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## Book Review

### THE BIRTHRIGHT LOTTERY: CITIZENSHIP AND GLOBAL INEQUALITY, by Ayelet Shachar<sup>1</sup>

SASHA BAGLAY<sup>2</sup>

ON 17 APRIL 2009, TWO MAJOR AMENDMENTS to the Canadian *Citizenship Act*<sup>3</sup> came into force.<sup>4</sup> The first granted citizenship to Canadians who had either lost or been denied Canadian citizenship due to previously existing restrictions.<sup>5</sup> The second introduced a limitation on the ability of Canadian parents to pass their citizenship down to children born to them overseas after one generation.<sup>6</sup> Under the latter amendment, a child born abroad on or after 17 April 2009 can become a Canadian citizen only if at least one of the parents has either been born in Canada or has become a Canadian citizen by naturalization. Children who do not have access to automatic citizenship by descent may be sponsored by their parents for permanent residence in Canada and may subsequently obtain citizenship. Although these amendments are said to protect the value of Canadian

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  3. R.S.C. 1985, c. C-29.
  4. The amendments were intended to address the situation of 4 groups of 'lost' Canadians: (1) persons who naturalized in Canada, subsequently lived abroad for more than 10 years prior to 1967, and, as a result, lost their citizenship; (2) persons who lost their citizenship between 1947 and 1977 due to the acquisition of citizenship of another country by their parent(s); (3) persons born to a Canadian parent abroad prior to 15 February 1977; and (4) second and subsequent generation Canadians who were born abroad after 14 February 1977 and who have not fulfilled the requirements of the legislation in order to retain their citizenship. See Parliamentary Information and Research Service, Law and Government Division, Legislative Summary LS-591E, "Bill C-37: An Act to Amend the Citizenship Act" by Penny Becklumb (9 January 2008), online: Library of Parliament <<http://www2.parl.gc.ca/Content/LOP/LegislativeSummaries/39/2/c37-e.pdf>>.
  5. *Citizenship Act*, *supra* note 3, ss. 3(1)(f)-(h).
  6. *Ibid.*, s. 3(3).

citizenship,<sup>7</sup> they do so by extending citizenship to some individuals and limiting it for others. Not surprisingly, this restriction on citizenship by descent has provoked a heated debate<sup>8</sup> that involves various concerns, including the potential statelessness of children born overseas, the creation of an inferior class of citizens born abroad,<sup>9</sup> and the negative impact on individuals' choices of work or study outside Canada.<sup>10</sup>

Given this renewed debate on the value and meaning of citizenship, the timing of Ayelet Shachar's *The Birthright Lottery: Citizenship and Global Inequality* could not have been better. The book offers an insightful and nuanced analysis of citizenship acquisition rules and their implications for a variety of issues, ranging from participation and democratic legitimacy at the national level to the distribution of resources and opportunities on a global scale. Divided into two parts, it first exposes the role of birthright citizenship in perpetuating global inequality, and then focuses on national domains and the problems of over- and under-inclusion that are created by current citizenship acquisition rules.

Many of these issues have long been subject to academic analysis and debate.<sup>11</sup> A burgeoning scholarship offers multiple perspectives on the locus of citizenship and its corresponding implications for individuals' rights, duties, and sense of belonging. For instance, some see citizenship predominantly as a legal status that is closely tied to the nation state.<sup>12</sup> Others argue that national citizenship is

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7. Citizenship and Immigration Canada, News Release, "Minister Kenney announces new citizenship law in effect" (17 April 2009), online: <<http://www.cic.gc.ca/english/department/media/releases/2009/2009-04-17.asp>>.
  8. Gloria Galloway, "Expats Fear for Children's Fate under New Rules" *Globe and Mail* (3 February 2009) A7.
  9. Glen McGregor, "Citizenship changes could create 'inferior' citizens; Children born abroad to some Canadians could become stateless, critics say" *Vancouver Sun* (19 January 2009) C2.
  10. Bruce Cheadle, "Citizenship law kicks in, aiding 'Lost Canadians'; Some who were disenfranchised will see rights return, but others will be penalized, critics warn" *Toronto Star* (17 April 2009) A08, online: <<http://www.thestar.com/printArticle/619891>>; Glen McGregor, "'Lost Canadians' law to be reviewed – Contentious citizenship rules unfair to some children: adoptive parents" *Ottawa Citizen* (11 February 2009) A5, online: <<http://www.ottawacitizen.com/Life/Lost+Canadians+reviewed/1275669/story.html>>.
  11. See e.g. Kim Rubenstein, "Advancing Citizenship: The Legal Armory and its Limits" (2007) 8 *Theoretical Inq. L.* 509; Dora Kostakopoulou, *The Future Governance of Citizenship* (Cambridge: Cambridge University Press, 2008).
  12. See e.g. Gertrude Himmelfarb, "The Illusions of Cosmopolitanism" in Joshua Cohen, ed., *For Love of Country: Debating the Limits of Patriotism* (Boston: Beacon Press, 1996) 72.

