PAROCHIALISM, COSMOPOLITANISM, AND THE FOUNDATIONS OF INTERNATIONAL LAW

This book examines the boundary between parochial and cosmopolitan justice. To what extent should international law recognize or support the political, historical, cultural, and economic differences among nations? Ten lawyers and philosophers from five continents consider whether certain states or persons deserve special treatment, exemptions, or heightened duties under international law. This volume draws the line between international law, national jurisdiction, and the private autonomy of persons.

M. N. S. Sellers is Regents Professor of the University System of Maryland and Director of the University of Baltimore Center for International and Comparative Law. He received his A.B. and J.D. degrees at Harvard University and was a Rhodes Scholar, Frank Knox Fellow, and T. H. Green Scholar at University and Wolfson Colleges, Oxford, where he completed his B.C.L. and doctorate. Professor Sellers has served as a visiting scholar at Georgetown University Law Center, the Lauterpacht Centre for International Law at Cambridge University, Erasmus University Rotterdam, the Hague Academy of International Law, and Bryn Mawr College. He is coeditor, with Elizabeth Andersen, of the Cambridge University Press book series ASIL Studies in International Legal Theory.
ASIL Studies in International Legal Theory

Series Editors

Elizabeth Andersen (ASIL)
Mortimer Sellers (University of Baltimore)

Editorial Board

Samantha Besson (Université de Fribourg)
Allen Buchanan (Duke University)
David Kennedy (Harvard University)
Jan Klabbers (University of Helsinki)
David Luban (Georgetown University)
Larry May (Vanderbilt University)
Mary Ellen O’Connell (University of Notre Dame)
Onuma Yasuaki (Meiji University)
Helen Stacy (Stanford University)
John Tasioulas (University College, London)
Fernando Teson (Florida State University)

The purpose of the ASIL Studies in International Legal Theory is to clarify and improve the theoretical foundations of international law. Too often the progressive development and implementation of international law have foundered on confusion about first principles. This series will raise the level of public and scholarly discussion about the structure and purposes of the world legal order and how best to achieve global justice through law.

Volumes in the Series

International Criminal Law and Philosophy edited by Larry May and Zachary Hoskins (2010)
The New Global Law by Rafael Domingo (2010)
The Role of Ethics in International Law edited by Donald Earl Childress III (2011)
Parochialism, Cosmopolitanism, and the Foundations of International Law

M. N. S. SELLERS

University of Baltimore Center for International and Comparative Law
To Therese Sellers
first companion
December 29, 2010,
with love and admiration
Contents

Notes on Contributors .......................................................... xi
Preface ........................................................................... xiii

1 Introduction ................................................................................. 1
   Mortimer Sellers

2 Parochialism and the Legitimacy of International Law ............... 16
   John Tasioulas

3 Parochialism, Cosmopolitanism, and the Paradigms of
   International Law ................................................................. 40
   Armin von Bogdandy and Sergio Dellavalle

4 Liberal Cosmopolitanism or Cosmopolitan Liberalism? ................ 118
   Ileana M. Porras

5 Are Human Rights Parochial? .................................................. 149
   James Griffin

6 The Parochial Foundations of Cosmopolitan Rights .................. 172
   Maxwell O. Chibundu

7 Rights in Reverse: International Human Rights as Obligations .... 212
   Chios Carmody

8 Parochial Restraints on Religious Liberty .................................. 225
   Brian D. Lepard

9 Parochialism, Cosmopolitanism, and Justice ............................. 250
   Mortimer Sellers

Index ....................................................................................... 277
Notes on Contributors

Armin von Bogdandy is Director at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg.

Chios Carmody is Professor of Law at the University of Western Ontario.

Maxwell O. Chibundu is Professor of Law at the University of Maryland School of Law.

Sergio Dellavalle is Professor of Public Law and State Theory at the Faculty of Law of the University of Turin and Codirector of the Research Project “Paradigms of Public Order” at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg.

James Griffin is White’s Professor of Moral Philosophy Emeritus at the University of Oxford and a Fellow of Corpus Christi College.

Brian D. Lepard is Law Alumni Professor of Law at the University of Nebraska College of Law.

Ileana M. Porras is Professor of Law at the University of Miami.

M. N. S. Sellers is Regents Professor of the University System of Maryland and Director of the University of Baltimore Center for International and Comparative Law.

John Tasioulas is Quain Professor of Jurisprudence, Faculty of Laws, at University College London.
Preface

This book inaugurates the ASIL Studies in International Legal Theory, a book series dedicated to clarifying and improving the theoretical foundations of international law. Too often the progressive development and effective implementation of international law have foundered on confusion about first principles. This series seeks to raise the level of public and scholarly discussion about the structure and purposes of the world legal order and how best to achieve global justice through law.

The idea for this series grows out of the International Legal Theory Project of the American Society of International Law. Every year for the past decade, the ASIL has devoted special attention to a different aspect of international law, inviting scholars and practitioners to discuss the theoretical basis of such topics as customary international law, humanitarian law, and universal human rights. The society has published a special issue of the journal *International Legal Theory* each year, presenting the results of these conversations. The book series ASIL Studies in International Legal Theory replaces this annual publication with a series of monographs and edited volumes considering fundamental questions in the theory, justification, and progressive improvement of the doctrine, substance, and institutions of international law.

This series does not seek to settle all disputed questions in international law, but rather to improve the quality of the discussion. The field of international law has experienced a constant growth in importance over the past century, supported by vast public enthusiasm, with a strengthening influence over governments and international affairs. At the same time, the law has outrun its theoretical basis, which has led to confusion and rising frustration. This series responds to increasing public demand for greater justice, coherence, and theoretical sophistication in international affairs.

This first volume addresses the foundational question of parochialism in international law. Law by its very nature requires rules of general application,
Preface

making the rule of law necessarily “cosmopolitan” when applied to international affairs. Yet circumstances differ vastly among the many peoples of the world. How then can there be a transcendent “international” law? This recurring question of generality and specificity in all human associations must reconcile liberty with law, independence with community, and the expression of treasured individuality with the realization of our common humanity.

The chapters collected in this volume grew out of a series of discussions held at Tillar House, the headquarters of the American Society of International Law, in Washington, D.C., under the auspices of the International Legal Theory Interest Group of the American Society of International Law. Leaders in this effort include Elizabeth Andersen and Charlotte Ku, present and past executive directors of the American Society of International Law; Lucy Reed, José Alvarez, James Carter, and Anne-Marie Slaughter, present and former presidents of the American Society of International Law; and present and past chairs of the International Legal Theory Interest Group of the American Society of International Law, Brian D. Lepard, Bryan Macpherson, Fernando Tésón, Onuma Yasuaki, Nicholas Onuf, and Joaquín Tacsan. Francesco Parisi deserves special thanks as founding editor of the ASIL publication International Legal Theory.

I would like to thank Laurie Schnitzer, Terican Gross, Netta Yochay, and Ian Foss for their work on this manuscript; Sheila Ward for her coordination of the meetings at Tillar House; and Finola O’Sullivan and John Berger for making Cambridge University Press the leading publisher in the field of international law. This book and this series would not exist without their encouragement. The American Society of International Law, the University of Baltimore Center for International and Comparative Law, the Lauterpacht Centre of Cambridge University, and Georgetown University Law Center gave me the practical and moral support that made this project possible. As always and for everything, I thank my wife Frances Stead Sellers and my daughter Cora Mary Stead Sellers, without whose comfort and inspiration my life and work would have no meaning.

Stanton Manor

December 29, 2010