

Birthright lottery

Ayelet Shachar rethinks citizenship *by Jenny Hall*

Ayelet Shachar wants you to work a little harder. But it's not just you — the legal scholar also has courts, governments and minority communities in her sights as she rethinks the way we organize some of the fundamental categories of society.

To wit: her new book about citizenship, called *The Birthright Lottery*.

"A child born this minute in Canada has all the protections, opportunities, rights and security that Canada provides," she says. "At the same moment, a child born in Malawi has a very different set of opportunities because she happens to be born into a less prosperous country. Each child has no control over which country provides her rights and status. It really is a lottery."

The idea of birthright was entrenched in feudal times, when birth on a certain territory would create a lifelong relationship between serf and lord. Shachar doesn't suggest abolishing citizenship based on birth, but points out that in all other aspects of life, we have abolished birthright as a meaningful criteria for membership in a group. "You wouldn't assume that someone who was born to a lawyer would automatically become a lawyer."

Yet birthright not only survives but thrives in the realm of citizenship. "The harsh reality on the ground," Shachar explains, "is that most people alive today — indeed 97 per cent of the global population — are assigned citizenship by the lottery of birth and either choose or are forced to keep it that way."

Her solution? Those who win the birthright lottery pay a "global levy" for their good fortune in a way that brings some of their advantages to those who don't fare so well in the lottery. And she's not just talking about financial investment. "If I could design this, I would say that every kid who's born in a well-off country would do a year or two of service in a poorer place. We should have a sense of how lucky we are, and the best way to do this is to see how other people are living." —

Getting us all to work a little harder is an enduring theme for Shachar, who's also an expert on multiculturalism. Her previous book, *Multicultural Jurisdictions*, grappled with

how much recognition states should grant religious communities while simultaneously protecting the rights of women within those communities.

For example, she studied a case of a Jewish couple who were granted a civil divorce. As part of the settlement, the husband promised to go through the religious process of releasing his wife, something that was required for her and her children to remain in good standing within their religious community. When he failed to do that, the Supreme Court granted her the right to sue for damages.

"How do you divide the responsibility between the state and the religious community over an individual who belongs to both?" she asks. Many people suggest that all the power be granted to the state. But this isn't satisfactory, she says, because the result is often a dilemma for women who might find themselves still married according to the norms of their religious communities.

In response, she tried to find legal mechanisms for cooperation between states and religious communities. "The idea," she says, "is that both need to work harder to protect women." She developed what she calls a joint governance regime: the state is left in control of things like property and custody but the religious community is granted the ability to define whether a person is released from barriers to remarriage according to their faith. But the last word in this legal arrangement is reserved for the women themselves. If they are treated unfairly by either the state or the religious group, they retain the right to turn to the competing jurisdiction. "In this way," she says, "both entities are forced to work harder to earn a woman's trust."

Canadian courts and tribunals have taken note of her innovative solutions and she has consulted with foreign governments. She's delighted by the interest in her work.

"I want to impact the world. I care about theory but I care about the world as well. I believe that fresh ideas are the core offerings that scholars can proffer. We need to do our fair share."

