Allegiance and Identity in a Globalised World

Edited by

Fiona Jenkins

Mark Nolan

Kim Rubenstein

CAMBRIDGE

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Interrogating the concepts of allegiance and identity in a globalised world involves renewing our understanding of membership and participation within and beyond the nation-state. Allegiance can be used to define a singular national identity and common connection to a nation-state. In a global context, however, we need more dynamic conceptions to understand the importance of maintaining diversity and building allegiance with others outside borders. Understanding how allegiance and identity are being reconfigured today provides valuable insights into important contemporary debates around citizenship.

This book reveals how public and international law understand allegiance and identity. Each involves viewing the nation-state as fundamental to concepts of allegiance and identity, but they also see the world slightly differently. With contributions from philosophers, political scientists and social psychologists, the result is a thorough appraisal of allegiance and identity in a range of socio-legal contexts.

FIONA JENKINS is a Senior Lecturer in the School of Philosophy, the Research School of Social Sciences, Australian National University.

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KIM RUBENSTEIN is Professor and Director of the Centre for International and Public Law, ANU College of Law, Australian National University.

This six volume series flows from workshops bringing public and international lawyers and public and international policy makers together for interdisciplinary discussion on selected topics and themes.

The aim of the series is to broaden both public and international laws' understanding of how these two areas intersect. Until now, international and public law have mainly overlapped in discussions on how international law is implemented domestically.

This series is unique in consciously bringing together public and international lawyers to consider and engage in each other's scholarship.

Series editors

Kim Rubenstein is Professor and Director of the Centre for International and Public Law with the ANU College of Law at the Australian National University. A graduate of the University of Melbourne and Harvard University, Kim's public law work spans constitutional and administrative law, and also includes her expertise in citizenship law. Her international law work focuses on the status of nationality. In 2011 and 2012 she was also inaugural Convenor of the ANU Gender Institute.

Thomas Pogge is Leitner Professor of Philosophy and International Affairs and founding Director of the Global Justice Program at Yale. He holds part-time positions at King's College London and the Universities of Oslo and Central Lancashire. He writes and teaches on moral and political philosophy and Kant.

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Editors

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MARK NOLAN is an Associate Professor at the ANU College of Law, the Australian National University, where he has researched and taught since 2002 mainly in the areas of criminal law and procedure but also legal psychology. As well as being a legal academic trained in law, Mark has a PhD in psychology and much of his interdisciplinary research involves the application of social psychology to legal contexts. His research interests and publications in social psychology relate to identity psychology, intergroup relations, social justice and stereotyping. Mark also has published work, together with Kim Rubenstein, relating to dual citizenship and multiple identity.

KIM RUBENSTEIN is Professor and Director of the Centre for International and Public Law with the ANU College of Law at the Australian National University. A graduate of the University of Melbourne and Harvard University, Kim's public law work spans constitutional and administrative law, and also includes her expertise in citizenship law. Her international law work focuses on the status of nationality. In 2011 and 2012 she was also inaugural Convenor of the ANU Gender Institute.

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DIANA GRACE is an Assistant Professor at the University of Canberra. Diana's research focuses on the intersection of social and developmental psychology. Her primary areas of research concern (i) young children's understanding of social categories (e.g., gender, age, race) and (ii) how beliefs about work and family affect the choices and workplace participation of both men and women. She has published journal articles and chapters on social categorisation, social influence and identity processes in children. Prior to her current position, Diana held a post-doctoral fellowship, funded by the Australian Research Council, explicitly examining marginalising racism. During that time, she was also a visiting fellow at the University of California, Los Angeles.

RISHI GULATI presently works at the Commonwealth Attorney-General's Department. Previously, Rishi has lectured in public international law at the University of New South Wales and worked as a research associate at the Gilbert and Tobin Centre for Public Law, the Organisation for the Prohibition of Chemical Weapons and the Federal Court of Australia. Rishi completed an Advanced Masters in Public International Law from Leiden University and a Bachelor of Laws (Honours) at the Australian National University.

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GEORGE HOA'AU is Assistant Secretary for the Regional Economic Cooperation Branch, Solomon Islands Ministry of Foreign Affairs and Trade. George has a Bachelor of Arts (Political Science) and Postgraduate Diploma (Governance) from the University of the South Pacific; a Graduate Diploma (Asia-Pacific Security Studies) from the University of Hawai'i; a Graduate Diploma (WTO Policy); and a Master of International Law from the Australian National University. He is the eldest son of Ulutoro, who was the eldest daughter of the fourteenth hereditary chief (Alaha), the late Robert Auwehiona of the feast-calling Ohuiola tribe of South Malaita in Solomon Islands.

