Immigrants, citizens, both? Postcolonial migration and the creation of the immigrant-citizen dichotomy in the United Kingdom

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Abstract

Much contemporary discussion of immigration rests on a conceptual dichotomy between citizens who have a right to access the national territory, and immigrants who do not. In the UK, discussion of the victims of the Windrush Scandal – people with forms of post-imperial citizenship who moved to the UK before 1973 and were later wrongfully targeted as irregular immigrants – has featured appeals their status as “citizens” that logically exempts them from this kind of border enforcement. This emphasises a contradistinction to “immigrants” that has been echoed in post-Brexit discourses on EU citizens. Examining 10,000 pages of archival UK government documents from 1962-1973, this paper analyzes the ahistorical nature of this distinction, as many people in the UK were understood citizens and immigrants simultaneously, until the UK state endeavoured to separate these categories in order to effect immigration control. Tracing how this policy process unfolded during a period when immigration controversies grew, this paper recovers the historical specificity of how states have attempted to reify the notion of immigrants as lacking rights. The issues that the UK state faced in the areas of citizenship and immigration control postwar decades have foreshadowed longer-run difficulties that many states have faced in this policy field. Despite such policy efforts, states continue to contend with blurred categorisations of citizenship and rights, and have been unable to conform administrative reality to an imagined a bright-line distinction between immigrants and citizens. These facts encourage us to question a social imaginary with seemingly natural distinctions between the citizen and immigrant categories.

Keywords: Commonwealth citizenship,

Introduction

> "When my parents and others of their generation arrived in this country under the British Nationality Act 1948, they arrived here as British citizens. It is inhumane and cruel for so many of that Windrush generation to have suffered for so long. … This is a day of national shame." (David Lammy MP, HC Deb 16 April 2018, vol. 639, col. 27-28)

A common observation in discussion of the United Kingdom's Windrush Scandal is that its victims had in fact been "citizens." Thousands of people from current or former colonies arrived in the UK as either "Commonwealth citizens" or "citizens of the United Kingdom and colonies" before 1973, only for the state to target them wrongfully in the 2010s as "illegal immigrants" (Gentleman 2019; Slaven 2022). In public discourse on the scandal, there are a number of prominent reasons that he targeting of these immigrants is held to be particularly egregious, including the image of them having helped "rebuild" postwar Britain and indeed having being "invited" to do so (Lidher, McIntosh, and Alexander 2021, 4224). Among these arguments, their postwar citizenship status has been employed to underscore the fundamental perversity of the scandal: by right, aren't citizens, as a category, axiomatically *not* subject to immigration control?

These citizenship statuses were held by hundreds of thousands of people from the Caribbean, Africa and Asia who arrived in the UK before 1973 and constituted the ascendancy of the contemporary multicultural Britain (Hansen 2000). The Windrush Scandal victims' arrival in the UK as citizens has in this way supported the prevailing public interpretation of their maltreatment, which has captured wide sympathy on the narrow grounds that UK's hostile environment policies toward immigrants had targeted "the wrong

people" (Gentleman 2019, 10). The fact that people who arrived as citizens were undone by policies aimed at immigrants underlines how the scandal violated a "common sense" dichotomisation between the deserving and undeserving, and constituted supposed bureaucratic malpractice which even anti-immigrant right-wing media and politicians were happy to criticise (Bhattacharyya et al. 2021, 21). Indeed, the targeting of these groups by immigration enforcement efforts this was surely perverse, since, as public discourse often has mooted, their citizenship meant that "debatably, these were not immigrants at all" (Kouprianoff 2018).

This dichotomised way of thinking about immigrants as citizens – citizens as by definition exempt from immigration control measures, immigrants as by definition subject to them – has been a frequent, and often tacit, understanding that has underlain discourse on migration policy in the UK and beyond. Similar arguments have been made, for example, about European Union citizens in the UK after Brexit: EU citizens frequently interpreted this citizenship and its mobility rights as privileges that rendered them, in some way, not quite immigrants (Brahic and Lallement 2020), an impression aligned with an EU framework that met third-country immigrants from non-EU countries with integration policies not meant for presumptively integrated EU nationals (Mügge and van der Haar 2016, 81–83). Academic commentary likewise has suggested that "pre-Brexit, EU citizens moved in the context of a rights-based treaty framework and therefore were not 'immigrants' in any legal sense" (Dennison and Geddes 2018, 1140). Naturalisation aside, one cannot be both a citizen and an immigrant in this dichotomy: the position of Windrush Scandal victims is explained, then, by the idea that they were "citizens who seem retrospectively to have become migrants" (Baroness Hamwee, HL Deb 24 April 2018, vol. 790, col. 1549-1550).