becoming anachronistic in light of emerging international and regional human rights regimes.<sup>13</sup> Yet others point to multiple sites of citizenship formation: national, sub-national, supranational, and global.<sup>14</sup> The novelty of Shachar's book, however, lies in her perspective on the issues she discusses. By using an analogy between birthright citizenship and inherited property, the author reveals the severe distributive consequences of the current citizenship rules and challenges the continuing blind reliance on them as a means of determining membership. Furthermore, while she draws attention to the persistent importance of national citizenship, Shachar also highlights its broader implications, which transcend national borders and help to maintain existing global patterns of wealth and concentrations of power. Her work not only effectively bridges various debates in citizenship studies, but also introduces valuable perspectives from the related literature in sociology, philosophy, economics, and inequality. Her analysis creates a more holistic picture of citizenship and provides a new, fresh look at the issues that have long preoccupied scholars and activists.

Part I theorizes an analogy between birthright citizenship and inherited property, and exposes the role of citizenship rules in maintaining severe inequalities of wealth and opportunity throughout the world. Although citizenship has a vital impact on the opportunities that are available in a person's life, acquisition of citizenship is determined by a mere accident of birth—based either on the location of birth (*jus soli*) or the citizenship of the child's parents (*jus sanguinis*). These rules, in a mechanism akin to property inheritance, facilitate intergenerational transfers of wealth, power, and national membership, and thereby perpetuate the existing status quo with respect to the distribution of resources and life opportunities. One might object that individuals are free to improve their situa-

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13. David Jacobson, *Rights Across Borders: Immigration and the Decline of Citizenship* (Baltimore: Johns Hopkins University Press, 1994). Some theorists developed an idea of "denizenship"—a type of membership that will provide immigrants with the full range of employment, residence, and social rights, without the need to naturalize. See Tomas Hammar, *European Immigration Policy: A Comparative Study* (Cambridge: Cambridge University Press, 1985); Zig Layton-Henry, ed., *The Political Rights of Migrant Workers in Western Europe* (Newbury Park: Sage, 1990).
  14. Yishai Blank, "Spheres of Citizenship" (2007) 8 *Theoretical Inq. L.* 411; Saskia Sassen, "Repositioning of Citizenship" in Alison Brysk & Gershon Shafir, eds., *People Out of Place: Globalization, Human Rights, and the Citizenship Gap* (New York: Routledge, 2004) 191 at 206-07; and Linda S. Bosniak, "Citizenship Denationalized" (2000) 7 *Ind. J. Global L. Stud.* 447.

tion by immigrating to more developed countries. However, Shachar explains that only a limited number of people are able to migrate, and migration alone is not capable of mitigating the existing inequalities that hinder access to better life opportunities. The author therefore argues that a global redistribution tool is needed in order to reduce the disparities that are perpetuated by the current citizenship allocation rules.<sup>15</sup>

Shachar proposes a birthright privilege levy—a tax-like burden on automatic transfers of membership and entitlement under the current rules.<sup>16</sup> According to this model, affluent polities will channel a portion of their revenue to developing countries for projects aimed at improving the life and opportunities of children.<sup>17</sup> The levy could take the form of financial assistance, as well as volunteer programs through which citizens of prosperous polities transfer skills, knowledge, and technology to developing nations.<sup>18</sup> Shachar offers some tentative options for the institutional design of the levy system. One of her suggestions is to use an international ranking, such as the United Nations Human Development Index (HDI), to pair up payors and beneficiaries. The country ranked first on the HDI would make transfers to the country ranked last, while the second country on the list would make transfers to the country second before last, and so on.<sup>19</sup>

The idea of a levy is intriguing and will likely produce reactions across the spectrum—from recognition of its value in advancing new ways of thinking about citizenship to deep skepticism about its feasibility. One immediate concern is the difficulty of implementation. Given that the levy system will impose obligations and financial burdens on states, the support necessary for its implementation may be difficult to generate. Further, the system's institutional design will likely represent a challenge, due to the many complex factors that need to be taken into consideration. How, for instance, would the new system ensure that aid reaches the needy without unduly interfering with the sovereign affairs of the recipient nations? How is the amount of the levy and the ability of countries to make such payments to be determined, especially in cases where the benefi-

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15. Shachar, *supra* note 1 at 84, 86.

