

**Book review: G. Zaccaroni (2021),
*Equality and Non-Discrimination in the EU.
The Foundations of the EU Legal Order*,
Cheltenham, UK, Northampton, MA, USA,
222 pages**

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The author of the reviewed monograph, Giovanni Zaccaroni, is a lawyer, university lecturer, and researcher, although he has also practised law in law firms. He earned his master's degree at the King's College London and obtained his Joint Ph.D. from the University of Bologna and the University of Strasbourg. He has been a trainee at the Legal Service of the European Commission and the Court of Justice of the EU. He has conducted research at the University of Luxembourg and Dublin City University. He currently works as a researcher and lecturer in European Law at the University of Malta. His research interests include EU law, in particular EU constitutional law, fundamental rights, and anti-discrimination law.

The reviewed monograph entitled *Equality and Non-Discrimination in the EU. The Foundations of the EU Legal Order* was published by Edward Elgar Publishing as a part of the *Elgar Studies in European Law and Policy* series. The context of the book's creation, it seems, is the author's personal interest in the issues analysed. Recently, there have been no special circumstances in the development of EU equality and anti-discrimination law to warrant a publication, unless we consider, as some scholars do (e.g., Sophie Jacquot), that its slowdown provides a reason to address the matter. The author himself did not outline the context of his considerations. The main research issue tackled in the monograph is formulated in the form of the following question: can equality and non-discrimination be considered as fundamental part of the EU legal order? While posing the problem this way is correct, the concept of the "fundamental part" was not operationalised using detailed research questions. These questions were substituted, it seems, by the manner in which the author conceptualises equality. For the purpose of analysis, the author distinguished three dimensions of equality under EU law: equality as a value, equality as a principle, and equality as a right. In answering the main research question, the author analysed the place and meaning within the EU legal order of each of the three dimensions of equality as well as the interaction between them. It is worth adding that the distinction between

these three dimensions, and especially their detailed analysis, is the author's original contribution to equality research, since the literature typically overlooks the difference between them and uses them interchangeably.

Although distinguishing the dimensions of equality mentioned above is useful for analytical purposes, the analyses in the book reveal one methodological weakness. The issue is the lack of conceptualisation of the concepts of value, principle, and right. The author does not actually explain these concepts, or if he does, it is very perfunctory. Hence, when reading the book, one must rely on the own intuition as to how these terms should be understood. It should be noted, however, that the author is very consistent in the execution of the purpose of his research. Referencing the central research problem is evident in every chapter and many subsections.

The book consists of a table of contents, acknowledgements, list of abbreviations, introduction, three chapters (each devoted to a different dimension of equality), conclusion, bibliography, and index of terms, names, and surnames. In the chapter on the first dimension of equality, the author argues that the importance of equality as a value stems from its influence on the design of many EU policies. Equality owes this influence to the judgments of the Court of Justice of the EU, which has been creative in protecting victims of discrimination (e.g., by comparing their case to a hypothetical situation), and to the activities of other EU institutions, which are trying to promote equality in ever new areas. An interesting and convincing argument of the author is the thesis that equality constitutes a link between the economic and social dimensions. It combines them into a coherent whole. In the first dimension, it enables different actors to function within the internal market. In the second dimension, it provides access to specific goods (e.g., services, social security, paid vacations). A third argument for the thesis of the fundamental importance of equality as a value is that it would be impossible to develop European integration on the basis of equal rights for all members of the European community without recognising that they are equal. The first two arguments point to the functional relevance of equality (impact on community policies, bringing two dimensions together), while the third argument demonstrates relevance to the essence of things, specifically the essence of EU citizenship.

In the next chapter, the author argues that the importance of equality as a principle is that it can be invoked before national and European courts as a source of rights and obligations for the individual, when it is not possible to apply primary and secondary law and to resort to national law in conformity with EU law. The author emphasises that it is an autonomous source, i.e., it does not require the citation of treaties or EU secondary legislation. These rights and obligations refer specifically to non-discrimination on the basis of sex, gender, nationality, age, sexual orientation, race, disability, and religion. Taken together with those arising under primary and secondary EU law, they can gain an advantage over competing obligations. However, according to the author, the most important argument indicating that equality as a principle is a fundamental part of the EU legal order is its role in promoting and accompanying the integration of the EU's economic and social objectives. In support of this thesis, the author cites the 1976 *Defrenne II* judgment of the Court of Justice of the EU, in which the Court interpreted Article 119 of the EEC Treaty, stating that the principle of equal pay is

a cornerstone of the Community, because it simultaneously addresses both its economic and social objectives. It should be noted that, while the argument for the principle of equality as an independent source of rights and obligations has been supported by extensive legal analyses, the author has devoted relatively little space to analyses supporting the argument for promoting and integrating economic and social objectives.

In the chapter on equality as a right, the author argues that the importance of equality as a right is demonstrated by the number of legal acts (notably, the Charter of Fundamental Rights and secondary law) in which this dimension of equality is present. Furthermore, the importance of equality as a right is that its role is to balance fundamental rights. In practice, this balancing is done through the activities of the Court of Justice of the EU. The Court's balancing has tended to follow two directions: the first relates to the balance between fundamental rights and economic freedoms (which are sometimes also counted as fundamental rights), and the second concerns the balance between competing fundamental rights. The author's argument is compelling and supported by evidence. The author came to these conclusions as a result of the analysis of the Court's judgments relating to freedom of expression, freedom to conduct a business, religious autonomy, and religious freedom. Furthermore, the author notes that the Court has tried to reconcile the role of equality as a principle and equality as a right. The author concludes that, as in the previous chapter, equality (in this case understood as a right) links competing economic interests and social integration.

If one wanted to define what is the most important idea contained in the reviewed book, it would be that the importance of equality in the EU legal order lies in the fact that it helps to overcome the dualism of "economic" and "social" Europe, thus contributing to a fuller integration of the EU on legal grounds.

The book's weaknesses include the methodological shortcomings mentioned above, while its strengths lie in its ability to capture certain regularities in a very broad and complex area of EU equality and anti-discrimination legislation.

The book can be recommended to all who are involved in European studies, especially lawyers and political scientists. It will certainly broaden their understanding of the role and importance of EU legislation on equality and anti-discrimination.

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