

BOOK REVIEW

Allegiance, Citizenship and the Law - The Enigma of Belonging

Helen Irving

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Despite a long and complex history that inextricably links allegiance to citizenship, the concept of allegiance has rarely been examined,¹ with scholars at a loss to define it in modern terms.² As observed late last year in *Benbrika v Minister for Home Affairs*, the High Court continues to grapple with the jurisprudentially enigmatic concept of allegiance in the twenty-first century and how an essentially feudal concept melds with modern statutory citizenship status in Australia.³ Helen Irving's book *Allegiance, Citizenship and the Law - The Enigma of Belonging*⁴ addresses the confounding gap in the literature, providing a carefully curated and comprehensive analysis of the relationship between allegiance and citizenship. Incorporating legal, theoretical, and historical perspectives, Irving's work challenges the long-held assumption that allegiance and citizenship are two sides of the same coin.

Irving provides the foundations for her central thesis that allegiance as the definitional core of legal citizenship has no place in a modern liberal

¹ But see Shai Lavi, 'Citizenship Revocation as Punishment: On the Modern Duties of Citizens and their Criminal Breach' (2011) 61 *University of Toronto Law Journal* 783; Ashwini Vasanthakumar, 'Treason, Expatriation and "So-Called" Americans: Recovering the Role of Allegiance in Citizenship' (2014) 12 *The Georgetown Journal of Law & Public Policy* 187; David Wishart, 'Allegiance and Citizenship as Concepts in Constitutional Law' (1986) 15 *Melbourne University Law Review* 662.

² See Alfred Boll, 'Nationality and Obligations of Loyalty in International and Municipal Law' 24 *Australian Yearbook of International Law* 45.

³ *Benbrika v Minister for Home Affairs* (2023) 97 ALRJ 899. See also *Alexander v Minister for Home Affairs* (2022) 96 ALJR 560; *Singh v The Commonwealth* (2004) 222 CLR 322; *Re Patterson; ex parte Taylor* (2001) 207 CLR 391; *Nolan v Minister for Immigration and Ethnic Affairs* (1998) 165 CLR 178.

⁴ Helen Irving, *Citizenship, Allegiance and the Law - The Enigma of Belonging* (Edward Elgar Publishing, 2022).

democracy in the book's opening chapter. Here, she diligently traces the origins and evolution of allegiance, commencing with 'Calvin's Case' in 1608, which she attributes to establishing the enduring principle that allegiance is an intrinsic duty or obligation attached to citizenship.⁵ The book highlights that this principle is incompatible with democratic participation and makes clear that democratic governments are not superordinate sovereigns to whom citizens should owe gratitude and allegiance in return for their protection.⁶ Irving goes further in her analysis to contest that more than just a mismatch, the marriage between allegiance and citizenship in its modern statutory form and its recent resurgence 'enhances discretionary and arbitrary power of the executive, at the expense of all citizens, and of citizenship itself'.⁷ This foundation provides the context for the following chapters, which are used to strengthen Irving's position.

To form the most substantial part of the book, Irving draws on examples from citizenship law, including dual citizenship,⁸ tests applied to naturalisation,⁹ oaths of allegiance,¹⁰ treason,¹¹ citizenship revocation¹² and the recent commodification of citizenship¹³ to challenge the long-held assumption that allegiance is the defining characteristic of citizenship. For example, Irving questions how the High Court's decision in *Re Canavan*, which conceptualised allegiance as a condition of mono-citizenship, can be reconciled with Australia's tolerance for dual citizenship.¹⁴ The alternative solution, Irving suggests, would have been to dispense with the association between citizenship and allegiance and define citizenship in contemporary terms based on the principles of democratic self-governance.¹⁵ Irving's

⁵ Ibid 5.

⁶ Ibid 9.

⁷ Audrey Macklin, 'Kick-off Contribution' in Audrey Macklin and Rainer Bauböck (eds), *The Return of Banishment: Do the New Denationalisation Policies Weaken Citizenship?* (EUI Working Paper RSCAS 2015/14) cited in ibid 6.

⁸ Ibid 24.

⁹ Ibid 44.

¹⁰ Ibid 68.

¹¹ Ibid 91.

¹² Ibid 112.

¹³ Ibid 142.

¹⁴ *Re Canavan; Re Ludlam; Re Waters; Re Roberts [No 2]; Re Joyce; Re Nash; Re Xenophon* ('*Re Canavan*') (2017) 263 CLR 284 cited in ibid 36.

¹⁵ Ibid 37.

arguments are cleverly articulated and meticulously researched throughout, drawing insightful connections between wide-ranging topics. No matter which path Irving guides the reader down, the destination is always the same: the conclusion that allegiance and citizenship in its modern statutory form are incompatible.

From this observation flows the only noted shortfall, albeit minor, in the book's construction. The logic in Irving's argument is difficult to fault, and her research is extensive; however, her conceptualisation of allegiance is narrow and arguably rigid, preventing any possible application to modern liberal democratic principles. It can be argued that a more malleable conceptualisation that merges citizenship as allegiance and citizenship as democratic participation, as has been attempted by the High Court and other academics, may be possible.¹⁶ For Irving, this proposal is inconceivable, and the book is convincing in its assertion that allegiance is incompatible with the modern theory and practice of democratic participation.¹⁷

While Irving makes a compelling argument for the case against allegiance, she also rejects the contention that citizenship is nothing more than a formal legal status.¹⁸ The concluding chapter of her book is dedicated to examining theories that she asserts, unlike allegiance, are compatible with the values of liberal democracy. Irving concludes that a 'social bond' arising from the relationship between citizens and their state is necessary in modern democracies.¹⁹

The book will provide fascinating reading for law, citizenship, and social politics scholars. It is undeniable that the content has a strong domestic flavour that will please Australian audiences.²⁰ However, Irving does not limit her analysis to a domestic context. One of the book's strengths is its ability to easily traverse international borders, as Irving draws on global examples throughout to reach her conclusions.

¹⁶ Ibid 5.

¹⁷ Ibid 13.

¹⁸ Ibid 5.

¹⁹ Ibid 161.

²⁰ Ibid 178, for example, Irving points to the election day 'sausage sizzle' as a democratic bond shared by Australians.

Overall, the book makes an invaluable and original contribution to the field of citizenship law. It should be essential reading for those wishing to understand the complex relationship between allegiance and citizenship.

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