
Book Review

CHRISTIAN JOPPKE, *CITIZENSHIP AND IMMIGRATION* (Polity Press, 2010)

AYELET SHACHAR, *THE BIRTHRIGHT LOTTERY: CITIZENSHIP AND GLOBAL INEQUALITY* (Harvard University Press, 2009)

THE CITIZENSHIP PUZZLE

*Reviewed by Liav Orgad**

The institution of citizenship has undergone far-reaching factual and normative changes. In two recent studies, Christian Joppke and Ayelet Shachar address complex and pressing problems underlying modern citizenship theory. Joppke and Shachar begin from different premises regarding immigration and citizenship. Joppke takes for granted the existing regime of birthright citizenship; his main focus is the relationship between immigration and citizenship, and the interrelation between the dimensions of citizenship. Shachar finds the option of becoming a citizen deficient, and underscores the need to rethink the whole concept of birthright citizenship and the role it plays in perpetuating global injustice. Joppke is more optimistic: he celebrates the triumph of liberalism. Shachar is pessimistic about the citizenship discourse—which, even if more liberal than in the past, is still flawed—yet optimistic about the potential of her ideas to bring about a better future. This review briefly examines each book and discusses the contribution of each to the contemporary, evolving debates on citizenship.

I. CITIZENSHIP AND IMMIGRATION

Christian Joppke's new book, *Citizenship and Immigration*, explores the contemporary meaning of citizenship and its evolution, arguing that citizenship has become more inclusive and universalistic. The book demonstrates: a) liberalization in the process of accessing citizenship; b) the strengthening of rights of non-citizen residents; and c) universalization of the concept of national identity. It examines three major dimensions of citizenship—status, rights, and identity—and clarifies the meaning of each dimension, providing an interesting examination of their internal relationship.

* Radzyner School of Law, The Interdisciplinary Center (IDC) Herzliya.

After analyzing different theories of citizenship—social citizenship, national citizenship, post-national citizenship, and multicultural citizenship—in Chapter I, the book explores the first dimension of citizenship: status (Chapter II). The idea of citizenship as a status—membership in a political community—focuses on the questions of who is entitled to be a citizen; by which means; and in what manner citizenship can be waived or rescinded. Joppke provides evidence to establish a general process of liberalization in accessing the status of citizenship. He offers three examples: adopting *jus soli* rather than *jus sanguinis* rules, tolerating dual citizenship, and lowering the requirements of naturalization. Immigration rules are no longer group-based; in particular, race-based discrimination has withered away. Yet, this process faces two countertrends: first, re-ethnicization of citizenship “by means of which contemporary states seek to retain or strengthen ties with expatriate communities abroad” (p. 32). Second, states impose new restrictions on access to citizenship: language requirements, income requirements, oaths of allegiance, citizenship tests, integration pacts, and security-based restrictions. Joppke identifies as the reasons for these countertrends the rise of national security concerns in a post-9/11 world, the failure of immigrant integration, and, one can add, the recession. These countertrends, Joppke asserts, are only nuances within “the overall liberalization of the access to citizenship” (p. 32).

Chapter III examines the second dimension of citizenship: rights. Citizenship is a legal contract in which both the individual and the state have rights and obligations. Joppke makes three arguments. First, he criticizes the popular contention that ethnic diversity, which is often the result of migration, negatively impacts the social rights of citizenship, and explains the reasons immigrants present no danger to the welfare state. Next, Joppke demonstrates how, due to changes in international human rights law, the breadth and nature of aliens and citizens’ rights have become closer. The idea of *human* rights has become “thicker” while the concept of *citizens’* rights has become “thinner.” Joppke admits that noncitizen residents are vulnerable—they have no political rights, their access to the labor market, especially public sector jobs, is more limited, and they can be more easily removed—yet finds that they have more rights than ever. Lastly, Joppke observes a recent trend of declining multicultural rights and increasing antidiscrimination rights.

