The concepts of humanity, human dignity and mankind have emerged in different contexts across international law and biolaw. This raises many different questions. What are the aims for which 'humanity' is mobilised? How do these aims affect the ensuing interpretations of this concept? What are the negative counterparts of humanity, mankind and human dignity? And what happens if a concept developed in one particular context is taken up in another? By bringing together research from international law, biolaw and legal theory, this volume answers such questions by analysing how the concepts overlap and contradict each other across the disciplines. The result is not an examination of what humanity is but rather what it does and what it brings about in a variety of contexts.

Britta van Beers is an assistant professor at the Department of Legal Theory of VU University Amsterdam, where her research and teaching involve the legal-philosophical aspects of biomedical regulation.

Luigi Corrias is an assistant professor at the Faculty of Law at VU University Amsterdam, within 'The Boundaries of Law' research programme. His research deals with community and identity in the European and international legal order.

Wouter Werner is Professor of Public International Law at VU University Amsterdam. He is also Programme Director of programme 'The Boundaries of Law' research, chair of the COST action on the constitutionalisation of international law and co-founder of the Center on the Politics of Transnational Law at VU University Amsterdam.
CONTENTS

List of contributors vii
List of abbreviations xvi

1 Introduction: probing the boundaries of humanity 1
BRITTA VAN BEERS, LUIGI CORRIAS AND WOUTER WERNER

PART I Crimes against humanity 23

2 Crimes against humanity: a category hors concours in (international) criminal law? 25
HARMEN VAN DER WILT

3 Humanity’s exemplary justice: from hostis to hostia humani generis 42
EDWIN BIKUNDO

4 The inhuman stain: representing humanity in international criminal law 67
LUIGI CORRIAS

5 Crimes against humanity, simple crime, and human dignity 87
ROGER BROWNSWORD

6 Crimes against the human species (‘type II crimes against humanity’ explained) 115
GEORGE ANNAS

PART II Human rights and human dignity 133

7 Human remains in French law: the snare of personification 135
FLORENCE BELLIVIER
vi CONTENTS

8 ‘Not in our name!’: losing humanity in current human rights discourse 152
WOUTER VERAART

9 Deciding what is humane: towards a critical reading of humanity as a normative standard in international law 178
RENE URUEÑA

10 The promise of human dignity and some of its juridical consequences, especially for medical criminal law 197
JAN C. JOERDEN

PART III  The commons of mankind 221

11 The concept of humanity and biogenetics 223
BARTHA M. KNOPPERS AND VURAL ÖZDEMİR

12 Interdependencies, conceptualizations of humanity and regulatory regimes 244
ELLEN HEY

13 The protection of human dignity in research involving human body material 265
KRISTOF VAN ASSCHE AND SIGRID STERCKX

14 The many faces of humanity: some concluding remarks 288
BRITTA VAN BEERS, LUIGI CORRIAS AND WOUTER WERNER

Index 295
CONTRIBUTORS

GEORGE ANNAS is the William Fairfield Warren Distinguished Professor and Chair of the Department of Health Law, Bioethics & Human Rights of Boston University School of Public Health, and Professor in the Boston University School of Medicine, and School of Law. He is the cofounder of Global Lawyers and Physicians, a transnational professional association of lawyers and physicians working together to promote human rights and health. He has degrees from Harvard College (AB economics, 1967), Harvard Law School (JD 1970) and Harvard School of Public Health (MPH 1972), where he was a Joseph P. Kennedy Fellow in Medical Ethics.


He is a fellow of the American Association for the Advancement of Science, a member of the Institute of Medicine, co-chair of the American Bar Association’s Committee on Health Rights and Bioethics (Individual Rights and Responsibilities Section) and a member of the Committee on Human Rights of the National Academies.
Contributors

Kristof Van Assche, LLM, MA (philosophy) (Ghent, 1974), obtained a PhD in philosophy in 2010 (Ghent University). Currently he is a PhD candidate in Law at the Vrije Universiteit Brussel (Free University of Brussels), where he is a member of the Department Metajuridica and the research group ‘Law, Science, Technology & Society Studies’, as well as an affiliated member of the Department of Philosophy & Moral Sciences.

His research project (2010–14), funded by the Council for Scientific Research Flanders, focuses on the legal and ethical aspects of the commodification, including the commercialisation, of human body material. More specifically, he is analysing the arguments invoked as grounds for the possible moral wrongness of commodification practices in the fields of organ transfer, biobanking and patenting of body material in order to clarify the boundaries of legitimate commodification and deepen the understanding of the principles that should inform regulation in these fields.