16. *Ibid.* at 96-99.

17. *Ibid.* at 96, 102.

18. *Ibid.* at 103.

19. *Ibid.*

ary is a highly populous country or a country with high birth rates? For example, Grenada ranks among the top half of the HDI and would have to make payments to China if Shachar's method were adopted. The significant differences in population and gross domestic product between these two countries,<sup>20</sup> however, hardly create the intended fair redistribution.

Nonetheless, the reader ought not be distracted from the essence of the book by questions of implementation. As Shachar acknowledges, the book offers no more than a sketch of possible options. It is not a practical guide to the new system and nor is it intended to be. The book seeks to advance scholarly debate, draw renewed attention to the inequalities created by citizenship rules, stimulate debate, and inspire change—tasks that it successfully achieves, even if by means of an idealistic model.

In Part II, Shachar discusses another dimension of birthright citizenship: its meaning and impact in a national context. She emphasizes that the existing rules create problems of over- and under-inclusion. *Jus soli* precludes full membership of long-term residents who have not been born in the state territory and who have not naturalized. *Jus sanguinis* allows the conferral of citizenship on persons who reside abroad and potentially have little meaningful connection to the country of their citizenship. In response, Shachar proposes a new principle of *jus nexi*<sup>21</sup> to be used in addition, or as an alternative, to the principles of *jus sanguinis* and *jus soli*. *Jus nexi*, redefined as a “real and effective link”<sup>22</sup> to one's polity, will shift attention to an individual's community participation, self-identification, and the location of his or her centre of life as the factors defining citizenship.

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20. China has a population of approximately 1,338,612,968 (with a birth rate of 13.71 births/1,000 population) and a GDP of about \$4.222 trillion. Central Intelligence Agency, *2008 World Factbook: China*, online: <<https://www.cia.gov/library/publications/the-world-factbook/print/ch.html>>. In comparison, Grenada's population is only 90,739 (with a birth rate of 21.61 births/1,000 population) and its GDP is about \$657 million. Central Intelligence Agency, *2008 World Factbook: Grenada*, online: <<https://www.cia.gov/library/publications/the-world-factbook/print/gj.html>>.

21. Although the term itself is not entirely new, it has never been used in this context or with the particular meaning that Shachar has provided. Sparse references to *jus nexi* are contained in the context of Roman civil law, where the term is used to denote the right of the creditor and a corresponding obligation of the debtor. M.F. Laferriere, *Histoire du Droit Civil de Rome et du Droit Français* (Paris: Libraire du Conseil d'État, 1846) at 134.

22. Shachar, *supra* note 1 at 165.

This approach will not only assist in establishing a closer correlation between a person's actual connection to the polity and his or her legal membership, but it will also facilitate change in the much criticized, inheritance-like rules of birth-right citizenship. In Shachar's words, it will demonstrate that "hereditary title alone is no longer a sufficient basis for membership."<sup>23</sup> *Jus nexi* will also overcome the problems of over- and under-inclusion of potential citizens by making entitlement to membership conditional on the candidate's genuine link to the host community. On the one hand, it will limit automatic transmissions of citizenship by descent through the introduction of the notion of "declining membership entitlement"<sup>24</sup>—the further away a person is from the original point of acquisition of citizenship, the weaker his or her entitlement to full membership will be. Second, third, and later generations, therefore, will need to show a genuine connection to the country for which they hold citizenship before they can enjoy full legal membership.<sup>25</sup> On the other hand, *jus nexi* will assist long-term residents (even those who have entered the country illegally) to obtain citizenship by virtue of their *de facto* participation in the life of the host society.

Shachar is not the first to identify problems of over- and under-inclusion in prevailing citizenship rules or the importance of "genuine connection" as a factor in determining citizenship.<sup>26</sup> As acknowledged by the author herself, these issues are reflected in academic writing, legislation, and international jurisprudence.<sup>27</sup>

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23. *Ibid.* at 181.

24. *Ibid.* at 171.

25. *Ibid.* at 173.

