Status at the Mercy of Language: a Reoccurring Crisis for Transnational Citizens in the United Kingdom

Luck, Matthew

Status at the Mercy of Language: A Reoccurring Crisis for Transnational Citizens in the United Kingdom

Matthew Luck

Out of the remnants of colonial empire and following generations of intra-European conflict, the post-World War II era has seen the emergence of new technologies and laws facilitating the transnational movement of people to Europe and amongst European countries. Among these countries, the United Kingdom has been no exception, having over the past seventy years made various legal provisions facilitating transnationalism. That said, the UK has also repeatedly revoked these provisions and replaced them with policies that frustrate transnationalism and foster racial and ethnic discrimination. In this article, I will discuss British immigration and nationality policy in the mid-twentieth century in relation to legislative changes that took place at the time of the UK's entry in the European Union. I will also discuss the UK's midcentury immigration and nationality policy in relation to the legislative changes which took place upon the UK's exit from the EU. To do this, I will examine two categories of primary source material. The first will be a selection of nationality and immigration acts from the mid-twentieth century: the British Nationality Act 1948, the Commonwealth Immigrants Act 1962 and the Immigration Act 1971. The second category will be primary source material relating to the UK's entry into the EU and subsequent exit: the 1992 Treaty of Maastricht, the 2020 Withdrawal Agreement, and the 2019 EU Settlement Scheme. In the texts of these acts and agreements, key legal terms such as "leave to remain" and "settled status" give form to categories of legal subject. "Leave to remain" is a term that defines rights of the

Windrush generation after the Immigration Act 1971, who were free from immigration controls and had no limit on the duration of their permitted residency in the UK. The existence of this unique legal status distinguishing them from UK citizens led them to face unjust scrutiny from immigration authorities. Reminiscent of "leave to remain," "settled status" describes the legal status of EU citizens living in the UK who, following Brexit, register with the EU Settlement Scheme. These EU citizens are given unique proof of their status to show employers, landlords and government officials, allowing them to access critical services when required.

The connection drawn in political and media spheres between migration and crisis is also examined in academic research. "Beyond Crisis Talk: Interrogating Migration and Crises in Europe" is one example of a scholarly article that takes a broad look at the link between migration and crisis. The article, written by Nick Dines, Nicola Montagna and Elena Vacchelli argues that this link has only strengthened in recent decades: "Human mobility has long been associated with the idea of crisis. Over the last 10 years this connection has become particularly pronounced."[1] Indeed, many contemporary debates that revolve around housing, employment and public services in the United Kingdom include discussion of immigration, and the role of immigrants within the country. Dines, Montagna and Vacchelli further note how social crises have often been tied to or even blamed on migrants: "Stephen Glover declared in the Daily Mail that 'It's not racist to say that migration has fuelled the housing crisis' [and that] uncontrolled immigration to the United Kingdom over the last 10 years and not austerity or a lack of public investment that had increased the 'scarcity of affordable housing.'"[2]

This article fits into the academic discourse that surrounds the topic of migration and its link to crisis. In particular, this article engages with research scholars have devoted to connections between the Windrush Scandal and Brexit in recent years. Ronald Cummings's "Ain't no black in the (Brexit) Union Jack? Race and empire in the era of Brexit and the Windrush scandal" is just one example of academic literature that links Brexit and the Windrush

[1] Dines, Montagna and Vacchelli, "Beyond Crisis Talk," 440.
[2] *Ibid.*

scandal. In doing so, Cummings discusses seminal academic works like Paul Gilroy's *There Ain't No Black in the Union Jack* (1987), which addresses the relation between British identity and race.

The connection drawn in political and media spheres between migration and crisis is also examined in academic research. "Beyond Crisis Talk: Interrogating Migration and Crises in Europe" is one example of a scholarly article that takes a broad look at the link between migration and crisis. The article, written by Nick Dines, Nicola Montagna and Elena Vacchelli argues that this link has only strengthened in recent decades: "Human mobility has long been associated with the idea of crisis. Over the last 10 years this connection has become particularly pronounced."[3] Indeed, many contemporary debates that revolve around housing, employment and public services in the United Kingdom include discussion of immigration, and the role of immigrants within the country. Dines, Montagna and Vacchelli further note how social crises have often been tied to or even blamed on migrants: "Stephen Glover declared in the Daily Mail that 'It's not racist to say that migration has fuelled the housing crisis' [and that] uncontrolled immigration to the United Kingdom over the last 10 years and not austerity or a lack of public investment that had increased the 'scarcity of affordable housing.'"[4] This article fits into the academic discourse that surrounds the topic of migration and its link to crisis. In particular, this article engages with research scholars have devoted to connections between the Windrush Scandal and Brexit in recent years. Ronald Cummings's "Ain't no black in the (Brexit) Union Jack? Race and empire in the era of Brexit and the Windrush scandal" is just one example of academic literature that links Brexit and the Windrush scandal. In doing so, Cummings discusses seminal academic works like Paul Gilroy's *There Ain't No Black in the Union Jack* (1987), which addresses the relation between British identity and race.

It is necessary to touch upon the details of the unjust scrutiny that Caribbean British subjects have faced. The 2018 Windrush scandal concerned actions taken by the Home Office affecting "British subjects" who had arrived from Caribbean countries before

[3] *Ibid.*
[4] *Ibid.*

immigration control changes in 1973. They faced potential detention, loss of rights, and deportation due to the hostile environment policy introduced in 2012. They also faced these risks because they were not issued legal documentation when they were originally granted an automatic right to remain in the UK. New cases of British subjects denied access to their rights of residency in the UK, the right to public services and the right to re-enter the country after travelling abroad, are still coming to light as of the time of writing of this article.

