR), human dignity, and the relationship of EU law and religion (i.e. the legal lens).

## 1.4 Structure

After a definition of some key terms (Sect. 1.5), the book will start with a brief introduction of the three main theories of normative ethics, i.e. deontology, consequentialism, and virtue ethics (Chap. 2). The first theory rather focuses on an act, the second on its consequences, and the last one putting an emphasis on the agent itself.<sup>66</sup> This will provide the necessary foundations for later (Chap. 4) putting the research findings into a philosophical (i.e. ethical) context.

Taking a closer look at the different layers of EU law, this book will first focus on EU primary law (i.e. the constitutional perspective, Sect. 3.1), international agreements (i.e. the external perspective, Sect. 3.2), and EU secondary law (i.e. the internal law perspective, Sect. 3.3). The latter part will start with the question, whether in regard to the legislative and the judiciary branch of power (CJEU case-law) we can observe a ‘*gouvernement des juges*’, or rather a judicial self-restraint (Sect. 3.3.1). This internal law perspective will then cover the law-making process in the sense of ethics in lobbying (Sect. 3.3.2), before finally turning to EU secondary (and tertiary) law (Sect. 3.3.3). As EU secondary law also comprises EU directives (referring to

---

<sup>62</sup>Busby et al. (2008, p. 834).

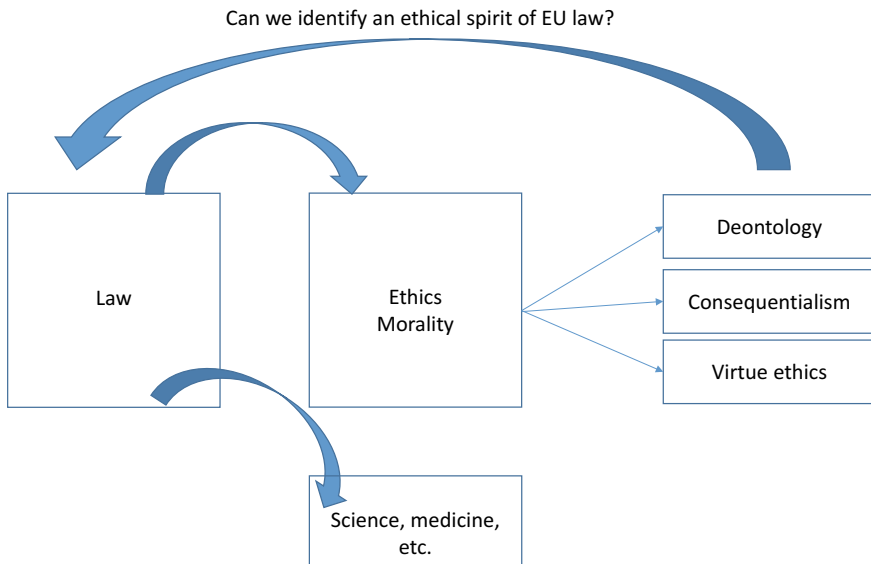
<sup>63</sup>This role was criticized as “ambiguous”; Busby et al. (2008, p. 842).

<sup>64</sup>Plomer (2008, p. 858).

<sup>65</sup>The opinions of the EGE were coded with the aim to derive ‘rules for prediction’ in an explorative way, using a latent analysis, in order to focus on the structural meaning of these opinions. The software MAQDA has been used by the research team in order to thoroughly analyse the EGE’s opinions; see *infra* Sect. 4.2.2.

<sup>66</sup>Cf. Loudon (2012, p. 504).

### The philosophical lens (chapter 4)



**Fig. 1.5** Philosophical lens

ethics and morality) which have to be implemented into national law, also the different implementation approaches of selected MS will be covered (Sect. 3.3.4).

Both the questions regarding the determination of content of EU law referring to ethics and morality (objective 1), as well as the related question as to how selected MS have implemented the relevant directives into national law (objective 2) will mainly be answered in Chap. 3. The same is true for the CJEU's approach in this field (objective 3; Sect. 3.3.1).