How do such assumptions today about these categories shape not just our understanding of past movements of people, but our future imaginings of a world where

migration increasingly features? What does this impulse to render people as either immigrants or citizens tell us about the limits of this imagination? In response to such questions, the purpose of this article is threefold. First, and most immediately in respect to public discussions of recent wrongs in immigration enforcement, it argues that debates about postcolonial citizenship to the UK must recover the fact that immigrants in the postwar decades from the former Empire were, at the time of their arrival, conclusively considered by the state to be *both* citizens and immigrants. This is a starting point for, second, tracing the historical processes by which the UK state increasingly attempted to render legally and bureaucratically real the supposed dichotomy between citizens and immigrants, when these had previously been obviously overlapping categories. This effort had far-reaching implications for how immigration control has been exerted in the UK. This is especially so because, crucially, this process was never really completed – partly due to the continued presence of people who had held overlapping or in-between statuses, and partly because new migration-governance challenges belied making complete divisions between citizens as rights-bearing and immigrants as not, even after this became a policy goal.

Third, this article reflects on what these historic processes of incomplete differentiation between the statuses of immigrant and citizen mean for our contemporary social imaginary around migration control, rights, and belonging. While the particular development of UK citizenship and immigration law in the post-war decades was in some ways "unique (and bizarre)" (Hansen 2000, 16), this article argues that the general problems which the UK state encountered in instituting migration control period were, in other ways, much more typical – and foreshadowed the longer-run struggles of European states to match administrative reality to an imagined sharp delineation between citizens who have a right to access the national territory and immigrants who do not. This clearly demarcated notion of citizenship, aligned with the apparently bright-line sovereignty of the contemporary nation-

state, is muddied in the current not just by the legacy of past ambiguous categorizations, but the UK state's frequent dealings with altogether statuses that are premised on different, less sharply delineated concepts of entitlement – such as EU citizenship, refugee status, or the rights claims of those seeking family reunification or historical redress. By uncovering in detail the process by which the figure of the "immigrant" in the UK has been (incompletely) reified as one who, in contradistinction to the citizen, possesses inherently limited rights, we can identify the historical contingency of this idea and point to other possibilities (De Genova 2002).

This article proceeds in three parts. First, it situates how existing literature has interpreted those who arrived in the UK from the Empire-Commonwealth in the post-WWII decades as citizens as immigrants. Second, the article examines archived official documents pertaining to how the UK state sought to manage immigration between 1962, when the first legislation was past restricting the immigration of these postcolonial citizens, until the passage of the Immigration Act 1971. Here, the state engaged in attempts to impose exclusion on social "outsiders" by introducing new gradations of rights of citizenship, and in general separate legally those who "belonged" to the United Kingdom and those who did not. This proved to be an extremely complex administrative and legal task that was difficult to fully complete, and which left substantial residual categories of "non-belongers" whom it was possibly to totally exclude from the territory, even following new immigration restrictions and a reform of citizenship law in 1981. In conclusion, the article discusses how this difficulty is not mere a historical anomaly from a particular collapsing empire, but rather foreshadowed continued difficulties faced by European states in governing migration and belonging, which encourage us to challenge rather than reify our current social imaginary of what divides citizens and immigrants.