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PABLO CRISTÓBAL JIMÉNEZ LOBEIRA has lived in Mexico, United States, Italy and now Australia. He possesses two bachelors degrees (in Economics and in Philosophy) and two masters degrees (in the Humanities and in Family Studies) and a PhD on the problem of political unity in the EU, at Charles Sturt University in Australia. Pablo's recent publications have dealt with culture and liberal democracy in Europe; normative conceptions of European identity; the debate about religious symbols in the European public sphere; citizenship and political regime in the EU; the cultural riddles of European integration; and EU political identity in analogical perspective. For about fifteen years Pablo has combined study, teaching and research with managerial positions in the field of international education. Presently he works at the Australian-American Fulbright Commission, and is an associate of both the Charles Sturt University Centre for Applied Philosophy and Public Ethics, and of the ANU Centre for European Studies, in Canberra.

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REBECCA MONSON is a Lecturer at the ANU College of Law, where she convenes the programme in Law, Governance and Development. Rebecca's research and practice is transdisciplinary, drawing on critical approaches in law, geography and anthropology. Her work focuses on the intersection of state and customary legal systems, particularly as they relate to gender relations; political participation; natural resource rights; and peace-building. Rebecca has conducted fieldwork in Fiji, Vanuatu and Solomon Islands, and regularly undertakes professional consultancies relating to justice systems, gender and development for both donors and NGOs. Prior to joining the ANU, Rebecca specialised in emergency and disaster law in private legal practice and at the Centre for Risk and Community Safety at RMIT University. She has also worked at the Centre on Housing Rights and Evictions, and at the Van Vollenhoven Institute for Law, Governance and Development at Leiden University.

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Science. His book, *The New Psychology of Leadership,* written with S. Alexander Haslam and Stephen D. Reicher, was awarded the Outstanding Leadership Book Award – 2012 by the Department of Leadership Studies at the University of San Diego. In 2007, Michael was awarded the Australian Commonwealth Office of Learning and Teaching Carrick Citation for Outstanding Contributions to Student Learning; and in 2012, he was elected as a Fellow of the Academy of Social Sciences in Australia. Professor Platow earned his Bachelor's degree from UCLA, his PhD from UC Santa Barbara, and his M.Higher Ed. from the Australian National University.

THOMAS POGGE is Leitner Professor of Philosophy and International Affairs and founding Director of the Global Justice Program at Yale. Having received his PhD in Philosophy from Harvard, he holds part-time positions at King's College London and the Universities of Oslo and Central Lancashire. Thomas is a member of the Norwegian Academy of Science and editor for political philosophy of the *Stanford Encyclopedia of Philosophy.* He also works for Academics Stand Against Poverty ('ASAP'), an international network aiming to enhance the impact of scholars, teachers and students on global poverty, and Incentives for Global Health, a team effort towards developing a complement to the pharmaceutical patent regime that would improve access to advanced medicines for the poor worldwide.

DONALD R. ROTHWELL is Professor of International Law and Deputy Dean at the ANU College of Law, Australian National University, where he has taught since July 2006. His research has a specific focus on law of the sea, law of the polar regions and implementation of international law within Australia as reflected in over 160 articles, book chapters and notes in international and Australian publications. Rothwell has authored, co-authored or edited seventeen books including most recently *Law of the Sea* (2013), and *Antarctic Security in the Twenty-First Century: Legal and Policy Perspectives* with Alan Hemmings and Karen Scott (2012) and his current co-edited work is with Alex Oude Elferink and Erik Molenaar, *The Law of the Sea and Polar Regions: Interactions between Global and Regional Regimes* (2013). Major career works include *The International Law of the Sea* (2010) with Tim Stephens, and *The Polar Regions and the Development of International Law* (1996). Rothwell is also coordinating editor of the *Oxford Handbook on the Law of the Sea* (forthcoming, 2015) and co-editor of the *Australian Year Book of International Law.*

MOHAMMAD SHAHABUDDIN holds a PhD in international law (London). He also studied at the Yokohama National University for the degree of Master of International Law. He is currently the Chairman of the Department of Law & Justice at Jahangirnagar University in Bangladesh. His research explores how 'ethnicity' expressed in the dichotomy of the 'self' and the backward 'other' along the line of the liberal and conservative traditions has informed the manner in which international law engaged with the major events of each of its developmental phases.

