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National Identity in EU Law

Elke Cloots

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OXFORD STUDIES IN EUROPEAN LAW

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National Identity in EU Law

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Paul Craig, Professor of English Law at St John's College, Oxford and

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University School of Law

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Series Editor's Preface

The extent to which conceptions of national identity can and should limit EU policy is of prime importance, both pragmatically and normatively, more especially so after the Lisbon Treaty brought the issue, now enshrined in Article 4(2) TEU, four-square within the jurisdiction of the CJEU. While the Court has made reference to this Article on a limited number of occasions, it has yet to fashion a clear vision as to its effect on the EU legal order. There is therefore much work to be done on reasoning through in a rigorous manner the implications of Article 4(2), and Elke Cloots' monograph is to be welcomed for undertaking this task.

The book seeks to craft a principled and coherent structure for national identity adjudication by the Court, the object being to determine the significance that the CJEU should attach to arguments informed by concerns over national identity when interpreting, and evaluating the validity of, EU law. It is designed therefore to furnish a normative framework to help the Court decide whether and how national identity-related interests should be taken into account. To this end the book is divided into two parts.

In the first part, the author develops the theoretical considerations concerning national identity that inform the remainder of the work. She demonstrates the existence of a legal obligation to pay heed to national identity, which is then reinforced by a sophisticated argument as to the existence and application of a moral duty to respect such identity. In developing this argument, Elke Cloots draws on Treaty foundations other than the identity clause itself, and shows how these Treaty articles are apposite for the argument advanced. The reasoning is informed by an excellent grasp of literature drawn from legal and political theory.

In the second part, Elke Cloots considers more doctrinal aspects of national identity, in the sense of considering the optimal doctrinal manner through which the CJEU should pay respect to this important principle. This is particularly important given that there are various juridical techniques that could be used to this end, including the limitation of the scope of application of a Treaty norm, recognition of national identity as a ground on which an interference with a Treaty provision could be justified, or a consideration that could affect the intensity of proportionality review. This analysis is undertaken differentially depending on whether the EU legislature has intervened in the area of law under consideration, and specific recommendations are made as to the best way for the principle underlying the identity clause to be realized.

The limit of EU integration is an endemic issue, and the relationship between this and national conceptions of identity is of enduring importance. This book will be of interest to all those concerned with EU law, and for scholars of national law who are looking for a rigorous theoretical and doctrinal treatment of this seminal topic.

Paul Craig and Gráinne de Búrca

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