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978-1-107-13857-5 - The Public Law of Gender: From the Local to the Global

Edited by Kim Rubenstein and Katharine G. Young

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THE PUBLIC LAW OF GENDER

With the worldwide sweep of gender-neutral, gender-equal or gender-sensitive public laws, in international treaties, national constitutions and statutes, it is timely to document the raft of legal reform and to analyse its effectiveness critically. In demarcating the academic study of the public law of gender, this book brings leading lawyers, political scientists, historians and philosophers together to examine law's structuring of politics, governing and gender in a new global frame. Of interest to constitutional and statutory designers, advocates, adjudicators and scholars, the contributions explore how concepts such as equality, accountability, representation, participation and rights depend on, challenge or enlist gendered roles and/or categories. These enquiries suggest that the new public law of gender must confront the lapses in enforcement, sincerity and coverage that are common in both national and international law and governance and critically and pluralistically recast the public/private distinction in family, community, religion, customary and market domains.

KIM RUBENSTEIN is a Professor in the ANU College of Law and was the Director of the Centre for International and Public Law with the Australian National University College of Law from 2006 through until the end of 2015, where she is also a Public Policy Fellow.

KATHARINE G. YOUNG is an Associate Professor at Boston College Law School, USA. Her fields of expertise include comparative public law and international human rights law.

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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 a Professor in the ANU College of Law and was the Director of the Centre for International and Public Law (CIPL) from 2006 until the end of 2015. Her current research projects are at the cutting edge of the intersection between public and international law. Her public law work spans constitutional and administrative law and also includes her expertise in citizenship law.

Thomas Pogge is Leitner Professor of Philosophy and International Affairs and founding Director of the Global Justice Programme at Yale University, with part-time appointments at King's College London and the Universities of Oslo and Central Lancashire. He writes and teaches on moral and political philosophy and Kant, with a special emphasis on global justice.

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University Printing House, Cambridge CB2 8BS, United Kingdom

Cambridge University Press is part of the University of Cambridge.

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www.cambridge.org

Information on this title: www.cambridge.org/9781107138575

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First published 2016

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data

Names: Rubenstein, Kim. | Young, Katharine G.

Title: The public law of gender : from the local to the global / edited by Kim Rubenstein, Katharine G. Young.

Description: Cambridge; New York : Cambridge University Press, 2016. |

Series: Connecting international law with public law |

Includes bibliographical references and index.

Identifiers: LCCN 2015039549 | ISBN 9781107138575 (hardback)

Subjects: LCSH: Sex discrimination against women – Law and legislation. |

Women – Legal status, laws, etc. | Women's rights. |

Sex discrimination – Law and legislation. | Constitutional law. |

BISAC: LAW /Constitutional.

Classification: LCC K3243.P83 2016 | DDC 342.08/78–dc23

LC record available at <http://lcn.loc.gov/2015039549>

ISBN 978-1-107-13857-5 Hardback

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and legal mobilisation shape the everyday life of marginalised groups in the midst of violent conflicts.

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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 Australian National University (ANU) College of Law. The Centre is recognised as the leading Australian academic centre bringing together public lawyers (scholars and practitioners in constitutional and administrative law broadly, but also specific areas of government regulation) and international lawyers from around the world. Established in 1990 with its inaugural director, Professor Philip Alston, the impact of the Centre and its work can be seen further at law.anu.edu.au/cipl/.

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 are organised with the following goals. First, they aim to attract both established scholars and outstanding early scholars. Second, at each of the workshops participants address specific questions and issues developing each other's understandings and knowledge about public and international law and policy and the links between the disciplines as they intersect with the chosen subject. Third, 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. This phase includes internal peer review by participants themselves, as well as external and anonymous peer review from scholars who have not attended the workshop.

The series seeks to broaden understanding of how public law and international law intersect. At the time of the initiation of the series, international and public law have mainly overlapped in discussions on how international law is implemented domestically. In the interim decade, a burgeoning literature has developed with a focus on intersecting issues in comparative public law, global administrative law and the selective

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migrations of law between fields. This series is unique in consciously bringing together public and international lawyers and scholars to examine these trends from their different standpoints.

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, the University of Copenhagen, ETH Zurich, the National University of Singapore, Oxford, Peking University, the University of Tokyo and Yale. The volumes discuss topics including health (Volume 2), environment (Volume 3), movement of people (Volume 4) and security (Volume 5). This final volume was added to the planned series in 2012 with a focus on gender, 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.

Kim Rubenstein and Thomas Pogge

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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 took on the role of Inaugural Convenor of the Australian National University (ANU) Gender Institute in 2011 at the same time as continuing as Director of the Centre for International and Public Law, the impetus for holding a sixth workshop in what had been originally planned as a five-part series arose. The idea was enthusiastically endorsed by the ANU Gender Institute management committee together with colleagues at the ANU College of Law, and we thank both bodies for their financial support of the workshop. Dr. Katharine Young, who was then Associate Professor at the ANU College of Law, worked with Kim Rubenstein to develop a call for papers and actively joined with Kim to organise and develop and frame the workshop.

This sixth workshop was originally titled 'En/gendering Governance: From the Local to the Global', and was held 6–8 August 2012 at ANU. We thank Professor Jacqueline Lo, Director of ANU's Centre for European Studies, for providing us with a dynamic venue.

The thirty-one paper presenters and a further group of participants, including Dr. Fiona Jenkins and Professor Hilary Charlesworth as ANU Gender Institute representatives, read all the papers and enjoyed vigorous discussion, engaging fully with each other and the material. We thank each of the authors in this volume, as well as Deborah Brennan, at the University of New South Wales; Astghik Mavishakalayan, then at ANU; Fiona Mackay, the University of Edinburgh; Gabrielle Simm, then at ANU; Margaret Thornton, ANU; Heidi Matthews, then at Harvard Law School; and John Morss, Deakin University, for presenting stimulating papers at the workshop. We thank Judith Resnik, of Yale Law School, and Vicki Jackson, of Harvard Law School, for their help in conceptualising the questions posed to workshop participants. We also thank the ANU's

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EDITORS' PREFACE

Centre for International Governance and Justice and its Director, Hilary Charlesworth, for supporting the visit of Dr. Sari Kouvo at the workshop, and Janet Hatch, then Coordinator of the Committee on Australian Studies at Harvard University, for facilitating and supporting Vicki Jackson's visit to participate in the workshop. We are also indebted to the twenty anonymous reviewers, drawn from law faculties across the world, who provided comments on and peer review of each of the chapters of the book.

The event was ably organised by the ANU College of Law Outreach and Administrative Support Team, and in particular we thank Wendy Mohring, Sarah Hull and Kristian Draxl. Between the workshop and the finalisation of the book, Katharine Young has moved to become Associate Professor at Boston College Law School and wishes to record her thanks for the valuable feedback she received at a Boston College Faculty Workshop in June 2015, and to participants in the Women in International Law Workshop at Duke Law School in May 2015. We also thank the research assistance of Mary Pat Brogan, Erica Coray, Colette Irving and Daniel Strigle, as JD candidates at Boston College Law School; the library support of Sherry Chen and Mollie Hammond; and the administrative support of Ryan Hynes at Boston College.

The staff at Cambridge University Press, especially Finola O'Sullivan and Elizabeth Spicer, have been enthusiastic in supporting this series, and Andy Saff as copy editor has been excellent.

Finally, we would like to thank our respective colleagues at the ANU Gender Institute and in the Centre for International and Public Law in the ANU College of Law and at Boston College Law School, and our wonderful families and friends for their support and inspiration in all that we do.

Katharine G. Young and Kim Rubenstein