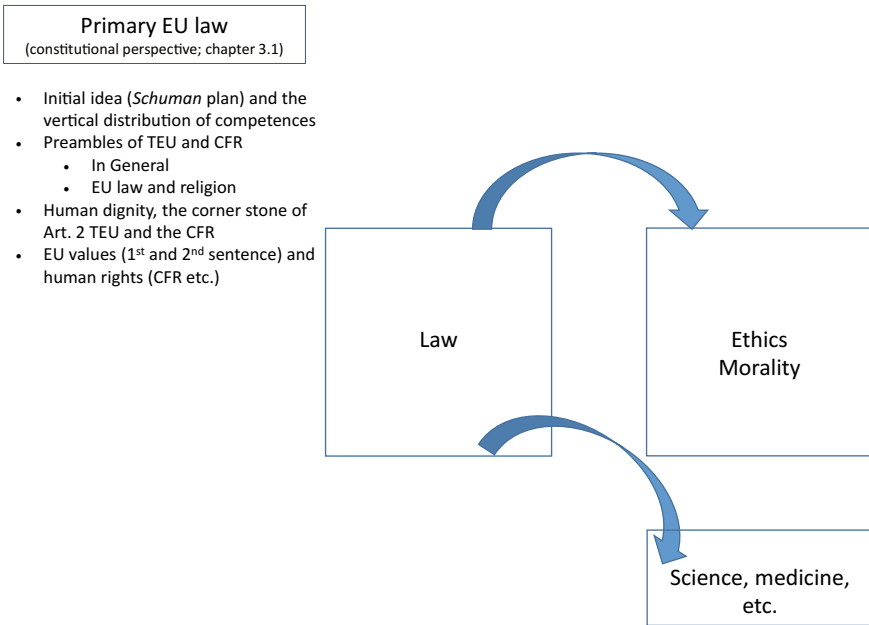
Based on these findings, the question concerning the ethical spirit of EU law (objective 4) will be addressed in Chap. 4 as follows.

Section 4.1 will put all the findings (of Chap. 3) together and will relate them to the three main philosophical theories covered in Chap. 2 (i.e. deontology, consequentialism, and virtue ethics). As mentioned above, this includes the question of whether we can identify any normative ethical theory at all, and, if yes, if we can identify one or more theories (i.e. the philosophical lens). In the latter situation, the question will be if one of them is the predominant one.

As displayed above in Fig. 1.5, Sects. 4.1 and 4.2 will answer the question if at all, and to which extent we can identify an ethical spirit of EU law from the lens of practical philosophy.<sup>67</sup>

<sup>67</sup>N.B. The two arrows pointing to the right refer to references of law to non-legal domains, whereas the arrow on top addresses a different question.

**The legal lens (chapter 5)**



**Fig. 1.6** Legal lens

As can also be seen from Fig. 1.5, references of EU law to ethics and morality address the same question as in case of references to science and medicine. That is to say, the question whether these notions shall be imported in an unaltered way (i.e. absolute approach), or whether they shall be imported by placing them in the legal context (i.e. relative approach).<sup>68</sup> This already takes us to the next chapter, the legal lens (see Fig. 1.6).

Finally, these findings will also be analysed from a legal lens. Chapter 5 will include the EU’s values enshrined in Art 2 TEU, which have a high normative orientation function.<sup>69</sup> As emphasized by *Potacs*, these values have to be taken into account in the interpretation of EU law.<sup>70</sup> This part on the EU’s values<sup>71</sup> will also include literature on the notion of the EU as a ‘community of values’ (*Wertgemeinschaft*).<sup>72</sup> Furthermore, this chapter will cover human rights, with a special emphasis

<sup>68</sup>For law and science, a relative approach has been preferred; Frischhut (2017, pp. 71–72), Wahlberg (2010, 208, 213; 2017, p. 63), Wahlberg and Persson (2017).

<sup>69</sup>Di Fabio (2004, p. 3).

<sup>70</sup>Potacs (2016).