In this article, I will not consider question of whether the European Union is most accurately defined as a supranational union. Nor will I consider the question of whether the concept of citizenship found in the United Kingdom's 1948 British Nationality Act is entirely equivalent to the concept of citizenship espoused by the European Union. Rather, I will study the history of the right of UK citizens and subjects to move to and settle in the UK. My approach will be from the perspective of transnationalism, a term which I understand to refer broadly "to multiple ties and interactions linking people or institutions across the borders of nation-states."[5] In many situations of transnationalism, people experience "a continued identification with the nation-state they have come from (often because of the intention to return)."[6] A crucial characteristic of transnational movement that in such cross-border interaction, state sovereignty remains at play: "while the power of the state has been challenged in some circumstances by subnational, supranational and transnational institutions, the organs of the nation-state still play a crucial role."[7] Transnational status is additive, enabling migrants to settle in countries other than their countries of origin while still retaining connections with and legal rights in their countries of origin due (e.g. a British subject who is also a European citizen). Despite this possibility, the nation-state can also create uncertainty for vulnerable transnationals by changing their legal status. This has been the case in the UK in relation to the Windrush generation, amongst others. Despite the role that national citizenship plays in transnational citizenship, Jonathan Fox's definition of "transnational

[5] Kaiser and Starie, *Transnational European Union*, ii.
[6] Willis, "State/Nation/Transnation," 2-3.
[7] *Ibid.*

citizenship" notes that "the concept of transnational citizenship resonates with those who want to extend rights and principles of political and social equality beyond nation-state boundaries."[8] This definition will be integral to my analysis, as I will examine how both the establishment and breakdown of transnational citizenship in the language of legislation determines the "political and social equality" of these citizens.

Giulia Adriana Pennisi addresses the unique functions of legal language and the importance of word choice in the drafting of legislation:

> Legislative expressions are required to be clear, precise, and unambiguous, on the one hand, and all-inclusive, on the other. The challenge in the construction of legislative discourse is the nature and extent of specification of legal scope in the expression of legislative intentions. A clever balance between the two is the essence of the craftsmanship of legislative intent.[9]

The particular language contained in legislation has the power to define, ensure, and also subsequently alter the rights and status of those whom the legislation addresses. The intent that legislative language be "unambiguous" is a fitting subject for a critical discourse analysis. Justin Parkinson identifies how an absence of legislation — an absence of the assurance of status in legal language — led to the mistreatment of the Windrush generation. Parkinson notes that the Equality and Human Rights Commission's (EHRC) determined in its report on the UK Home Office's treatment of the Windrush generation that "it is unacceptable that equality legislation, designed to prevent an unfair or disproportionate impact on people from ethnic minorities and other groups, was effectively ignored in the creation and delivery of policies that had such profound implications for so many people's lives."[10] Clearly, the detrimental effects of the changes to key immigration and nationality legislation

[8] Fox, "Unpacking "Transnational Citizenship," 171.
[9] Pennisi, "Legislative Drafting," 99.
[10] Parkinson, "Windrush Generation," para.17.

coupled with an increasingly hostile UK government stance on immigration over the last century have altered assurances and perceptions on transnationals. The EHRC report itself acknowledges the unique history of transnational connections to the UK that result from the history of the British Empire, identifying the considerations that should have been made in regards to any alteration to immigration policy: "Britain's complex history of international power [has] implications for the movement of people. The potential consequences of immigration policy for people's lives are profound, especially when it goes wrong."[11] The report homes in on how UK immigration policy should be but historically has not been rooted in a sense of common humanity. This is a key facet of the ongoing UK immigration crisis. Sweeping political decisions have brought about monumental problems for members of the Windrush generation and will have similar effects on European citizens in the UK in years to come.

I will draw on theory and research on citizenship and transnationalism alongside my methodology of critical discourse analysis, which Ruth Wodak defines in *Methods of Critical Discourse Analysis* as a focus on the fundamental role of language use in structural relationships:

> CDA may be defined as fundamentally concerned with analyzing opaque as well as transparent structural relationships of dominance, discrimination, power and control as manifested in language. In other words, CDA aims to investigate critically social inequality as it is expressed, signaled, constituted, legitimized and so on by language use.[12]

With this critical approach in mind, my comparison of postcolonial migration acts with the UK's exit from the European Union will examine language use in policy directed for mass public consumption.

[11] "Public Sector Equality Duty," para.7
[12] Wodak, "What CDA Is About," 3.

My article is divided into four sections. In the first section, I will study the legislation that led to the formation of transnational connections between the UK and its colonies and Commonwealth. My primary source material in the first section will be the British Nationality Act 1948, which created the legal status of "Citizen of the United Kingdom and Colonies" (CUKC). In the second section, I will study the legislation that led to the formation of connections between the UK and the European Union. I will also study the legal status of "European citizen," a term which the European Union uses to describe a new transnational citizen. The primary source material I study in this section will be the Treaty of Maastricht (1992).

The third section of my article will examine the controversy around rights-restricting legal status "leave to remain," which the Immigration Act of 1971 applied to CUKC transnationals. This Act and the Commonwealth Immigrants Act 1962 are the primary material of the third section. In the fourth section of my article, the legal status change of CUKCs that I discuss in the prior section will provide the basis for a comparison to situation of EU citizens in the UK during and after Brexit.