Britta van Beers is an assistant professor at the Department of Legal Theory of VU University Amsterdam. Her research involves the legal–philosophical aspects of biomedical regulation. After studying law and philosophy (cum laude) at the University of Amsterdam and New York University School of Law, she worked and studied in Tokyo as part of a one-year postgraduate programme of Japanese language and culture. She then joined the law faculty of VU University as a PhD candidate. In 2005, she was a visiting scholar at the Parisian universities Panthéon-Sorbonne and the EHESS. In 2009, van Beers was invited to write an advisory report on the legal regulation of medical biotechnology for the general association of Dutch lawyers ('The Humanity of Human Biotechnology: Legal Perspectives on Human Dignity and Medical Biotechnology', published in Dutch in 2009). For her PhD thesis, 'Person and Body in the Law: Human Dignity and Self-Determination in the Era of Medical Biotechnology', published in Dutch in 2009, she received the C. J. Goudsmit prize from the Dutch Health Law Association and the Praemium Erasmianum Research Prize from the Praemium Erasmianum Foundation in 2011. Since 2011, van Beers has been a member of several advisory committees of the Dutch Health Council – an independent scientific advisory body and network that provides the Dutch government and parliament with advice in the field of public health.
Florence Bellivier obtained a degree (DEA) in literature. In 1997, she defended a PhD in private law on the legal dimension of ‘genetic patrimony’. In 1999, she became a professor in private law and she is currently teaching at Université Paris Ouest La Défense. Among her main publications are: *Contrats et vivant: essai sur la circulation juridique des ressources biologiques* (2006) (with C. Noiville) and *Les Biobanques* (2009). She is deputy general secretary at the Fédération internationale des ligues des droits de l’homme, specializing in capital punishment.

Edwin Bikundo is a lecturer at the School of Law at Griffith University in Brisbane, Australia. He has teaching and research interests in international and comparative law and critical legal theory. His current research focuses on the role of the international criminal trial in preventing the recurrence of violence. Before joining Griffith University he was a member of the Law Faculty as well as a research student at the University of Sydney. Prior to that he studied at the University of Pune in India, Utrecht University in the Netherlands and at the Kenya School of Law. Edwin also practised as an Advocate of the High Court of Kenya and taught at the Faculty of Law at the University of Nairobi and the Faculty of Arts at Egerton University, both in Kenya. Publications include: ‘Exclusion and Inclusion: Bio-Politics and Global Governance through Criminalisation’, in Mark Findlay and Ralph Henham (eds), *Exploring the Boundaries of International Criminal Justice* (2011); ‘The Responsibility to Protect Civilians: Between the Rule and its Exception’, in Charles Sampford, Ramesh Thakur and Angus Francis (eds), *Responsibility to Protect and the Protection of Civilians in Armed Conflicts* (2012).

Roger Brownsword is a graduate of the London School of Economics. He is Professor of Law at King’s College London, where he was the founding director of TELOS (a research centre that focuses on technology, ethics, law and society); an honorary professor in law at the University of Sheffield; and a visiting professor at Singapore Management University.

Rights, Regulation and the Technological Revolution (2008), and (with Morag Goodwin) Law and the Technologies of the Twenty-First Century (2012). He is a member of the editorial board of the Modern Law Review; general editor of the Understanding Law series of books; and founding general editor of the journal Law, Innovation and Technology.

Professor Brownsword has acted as a specialist adviser to parliamentary committees dealing with stem cells and hybrid embryos. From 2004 to 2010, he was a member of the Nuffield Council on Bioethics, during which time he was a member of the working party on public health. Currently, he is a member of the UK NHS Screening Committee and chair of the Ethics and Governance Council of UK Biobank.

Luigi Corrias is an assistant professor at the Faculty of Law at VU University Amsterdam. After studying European and international law and legal philosophy (cum laude), he obtained a PhD from Tilburg University. His dissertation, 'The Passivity of Law: Competence and Constitution in the European Body Politic', was awarded with the prize for the best dissertation in legal philosophy 2009–10 by the board of the Dutch IVR section (Society for Philosophy of Law). Publications include: 'Het chiasme van de rechtsmacht' [The Chiasm of Legal Power], Tijdschrift voor Filosofie 70.3 (2008): 537–62; 'L’Europa esprime se stessa: identità europea e potere costituente' [Europe Expresses Itself: European Identity and Constituent Power], in B. Montanari and G. Bombelli (eds), Identità europea e politiche migratorie (2008) and (with M. Brand), 'Editorial: The Enlarging Europe and its Implications for the Concept of European Identity', Tilburg Foreign Law Review 12.2 (2004): 103–9. His research interests include sovereignty, constitutional theory, the limits of political representation, phenomenology and the foundations of EU law.