Chapter IV discusses the third dimension of citizenship: identity. Citizenship is a form of nation-building. Joppke observes that, in order to create citizens out of immigrants, states require newcomers to adopt their national identity, but the “national” identity is nothing but a universalistic concept of political liberalism: a worldwide “review of state pronouncements of what it means to be American, British, or Dutch reveals them as at heart identical” (p. 33). Joppke’s finding touches upon one of the most fascinating questions in political theory: what is the minimum “center” needed to maintain a society and achieve unity and social cohesion? The traditional view finds this center to be *national*, rooted in national language, mores, identities,

and customs. Joppke challenges this view: in an attempt to return to a romantic notion of citizenship, states have been revisiting their national identities, yet have arrived at a universal identity rooted in liberal-democratic creed.¹ Contemporary liberal states are “procedural states” (p. 112). Joppke does not consider it illiberal to ask newcomers to know basic facts pertaining to national culture: rather, “what is pernicious is to require—and verify by means of an inquisitive procedure—a certain identity” of the newcomer, and this is true even if it is a liberal identity (p. 123). Herein lies another contribution of the book: clarifying the distinction between culture and identity.

Chapter V, titled “Citizenship Light,” explores the interrelation between the three dimensions of citizenship: status, rights, and identity. Joppke presents an innovative scheme for examining the concept of citizenship: it is “a story of successive causation, in which changes in one dimension of citizenship helped bring about changes in the other dimensions” (p. 148). The argument would proceed as follows: Liberalization of access to the *status* of citizenship leads to a more ethnically diverse society, which is followed by strengthening of aliens’ *rights*, which generates a defensive response of liberal democracies in an attempt to protect their national *identity*, resulting in a universalistic concept of citizenship. Joppke then asks, what is the future of citizenship? He explains that Europe is moving away from nationality-based to residence-based communities, and predicts that other countries will move toward this model as well. Residence matters more than citizenship; hence, Joppke concludes, “the future of citizenship is bound to be light” (p. 172).

Joppke’s journey includes some insightful lessons about the contemporary challenges of citizenship. For lawyers, Joppke provides case law and legal instruments that facilitate a better understanding of the law of citizenship. For political theorists, Joppke provides a deep analysis of the theory of citizenship and offers a theoretical study of cross-dimensional dynamics of citizenship. For decision-makers, Joppke explains the politics of citizenship, that is, the political forces and ideologies that drive the citizenship debate and influence its outcome. Most of all, Joppke is a comparativist. The strength of the book lies in the comparative method used to explore citizenship by juxtaposing national law, European law, and international law. Joppke offers the reader an interdisciplinary framework and a comparative sociological and legal analysis of both the shared and the different characteristics of the immigration challenge. This is a useful service, since the law of citizenship is often written by lawyers who cut and paste rules from other countries. Such a wide range of perspectives is a great contribution for immigration design in lib-

1. CITIZENSHIP AND IMMIGRATION, at 130 (“The British state, like all Western states trying to upgrade citizenship for the purpose of more successful immigrant integration, is caught in the paradox of universalism: it perceives the need to make immigrants and ethnic minorities parts of *this* and not of *any* society, but it cannot name and enforce any particulars that distinguish the ‘here’ from ‘there.’”).

eral states. It is a must-read book for anyone who is interested in one of the most pressing issues of our time.

Having said that, I have two points of disagreement. To begin with, the book glosses over a fourth, arguably important, dimension of citizenship: participation. The republican idea of participation goes back to ancient Athens. Athenian citizenship emphasized active citizenship. A state is a partnership of citizens in the Constitution; the chief business citizens are engaged in public service, voting, serving in the military (if called), and living a self-sufficient life.² Joppke admits the significance of participation yet states three reasons for its omission: “this is one aspect of citizenship that has changed least and has not opened up in response to immigration” (p. 146); immigrants care less about political participation than about “mundane and belly-centered” issues of social, economic, and cultural rights; and political participation is more a piece of history than a current real-world dimension.