<sup>71</sup>We have to accept that values do not only have a legal meaning, but also a philosophical one; cf. e.g. Scheler (1916).

<sup>72</sup>E.g. Mandry (2009), Reimer (2003), Rensmann (2005), Schmitz (2005, 80–85), Sedmak (2010, pp. 9–19).

on the CFR. Within the different values mentioned in Art 2 TEU,<sup>73</sup> a special emphasis will be put on human dignity,<sup>74</sup> the corner stone<sup>75</sup> of both the CFR and the values.

In search for the ethical spirit of EU law, also the preambles<sup>76</sup> of both the CFR as well as of the TEU will be taken into account,<sup>77</sup> as they include valuable contributions to the topic at hand.<sup>78</sup> This will also lead us to the heated debates in the European Convention about an *invocatio dei*, respectively a reference to (one or more) religion(s) in the process of drafting the CFR,<sup>79</sup> as well as the influence of religion on the notion of human dignity.<sup>80</sup>

Given the fact that so far, the European integration process is new and unique, one question will be whether the ethical spirit of the EU can be identified as an accomplished status quo, or whether it is a nascent one. Thus, a short look should also be taken at the *Schuman* declaration, which initiated this integration process, as well as at today's vertical separation of powers, as enshrined in articles 2–6 TFEU.<sup>81</sup>

All of this together will help us to answer the question about the ethical spirit of EU law. In other words, as it was described elsewhere,<sup>82</sup> the discovery of a common approach which can serve as a basis of understanding to the underlying philosophy of EU law. This shall help contribute to a better understanding not only of those legal documents referring to ethics and morality, but also for the rest of them.

## 1.5 Terminology

The word 'ethics' is partly used in the sense of 'justified morality' (the philosophers' view), partly in the sense of 'common morality' or 'social morality' (in a sociological sense). However, we should not only focus on individual moral beliefs and at the same time disregard norms embodied in institutions, in our case the EU.<sup>83</sup>

---

<sup>73</sup>Another question to be answered is the different meaning of the first in relation to the second sentence of Art 2 TEU.

<sup>74</sup>In literature, human dignity has been described as a deontological concept; Düwell (2017, p. 182).

<sup>75</sup>Frischhut (2015, p. 532).

<sup>76</sup>According to Art 31(2) Vienna Convention on the Law of Treaties (United Nations, Treaty Series, vol. 1155, p. 331) the context for the purpose of the interpretation of a treaty also comprises, amongst others, its preamble.

<sup>77</sup>I.e. especially recital 2 of the CFR preamble ("spiritual and moral heritage", "indivisible, universal values of human dignity"), as well as recital 2 of the TEU preamble ("cultural, religious and humanist inheritance of Europe", "universal values of the inviolable and inalienable rights of the human person").

<sup>78</sup>See especially Meyer (2014).

<sup>79</sup>Cf. Meyer (2014, pp. 70–73).

<sup>80</sup>Moyn (2014).

<sup>81</sup>Consolidated version: OJ 2016 C 202/47.

<sup>82</sup>Waluchow (2012, p. 199).

<sup>83</sup>The author would like to thank Johan Brännmark (Lund University | VBE research group; see note 24) for sharing these thoughts.

In EU law, the terms of ‘ethics’ and ‘morality’ are often used in a way that leaves it open whether they are to be understood as synonymous. As we have seen above in Fig. 1.4, ‘ethics’ is a branch of practical philosophy which deals with what is morally right or wrong, whereas ‘morality’, on the other hand, is described by Beauchamp and Childress in the following way<sup>84</sup>:

In its most familiar sense, the word *morality* [...] refers to norms about right and wrong human conduct that are so widely shared that they form a stable social compact. As a social institution, morality encompasses many standards of conduct, including moral principles, rules, ideals, rights, and virtues. We learn about morality as we grow up, and we learn to distinguish the part of morality that holds for everyone from moral norms that bind only members of specific communities or special groups [...].