Ellen Hey is Head of the Department and Professor of Public International Law, Erasmus School of Law, Erasmus University Rotterdam. She has lectured at academic institutions in the Netherlands and abroad, including Argentina, China, Ethiopia, Indonesia, the United States and Europe. She has worked for the Netherlands government, non-governmental organisations and as a consultant for international organisations such as the European Union, the UN Food and Agriculture Organization, the UN Development Programme, the UN Environment Programme and the World Bank. Ellen Hey grew up in the Netherlands,
Egypt and Venezuela and holds law degrees from Utrecht University and an MSc. from the University of Wales.

Hey's research interests include international institutional law and international natural resources law. Her publications include (as co-editor) the *Oxford Handbook of International Environmental Law*. She is the editor in chief of *Erasmus Law Review* and *Netherlands Yearbook of International Law*. She is a member of the Aarhus Compliance Mechanism (elected summer 2008) of the advisory board on legal aspects of water management of the government of the Netherlands.


**Bartha Maria Knoppers**, PhD holds the Canada Research Chair in Law and Medicine. She is Director of the Centre of Genomics and Policy, Faculty of Medicine, Department of Human Genetics, McGill University. She held the Chair d’excellence Pierre Fermat (France: 2006–8) and was named distinguished visiting scientist (Netherlands Genomics Initiative) (2009). A graduate of McMaster University (BA), University of Alberta (MA), McGill University (LLB, BCL), Cambridge University (DLS), University of Paris 1 (PhD), she was admitted to the Bar of Quebec in 1985 and named Governor and Advocatus Emeritus in 2009. Professor Knoppers was the chair of the international ethics committee of the Human Genome Organisation (HUGO) (1996–2004) and a member of the International Bioethics Committee of UNESCO, which drafted the Universal Declaration on the Human Genome and Human Rights (1993–7). Co-founder of the International Institute of Research in Ethics and Biomedicine (IIREB) (2000–9), she also founded the international Population Project in Genomics (P3G) and CARTaGENE, a Quebec population study, in 2003. From 2000 to 2006, she served on the board of Genome Canada, became chair of the ethics working party of the...
International Stem Cell Forum, co-chair of the Sampling/ELSI Committee of the 1000 Genomes Project (2008) and a member of the scientific steering committee of the International Cancer Genome Consortium (ICGC) (2009). Professor Knoppers has received four doctorates honoris causa, is Fellow of the American Association for the Advancement of Science, of the Hastings Center (Bioethics) and the Canadian Academy of Health Sciences (CAHS). She is an Officer of the Order of Canada and of Quebec.

Vural Özdemir is Vice Dean, Faculty of Communications, and adviser to the President, International Affairs and Global Development Strategy, Office of the President, Gaziantep University, Turkey. He has published in the field of genomics and personalised medicine, including the social, ethical and public policy aspects. He is a member of the Society for Social Studies of Science (4S) and serves as President for the Pacific Rim Association for Clinical Pharmacogenetics. He is an associate editor for OMICS: A Journal of Integrative Biology and editor in chief for Current Pharmacogenomics and Personalized Medicine. Present research focuses on anticipatory governance, foresight and upstream policy on emerging health technologies in data intensive sciences, personalized medicine and global health.

Sigrid Sterckx is a professor of ethics at Ghent University. She lectures courses in theoretical ethics, methods in ethics, contemporary continental ethics and global ethics. Her current research focuses on: ethical aspects of biobanking, organ transplantation and patenting of human body material; ethical issues regarding human enhancement (attempts to enhance non-disease-related traits); medical decision-making at the end of life; environmental ethics and governance, particularly in relation to climate change and ethical aspects of the patent system. Sigrid Sterckx also serves on various advisory boards and commissions, including the Belgian Advisory Council on Bioethics, which advises the Federal Government. She is an ethics consultant for various EU research projects. Recent publications include: (with J. Cockbain), ‘Assessing the Morality of the Commercial Exploitation of Inventions concerning Uses of Human Embryos and the Relevance of Moral Complicity’, SCRIPT-ed – A Journal of Law, Technology & Society 7.1 (2010): 83–103; (with J. Cockbain), ‘Something More Is Necessary – Are Genes and Genetic Diagnostic Tests Statutory Subject Matter for US Patents?’, Expert Review of Molecular Diagnostics 11.2 (2011): 149–58;