The book underestimates the role of active participation in current citizenship policy. Recent legal reforms reaffirm the importance of active participation as a virtue of citizenship. Denmark has recently imposed a mandatory “integration pact” that must be signed by newcomers before becoming Danish citizens. Every applicant must sign the *Declaration on Active Participation and Integration*. This declaration includes statements such as “I will make active efforts to become self-supporting through gainful employment,” and “I will make active efforts to participate in the life of the community.”³ Similar integration pacts exist in other countries in Europe and in Australia.⁴ Perhaps the most bizarre example comes from the United Kingdom. In 2008, the Home Office reinvented the concept of citizenship. It suggests a new status—a “probationary citizenship” status, which distinguishes temporary residence from citizenship. During the probationary period, the applicant has to improve her command of the language, prove self sufficiency, show a minimum time period of paying taxes, and prove active participation in the society.⁵ The last requirement is not mandatory but, if fulfilled, allows the applicant to apply for citizenship after one year instead of the regular course of three years. Applicants can shorten the path to citizenship by becoming active members of political parties or trade unions, or performing socially beneficial volunteer work. Acquiring citizenship is a journey; those actively participating in the journey should be rewarded. The expectation is that a fast-pass ticket to citizenship will speed up integration.

These few examples illustrate that participation is becoming more central in the citizenship discourse. It is often a legal require-

2. See ARISTOTLE, *POLITICS*, book III (Benjamin Jowett trans., 1943).

3. See *Declaration on Active Participation in Acquiring Danish Language Skills and Achieving Integration into Danish Society*, Danish Immigration Service (2006).

4. See Australian Values Statement, available at <http://www.immi.gov.au/living-in-australia/values/>.

5. See HOME OFFICE BORDER & IMMIGRATION AGENCY, *THE PATH TO CITIZENSHIP: NEXT STEPS IN REFORMING THE IMMIGRATION SYSTEM* 29-31 (2008).

ment preceding citizenship acquisition. The importance of participation may also be found in its potential interrelation with the other dimensions of citizenship. It may be interesting to explore whether participation is imposed as an end in itself, or as an incremental means aimed at promoting other dimensions, such as identity. Conversely, it may also be possible that the promotion of the other dimensions is a means to promote participation. Under this view, citizens in liberal democracies are expected to participate in public life and watch over elected officials. In order to carry out these responsibilities, immigrants need to speak the language and understand the basic history and political system. This way or another, the book, whose purpose is to review the evolution of citizenship in a post-World War II era, skips over participation. This omission is unfortunate in such a great book addressing what citizenship is.

In addition, there is much to say about the thesis on the third dimension of citizenship, identity. The book presents a process of universalization of citizenship as identity. This observation offers a partial picture of current trends. In Europe, this process is followed by a competing process of “cultural convergence.” Member States define the essence of citizenship, and thereby the rules of joining a community, in terms of social mores, folkways, and customs. They seek to impose a certain way of life on newcomers as a prerequisite for admission and naturalization. The message is that liberal states are dominated by one group, and that there is a one-to-one correlation between a “state culture” and a “majority culture.” By means of citizenship tests, states create an image of one culturally homogeneous group, speaking the same language, sharing the same values, celebrating the same holidays, and wearing the same dress—as if all people are the same with no nuances.⁶

Joppke dismisses the rising power of culture as an immigration criterion by arguing that, in the end, the state culture is nothing but a universal concept of political liberalism. But this conclusion does not consider the cultural nuances of political liberalism. First, the same ideas have a different legal interpretation in different states. Universal concepts such as free speech, equality, and freedom of religion have no standard universal application; their meaning is understood in the context of a particular legal culture and national constitution.⁷ Second, the process of universalization of citizenship as identity stands if one looks separately at political ideas that immigrants are required to adopt. However, a particular national culture appears when looking at the system *as a whole*, and not at each of its individual items separately. What makes the German Constitution particular *German* is not any single constitutional principle, but the

6. See A REDEFINITION OF BELONGING? LANGUAGE AND INTEGRATION TESTS IN EUROPE (Eva Ersbøll, Dora Kostakopoulou & Ricky V. Oers eds., 2010).