Hence, in a very simplified way, one can say that ethics is the theoretical/philosophical approach to morality, where the latter refers to certain rules (“*mores*”) and formal<sup>85</sup> codes of conduct in a specific (cultural, territorial and temporal) social system.<sup>86</sup> At least, this is the standard terminology in philosophy.

This is also true for the notion of ‘public morality’<sup>87</sup> in EU law; while morality changes over the years (evolutionary character), it is different from country to country (“in its territory”) and is based on certain values (“in accordance with its own scale of values”).<sup>88</sup>

This collective notion of ‘public morality’ can be opposed to the notion of ‘ethos’, which has more of an individual connotation. The latter describes the special nature and attitude of a person, his convictions, customs and behaviours, which are rooted in an innate natural disposition (including the natural disposition to reason), but which can also be developed and fortified by habit, practice and adaptation according to origin.<sup>89</sup> Nowadays, the term of ethos is often used to refer to a certain professional group.<sup>90</sup> However, the notion of ‘ethos’ refers not only to humans, but is also used in the context of organisations.<sup>91</sup>

Besides ‘ethics’, ‘morality’ and ‘ethos’, we also need to shed some light on the notions of ‘principles’, ‘values’ and ‘virtues’. This book is based on a legal, not on a

---

<sup>84</sup>Beauchamp and Childress (2013, pp. 2–3); no emphasis added.

<sup>85</sup>The author would like to thank Lena Wahlberg (Lund University | VBE research group; see note 24) for valuable feedback in this regard.

<sup>86</sup>Frischhut (2015, p. 536).

<sup>87</sup>See also *infra* Sect. 3.1.1.

<sup>88</sup>CJEU judgment of 11 March 1986, *Conegate*, 121/85, EU:C:1986:114, para 14.

<sup>89</sup>Funke (1971–2007, p. 812).

<sup>90</sup>See Footnote 89.

<sup>91</sup>CJEU judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257 (ethos of church as employer and recruitment); CJEU judgment of 11 September 2018, *IR*, C-68/17, EU:C:2018:696 (similar case, but on dismissal).

philosophical<sup>92</sup> understanding of the notion of ‘principles’,<sup>93</sup> whereas “principles are legal norms laying down essential elements of a legal order”.<sup>94</sup> Principles “refer to general propositions from which rules might derive [and] relate to certain standards that might be based in law or practice, which contribute to forming a framework for decision-making and action”.<sup>95</sup>

‘Values’,<sup>96</sup> according to one view,<sup>97</sup> can be explained as follows, by distinguishing them from principles<sup>98</sup>:

principles possess a deontological character ‘whereas values are teleological’. [...] A sense of obligation attaches to principles whereas a sense of purpose is emitted by values, which ‘are to be understood as intersubjectively shared preferences.’ [...] Values are therefore those ends deemed worth pursuing. Politically, they describe those qualities and states of condition that are considered desirable as shaping action or political programmes.

It is important to emphasise that values are more abstract than principles, as the former lack specific limitations, in particular with regard to specific legal consequences and addressees.<sup>99</sup>

Besides ‘principles’ and ‘values’, ‘virtues’<sup>100</sup> have been described as “[t]raits of character that are judged to be morally admirable or valuable”.<sup>101</sup> In the words of MacIntyre, virtue is understood “as a disposition or sentiment which will produce in us obedience to certain rules”.<sup>102</sup> Virtues are usually only spoken of when they are actually lived and not just wanted, a combination of competence and performance, so to speak.<sup>103</sup> “Good character is not an accident. It requires discipline, reflection and responsibility.”<sup>104</sup>

The basic virtues necessary for a virtuous life are called the ‘cardinal virtues’, which are temperance (*temperantia*), courage (*fortitudo*), practical wisdom (*pruden-*

<sup>92</sup>The author would like to thank Nils-Eric Sahlin (Lund University | VBE research group; see note 24; member of the EGE) for valuable discussions concerning the legal versus the philosophical understanding of this notion of ‘principle’ (in the context of the precautionary principle/approach) during a workshop on 3 May 2018 in Lund.