CUKC, commonwealth, and EU citizens living in the UK lack official documentation of legal residency status. When their residency in the UK is questioned, these people themselves have the burden of proving their legal right to this residency, but no means by which to prove this right. Media and legal initiatives such *the3million* have already noted comparisons between the consequences of Brexit and the Windrush scandal, highlighting the impossibility of registering all EU citizens living in the UK as people with "settled status." *The3million* is an advocacy group that was established after the UK's 2016 referendum on membership in the EU. This group campaigns for EU citizens' rights in the UK in response to Brexit policy developments. The aim of my article is not to provide a solution to this reoccurring crisis, nor to advocate for sweeping changes to the current UK legal structure determining the rights of migrants to the UK from the Caribbean, the commonwealth and the EU. This is partly because the full extent of the consequences of recent legislative changes affecting the status of transnationals have not yet been fully realized. In place of advocacy, I will examine how the transnational crisis repeats itself the last

century of British history. In the process, I will aim to highlight the role of legal policy language in manifesting political intent. It is specific uses of language, I will argue, which effects the severing of transnational connections. In this, I aim to demonstrate the propensity for the transnational crisis to remerge not only in the United Kingdom, but also in the European Union and other transnational contexts.

The creation of the "British subject" through the British Nationality Act (1948)

The passage of the British Nationality Act 1948 (BNA) was a defining moment in the history of British citizenship. The act was passed in the same year that the National Health Service was founded, and both acts signified a crucial period of change in the UK after the Second World War. The BNA regularized the citizenship rights of British subjects, which had previously been legally inconsistent between Commonwealth nations:

> (1) Every person who under this Act is a citizen of the United Kingdom and Colonies or who under any enactment for the time being in force in any country mentioned in subsection (3) of this section is a citizen of that country shall by virtue of that citizenship have the status of a British subject.[13]

This clearly constitutes an intent to establish in writing an equality of status between British citizens and subjects. In his study of citizenship in postwar Britain, Randall Hansen highlights the importance of this parity to the legislation's drafters:

> There was near-unanimity around the belief that all British subjects – colonial subjects and Old Commonwealth citizens – should formally enjoy full citizenship rights (though they would not be referred to as such) in the UK. ... In the main, criticism of the legislation centred on its potential for introducing distinctions among

[13] *Legislation.gov.uk*, "British Nationality Act 1948."

> British subjects. Lord Altrincham, for example, detected such a differentiation in the distinction between CUKCs and citizens of independent Commonwealth countries ... When Altrincham's arguments were repeated by others, the Lord Chancellor tried to reassure Opposition members that: "This Bill does not differentiate between British subjects.[14]

The Parliament sought to ensure full rights for all British subjects, fearing the consequences of a distinction between nations of the CUKC and Commonwealth citizens. Despite their efforts, the Parliament's fears would be realized. Subsequent legislation created such distinctions between British subjects and caused confusion surrounding the legal status of United Kingdom residents.

Attending to the particular word "citizenship" as it appears in the BNA, a critical discourse analysis approach can reveal the role of this term in determining power relations between and statuses of British citizens. David Olusoga identifies the transnationalism inherent in the BNA and the parity of rights that the broad term "citizenship" signifies:

> The 1948 British Nationality Act reaffirmed rights that had existed for centuries in common law, including the right of all British subjects to move freely and live anywhere they chose within the newly constituted British Commonwealth.[15]

Following the Lord Chancellor's promise to Parliament of parity between subjects, the act put into place a transnational system that defined colonial subjects and Commonwealth citizens as of an equal right to the "British" identity. In their discussion of citizenship theory, Peter Kivisto and Thomas Faist point to the system of inclusion and exclusion that defines citizenship:

---

[14] Hansen, *Citizenship and Immigration,* 49.
[15] "The Unwanted The Secret Windrush Files," 00:08:30 - 00:09:00.

> The distinction between citizens and noncitizens, those who were for one reason or another excluded from full membership as citizens ... served as a significant and consequential differential mark of identity. It spoke to who could and who could not take part in the ongoing process of self-rule. The idea of full membership is crucial here insofar as while in some instances it was possible to distinguish the citizen from the alien.[16]

The implications of such a "differential mark of identity" were Lord Altrincham's concern in considering the potential for the BNA creating changes in the respective statuses of CUKC and Commonwealth "British subjects." Despite the Lord Chancellor's assurances to the contrary, one's transnational status as a "British subject" still had the potential to become a function of one's ethnicity, race or national identity. "Full membership" in this sense presents the possibility of dividing the British citizen from the British subject, the national from the transnational identity. Transnationals, unlike nationals of a given state, can be by turns included and subsequently excluded from the social body.

A prominent Pathé newsreel report covering the Empire Windrush's arrival in the UK, titled "Pathé Reporter Meets (1948)," is evidence of favorable popular attitude to the arrival of the Empire Windrush's passengers.[17] Although the journey of the Windrush passengers was not easy — historians such as Olusoga have revealed that the UK government made secret attempts to prevent these citizens from arriving in the UK, as well as that these citizens faced discrimination on arrival — their arrival in the UK nonetheless constitutes a new transnational connection coming into existence.[18]

---

[16] Kivisto & Faist, *Citizenship: Discourse*, 16.

[17] The Empire Windrush was a passenger liner which docked in Kingston Jamaica en route to the United Kingdom to pick up servicemen who were on leave. The ship was far from capacity, and therefore advertised cheap transport to the UK. Jamaicans were to be deemed "British subjects" under the British Nationality Act 1948 going through parliament, and so, people took this opportunity to find work and residence in the UK as per their right within this act.

[18] Olusoga, "The Windrush Story," para.8-9.

The language of the BNA allowed people living in the UK's West Indian colonies to view themselves as transnational British citizens.