7. See George P. Fletcher, *Constitutional Identity*, 14 CARDOZO L. REV. 737 (1993).

entire Constitution, the whole package, and the particular way the Germans both express and implement these principles.⁸

II. THE BIRTHRIGHT LOTTERY

The citizenship puzzle cannot be completed by looking only at access to citizenship (naturalization). In a recent book, *The Birthright Lottery*, Ayelet Shachar points out that ninety-seven percent of the citizenship of the world population is transferred at birth, either in a specific territory (*jus soli*) or to a specific ancestor (*jus sanguinis*) (p. 11). Immigrants constitute only three percent of the global population. Thus, for the bulk of the world population, immigration is not an issue. People born with the “wrong” citizenship are more likely to be poor, suffer starvation and disease, and die younger than those born with the “right” citizenship, who are more likely to enjoy better life opportunities, social conditions, and freedoms. Shachar asserts that the rules of acquiring citizenship at birth—through either birthplace or bloodline—are morally arbitrary. Birthright citizenship is a “form of untaxed inherited property” (p. 3). To mitigate the injustice created by the arbitrary regime of birthright citizenship, Shachar has two suggestions: birthright privilege levy and a new membership criterion, *jus nexi*. Much of her book—which is divided into two parts, each has three chapters—is devoted to justifying these novel proposals.

The first part of the book discusses the global implications of birthright citizenship. After presenting an interesting analogy of citizenship as a form of inherited property, it shows how birthright citizenship perpetuates global injustice and inequality, and analyzes alternatives for the current system: a) open borders: abolishing formal borders in lieu of embracing an equal status of world citizenship; b) resurrecting borders to restrict the flow of immigrants by using defensive measures, such as tightening admission criteria and border control programs; c) commodifying citizenship: making citizenship a tradable product that can be “sold or auctioned to the highest bidder among qualified applicants” (p. 54); d) de-territorialization of citizenship, or decoupling of political authority and territory; e) more open admission policies by increasing the number of admitted immigrants. Shachar rejects these ideas—except for the last one, which she endorses—and advocates the imposition of a tax on birthright citizenship; she calls it “birthright privilege levy” (p. 69). This idea suggests that wealthy countries will transfer a levy to poor countries as a kind of redress to improve the quality of life of those negatively affected by birthright citizenship. Shachar is dreaming of a world in which “no child, no matter where or to whom she is born, is left without access to basic goods, such as clean water, food, shelter, education, health care, and so on” (p. 96).⁹ Indeed, Shachar is really

8. Cf. Frank I. Michelman, *Morality, Identity and “Constitutional Patriotism,”* 76 DENV. U. L. REV. 1009, 1015 (1999).

9. The book opens with a great quote by Louis Brandeis: “Most of the things worth doing in the world have been declared impossible before they were done” (p. v).

concerned about the future of the world's children; the words "child" and "children" appear in the book in a similar context to the above quote about a hundred times, not including the *Preface*, in which she tells how the birth of her own son in Toronto contributes to her thesis (p. ix).

The second part of the book is devoted to analyzing local implications of birthright citizenship. Shachar is concerned that the concept of birthright citizenship is both over- and under-inclusive. It is over-inclusive because it is usually automatically granted to citizens' children born abroad, who may have never even visited their country of citizenship. It is also under-inclusive, because citizenship is not automatically granted to people who reside in the territory, such as permanent residents, even though they may have strong ties to their country of residence. After exploring the historical origin of the rules through which citizenship is transferred, and rejecting six common justifications for their preservation, Shachar suggests a new membership criterion, *jus nexi*, which emphasizes actual membership, civic participation, and social ties. *Jus nexi* puts the focus on a "real and effective link" between a person and a polity. It creates membership based not on ancestry or territory, but on genuine connection and substantial ties. Among these ties are: habitual residence, family ties, the center of one's life, participation in public life, and the person's interests (pp. 166-70). *Jus nexi* examines actual behavior and experience, language, everyday life, culture, and active participation in a community. It can serve as a complement, or as an alternative, to the current legal regime governed by *jus soli* or *jus sanguinis*.

While citizenship literature usually focuses on immigration and access to the status of citizenship, Shachar targets the well-established proposition of citizenship allocation. She does not stay in the ivory tower with philosophical ideas, but prescribes in detail how to make them possible in the real world, by which institutions, according to what criteria, and for what goals. She is three professors in one: the philosopher—the person with the vision and lofty goal to make the world a better place; the policy-planner—the person who translates these philosophical ideas into a practical plan, and; the lawyer—the person who transforms the plan into a legal scheme and sketches legitimate and illegitimate legal boundaries. She admits that the contemporary world is not ready for her ideas, but her vision, she nonetheless believes, is within reach.