<sup>93</sup>On principlism, see *infra* Sect. 2.4.

<sup>94</sup>Bogdandy (2003, p. 10).

<sup>95</sup>Williams (2009, p. 559).

<sup>96</sup>For a detailed analysis of this term, see Hermerén (2015).

<sup>97</sup>The author would like to thank Lena Wahlberg for addressing the issue that sometimes also values need to be balanced against each other; hence, what we ought to do can depend on the balancing, the situation, the decision rule, etc.

<sup>98</sup>Williams (2009, p. 559); see also Williams (2010, pp. 256–257).

<sup>99</sup>Reimer (2003, p. 209). See, for a similar analysis with regard to human dignity, Advocate General (AG) Stix-Hackl opinion of 18 March 2004, *Omega*, C-36/02, EU:C:2004:162, paras 84–85.

<sup>100</sup>On virtue ethics, see *infra* Sect. 2.3.

<sup>101</sup>Louden (2012, p. 503).

<sup>102</sup>MacIntyre (1981, p. 227). Also adopting this definition: Williams (2010, p. 257), who furthermore points out that these three notions of values, principles and virtues “can and do overlap”.

<sup>103</sup>Birnbacher (2013, p. 297).

<sup>104</sup>Kollar (2002, p. 915).



*tia* and justice (*iustitia*).<sup>105</sup> As for all theories of ethics it has to be emphasized that those cardinal virtues can be understood in a secular (Platon), or in a religious way (Ambrose).<sup>106</sup> Although virtues can be relative to culture, as Kollar pointed out: “Some virtues are part of any listing of virtues: justice, prudence, generosity, courage, temperance, magnanimity, gentleness, magnificence, wisdom. Yet there is no agreed-upon list of virtues.”<sup>107</sup>

The last term to be defined is ‘humanism’, which can be described as “any philosophical perspective that assigns preeminent value to human beings, their experiences, their interests, and their rights”.<sup>108</sup> Humanism is a central notion for the EU, although a reference to humanism in an earlier version,<sup>109</sup> in the end, has not made it into the preamble of the CFR.

Having shed some light on these terms, let us now turn to the three main theories of normative ethics.

## References

- Beauchamp, T. L., & Childress, J. F. (2013). *Principles of biomedical ethics* (7th ed.). New York: Oxford University Press.
- Birnbacher, D. (2013). *Analytische Einführung in die Ethik*. Berlin: De Gruyter.
- Bogdandy, A. V. (2003). Doctrine of Principles: Jean Monnet Working Paper Series No. 9/03.
- Busby, H., Herve, T. K., & Mohr, A. (2008). Ethical EU law? The influence of the European Group on ethics in science and new technologies. *European Law Review (E.L.Rev.)*, 33, 803–842.
- Calliess, C. (2004). Europa als Wertegemeinschaft: Integration und Identität durch europäisches Verfassungsrecht? *Juristenzeitung (JZ)*, 59, 1033–1084.
- Craig, P. (1997). Formal and substantive conceptions of the rule of law: An analytical framework. *Public Law*, 467–487.
- Di Fabio, U. (2004). Grundrechte als Werteordnung. *Juristenzeitung (JZ)*, 59, 1–8.
- Dratwa, J. (2014). How values come to matter at the European Commission: Ethical experiments of Europe. *Politique Européenne*, 86–121.
- Düwell, M. (2017). Human dignity and the ethics and regulation of technology. In R. Brownsword, E. Scotford, & K. Yeung (Eds.), *The Oxford handbook of law, regulation and technology* (pp. 177–196). New York: Oxford University Press.
- Ethics Advisory Group. (2018). Towards a digital ethics: Report by the Ethics Advisory Group established by the European Data Protection Supervisor, the EU’s independent data protection authority. Retrieved from [https://edps.europa.eu/sites/edp/files/publication/18-01-25\\_eag\\_report\\_en.pdf](https://edps.europa.eu/sites/edp/files/publication/18-01-25_eag_report_en.pdf).
- Fowkes, J., & Hailbronner, M. (2013). Courts as the Nation’s conscience: Empirically testing the intuitions behind ethicalization. In S. Vöneky, B. Beylage-Haarmann, A. Höfelmeier, & A.-K. Hübler (Eds.), *Ethik und Recht—Ethics and Law: Die Ethisierung des Rechts—The Ethicalization of Law* (pp. 395–419). Heidelberg: Springer.