The newsreel contains an interview with a man who says he travelled from Jamaica to the UK in order to provide for his mother back in Jamaica: "I am a single man, only my mother that is depending on me ... I'm trying to help myself and also help my mum."[19] The BNA ensures that this man and others from the UK colonies and Commonwealth that their legal status will enable them to go between nations freely and retain connections to family outside of the UK. In the same way that the BNA uses inclusionary terms like "British subject" to describe residents of the UK's colonies and the commonwealth, the Pathé newsreel announcer admiringly calls these people "our ex-servicemen who know England ... coming to the mother country with good intent."[20]

New rights and a new community with the Treaty of Maastricht (1992)

The introduction of the "British subject" status through the BNA can be compared to that of "European citizenship" through the 1992 Treaty of Maastricht, which similarly instituted transnational freedoms for nationals of EU countries. Later treaties, such the 1997 Treaty of Amsterdam, specified that European citizenship was a supplement to rather than a replacement of national citizenship. Like the United Kingdom following the BNA, the European Union with these treaties established itself as a transnational system. Like the CUKC and Commonwealth "British subject" within the United Kingdom, the EU citizen is a "citizen of the Union" with rights that extend beyond his or her rights as a national of any particular EU member state. The following lines from the Treaty of Maastricht are relevant here:

[19] *British Pathe*, "Pathe Reporter Meets (1948)," 00:01:35 – 00:01:56.
[20] *Id.*, 00:00:50 – 00:01:01.

> Every person holding the nationality of a Member State shall be a citizen of the Union. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States.[21]

Michael Lister discusses some of the complexities arising from this definition of European citizenship, including a conflict that arises between transnational citizenship and traditional national citizenship. A "key task" involved in constructing the European Union as a transnational system, he finds, is to "enable every national of an EU Member State to recognise European citizenship as a source of new rights and the expression of belonging to a new community."[22] This belonging "'give[s] European citizenship . . . its full meaning.'"[23] The intent to foster a "new community" is key here. The European Union's conferral of equal status on European citizens regardless of national origin is reminiscent of the BNA's assurance of no disparity between CUKC and Commonwealth citizens as British subjects. But in both contexts, despite aspirations to create new transnational "communities," subsequent government decisions such as changes in immigration policy have redefined — and in some cases undermined — the legal rights of transnational individuals. The changes in legal language — the new words — which bring about these changes in immigration policy restructure the power relations between non-transnational and transnational citizens, leading to reoccurring crises of transnationalism.

"Patriality": Transnationalism Revoked through the Commonwealth Immigrants Act (1962) and Immigration Act (1971)[24]

The first instance of such a reoccurring crisis following the BNA emerges through changes UK immigration policy in the 1960s and 1970s. These changes overhauled the rights of transnational British subjects. The Commonwealth Immigrants Act of 1962 subjected all CUKC and commonwealth citizens to immigration control,

[21] EU Citizenship, "EUR."
[22] Lister, "European citizenship," 166.
[23] *Ibid.*
[24] Patriality is a right granted to reside in the United Kingdom without facing the constraints of immigration policy.

permitting only those in possession of government-issued employment vouchers entry to the UK. This was a drastic change to the legal status of those British subjects, including those who arrived aboard the Empire Windrush, who had settled in the UK following the BNA. The UK government gave a new and all-encompassing "leave to remain" status to former colonial British subjects living in the UK. This meant that the necessary documentation was not given to these subjects, nor deemed necessary to provide to authorities until this flaw in transnational documentation was revealed in the 2018 Windrush Scandal. Ironically, this denial of documentation meant that people with "leave to remain" status could not "leave" nor legally "remain" in the UK upon the introduction of the hostile environment policy. As a result, they became the wrongful targets of immigration law enforcement authorities.

The language of the Commonwealth Immigrants Act 1962 cements a hierarchy privileging non-transnational subjects over transnational subjects. One of the provisions of this act is "to amend the qualifications required of Commonwealth citizens applying for citizenship under the British Nationality Act, 1948."[25] The provision to amend citizenship "qualifications" — in practice, to make them more stringent — signals a drastic immigration policy shift away from the intentions of the BNA, which gave assured the free movement of CUKC and Commonwealth citizens to and from the United Kingdom. In that the Commonwealth Immigrants Act obligated these citizens to quality for British citizenship on the basis of employment prospects in the UK, the 1962 act reflects changing power relations between non-transnationals and transnationals. Critics such as David Olusoga and Denise Noble read the Commonwealth Immigrants Act as thinly veiled racial discrimination. British subjects from Caribbean countries who were on equal footing as British citizens from United Kingdom according to legislation enacted just over a decade prior were suddenly determined to be legally inferior than those citizens from the United Kingdom. Noble states that "what the 1962 act clearly does is draw a line and says you may have been British subjects — British colonial

[25] "Commonwealth Immigrants Act 1962," 178.

subjects — prior to 1962, but now you are not anymore."[26] The term "Commonwealth citizen," which after 1962 encompasses those formerly of British subject status, creates a hierarchy in which prospective Caribbean immigrants to the UK are considered "unskilled workers" and those Caribbean immigrants already settled in the UK under the provisions of the BNA begin to receive scrutiny over their immigration status.

In order for a "Commonwealth citizen" to immigrate to the UK, the act requires that the prospective immigrant possesses a "voucher" issued "by or on behalf of the Minister of Labour or the Ministry of Labour."[27] The voucher system allowed for government to discriminate against Caribbean migrants on the basis of race without seeming blatantly to do so. The discriminatory quality of the Ministry of Labour's immigration application system was couched in legislative language according to which the only criterion for making immigration decisions was suitability for employment.[28] Rather strikingly, Rab Butler — Home Secretary at the time the Commonwealth Immigration Act was being written–acknowledges the discriminatory quality of an employment-based immigration system in a letter to cabinet colleagues:

> We must recognise that, although the scheme purports to relate solely to employment and to be non-discriminatory, its aim is primarily social and its restrictive effect is intended to, and would in fact, operate on coloured people almost exclusively.[29]

The Commonwealth Immigration Act, he writes elsewhere, "would represent a departure from the long-standing freedom of all British subjects to enter and stay in the United Kingdom."[30] The ongoing Windrush scandal has shown the consequences of this discriminatory law and the similarly discriminatory laws that came in its wake. One such subsequent law was the Immigration Act 1971,