Situating citizenship within postcolonial migrations

The extent to which we should understand people who arrived in the UK from former colonies in the postwar decades as citizens or immigrants depends on a dichotomy between these categories which becomes blurrier the more closely it is examined. The issue of whether one is a citizen is, at face, a simple issue of whether an individual possesses a particular legal relationship to a state or not – if so, being fundamentally included and if not, fundamentally excluded (Bloemraad, Korteweg, and Yurdakul 2008, 155). Despite the persistence of this state-centred and binary view of citizenship, particularly in public discourses and social imagination, scholarship on citizenship has frequently identified how citizenship carries a multiplicity of meanings pertaining to rights, duties, participation, and social membership. Those who possess ostensibly identical legal citizenships nonetheless experience citizenship differently due to the extent to which the meanings of and entitlements to citizenship are mediated by society and culture (Beaman 2016). Those perceived socially not to "belong" can experience even troublesome questioning of their formal statues, which might otherwise be assumed to be impregnable to everyday social prejudices but in reality are not (Yuval-Davis, Wemyss, and Cassidy 2019). Still, legal citizenship is often avidly sought after by vulnerable immigrants – often based on appeals to their existing social incorporation and conformity with certain cultural images of model citizens (Monico 2020) – because of the rights and security that citizenship provides. But these rights are not always readily granted even to long-time residents, or as full as they might appear, leading to concepts such as "denizenship" to express various forms of degraded legal or social rights beneath the full civic inclusion implied by citizenship (Turner 2016). Already, therefore, "citizenship" is a concept with murkier boundaries than legalistic definitions would suggest.

On the other side of the supposed binary, the category of "immigrant" similarly appears straightforward until examined. In part, defining the "immigrant" has been made

more complex by the routine separation of privileged people who engage in mobility from this category (e.g. as "expats") (Kunz 2016). This reflects the extent to which the "migrant" label has become stigmatised (Scheel and Tazzioli 2022) – a clear reason why people seeking redress against unjust immigration enforcement may seek to avoid it. But even the supposedly straightforward question of whether a person legally belongs to the state where they are dwelling – which under some definitions seems to define an immigrant – possesses unclear boundaries:

> Definitionally, it turns out to be surprisingly difficult to set boundaries around the category of immigrant. … Are ethnic Germans immigrants into Germany; are Puerto Ricans immigrants to the United States; are Jews making *aliyah* immigrants to Israel; are subjects of the former British Commonwealth or French Algerians immigrants when they move to England or France, respectively? What about the French or Germans who move to Brussels to work for the European Union -- are they Belgian immigrants? (Hochschild et al. 2013, 4)

Indeed, this passage illustrates that such ambiguities between immigrant and non-citizen status are not merely antique considerations emerging from long-ago empires. They continue through various categories the creation of which relate to basic questions of how nations or other political communities define themselves. How do we interpret the UK's postwar arrivals from ex-colonies given these complexities?

To take citizenship first, what was the legal relationship between those who arrived to live in the UK from former colonies in the postwar decades? The end of European empires and decolonisation further complicate understanding citizenship of the contemporary nation-state (Gorman 2002; Cooper 2014). While British imperial figures spoke, in socially consequential ways, of an imperial citizenship (Gorman 2013), the relevant legal category was not one of citizenship per se but rather subjecthood (Ansari 2013), with British subject's common allegiance to the sovereign unmediated by legal membership of a particular nation, whether colony or metropole. This subjecthood concept in turn helped to shape the

definitions of the citizenship categories in the original legislation that established citizenship in respect to Britain, the British Nationality Act 1948. Responding to attempts by dominions of the British Empire to enact their own citizenship laws, the postwar Labour government sought to encompass those who had belonged to the empire through shared subjecthood within new citizenship categories – a policy effort which scholarship acknowledges universally to have aimed at preserving Britain's global position, without anticipating increased mobility by non-white citizens in ex-colonies to the former metropole (Hansen 1999b).

Some scholarly debate has emerged about the extent to which these forms of citizenship – "Citizens of the United Kingdom and Colonies" for people in the UK and current colonies, or "Citizens of Independent Commonwealth Countries" for people in former colonies had gained independence – are analogous to contemporary legal citizenship, such that it would make sense to speak of these groups legally as "citizens" and not "migrants." Nadine El-Enany argues that these categories are not analogues to the discrete British citizenship introduced in the British Nationality Act 1981, and that it would be ahistorical to read the 1948 Act as encompassing the "colonies" within a privileged British citizenship that had, up to that point, never on its own existed (El-Enany 2020, 87–89). Thus, the 1948 Act should be read as an product of an imperial (or barely post-imperial) mode of thinking, before a later transition where UK citizenship was recast in terms of membership of a nation-state, in 1981. However, despite the various differentiations made by the 1948 legislation among people who, in different ways and to different extents, had a legal relationship to the UK (Hansen 1999b, 78), it is notable that these differences did not at first carry substantial differentiation in rights. The shape of citizenship not only allowed substantial later migration to occur and forged substantial path dependency because British officials were loath to alter it (Hansen 2000), but it also established a system where broadly speaking, postcolonial

immigrants formally had equal economic, social and political rights once they entered the United Kingdom (Slaven 2022). Thus, while UK attempts to close off immigration from the former Empire occurred at the same time as a wider Western European attempts to close postwar forms of migration in the early 1970s (Freeman 1995, 891–92), it is reasonable to believe that these citizenships statuses put immigrants in the UK in a comparatively advantageous position.