<sup>105</sup>Klein (1971–2007, p. 695).

<sup>106</sup>See Footnote 105.

<sup>107</sup>See Footnote 104.

<sup>108</sup>Steelwater (2012, p. 674).

<sup>109</sup>CONV 722/03 of 28 May 2003, p. 2.

- Frischhut, M. (2003). *Die Rolle der Judikative in der Ausformung der Verbandsgewalt supranationaler Organisationen: EuGH, Andengerichtshof, Supreme Court und Conseil Constitutionnel im Vergleich*. Frankfurt am Main: Peter Lang.
- Frischhut, M. (2015). "EU": Short for "Ethical" Union?: The role of ethics in European Union law. *Heidelberg Journal of International Law (HJIL)*, 75, 531–577.
- Frischhut, M. (2017). Standards on quality and safety in cross-border healthcare. In A. D. Exter (Ed.), *Cross-border health care and European Union law* (pp. 59–86). Rotterdam: Erasmus University Press.
- Funke, G. (1971–2007). Ethos. In J. Ritter, K. Gründer, & G. Gabriel (Eds.), *Historisches Wörterbuch der Philosophie* (pp. 812–815). Basel: Schwabe.
- Gruschke, D. (2013). Externe und interne Ethisierung des Rechts. In S. Vöneky, B. Beylage-Haarmann, A. Höfelmeier, & A.-K. Hübler (Eds.), *Ethik und Recht—Ethics and Law: Die Ethisierung des Rechts—The Ethicalization of Law* (pp. 41–66). Heidelberg: Springer.
- Hallstein, W. (1979). *Die Europäische Gemeinschaft* (5. Auflage). Düsseldorf, Wien: Econ.
- Hart, H. L. A. (1994). *The concept of law* (2nd ed.). Oxford: Clarendon Press.
- Hermerén, G. (2009). Accountability, democracy, and ethics committees. *Law, Innovation and Technology*, 1, 153–170.
- Hermerén, G. (2015). Werte. In D. Sturma & B. Heinrichs (Eds.), *Handbuch Bioethik* (pp. 165–173). Stuttgart: J.B. Metzler'sche Verlagsbuchhandlung und Carl Ernst Poeschel Verlag GmbH.
- Herrmann, J. R., & Rowlandson, M. (2008). The role of ethics and morality in EU law. *Journal of International Biotechnology Law*, 5, 241–251. <https://doi.org/10.1515/JIBL.2008.39>.
- Jasanoff, S. (2007). *Designs on nature: Science and democracy in Europe and the United States*. Princeton, NJ: Princeton University Press.
- Klein, U. (1971–2007). Kardinaltugenden. In J. Ritter, K. Gründer, & G. Gabriel (Eds.), *Historisches Wörterbuch der Philosophie* (pp. 695–696). Basel: Schwabe.
- Kollar, N. R. (2002). Virtue ethics. In J. K. Roth (Ed.), *International encyclopedia of ethics* (pp. 915–916). London, Chicago, Illinois: Fitzroy Dearborn.
- Lambert, É. (1921). *Le gouvernement des juges et la lutte contre la législation sociale aux États-Unis: l'expérience américaine du contrôle judiciaire de la constitutionnalité des lois*. Paris: Marcel Giard & Cie.
- Louden, R. B. (2012). Virtue Ethics. In R. F. Chadwick (Ed.), *Encyclopedia of applied ethics* (2nd ed., pp. 503–510). London: Academic Press.
- MacIntyre, A. (1981). *After Virtue: A study in moral theory*. Notre Dame, IN: University of Notre Dame Press.
- Mandry, C. (2009). *Europa als Wertegemeinschaft: Eine theologisch-ethische Studie zum politischen Selbstverständnis der Europäischen Union. Denkart Europa: Vol. 9*. Baden-Baden: Nomos.
- Manners, I. (2008). The normative ethics of the European Union. *International Affairs*, 84, 45–60. <https://doi.org/10.1111/j.1468-2346.2008.00688.x>.
- Matthes, J. (2014). *Framing* (1. Aufl.). *Konzepte: Bd. 10*. Baden-Baden: Nomos.
- Meyer, J. (2014). Präambel. In J. Meyer (Ed.), *Charta der Grundrechte der Europäischen Union* (4th ed., pp. 43–93). Baden-Baden: Nomos.
- Mohr, A., Busby, H., Hervey, T. K., & Dingwall, R. (2012). Mapping the role of official bioethics advice in the governance of biotechnologies in the EU: The European Group on Ethics' Opinion on commercial cord blood banking. *Science and Public Policy*, 39, 105–117. <https://doi.org/10.1093/scipol/scs003>.
- Montesquieu, Charles de Secondat, Baron de. (1927). *De L'esprit des Loix: Avec des notes de Voltaire, de Crevier, de Mably, de la Harpe, etc.* Nouvelle édition entièrement refondue. Tome premier. Paris: Librairie Garnier Frères.
- Moyn, S. (2014). The secret history of constitutional dignity. In C. McCrudden (Ed.), *Understanding human dignity* (pp. 95–111). Oxford: Oxford University Press.
- Paulus, C. G., & Schneider, F. B. (2013). Über die Ethisierung des Rechts. *Juristische Ausbildung*, 12, 1197–1205.

