CONTENTS

	List of Tables page xi
	Series Editors' Preface xiii
	Acknowledgements xv
	Introduction 1
	Still an Ever Closer Union in Need of a Fundamental Rights Policy? 1
	2 Governance in the European Union 2
	3 Governance as a Fundamental Rights Concept 4
	4 What Are EU Fundamental Rights for? 7
	5 Which Institutions? 9
	6 Two Case Studies 11
	7 The Book's Approach 15
1	Critiquing and Theorising the Governance of EU Fundamental Rights 18 1.1 Conceptualising and Justifying EU Fundamental Rights 18 1.2 EU Human Rights Scepticism 21 1.2.1 The Counter-Majoritarian Difficulty 21 1.2.2 The Communitarian Critique – Individualising EU Citizenship 22 1.2.3 The Empirical Critique – What Do EU Rights Add? 25
	 1.3 A Procedural Approach to Transnational Human Rights Protection? 26 1.3.1 Ely: Democracy and Distrust 27
	1.3.2 Habermas: The 'Internal Relation' between the Rule of Law and Democracy 29
	1.3.3 Proceduralism in European Human Rights Law 31

	1.4	Fundamental Rights and Political Disagreement 36
		1.4.1 The Normative Value of Disagreement 36
		1.4.2 The Collective Enforcement of Fundamental Rights 39
	1.5	Conclusion 44
2	Th	e Court of Justice in the Governance of EU Fundamental
	Rig	thts 47
	2.1	Introduction 47
	2.2	The Margin of Appreciation under the ECHR 49
	2.3	Does the Court of Justice Exercise a Margin of Appreciation?
		The Vertical Dimension 53
		2.3.1 The Scope of EU Fundamental Rights 53
		2.3.2 Limitations on Charter Rights and the Diversity Variable 58
		2.3.3 The Nature of Rights Variable 62
		2.3.4 The Procedural Variable 65
		2.3.5 Level(s) of Protection 67
	2.4	Does the Court of Justice Exercise a Margin of Appreciation? The Horizontal Dimension 71
		2.4.1 The Nature of Rights Variable 71
		2.4.2 The Procedural Variable 73
	25	Balancing Different Margins of Appreciation in EU Fundamental
	4.5	Rights 77
		2.5.1 Scope: From a Binary Distinction to a 'Sliding Scale'? 77
		2.5.2 The Standard of Review: Towards a Real 'Process-Oriented'
		Approach? 80
	2.6	Conclusion 82
3	Fu	ndamental Rights and the Political Institutions 84
	3.1	Dividing Labour in EU Fundamental Rights 84
	3.2	The European Commission 87
		3.2.1 Impact Assessment and Establishing a 'Fundamental Rights Culture' 89
		3.2.2 Fundamental Rights in Decision-Making 95
		3.2.3 The Guardian of the Treaties (and the Charter Too?) 95
		3.2.4 Post-Legislative Action and Awareness Raising 97
	3.3	The European Parliament 100
		3.3.1 Politicising EU Fundamental Rights 100
		3.3.2 Rights Reporting and the Role of the LIBE Committee 102
		3.3.3 Fundamental Rights in the Ordinary Legislative
		Procedure 104

CONTENTS ix

3.4	The Council 107
	3.4.1 Making Council Proposals 'Fundamental Rights Proof' 107
	3.4.2 Peer Review and the Scope of EU Fundamental Rights 110
	3.4.3 Frontex and Agency Governance 111
3.5	Watchdog Institutions 114
	3.5.1 The European Ombudsman as a Fundamental Rights Actor 114
	3.5.2 The CJEU and the Ombudsman: Working Together to Police Executive Authority? 116
	3.5.3 Fundamental Rights in the Political Process 119
3.6	Implementing Institutions 121
	3.6.1 Implementing 'Dynamic' Rights: The Article 29 Working Party 121
	3.6.2 The EU's Fundamental Rights Agency: The Road Not Taken? 126
3.7	The EU Institutions and the Standard of FR Protection: Tracing Two Legislative Proposals 133
	3.7.1 Data Protection and PNR: The Legislative Context 133
	3.7.2 Improving the Standard? Legislative Interaction on Fundamental Rights 135
3.8	Conclusion 141
Go	verning Justice and the Rule of Law 144
	Justifying EU Rule of Law Oversight 144
	The European Rule of Law in Crisis – Early Warnings 149
	The European Rule of Law in Crisis – Hungary 151
	4.3.1 Autonomy 152
	4.3.2 Electoral Competition 156
	4.3.3 Freedom of Expression and the Media 159
4.4	The European Rule of Law in Crisis – Romania 161
	The Future of EU Intervention on Democracy and the Rule
	of Law 167
	4.5.1 'New' Governance and the Quantification of Democracy and the Rule of Law 167
	4.5.2 Command and Control Revisited: The Idea of a 'Copenhagen Commission' 170
	4.5.3 'Reverse Solange' and the Judicialisation of an EU Rule of Law 173
4.6	The Rule of Law from a Governance Perspective 175
	4.6.1 Differentiation 176

4

CONTENTS

		4.6.2 Multilevel Action 176
		4.6.3 Governing between Law and Politics 177
		4.6.4 Governing Not Government: The Dispersal of Normative Authority 178
	4.7	Conclusion - Poland and Beyond 179
5	Go	verning Fundamental Social Rights 185
	5.1	What Are EU Social Rights and Why Might We Need Them? 185
	5.2	Social Rights in the Age of Austerity 189
		5.2.1 Greece 190
		5.2.2 Portugal 195
		5.2.3 Ireland 198
		5.2.4 Common Elements 201
	5.3	The Role of the EU Institutions: How Responsible and How Accountable? 203
		5.3.1 Allocating Responsibility 203
		5.3.2 The European Committee on Social Rights: Evaluating Conditionality's Social Effects 206
	5.4	Four Duties in the Governance of EU Social Rights 212
		5.4.1 Assessing Social Impacts 212
		5.4.2 Politicising Europe's Economic and Monetary Union 214
		5.4.3 Dividing Social Rights Responsibilities 217
		5.4.4 Empowering the Vulnerable 221
	5.5	Conclusion 224
	Ep	ilogue: Accession, Asylum and the Politics of Human
	-	ghts 226
	Inc	dex 231