To what extent, then, were these postwar arrivals considered to be "immigrants?" If citizenship is in some way culturally defined – exercised more fully by those who conform to a cultural ideal of the true citizenry (Beaman 2016) – then the same also applies to the citizen's supposed opposite number, the immigrant. Indeed, despite contentions that post-WWII arrivals from the Empire-Commonwealth were citizens in the UK, these groups are almost always understood at least implicitly to be immigrant groups: being presented as migrants in public memory (Lidher, McIntosh, and Alexander 2021), often understanding themselves as immigrants (Wardle and Obermuller 2019), being problematized as foreigners by anti-immigrant politicians (Meer 2018), and, of course, being a frequent topic of analysis in migration studies. The prominence in contemporary public discussions how at least some non-white post-war arrivals in the UK were "citizens" has accompanied substantial changes over time in the dominant ways in which these groups are discussed and remembered in UK society. For instance, recent portrayals of Windrush migrants as industrious, settled, and "belonging" contrast sharply with contemporaneous accounts that emphasised them as unwanted and essentially foreign (Taylor 2020; Fryar, Jackson, and Perry 2018). Much of the popular discourse surrounding the "Windrush generation" portrays a group who moved from non-belonging to incorporation, making their subsequent reversion to "immigrants" subject to state exclusion all the more tragic.

Complicating this narrative of citizenship, scholarship on immigration policy in the United Kingdom has traced the reduction of rights of people from the Empire-Commonwealth amid what has amounted to a decades-long crescendo of immigrant restriction (Goodfellow 2019). The initial effort to reduce non-white arrivals from ex-colonies could largely be understood as a process by which the rights of these citizens were restricted, first, as these rights pertained to entry, in part by dramatic curtailments of UK citizen's rights to access the territory that were based in increasingly evident ways on race (Hansen 1999a). Only later on did the scaling back of rights also clearly come to bear on formal rights once immigrants were in the territory. This followed the formulation of the "race relations" framework that emerged following the Commonwealth Immigrants Act 1962, which sought to foster tranquil intercommunal relations, satisfying both conservative and liberal opinion, by restricting nonwhite arrivals in the name of racial harmony while reducing perceived domestic discrimination and promoting the integration of already-settled minorities. However, this second part of the race relations framework faced slow degradation after the Immigration Act 1971 was adopted in the aftermath of restrictive immigration pledges by the Conservative Party (Williams 2015), marking a substantial abandonment of the Commonwealth ideal in favour of European integration (Consterdine 2016). The 1971 Act's adoption marked a shift in the programmatic ideas governing immigration control away from policy goals of broadly limiting immigrant numbers to control intercommunal relations, and toward a vision of controlling individual immigrants – one which was more hostile attitude toward settled immigrants' rights, and which inevitably collided with any promises of security offered by a residual citizenship (Slaven 2022).

Scholarship has therefore made clear that the position of post-WII arrivals in the UK as citizens or immigrant was multi-layered and subject to complex historical processes, not only of mobility, but also of social concepts of belonging, and of policy development.

Existing literature has also made clear the extent to which policy development in UK immigration control was constrained by nationality law which had established post-imperial forms of citizenship (Hansen 2000). Despite many well-established facts and interpretations in this field, however, there is less literature which directly addresses the issues surrounding categorisations as of arrivals immigrants or citizens – and what these categories were understood to mean contemporaneously, not only in a legal sense, but also substantively. While a substantial amount of scholarship has tracked the meaning of citizenship – as indeed "Commonwealth citizenship" or "citizenship of the United Kingdom and Colonies" became degraded for non-white citizens – there is less scholarship that specified what the state administration though the "immigrant" category meant or ought to mean, if anything, and how these understandings shaped the administrative categories into which the state tried latterly to fit those arriving from former colonies. Indeed, this literature has lacked an analysis focused on tracing the relationships among citizenship, immigration status, and rights. This can inform both our understanding of what these categories signified at the time of these post-WWII migrations, and how this supports or challenges contemporary social imaginaries about the difference between immigrants and citizens.