---

[26] "The Unwanted: The Secret Windrush Files," 00:41:30 – 00:41:46.
[27] "Commonwealth Immigrants Act 1962," 179.
[28] *Ibid.*
[29] "Cabinet Memorandum. Commonwealth Migrants Memorandum," 47.
[30] *Id.,* 46.

which followed up on both the 1962 act and another in 1968. The Immigration Act 1971 increased restrictions on immigration to UK, taking aim at the BNA's expansive definition of "Britishness." But the act also permitted immigrants already settled in the UK to remain in the country indefinitely. This came with a catch, however: the act did not define any mechanism to provide legal immigrants with documentation of their legal residency. Moreover, in the BBC documentary "The Unwanted: The Secret Windrush Files," Olusoga identifies the "catastrophic consequences" of the particular language choice in the Immigration Act 1971 and the power imbalance it establishes between the citizen and the state. He discusses in particular the impact of the language choices at section 3, paragraph 8. The Act states that "when any question arises under this Act whether or not a person is patrial, or is entitled to any exemption under this Act, it shall lie on the person asserting it to prove that he is."[31] According to Olusoga, "these words would come back to haunt the children of the Windrush."[32] As a consequence of the Immigration Act 1971, "anyone without the proper documentation was denied accommodation, employment or treatment and was reported to the Home Office. Now deemed to be illegal immigrants, they were at risk of deportation."[33] This act and others created great hardships for the Windrush generation, a minority community in which many do not possess nor have means to acquire proof of legal residency status in the UK sufficient to satisfy the increasingly stringent demands of successive immigration acts. The disappearance of the term "British subject" in the post-1948 UK policy language has eroded the standing of such people, who increasingly find they lack legal place within UK society.

The dispassionate language of the UK's post-1948 immigration legislation — which categorizes citizens on the basis of "qualifications" such as employability — functions as a pretext for discrimination against transnational citizens on the basis of race, ethnicity, and nationality. Words create legal differentiations between different groups formerly granted equal standing on the basis of mutual transnational citizenship rights.

---

[31] *Legislation.gov.uk*, "Immigration Act 1971."
[32] "The Unwanted: The Secret Windrush Files," 00:46:53 – 00:47:00.
[33] *Id.*, 00:50:56 – 00:51:11.

In a 1952 memorandum by the UK postmaster general, we can see these legal differentiations begin to crop up in discourse at the highest levels of government. Responding to a query from Prime Minister Winston Churchill about the racial demographics of Post Office employees, the postmaster general replies that "this is not purely a post office question at all. It raises the whole issue of whether coloured subjects of the commonwealth and Empire should be admitted to the country from now on." But beyond merely speculating about immigration policy, the postmaster general asks "whether those who are already here should be discharged not only by the Post Office, but by the rest of the Civil Service, other nationalised industries and, indeed, if we are to be logical, by private industry also."[34] The candidness is striking: a cabinet minister muses about wielding the state legal apparatus explicitly for the purpose of forcing settled British subjects out of work. The postmaster general recognizes the practical difficulty of such an act, but raises its possibility to Churchill anyway. Though the series of increasingly restrictive immigration and nationality acts that would come about beginning in 1962 did not go so far as to disenfranchise Caribbean immigrants in the UK from their right to work, they were informed by the same discriminatory intent that motivates the postmaster general's proposal.

Caribbean migrants in the UK make for vulnerable group that can be targeted on the basis of race. Lacking the legal documentation to prove their status after the term "British subject" ceased to have a legal function in the UK, race would continue to be used as the basis to determine who had to prove their right to live, work, and receive healthcare.

The Status Change of European Citizens: Withdrawal Agreement (2020) and EU Settlement Scheme

Certain European citizens who settled in the United Kingdom between the years between 2004 and 2007 also experienced discrimination on the basis of their transnational status. Deanna Demetriou describes the creation of a transnational-national distinction which served the purpose of discrimination:

[34] "The Unwanted: The Secret Windrush Files," 00:27:33 – 00:27:48.

> It was then on October 24, 2006 that Home Secretary John Reid announced the government would be placing restrictions on Romanian and Bulgarian rights to work in the UK. It can be argued that this decision automatically imposed a sense of difference between the 'A10' and the 'A2' accession countries, seemingly legitimizing much of the contentious discourse directed towards 'A2' nationals.[35]

The 'A2' descriptor appearing in the legal text outlining the government's policy change functions to define Bulgarian and Romanian nationals as separate from "European citizens."[36] This is strikingly similar to the distinction which the 1962 immigration act makes between British and non-British Commonwealth citizens. Legislation which aims to divide groups on the basis of race, ethnicity, or nationality without explicitly naming those groups on these bases can be called obscured discrimination. Like overt discrimination, it creates a difference between the figure of the so-imagined "native citizen" and those others who cannot assume this position.

The UK's exit from the European Union has led to another flaring-up of the reoccurring crisis of transnationalism. The Withdrawal Agreement 2019 altered the status of transnationals in both the UK and European Union nations. Many rights will change with this status change and many additional requirements will fall on EU citizens who have lived in the UK for decades under assured circumstances and UK citizens who likewise have lived in the EU. Indeed, Article 18 of the Withdrawal Agreement provides that the host state can require an individual to apply for new residency documentation:

---

[35] Demetriou, "Welfare restrictions," 381.

[36] "A10" countries refer to those which joined the European Union in 2004: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. "A2" countries refer to those which joined in 2007: Bulgaria and Romania.