- Plomer, A. (2008). The European group on ethics: Law, politics and the limits of moral integration in Europe. *European Law Journal*, 14, 839–859. <https://doi.org/10.1111/j.1468-0386.2008.00447.x>.
- Potacs, M. (2016). Wertkonforme Auslegung des Unionsrechts? *Europarecht (EuR)*, 164–176.
- Radbruch, G. (2006). Statutory Lawlessness and Supra-Statutory Law (1946): Translated by Bonnie Litschewski Paulson and Stanley L. Paulson. *Oxford Journal of Legal Studies*, 26, 1–11. <https://doi.org/10.1093/ojls/gqi041>.
- Reimer, F. (2003). Wertgemeinschaft durch Wertennormierung?: Die Grundwerteklausel im europäischen Verfassungsvertrag. *Zeitschrift Für Gesetzgebung*, 208–217.
- Rensmann, T. (2005). Grundwerte im Prozeß der europäischen Konstitutionalisierung: Anmerkung zur Europäischen Union als Wertgemeinschaft aus juristischer Perspektive. In D. Blumenwitz, G.-H. Gornig, & D. Murswiek (Eds.), *Die Europäische Union als Wertgemeinschaft* (pp. 49–72). Berlin: Duncker & Humblot.
- Scheler, M. (1916). *Der Formalismus in der Ethik und die materiale Wertethik: Neuer Versuch der Grundlegung eines ethischen Personalismus*. Sonderdruck aus: "Jahrbuch für Philosophie und phänomenologische Forschung", Bd. I und II, herausgegeben von EDMUND HUSSERL, Freiburg i. Br. Halle a. d. Saale: Verlag von Max Niemeyer.
- Schmitz, T. (2005). Die Charta der Grundrechte der Europäischen Union als Konkretisierung der gemeinsamen europäischen Werte. In D. Blumenwitz, G.-H. Gornig, & D. Murswiek (Eds.), *Die Europäische Union als Wertgemeinschaft* (pp. 73–97). Berlin: Duncker & Humblot.
- Sedmak, C. (2010). Europäische Grundwerte, Werte in Europa: Einleitung zum Gesamtprojekt. In C. Sedmak (Ed.), *Grundwerte Europas: Band 1. Solidarität: Vom Wert der Gemeinschaft* (pp. 9–42). Darmstadt: WBG Wissen verbindet.
- Smits, R. (2018). The invisible core of values in the European integration project. *Legal Issues of Economic Integration*, 45, 221–227.
- Steelwater, E. (2012). Humanism. In R. F. Chadwick (Ed.), *Encyclopedia of applied ethics* (2nd ed., pp. 674–682). London: Academic Press.
- Tallacchini, M. (2015). To bind or not bind?: European ethics as soft law. In S. Hilgartner, C. A. Miller, & R. Hagendijk (Eds.), *Genetics and society. Science and Democracy: Making knowledge and making power in the biosciences and beyond* (pp. 156–175). New York: Routledge, Taylor & Francis Group.
- von Savigny, K. F. (1951). *Juristische Methodenlehre: Nach der Ausarbeitung des Jakob Grimm*. Herausgegeben von Gerhard Wesenberg. Stuttgart: K.F. Koehler Verlag.