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ASMI J. WOOD is a Torres Strait Islander now residing on the mainland. He is a senior research fellow and the higher degree by research coordinator at the National Centre for Indigenous Studies ('NCIS') at the Australian National University. He also teaches at the ANU College of Law.

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SERIES EDITORS' PREFACE

The idea for this series began in June 2005, when Kim Rubenstein applied for the position of Professor and Director of the Centre for International and Public Law at the ANU College of Law. The Centre is recognised as the leading Australian academic centre bringing together public lawyers (constitutional and administrative law broadly, but also specific areas of government regulation) and international lawyers from around the world.

In discussing with the law faculty ideas for the Centre's direction, Kim raised the concept underpinning this series. Each of the volumes flows from workshops bringing public and international lawyers and public and international policy experts together for interdisciplinary discussion on selected topics and themes. The workshops attract both established scholars and outstanding early scholars. At each of the workshops participants address specific questions and issues developing each others' understandings and knowledge about public and international law and policy and the links between the disciplines as they intersect with the chosen subject. These papers are discussed and reviewed at the workshop collaboratively, then after the workshop the papers are finalised for the final editing phase for the overall manuscript.

The series seeks to broaden understanding of how public law and international law intersect. Until now, international and public law have mainly overlapped in discussions on how international law is implemented domestically. While there is scholarship developing in the area of global administrative law, and some scholars have touched upon the principles relevant to both disciplines, those publications do not concentrate upon the broader mission of this series. This series is unique in consciously bringing together public and international lawyers to consider and engage in each others' scholarship.

Beyond the first topic of sanctions, the other topics draw from the research themes underpinning the International Alliance of Research Universities ('IARU') which is made up of ANU, Berkeley, Cambridge, University of Copenhagen, ETH Zurich, National University of

Singapore, Oxford, Peking University, University of Tokyo and Yale. The topics include volumes on Health (Volume 2), Environment (Volume 3), Movement of People (Volume 4) and Security (Volume 5). A new volume was added to the planned series in 2012 with a focus on Gender (Volume 6), and this too is one of the IARU areas of interest.

After the first successful workshop was complete, Professor Rubenstein contacted Professor Thomas Pogge to co-host the second workshop and in addition to doing that, he has enthusiastically joined with Professor Rubenstein as a joint series editor. His contributions to each volume are an expression of his cosmopolitan outlook which is a theme engaged with throughout the series.

Kim Rubenstein and Thomas Pogge

EDITORS' PREFACE

As explained in the Series Editors' Preface, this series is a result of workshops bringing together public and international lawyers. From the second volume onwards, the topics revolve around the International Association of Research Universities ('IARU') thematic research topics.

When Kim Rubenstein began thinking about organising the fourth workshop around the theme of Movement of People, she was enthusiastic about inviting her ANU colleagues Fiona Jenkins from Philosophy and Mark Nolan from Law to join her in running it as the three of them had already been collaborating on related work.

This fourth workshop 'Allegiance and Identity in a Globalised World' was inspired by interesting interdisciplinary work Kim and Fiona and Mark were developing assessing membership issues from the perspectives of citizenship law, political philosophy and social psychology.

Our workshop took place on 19–21 July 2010 at the Australian National University. The thirty three paper presenters and a further group of participants, who had read all the papers, enjoyed vigorous discussion, engaging fully with each other and the material.

We thank Matthew Zagor, then Deputy Director of ANU's National Europe Centre, for providing us with a dynamic venue. We thank Giovanni Di Lieto, Jacqui Field, then undergraduate student in the ANU College of Law, Kevin Boreham from the ANU College of Law, John Milfull from the University of New South Wales, Anne Macduff from the ANU College of Law, Tim Soutphommasane, then from Monash University, and Fanny Thornton from the ANU College of Law for presenting stimulating papers at the workshop even though their papers were not developed for the resulting book.

We thank the National Europe Centre for funding Vito Breda's visit through their Visiting Fellowship series and the Department of Immigration and Citizenship for support in running the workshop by sending along participants for the discussion from their ranks.