> The host State may require Union citizens or United Kingdom nationals, their respective family members and other persons, who reside in its territory in accordance with the conditions set out in this Title, to apply for a new residence status which confers the rights under this Title and a document evidencing such status which may be in a digital form.[37]

Because in such circumstances it is the individual who is obliged to apply for this documentation rather than the state that is obliged to provide it, the burden of to prove right of residency falls — as for the Windrush generation — on the individual. The Withdrawal Agreement 2019 places no burden on the state of proving that any particular individual is *not* a legal resident. Withdrawal Agreement 2019 may attempt to play down the changes for which it provides in transnational citizenship status, but these changes are undoubtedly consequential: transnational citizens after Brexit must now adhere to the requirements of nations rather than the transnational system that provided them with the rights to live and work across nations.

The "digital form" of documentation to which Article 18 alludes is especially relevant to problems of transnational citizenship, provoking the question of who "owns" an individual's legal status. The UK government website for Settled Status notes that "you can view your status or prove it to someone else online. You will not usually get a physical document."[38] The very fact that instructions are required to convey to an individual how to view an online version of their status document shows the extent of governmental control over residency status. Remarks on the application website such as ""you cannot use the [application success] letter itself to prove your status" imply an official desire to preclude European citizens in the UK from ever physically possessing their status.[39]

In the same way that digital identity documentation prevents transnationals from ownership of their residency status, transnationals were unable to vote in the UK's EU referendum, and

[37] "Withdrawal Agreement."
[38] *GOV.UK*, "Apply to the EU Settlement Scheme."
[39] "Apply to the EU Settlement Scheme."

as such they lacked "ownership" of their future. Some have argued that this disenfranchisement is a violation of human rights.[40] Transnationals lost control over their lives as immigration policy changes and new documentation requirements were thrust upon them. All the while, a governmental website holds their legal rights in a code accessible "only online." It is ironic that this legal residency verification system is exclusively digital considering that the application process for settled status requires physical proof of identity and proof of continuous residence. This reliance on digital rather than physical proof is destined for failure and abuse.

In addition to all of these conditions for receiving documentation of legal residency in the UK, there is a condition relating to time: "If you're an EU, EEA or Swiss citizen, you and your family can apply to the EU Settlement Scheme to continue living in the UK after 30 June 2021."[41] Is the UK's imposition of this deadline simply a bureaucratic formality, or does it mark the precise moment in time when the transnational's right to live in the UK comes into danger?

Following Brexit, the transnational European citizen living in the UK must abide a change in legal status and an unfavorable requirement to "prove" his or her life in the country. The alternative is the undocumented status and precarity of the Windrush generation. Madeleine Sumption, Director of the Migration Observatory at Oxford University, states in an Institute for Government panel discussion on European citizens' rights after Brexit that "the basic issue is that we have no idea how many people are eligible" for settled status.[42] The UK government's uncertainty as to the number of people eligible to receive settled status — coupled with the legal necessity of applying for this status before a government-determined deadline — creates a hostile situation for vulnerable groups. In a report on The Migration Observatory recognizes that vulnerable groups are liable to miss this deadline or lack the proof required of them:

[40] Low, "In Some Respects."
[41] "EU settlement scheme."
[42] "Settled Status? Citizens' Rights after Brexit." 00:13:51 – 00:13:55.

> securing settled status will be more difficult for certain groups of people, whether because they lack awareness of the process or the need to apply, are vulnerable for different reasons (such as abuse or exploitation), have difficulty navigating the application system, or cannot provide evidence of time spent in the UK.[43]

The Migration Observatory report goes on to elaborate that factors such as "language barriers," "age or disability," and computer illiteracy will make it especially challenging for these groups to navigate an online residency documentation system. These factors should remind us of a major issue making "settled status" reminiscent of the Windrush generation's legal documentation obligations in the UK: namely that authorities failed to inform this group of the sudden need to prove their British legal residency status following the introduction of the Hostile environment policy in 2012. In spite of the UK government's attempts to reach all European citizens in the UK through marketing campaigns, it will once again be those with limited resources and of a lower social class who will not be made aware of how the language contained within new immigration legislation has so drastically altered their status.

Former Minister of State for Immigration Minister Caroline Nokes comments at the Institute for Government panel on the relation between statecraft and language:

> You do not spend a single day as immigration minister without thinking extremely carefully about every single word you are going to say and not only the words you are going to say but the tone you will say them.[44]

Aware of language's political consequentiality, Nokes goes on to argue that the "settled status" documentation system is necessary in order to avoid the issues of a declaratory system, as was implemented with the automatic granting of the 'leave to remain' to citizens who settled under the BNA. This is an attempt to avoid the

[43] *Migration Observatory*, "Unsettled Status?," Para.4.
[44] "Settled Status? Citizens' rights after Brexit," 01:04:32 – 01:04:47.

pitfalls of previous government legislation, which resulted in the catastrophic consequences for the Windrush generation and their children. However, the fact remains that while European citizens are not deemed illegal immigrants, their altered status is named deliberately and a distinction is created in doing so that perpetuates or creates terms which distinguish between citizens in the UK. Nokes may criticize the use of the term "illegal immigrant" because of the connotations surrounding it. Yet, "Settled Status" is a newly created term for 'European citizens' that is not safe from the same negative connotations. Distinctions between groups are given form in terms such as these, and attitudes toward the labeled group will naturally develop once the term has left the pages of legislation and enters into public discourse.

In the weeks and months leading up to the 30 June 2021 deadline for applying for settled status, media reports have increasingly reflected changing attitudes in the UK toward European citizens. In a 2021 *Daily Mail* article, Katie Feehan contrasts the number of European citizens predicted to be living in the UK and the number who have applied for settled status: "In total, 4.6 million people have been granted the right to remain in the UK after Brexit by way of the Government's EU Settlement Scheme. This is higher than the estimated 3.1 million EU citizens in the UK before Brexit, according to the *Times*."[45] The fact that Feehan does not specifically identify the "4.6 million people [who] have been granted the right to remain" as "EU citizens," but does use that designation to refer to the 3.1 million estimated to live in the UK before Brexit by the *Times*' implies a belief that those receiving status under the settlement scheme are not the same EU citizens who have been living and working in the UK for many decades. This is a worrying characterization of European citizens, showing clearly how a change in the language that identifies a group can result in an alteration in the media and public perception of that group. While Feehan's article does eventually note inconsistencies in the government's data on EU citizens living in the UK, the headline of the article misleadingly implies that settled status holders have taken advantage of the Brexit transition process, in turn casting suspicions on all

[45] Feehan, "Number of EU Citizens," para.2-3.

