

# Reviews

***The Birthright Lottery: Citizenship and Global Inequality***, Ayelet Shachar  
(Cambridge, Mass.: Harvard University Press, 2009), 290 pp., \$39.95 cloth.

In this provocative volume, Ayelet Shachar puts forward an account of birthright citizenship as analogous to inherited property, and proposes a birthright privilege levy on citizenship inheritance that citizens of affluent countries should contribute to alleviate global inequalities of wealth and opportunity. By drawing an analogy with property inheritance, Shachar questions a widespread intuition that citizenship assignment based on birth is unproblematic. The recipients of political membership in prosperous and politically stable societies, she notes, inherit a valuable bundle of rights, benefits, and opportunities. Since the place of one's birth is a circumstance beyond one's control, birthright citizens of a well-off society have a duty to transfer some of their chance gains to those who were born in a society with greatly diminished life opportunities.

An important feature of Shachar's book is that, based on the analogy, she justifies assistance to the world's poor as a *legal obligation* of the rich, and not as a duty of charity or a moral obligation. In the first part of the book, Shachar develops the analogy between birthright citizenship and inherited property, which allows her to argue for extending legal qualifications found in the realms of property and inheritance law in order to impose restrictions on the unlimited transmission of membership.

According to Shachar, birthright citizenship is analogous to property transfers in several ways: bounded membership carries with it a right to exclude; it preserves unequal accumulation of wealth and power in the hands of heirs; and citizens of wealthy countries, similar to property owners, are provided with enhanced opportunities to fulfill their potential.

Next, Shachar proposes a concrete institutional measure to mitigate the global-distributive aspect of citizenship: the levy on birthright citizenship inheritance. Such a levy may take the form of resource transfers (as some proportion of the worth of entitlement to inherited citizenship) and will be owed only once in a lifetime. Individuals will be subject to exemptions and deductions similar to those in tax law to ensure the levy is sensitive to citizens' disparities of wealth within the affluent countries. The levy can also be paid in the form of public service. One way of calculating the amount of transfer an affluent country should owe per year would be to multiply the number of its newborns by a per capita rate, which would be set based on the economic standing of the country. A country would be able to pay at a lower rate by admitting more immigrants, by establishing a public service option, or by using some other measure that contributes to global redistribution.

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In the second part of the book, Shachar concentrates on the relations of states with noncitizens within their borders and with birthright citizens residing outside their borders. She points to the inconsistency between the exclusion of resident immigrants, both legal and illegal, from citizenship and the inclusion of citizens who live abroad and have lost a real connection with their state of origin. Shachar argues for prioritizing actual membership in the communities over and above privileges obtained through inherited entitlement. She calls this “genuine connection” principle *jus nexi*. Her recommendation is for states to adopt a functional criterion for defining citizenship, and thus provide a path to citizenship to qualifying immigrants. She also endorses a declining intergenerational entitlement to citizenship with a stopping point in extraterritorial citizenship transmission.

While the property analogy is effective in highlighting the arbitrary nature of birthright citizenship and the associated duty that citizens of the affluent countries bear to the world’s poor, most readers will probably agree that the analogy does not work as well as one might wish. Citizenship is a group relation that excludes only those outside the group; property relations operate within the group and allow property owners to exclude other group members. Citizenship is constitutive of the group as a self-determining agent; property does not constitute the body politic. Hence, the exact nature of the analogy needs to be clarified.

Moreover, Shachar wishes to highlight that the conferral of birthright citizenship strongly resembles the entail, a hereditary transfer of an estate in which inheritance rules would tie the hands of future generations from altering or alienating the estate they inherited from their predecessors. Shachar argues that while the entail

is discredited in the realm of property, birthright principles still strictly regulate the entail of political membership for the vast majority of the global population. This is not true of citizenship, however, especially that of affluent and democratic countries. As far as individuals are concerned, they can emigrate or, together, as the body politic, they can change the rules of membership and the boundaries of the state (consider the peaceful split of the Czech and Slovak republics, for example). Thus, the property analogy would conceptually benefit from further clarifications. For example, an elaboration on whether individuals or the self-determining groups of which they are members are the holders of rights and bearers of duties for the purpose of the analogy would be especially useful.

As to the levy, it is effectively an additional tax on the citizens of affluent countries collected domestically and used to fund international projects. It would help the readers to evaluate the proposal if the difference between this source of funding and the present regime of assistance that affluent countries provide based on their tax revenue were elaborated. For example, by how much would the levy increase the scope of the assistance now offered? In the absence of a world government that is effectively accountable, who will administer the redistribution of the levy and ensure that the often inefficient or nondemocratic governments of receiving countries use the money well and have the incentive to democratize and increase the welfare of their populations? Who would control the incentive for the well-off countries facing reductions to their domestic programs to cheat on their GDP accounting schemes? Unfortunately, none of these important questions is addressed.

In her argument for granting citizenship to illegal immigrants based on the length of

their stay in the receiving country, Shachar evokes the adverse possession principle, which limits the right of a property owner to exclude those who use their property for a sufficient period of time if the owner has not taken action to prevent them from doing so. Thus, those immigrants residing long enough and knowingly to others in the territory of a state have the right to remain. But this analogy seems to falter as well. The principle does not seem to work for owners who happen to be large groups in which members disagree, unless the rights holder whose intention is in question is clearly specified (which Shachar does not do in the case of citizenship). It is not true that all citizens are of the same mind concerning illegal immigration. For example, if the majority of Americans want the government to act on illegal immigration, but the government does not do so to their satisfaction, it seems

that adverse possession does not apply. The government's inaction cannot imply that an individual member or even all of the people "slept on their rights" without intending to claim their property.

Shachar's take on global inequality merits serious attention. Her appeal to the legal duty of each citizen of a well-off society makes her reader relate to the distant needy in a concrete way. No doubt this discourse will offer a fruitful venue for debates on global justice in the years to come, and the additional work that this project requires will be successfully carried out by Shachar and those inspired by her.

—ANNA MOLTCHANOVA

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***Genocide: A Normative Account***, Larry May (Cambridge: Cambridge University Press, 2010), 283 pp., \$85 cloth, \$28.99 paper.

This new book from Larry May is not a study of genocide, but rather an attempt to draw attention to the conceptual and practical difficulties and "puzzles" of conceptualizing and prosecuting genocide under international law. May also argues for expanding the list of groups that are protected under international law against genocide to include gender, culture, and language in addition to race, ethnicity, religion, and national origin. The book's central thesis, however, is that genocide is not "the crime of crimes," and that it differs little from various crimes against humanity. May reminds us that under international law genocide does not necessarily even involve killing, and he goes on to ask why it should

be regarded as worse than other crimes committed systematically against civilians. Since genocide is about the destruction of groups, not individuals, what is special about groups, and what is the "unique harm" that genocide involves as a result of the destruction of a group?

Philosophically, the author offers a nominalist account of groups, which does not recognize the independent existence of groups apart from the individuals who are said to compose them. At the same time he recognizes that individuals identify with certain structures, common interests, and the perception by the public that such groups exist. Groups have a moral standing because they provide for their members'