Rene Urueña is Professor and Director of the International Law Program, Universidad de Los Andes, Bogotá, Colombia, where he is also a faculty member of the Global Justice and Human Rights Clinic. He was a visiting fellow at the Institute for International Law and Justice at the New York University School of Law. He holds an LLD (eximia cum laude) and an LLM (laudatur) in international law, both from the University of Helsinki. He graduated with a law degree from the Universidad de Los Andes, Colombia and holds a postgraduate degree in economics from the same university. Recent publications include: No Citizens Here: Global Subjects and Participation in International Law (2012); ‘Internally Displaced Population in Colombia: A Case Study on the Domestic Aspects of Indicators as Technologies of Global Governance’, in Benedict Kingsbury et al. (eds), Governance by Indicators: Global Power through Quantification and Rankings (2012); ‘Risk and Randomness in International Legal Argumentation’, 21 Leiden Journal of International Law (2008).

Wouter Veraart is Professor of Legal Philosophy at the Department of Legal Theory and Legal History, VU University Amsterdam. His PhD thesis, ‘Deprivation and Restitution of Property Rights during the Years of Occupation and Post-War Reconstruction in the Netherlands and in France’ (in Dutch) was published in 2005. He is currently working on a research project ‘Time, Restitution and the Law’, for which a Veni-grant has been awarded by the Netherlands Organization for Scientific Research. He is co-editor (with Laurens Winkel) of The Post-War Restitution of Property Rights in Europe: Comparative Perspectives (2011). An English translation of his inaugural lecture, under the title ‘Forgetting, Remembering, Forgiving and the Mundane Legal Order’, is published in Bas van Stokkom, Neelke Doorn and Paul van Tongeren (eds), Public Forgiveness in Post-Conflict Contexts (2012).

Wouter Werner is Professor of Public International Law at VU University Amsterdam. His main fields of interest are international legal theory, the interplay between international law and international politics.
and the international legal regime on the use of force. Recent publications concern the politics of legal cosmopolitanism, critical analyses of Carl Schmitt’s international legal theory and the political implications of the International Criminal Court.

Professor Werner is Programme Director of the ‘The Boundaries of Law’ research programme, which brings together scholars from international and European law, IT and law, legal theory and legal philosophy; he has obtained a four-year grant from Cooperation in Science and Technology (COST) to establish a European research network. The research network studies foundational changes in the international legal order from the perspectives of international law, international relations, international political sociology and legal and political theory. Currently, some twenty-five institutions from seventeen different countries participate in the project.


**Harmen van der Wilt** is a professor of international law at the Amsterdam School of Law, University of Amsterdam. His research interests lie in the concepts of criminal responsibility in international criminal law; the European arrest warrant; ICC: principle of complementarity; harmonisation of criminal law in Europe; criminal procedure of international criminal tribunals; legal reaction to terrorism; cooperation between states and international criminal tribunals.

Van der Wilt has been involved in professional training programmes for judiciary and public prosecutors in Addis Abeba and training programmes for young staff members of Lobatchevski University of Nijni Novgorod. He has been a member of the Research Council of an EU project on the European arrest warrant and is currently a member of the steering committee of the EU project on the impact of international procedures on domestic criminal procedures in mass atrocity cases.
ABBREVIATIONS

BBMRI  Biobanking and Biomolecular Resources Research Infrastructure
BGB    Bürgerliches Gesetzbuch
BGH    Bundesgerichtshof
BVerfG Bundesverfassungsgericht
CAH    crimes against humanity
CCNE   Comité consultatif national d’éthique
CEDH   Convention européenne des droits de l’homme
CURAPP  Centre Universitaire de Recherches sur l’Action Publique et le Politique
ECFR   European Council on Foreign Relations
ECHR   European Court of Human Rights
EHRR   European Human Rights Reports
FAO    Food and Agriculture Organization
GG     Grundgesetz
HUGO   Human Genome Organisation
IAEA   International Atomic Energy Agency
ICC    International Criminal Court
ICGC   International Cancer Genome Consortium
ICI    International Consortium Initiative
ICJ    International Court of Justice
ICTR   International Criminal Tribunal for Rwanda
ICTRP  International Clinical Trials Registry Platform
ICTY   International Criminal Tribunal for the former Yugoslavia
IRB    institutional review board
ISA    International Seabed Authority
NIEO   new international economic order
NIH    National Institutes of Health
SNP    single nucleotide polymorphism
UDHR   Universal Declaration of Human Rights
UNESCO United Nations Educational, Scientific and Cultural Organization
UNGAOR United Nations General Assembly Official Records
WHO    World Health Organization

xvi