European citizens living in the UK: "Number of EU citizens living in UK is now HIGHER than before Brexit."[46]

Regardless of the Home Office's actions to prevent a post-Brexit recurrence of the crisis which the declaratory system coupled with the Immigration Act 2014 created for the Windrush generation, Madeleine Sumption argues the crisis that will emerge for vulnerable transnationals once again:

> The thing that is likely to create discrimination is the fact that British citizens aren't in the database, and so you have to have a different way of checking. British citizens will only be able to use the physical document. So you're always gonna have with employers and landlords and so forth a dual system where some people get to use the physical document and some people don't. I think that's where the concern about discrimination come in.[47]

The system which collates the status of European Citizens will naturally be discriminatory because British citizens are not in the system. Brexit's removal of the nation from a transnational system undoubtedly will lead to a reoccurrence of the crisis of status endured by the Windrush generation. The BNA and European Union citizenship were systems intended to grant transnational populations equal status, but in the UK both faltered, morphing into systems for differentiating people who were previously seen by the law as equivalent. Organizations such as *the3million* have campaigned to mitigate the potential issues facing vulnerable European citizens living in the UK after Brexit. Their efforts have already seen the filing fee for settled status applications removed. But beyond the filing fee, they have identified further issues with the digital registration system and the Home Office's ownership of the physical documentation of European citizens' status: "we are now seeing increasing examples of where the lack of physical proof is failing people, unable for example to open a bank account because

[46] Feehan.
[47] "Settled Status? Citizens' rights after Brexit," 01:14:15 – 01:14:35.

many providers demand a physical document."[48] Indeed, the distinctions made in the language of the Withdrawal Agreement and Settled Status system between national citizens and transitional citizens will only increasingly lead to discrimination against European residents in the UK in their everyday lives.

Conclusion

British journalists and groups such as *the3million* and the Migration Observatory have identified a reoccurring crisis for vulnerable transnational groups since 1948. They point to the myriad ways in which immigrants to the UK under the BNA and the Treaty of Maastricht have seen their legal statuses change after changes in the law. When such changes invalidate transnational citizenship, transnational individuals face many subsequent legal issues.

Indeed, the Windrush scandal and the uncertain status of EU citizens in the UK from disadvantaged circumstances post-Brexit illustrate that the changing status of transnationals brought about by changes in legal language is an acute crisis experienced repeatedly by the most vulnerable.

The observation made by the EHRC that I cite in my introduction — namely their criticism of the UK for lack of equality legislation — demonstrates the dynamic I have addressed throughout this article. While the terms "British subject" and "European citizen" were designed to apply to all those within their respective transnational systems and therefore implement equality, the EHRC's report shows how government legislation in 2012 sowed division and denied equality to vulnerable groups such as the Windrush generation. The 2012 "hostile environment" policy sought to reduce immigration figures and in doing so ignored the nuanced status of transnational citizens. The change in government sentiment and the consequential change in legislation meant that these one-time "British subjects" were now broadly seen as "illegal immigrants."[49] When changing policy language places a burden on the individual to prove his or her right of residency, naturally those with limited means of access to such proof will be the most

[48] "#DeniedMyBackup Is Discriminatory," para.8.
[49] Gentlemen, "Home Office Broke Equalities Law."

vulnerable to the policy change. This article is of academic relevance in a field of research that has noted parallels between the Windrush Scandal and Brexit, and as in as in Deanna Demetriou's "Welfare restrictions and 'benefit tourists': Representations and evaluations of EU migrants in the UK," used critical discourse analysis as a tool with which to deconstruct the intent and formulation of terms that are placed on non-native UK citizens."

The changing status of transnationals in the UK is a crisis which originates in political actions and has a tremendous effect on individuals on a personal level, as callous legislative changes bear on the lives of vulnerable individuals, families, and communities. One could argue that transnationalism and a citizenship that crosses national boundaries is in itself a marker of difference, and that migration and settlement in a new country will always define the immigrant as distinct from a native-born citizen. However, the drastic and consequential changes to immigration and nationality law throughout the UK's recent history are evidence that the UK is a country deeply uncertain of which groups of people compose its national identity. The last century has seen this former imperial power open up through transnational connections to the colonies, commonwealth, and EU by way of broad and inclusive immigration legislation. Now that many of these doors have closed, a crisis remains for those transnationals who have found a home in the UK. I have no doubt that the UK will re-engage in transnational systems in the future, but lessons from the current period must be learned. The political actions of nations should not lose sight of the unseen people whose status is at the mercy of language.

Bibliography

British Pathe. "Pathe Reporter Meets 1948." Video, 2:49. 24 June 1948. Accessed 14 March 2021, https://www.britishpathe.com/video/pathe-reporter-meetsreporter-meets.

Commonwealth Immigrants Act, 1962 10 and 11 Eliz. 2. Ch. 21 "Arrangement of Sections." *The International Migration Digest* 1, no. 2 (1964): 177-99. Accessed March 28, 2021. doi:10.2307/300289.

CrowdJustice. "#DeniedMyBackup Is Discriminatory - Challenge the Government Today." Accessed 15 March 2021, www.crowdjustice.com/case/deniedmybackup-discriminatory-eu-citizensbrexit/.

Cummings, Ronald. "Ain't No Black in the (Brexit) Union Jack? Race and Empire in the Era of Brexit and the Windrush Scandal." Journal of Postcolonial Writing 56, no. 5 (2020): 593-606.