26. For example, Kostakopoulou talks about "citizenship based on domicile," to which she gives a meaning similar to that of *jus nexi* (*i.e.*, a genuine and effective connection to a given country). Kostakopoulou, *supra* note 11.

27. Shachar, *supra* note 1 at 169, 174-75. In addition to the examples provided by Shachar, an illustration of a *jus nexi*-like principle can be found in the EU Directive 2003/109/EC, which allows for the grant of rights of residence, mobility, employment, and social security to third country nationals who have continuously and legally resided in a Member State for at least five years. It does not, however, confer any political rights on third country nationals. See EC, *Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents*, [2004] O.J. L 016/44, online: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0109:EN:HTML>>, <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:016:0044:0053:EN:PDF>>. Several EU Member States, including the Netherlands, Sweden, Ireland, Denmark, and Finland, have earlier granted resident non-citizens a right to participate in local elections. See generally Theodora Kostakopoulou, "Integrating' Non-EU Migrants: Ambivalent Legacies and Mutating Paradigms" (2002) 8 Colum. J. Eur. L. 181 at 184.

In Canada, the idea of “genuine connection” may be found in the former provisions of the *Citizenship Act* as well as in the interpretation of “residence” for the purposes of eligibility for citizenship by naturalization.<sup>28</sup> Given that the *Citizenship Act* does not define the term “residence,” several interpretations of this concept have developed.<sup>29</sup> While one approach focuses exclusively on the applicant’s physical presence in Canada, others define residence more flexibly as the place where one “regularly, normally or customarily lives” or has “centralized his or her mode of existence.”<sup>30</sup> This approach indeed probes the person’s actual connection to Canada and provides a greater degree of inclusion, even for those who are temporarily absent from Canada during the requisite period of time.

Section 8 of the *Citizenship Act* provides another example of the application of *jus nexi* considerations (although this provision is no longer in force due to the recent amendments).<sup>31</sup> This provision applied to a person who had been born outside Canada after 14 February 1977 and had derived his or her Canadian citizenship from a parent who had also been born outside Canada and had likewise obtained Canadian citizenship by descent. Under the former section 8, such a person would cease to be a citizen on his or her twenty-eighth birthday, unless he or she successfully applied to retain citizenship and had either resided in Canada for a year before applying or established a substantial connection with Canada. This rule could be regarded as a combination of *jus sanguinis* and *jus nexi*, as it allows transmission of citizenship through birthright, but also makes its retention conditional on demonstrating a link to Canada.

In contrast, Canada’s new legislation denies citizenship after the first generation, even to those who may have substantial connections to Canada. Shachar’s analysis provides a useful vantage point for assessing where Canada and other countries stand in the continuum of *jus sanguinis*, *jus soli*, and *jus nexi*. The application of her framework suggests that Canada is moving away from a somewhat over-inclusive combination of *jus sanguinis* and *jus nexi* to a narrow

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28. In order to be eligible for citizenship by naturalization, an applicant must accumulate at least three years of residence in Canada in the four-year period immediately preceding the application. *Citizenship Act*, *supra* note 3, s. 5(1)(c).

29. A review of the case law identifies three main approaches to residence: (1) residence as physical presence in Canada, (2) residence as strong attachment to Canada, and (3) residence as “centralized mode of existence.”

30. *Re Koo*, [1993] 1 F.C. 286 (T.D.); *Re Papadogiorgakis*, [1978] 2 F.C. 208.

31. *Supra* note 3, s. 8 (“[Repealed, 2008, c. 14, s. 6]”).

interpretation of *jus sanguinis*. The recognition of increasing trans-border mobility has prompted restrictive rules instead of attempts to explore a more contextual, “genuine connection” approach. If recent amendments to the *Citizenship Act* are any indication of a future trend, it is reasonable to expect that there will be plenty of material for scholarly analysis. Shachar’s framework will likely enjoy long-lasting relevance as a tool for tracing developments in citizenship laws across the globe, including changing interpretations of the principles of *jus sanguinis* and *jus soli*.

*The Birthright Lottery* is a timely and relevant contribution to the modern theory and practice of citizenship. It will be of interest to scholars of citizenship and those new to the subject. By situating the discussion in the rich context of literature on citizenship theory, borders, migration, and global inequality, the book provides an excellent introduction to existing discourse. Those already familiar with these topics will find the author’s novel perspective on citizenship and her creative proposals for change both refreshing and stimulating. Indeed, the value of this book lies not only in its important contribution to citizenship theory, but also in its explosive power to spark new debates and inspire innovative work in this area.