Methods

Archival (10,000 pg. official docs 1962-73; this article cites files that include ___ pages), interpretive.

Shifting and intersecting categories, 1963-1973

Clearly I have not written this, but I plan for this to include sections on the following:

Overlapping images of the "familiar immigrant"

Officials always regarded these incomers as "immigrants," much as they were always regarded as "immigrants" in public discourse while at the same time they held citizenship. To a certain extent they also realised the anomalous position of UK citizenship law vis-à-vis other countries and thought the situation would be easier if there were a nationality law that encompassed people who should have a right to the territory and excluded others. At this time, officials did not discuss Commonwealth immigrants like they were claiming certain entitlements or a right to certain expectations from the UK state which by right the state ought to ignore (this perhaps reflects a pragmatic aspect of British administrative culture). Ambiguity in official writings about whether postcolonial immigrants are clearly separable from the UK polity persists until quite late, even after the election of the Conservatives on an anti-immigration platform in June 1970. For example, are they "foreigners" or not? Even after the 1968 Act officials worry that policy changes will push them into "second class citizenship." The degradation of their citizenship did not follow a change in understanding of what their status meant, but happened during a longer process during which they were re-imagined. This supports a larger assertion in these histories that officials were making things up as they went along.

"Belongers" and "non-belongers"

The 1962 Act established the anomaly of some citizens having a right to enter the territory but others not. This contradictions increased especially during the East African Asian issue in 1967-68. Officials spoke spoke of citizens who "belonged to the United Kingdom" and those who did not, who had CUKC status because they "belonged" to a colony. Thus there were

several gradations of citizen, including some who in common understanding belonged to different parts of the imperial polity than the others but who were not, under current law, legally differentiable. There was a desire to conform immigration control to common understandings of belonging (inevitably racialized), and this seemed to not be simply a response to public pressure but to embody the ideal way that officials thought the system should work. Nonetheless the complexity of obligations to diverse categories of people were a policy problem, and while the UK state slammed the door on East African Asians, the state was not able to totally foreswear obligations to them by leaving them stateless or categorically refusing entry, leading to the persistence of "non-belonger" citizens.

"Immigrant" as a rights-lacking category?

Efforts to reform the immigration system following the Conservatives' 1970 election win on an anti-immigration platform show the indeterminacy of how few rights immigrants should have. The liberal zeitgeist of the postwar decades had meant the "race relations" framework which had embodied a compromise about how to reduce immigration while satisfying liberal opinion. This was the default mode of thinking for some officials even after the 1970 election. There was some thinking that a recission of entry rights for Commonwealth citizens should be accompanied by the extension of entry rights to "aliens" in particular situations, including for family reunification or for "political refugees." These were rejected in the legislation to meet more ostensibly restrictionist goals. However, it is exactly these sorts of immigrants who became difficult for the state to keep out because of the complex rights claims involved in their cases. Again it was not possible ultimately to align the preferred imaginary of an immigrant with no claims on the territory with administrative reality.

Conclusion

- While there was always a sense of problems with the 1948 law, the category of immigrant as necessarily lacking rights of citizenship had to be invented
- Nonetheless the process of separating these categories was incomplete – there were always categories of immigrants with claims to the territory the state could not shake off
- While the UK's experience has often been interpreted as peculiar due to the anomalies of its postwar citizenship act and its complex process of decolonization, in general the issues which it confronted were similar: the inability to conform administrative reality to these two imagined categories
- States continue to have to contend not just with the residual citizenship categories from empire, but from rights claims that emerge from migration histories, and with new categories of transnational belonging (e.g. EU citizenship)
- Cautions against the use of these dichotomies to try to advance rights, not only because they are necessarily exclusionary but also ahistorical and empirically inaccurate, and limit the extent to which rights claims outside of clear citizenship entitlements are potentially legitimate and indeed an inherent part of the complexities of belonging in today's world

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