Demetriou, Deanna. "Welfare restrictions and 'benefit tourists': Representations and evaluations of EU migrants in the UK." *Communications* 43, no. 3 (2018): 379-401. https://doi-org.ezproxy.leidenuniv.nl/10.1515/commun-2018-0015.

Dines, Nick, Nicola Montagna, and Elena Vacchelli. "Beyond Crisis Talk: Interrogating Migration and Crises in Europe." *Sociology* 52, no. 3 (June 2018): 439–47. https://doi.org/10.1177/0038038518767372.

EUR. "Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community." Accessed 15 March 2021, https://eurhttps://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1580206007232&uri=CELEX%3A12019W%2FTXT%2802%29lex.europa.eu/legal-content/EN/TXT/?qid=1580206007232&uri=CELEX%3A12019W%2FTXT%2802%29

EUR. "EU Citizenship." Accessed 15 March 2021, https://eurlex.europa.eu/legal-content/EN/TXT/?uri=celex%3A11992M%2FTXT

Feehan, Katie. "Number of EU Citizens Living in UK Is Now HIGHER than before Brexit." *Daily Mail Online*, Associated Newspapers, 13 Mar. 2021, https://www.dailymail.co.uk/news/article-9358195/Number-EU-citizens-living-UK-HIGHER-Brexit.html.

Fox, Jonathan A. "Unpacking 'Transnational Citizenship'." *UC Santa Cruz: Center for Global, International and Regional Studies* (2005). https://escholarship.org/uc/item/4703m6bf

Gentlemen, Amelia. "Home Office Broke Equalities Law with Hostile Environment Measures." *The Guardian*, 25 Nov. 2020, https://www.theguardian.com/uk-news/2020/nov/25/home-office-broke-equalities-law-with-hostile-environment-measures.

Gilroy, Paul. *There Ain't No Black in the Union Jack: The Cultural Politics of Race and Nation*. 2nd ed. Routledge Classics. London: Routledge, 2002.

GOV.UK. "Apply to the EU Settlement Scheme (Settled and Pre-Settled Status)." Accessed 15 March 2021, https://www.gov.uk/settled-status-eucitizens-families/after-youve-applied

Hansen, Randall. *Citizenship and Immigration in Postwar Britain: the Institutional Origins of a Multicultural Nation*. Oxford University Press, 2004.

Kaiser, Wolfram and Peter Starie. *Transnational European Union towards a Common Political Space*. New York & London: Routledge, 2005.

Kivisto, Peter and Thomas Faist. *Citizenship: Discourse, Theory, and Transnational Prospects*, Oxford: Blackwell Publishing, 2007.

Legislation.gov.uk. "British Nationality Act 1948." Queen's Printer of Acts of Parliament. Accessed 15 March 2021, https://www.legislation.gov.uk/ukpga/Geo6/11-12/56/enacted.

Legislation.gov.uk. "Immigration Act 1971." Statute Law Database, 1 Jan. 1983, https://www.legislation.gov.uk/ukpga/1971/77/section/3.

Lister, Michael, and Emily Pia. *Citizenship in Contemporary Europe*. Edinburgh: Edinburgh University Press, 2008.

Low, Adrian. "In Some Respects the Brexit Referendum Was a Violation of Human Rights." *EUROPP*, 8 Feb. 2017, https://blogs.lse.ac.uk/europpblog/2017/02/09/brexit-referendum-human-rights/.

Migration Observatory . "Unsettled Status? Which EU Citizens Are at Risk of Failing to Secure Their Rights after Brexit?" 12 April 2018, https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-which-eu-citizens-are-at-risk-of-failing-to-secure-their-rights-after-brexit/.

Olusoga, David. "The Windrush Story Was Not a Rosy One Even before the Ship Arrived." *The Guardian*, 22 Apr. 2018, www.theguardian.com/commentisfree/2018/apr/22/windrush-story-not-a-rosy-one-even-before-ship-arrived.

Parkinson, Justin. "Windrush Generation: UK 'Unlawfully Ignored' Immigration Rules Warnings." *BBC*, 25 Nov. 2020, www.bbc.com/news/uk-politics-55065061.

Pennisi, Giulia Adriana. "Legislative Drafting and Language: Legal Language in Context." *Statute Law Review*, vol. 37, no. 2 (2016): 97–100.

Public Sector Equality Duty assessment of hostile environment policies. PDF file. November 25, 2020. https://www.equalityhumanrights.com/sites/default/files/public-sector-equality-duty-assessment-of-hostile-environment-policies.pdf.

The National Archives. "Cabinet Memorandum. Commonwealth Migrants Memorandum by the Secretary of State for the Home Department." 6 October 1961. http://filestore.nationalarchives.gov.uk/pdfs/small/cab-129107-c-153.pdf

Willis, Katie, Yeoh, Brenda S. A, and Fakhri, S. M. A K. State/Nation/Transnation. Vol. 12. Transnationalism. Routledge Research in Transnationalism. Florence: Routledge, 2004.

Wodak, Ruth. "What CDA is About – A Summary of its History, Important Concepts and Its Developments." In *Methods of Critical Discourse Analysis*, edited by Ruth Wodak & Michael Myers, 1-13. London: SAGE Publishing, 2001.

YouTube. "Settled Status? Citizens' Rights after Brexit." Video, 1:19:43. Uploaded by Institute for Government, 26 Feb. 2020, https://www.youtube.com/watch?v=pm-kPp-PGI.

Youtube. "The Unwanted: The Secret Windrush Files BBC Documentary on Caribbean Blacks Mistreatment." Video, 59:15. Uploaded by ignoredvoices, 26 June 2019, www.youtube.com/watch?v=f_rzJTNZSLM.