Preface and acknowledgements

The idea of this book was conceived when I was asked to introduce the jurisprudence of the EU Court of Justice on human dignity to a non-lawyer professional audience and I had to spend considerable time and effort explaining the potential rationales for the interpretative approach taken. My subsequent intellectual attempts to throw light on the reduced language and limited reading of the concept of human dignity and the corresponding human right revealed the complexity of the interpretative considerations at play and the significance for judicial interpretation of the narrower regulatory and the broader governance and constitutional context in the EU. That revelation was not entirely new and it was rather similar in its foundations to the discussion in the literature on the ‘ulterior agendas’ which are suspected of driving the EU human rights jurisprudence. It was an exciting process to realize that there was a sufficient amount and quality of ideas to warrant a book-length examination of EU human rights law and that those ideas could be organized into a coherent, and I hope original, conceptual framework.

Finalizing this book’s conceptual framework and researching and writing the book was an enjoyable experience. Although revisiting and analysing decades of legal development familiar to all learners of EU law could be dispiriting, it was not, however, how this book was created. I was experimenting with new ideas, I was making connections between old and new approaches and concepts and I was fitting information into what I think is a complex and novel conceptual framework. I particularly enjoyed developing further the ideas and approach of previous scholarship which despite its character flaws appreciates the human rights performance of EU courts and recognizes the complex dimensions and dynamics of the development of the EU human rights jurisprudence. Readers finding that my attachment to the subject matter might have prevented the production of a genuinely critical account would have to accept that my primary aim was first to the establish and then analyse the complex character of EU human rights law as influenced by its equally complex interpretative context which offers multiple, often contradicting considerations and agendas for judicial interpretation to incorporate. In
this, I aimed to criticize as well as to appreciate the character acquired by
the EU human rights jurisprudence.

We are at a stage in the development of the EU human rights
jurisprudence where the interpretative practices of EU courts are sub-
jected to an ever-increasing intensity of professional and academic
scrutiny. The legitimacy and integrity of EU human rights law depends
on the understanding by international and national courts, politicians,
legal and governance professionals and the academic community of how
the broader and narrower legal and governance context in the EU
influences and shapes the jurisprudence. The complexity of consider-
ations and agendas which determine the dynamics of judicial interpret-
ation, for instance, those which govern judicial deference and its
boundaries in EU human rights law, requires a more complex and
complete reading of the law. It is hoped that the conceptual and analytical
framework of this book will help this process of understanding.

This book focuses on the jurisprudence of EU courts and it discusses
the dynamic relationship between judicial interpretation and its context. It
may be criticized for what could be considered as an excessive emphasis
on the role of judges in the development of EU human rights law. Neverthe-
less, it manages, in my view, to link the judicial with the
political and the constitutional and it quite explicitly discusses the limits
of judicial power in the interpretation and application of human rights. It
regards the multiple agenda-driven, constructive engagement of EU
courts with the protection of human rights as constrained by the complex
internal and external constitutional arrangements of the EU polity.

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