- Vöneky, S. (2013). Grundlagen und Grenzen der Ethisierung des Völkerrechts. In S. Vöneky, B. Beylage-Haarmann, A. Höfelmeier, & A.-K. Hübler (Eds.), *Ethik und Recht—Ethics and Law: Die Ethisierung des Rechts—The Ethicalization of Law* (pp. 129–148). Heidelberg: Springer.
- Vöneky, S., Beylage-Haarmann, B., Höfelmeier, A., & Hübler, A.-K. (2013). Vorwort. In S. Vöneky, B. Beylage-Haarmann, A. Höfelmeier, & A.-K. Hübler (Eds.), *Ethik und Recht—Ethics and Law: Die Ethisierung des Rechts—The Ethicalization of Law* (pp. V–IX). Heidelberg: Springer.
- Wahlberg, L. (2010). *Legal questions and scientific answers: Ontological differences and epistemic gaps in the assessment of causal relations*. Lund: Media-Tryck.
- Wahlberg, L. (2017). Legal ontology, scientific expertise and the factual world. *Journal of Social Ontology*, 3, 49–65. <https://doi.org/10.1517/jso-2015-0022>.
- Wahlberg, L., & Persson, J. (2017). Importing notions in health law: Science and proven experience. *European Journal of Health Law*, 24, 565–590. <https://doi.org/10.1163/15718093-12453308>.
- Walker, N. (2015). The philosophy of European Union law. In A. Arnull & D. Chalmers (Eds.), *Oxford Handbooks in Law. The Oxford handbook of European Union law* (pp. 3–27). Oxford University Press.
- Waluchow, W. (2012). Constitutionalism in the European Union: Pipedream or possibility? In J. Dickson & P. Eleftheriadis (Eds.), *Philosophical foundations of law. Philosophical foundations of EU law* (pp. 189–215). Oxford: Oxford University Press.
- Wehling, E. (2016). *Politisches Framing: Wie eine Nation sich ihr Denken einredet—und daraus Politik macht*. Edition medienpraxis: Vol. 14. Köln: Halem Verlag.

- Williams, A. T. (2009). Taking values seriously: Towards a philosophy of EU law. *Oxford Journal of Legal Studies*, 29, 549–577. <https://doi.org/10.1093/ojls/gqp017>.
- Williams, A. T. (2010). *The ethos of Europe: Values, law and justice in the EU*. Cambridge studies in European law and policy. Cambridge: Cambridge University Press.
- Wilms, H. C. (2013). Ethisierung des Europarechts—Grundrechtliche Grenzen und politische Praktiken. In S. Vöneky, B. Beylage-Haarmann, A. Höfelmeier, & A.-K. Hübler (Eds.), *Ethik und Recht—Ethics and Law: Die Ethisierung des Rechts—The Ethicalization of Law* (pp. 285–298). Heidelberg: Springer.

**Open Access** This chapter is licensed under the terms of the Creative Commons Attribution 4.0 International License (<http://creativecommons.org/licenses/by/4.0/>), which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