Shachar's ideas deserve an in-depth discussion. The analogy to property law, the use of tax law theory as a remedy, the feasibility of her utopian idea, its practical implication, the question whether minimizing global injustice is (or should be) one of the goals of citizenship law, and the interrelationship between this goal and other goals of citizenship law (cultural preservation, economic prosperity, self-determination, etc.) must all be addressed. Without doubt, Shachar will provoke a debate. Here, I just want to make three minor remarks. First, Shachar's premise that birthright citizenship perpetuates global injustice seems correct. However, her suggestion of birthright privilege levy as a way of mitigating this reality needs further discus-

sion of its justifications and philosophical foundations. Shachar rightly says that “[r]ecognition of the dramatic and unjust effects of birthright membership regimes is the first step” (p. 86), but it is not self-evident that what follows is a duty to mitigate these effects by a birthright privilege levy. Shachar argues that “[t]he children of well-off polities have done nothing to merit more opportunities in life than the children of poorer nations, yet the current property/membership system grants the former ample privileges” (p. 91). Current rules of citizenship allocation may be arbitrary, yet it does not necessarily lead to the conclusion that there is a legal (or even a moral) duty—unlike aid or charity—to impose a levy on wealthy countries. The wealth, rights, and freedoms associated with Western citizenship are man-made political and social achievements. They are not the consequence of natural resources; rather, they are the accomplishment of hard work and self-sacrifice of a political community, whose members risked themselves in order that they, as well their children and grandchildren, will have a better future—the same as the accomplishments of other political communities from which immigrants flee are, to a large extent, their political and social failure. The social goods attached to citizenship allocation are not arbitrary but rather a result of social, economic, or political accomplishments.

Second, Shachar’s premise that the citizenship rules of *jus soli* and *jus sanguinis* are often over- and under-inclusive seems reasonable. Yet, her suggestion of *jus nexi* provides little help in improving the system. On the one hand, if *jus nexi* is a replacement alternative to the current rules of *jus soli* and *jus sanguinis*, states would still have to adopt some rules of citizenship acquisition at birth since the relevant ties—habitual residence, family ties, the center of one’s life, participation in public life, and a person’s interests—do not usually exist at the moment of birth but in a later stage in life. On the other hand, if *jus nexi* is a supplement alternative to current rules, then it is less novel because most liberal countries have a similar idea in use as part of their naturalization requirements, especially in those countries that have a point-based system (Britain, Canada, New Zealand, etc.). Naturalization criteria in most countries are based on the person’s attachments to the country.

Third, Joppke’s findings shed light on Shachar’s concerns. Joppke shows that while citizenship still matters, it has become thinner, while non-citizen residents’ rights have become thicker. The rules which regulate, monitor, and control the borders are no less critical in creating global disparities than the rules governing the transfer of citizenship. The value of citizenship is “light”; it offers little in terms of tangible benefits. Once a person gains admission and becomes a permanent resident, she is in a good position to gain citizenship—in some states, the road to citizenship is relatively easy—and, if born in the state’s territory, her children are likely to enjoy the “birthright lottery” and become citizens in those countries that apply the *jus soli* rule. True, only citizens have a right not to be excluded, and non-citizen residents’ rights are more vulnerable, but the barriers needed to pass constitutional muster become stricter. Shachar

2011]

BOOK REVIEWS

603

points out that citizenship provides political rights to vote, yet Joppke demonstrates that non-citizens are more interested in social rights than political rights; social stipends and economic benefits are granted to persons, not just citizens. Thus, what are needed are more open admissions policies, as Shachar herself supports, not necessarily a citizenship revolution.

The studies of Joppke and Shachar are rich in ideas and innovations. In different ways, each stimulates a debate on the future of citizenship in the Western world and is a timely contribution to the law of immigration and citizenship. They are recommended reading not just for academic scholars but for any person who is interested in one of the greatest challenges of our time.

