

# Contents

## Part I Understanding the Development in EU Member States

**Not on Bread Alone Doth Man Liveth (Deut. 8:3; Mat 4:4): Some  
Iconoclastic Views on Populism, Democracy, the Rule of Law and the  
Polish Circumstance . . . . .** 3  
Joseph H. H. Weiler

|                                                                                                      |    |
|------------------------------------------------------------------------------------------------------|----|
| <b>Constitutional Crisis in Poland 2015–2016 in the Light of the Rule of Law Principle</b> . . . . . | 15 |
| Marcin Wiącek                                                                                        |    |

|                                                                                                            |           |
|------------------------------------------------------------------------------------------------------------|-----------|
| <b>Hungary's Latest Experiences with Article 2 TEU: The Need for<br/>'Informed' EU Sanctions . . . . .</b> | <b>35</b> |
| Beáta Bakó                                                                                                 |           |

## Part II European Action

**Towards a Tyranny of Values? . . . . . 73**  
Armin von Bogdandy

**The Rule of Law As a Value in the Sense of Article 2 TEU:  
What Does It Mean and Imply? . . . . .** 105  
Werner Schroeder

**Article 7: A Commentary on a Much Talked-About ‘Dead’ Provision . . . 127**  
Dimitry Kochenov

**The Responsibility of Courts in Maintaining the Rule of Law: Two  
Tales of Consequential Judicial Self-Restraint . . . . . 155**  
Pál Sonnevend

**Suspending Horizontal *Solange*: A Decentralized Instrument for Protecting Mutual Trust and the European Rule of Law . . . . .** 183  
Iris Canor

|                                                                                                                                                      |     |
|------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| <b>Ascertaining the ‘Guarantee of Guarantees’: Recent Developments Regarding the Infringement Procedure in the EU’s Rule of Law Crisis . . . . .</b> | 207 |
| Matthias Schmidt and Piotr Bogdanowicz                                                                                                               |     |
| <b>Defending Union Values in Judicial Proceedings. On How to Turn Article 2 TEU into a Judicially Applicable Provision . . . . .</b>                 | 237 |
| Luke Dimitrios Spieker                                                                                                                               |     |
| <b>Suspension of EU Funds Paid to Member States Breaching the Rule of Law: Is the Commission’s Proposal Legal? . . . . .</b>                         | 269 |
| Justyna Łacny                                                                                                                                        |     |
| <b>The Rule of Law Framework in the European Union: Its Rationale, Origins, Role and International Ramifications . . . . .</b>                       | 305 |
| Artur Nowak-Far                                                                                                                                      |     |
| <b>The Rule of Law and the Roll of the Dice. The Uncertain Future of Investor-State Arbitration in the EU . . . . .</b>                              | 333 |
| Wojciech Sadowski                                                                                                                                    |     |
| <b>Sounding the Alarm: The Council of Europe As the Guardian of the Rule of Law in Contemporary Europe . . . . .</b>                                 | 361 |
| Jörg Polakiewicz and Julia Katharina Kirchmayr                                                                                                       |     |
| <b>Part III Dissecting the LM Case</b>                                                                                                               |     |
| <b>A Potential Constitutional Moment for the European Rule of Law: The Importance of Red Lines . . . . .</b>                                         | 385 |
| Armin von Bogdandy, Piotr Bogdanowicz, Iris Canor, Giacomo Rugge, Matthias Schmidt, and Maciej Taborowski                                            |     |
| <b>The Assessment of Judicial Independence Following the CJEU Ruling in C-216/18 LM . . . . .</b>                                                    | 403 |
| Stanisław Biernat and Paweł Filipek                                                                                                                  |     |
| <b>The Rule of Law, Fair Trial and Human Dignity: The Protection of EU Values After <i>LM</i> . . . . .</b>                                          | 431 |
| Catherine Dupré                                                                                                                                      |     |
| <b>Drawing Red Lines with No (Significant) Bites: Why an Individual Test Is Not Appropriate in the <i>LM</i> Case . . . . .</b>                      | 443 |
| Agnieszka Frąckowiak-Adamska                                                                                                                         |     |
| <b><i>Intermezzo</i> in the Rule of Law Play: The Court of Justice’s <i>LM</i> Case . . .</b>                                                        | 455 |
| Matteo Bonelli                                                                                                                                       |     |
| <b>Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht . . . . .</b>                                                            | 477 |