

Please cite the Published Version

Naqvi, Zainab Batul (2022) Coloniality, belonging and citizenship deprivation in the UK: exploring judicial responses. *Social and Legal Studies: an international journal*, 31 (4). pp. 515-534. ISSN 0964-6639

DOI: <https://doi.org/10.1177/09646639211044294>

Publisher: SAGE Publications

Version: Accepted Version

Downloaded from: <https://e-space.mmu.ac.uk/631566/>

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Coloniality, Belonging and Citizenship Deprivation in the UK: Exploring Judicial Responses

ABSTRACT

In this paper, I interrogate the English case law on citizenship deprivation and its effects on the migrant and diasporic communities most affected by it from a critical postcolonial perspective. I explore how it forms part of state responses to national security that are rooted in racist imperialist ideologies. These underpinnings are ignored in law because such responses are supposedly reserved for exceptional circumstances. This has led to a lack of critical awareness of the wider damage they cause. The damage caused is compounded by the ways that citizenship deprivation constitutes a technology of the politics of belonging. It orientalises people, “othering” and dividing them into those who belong and those who do not based on their differences. This approach leaves racialised and minoritised citizens more vulnerable to losing their citizenship which is a deliberate form of control reminiscent of the longstanding behaviour of colonialist imperialists.

KEYWORDS

Nationality, Citizenship Deprivation, Critical Postcolonial Studies, Politics of Belonging, British Nationality Act 1981

INTRODUCTION

How are migrant and diasporic communities in the UK affected by the state’s increasing use of citizenship deprivation? The process by which an individual has their citizenship involuntarily removed has attracted media attention due to the discovery of Shamima Begum – one of the so-called “jihadi brides” of Da’esh in a Syrian refugee camp. Shamima was 15 years old when she left the UK to join Da’esh. During an interview, she expressed her desire to return to the UK. The response was to strip her of her British citizenship because supporting a terrorist organisation abroad is unforgivable. What does this mean for Shamima? And for British citizens who fall foul of the British Nationality Act 1981 which provides for citizenship deprivation?

Whilst there is a developing base of literature around citizenship deprivation, much of this is focussed on national security and terrorism (e.g. Choudhury, 2017; Van Waas and Jaghai, 2018; Kapoor and Narcowicz, 2019a). Further scholarship considers the intersections with discrimination and statelessness in law and human rights (Mantu, 2014; Prabhat, 2016a; Zedner, 2016; Merry, 2017). This paper shares the findings from a wider critical postcolonial examination of citizenship deprivation in law. Whilst legal approaches to citizenship and its removal by the state are not specifically attributed to British colonialism, I show that contemporary approaches and uses of this are part of a framework rooted in coloniality or the ongoing mass exploitation and domination of racialised and minoritised people established through colonial encounters. There is a lack of deeper engagement with the historical context around this practice from a critical perspective in law¹ without which we risk overlooking the influence colonial-linked migration has on policies today (Bhambra, 2015). This is vital to better understanding how immigration law affects communities and their belonging. Depriving an individual of their citizenship is a political project which shapes the boundaries of belonging. By

recognising this wider impact, we have the conceptual space to look beyond the directly affected individuals to the migrant and diasporic communities they come from. These communities are disproportionately affected by citizenship deprivation practices but the effects on them have been addressed in a less considered way so far.

Following an overview of legal developments, I explain the conceptual arguments that provide a scaffold for my case law analysis. First, that colonial links are less prominent in legal accounts of the framework around citizenship deprivation. Citizenship deprivation is seemingly reserved for exceptional situations to protect national security but there is less attention given to how this aim itself is embedded in colonial logics and uses the law to racialise “undesirable” individuals. Citizenship deprivation is a distinct technology of the politics of belonging which “others” individuals and communities. Establishing the boundaries between who does and does not belong to a nation-state creates an “us versus them” division whereby those who do not belong are defined by how they fail to match the standards of those who do belong. Racialised and minoritised communities who are disproportionately at risk of losing their citizenship are more vulnerable.

I then share three findings from my thematic analysis of the English case law in this area. First, that the courts overlook colonialist influences on the wider framework of law and policy. Second, permitting citizenship deprivation if it is deemed ‘conducive to the public good’ is a contemporary orientalisering process that characterises racialised communities as less capable of “upholding the public good”. Finally, these imperialist and orientalist logics are reinforced by the Home Office’s ever-widening attempts to deny and deprive individuals of their citizenship subjecting these communities to forms of colonialist control even today.

A NOTE ABOUT METHODOLOGY

Although high-profile deprivation cases like Shamima’s have been reported in the media, they provide limited insight into the law’s operation and construction. An effective way to observe the effects of law is to examine the courts’ application of it. This is best achieved by analysing case law reports in the area. Over 50 cases were sourced digitally using Westlaw using the keywords “citizenship deprivation”. I examined each judgment using a critical postcolonial lens that focussed on how the courts perceive citizenship deprivation and how judicial attitudes towards it are shaped. I noted down any recurring patterns across the case reports that indicated these underlying attitudes and influences (Braun and Clarke, 2006). In my discussion below, I have shared select examples that illustrate themes with quotes from judgments to show a pattern of legal attitudes and conduct in this area. There are always limitations to this type of exercise. Law is dynamic and subject to rapid changes with new decisions being passed down all the time. This is therefore not a complete or final exploration of the area. My intention instead is to foster greater understanding of the effects of citizenship deprivation as a legal practice and its potential impacts on those disproportionately affected by it. This also shows the scope for further empirical exploration of citizenship deprivation in law and how it affects real people.

BACKGROUND AND STATUTORY DEVELOPMENTS

Citizenship deprivation occurs when the Home Office decides to remove or revoke an individual's citizenship. It is an administrative process but there are legal mechanisms for appeal and judicial review. Consequences of such a decision include a person's passport being cancelled, restriction of their movements and the possibility of deportation. It has a long history in English law that is intertwined with subjecthood and citizenship. Up until 1948 when citizenship was introduced into English legislation, people were subjects that pledged allegiance to their local feudal lords and later the Crown (Hansen, 2000). Various acts in the 1700s and 1800s allowed individuals to become subjects of the English monarchy and empire but at the same time, concerns about controlling and removing this subjecthood arose. Subjecthood and later citizenship deprivation therefore also have a long history in English law. In 1870, the Government tried unsuccessfully to include deprivation powers in the Naturalization Act amidst worries about mass migration to the UK because foreign citizens could not be trusted with irrevocable subjecthood (Gibney, 2013). Deprivation powers were eventually introduced into English law in the British Nationality and Status of Aliens Act 1914. These powers were targeted towards those who had engaged in espionage during the world wars although the statute was passed during colonial dominance. The statute allowed for an alien to apply for a certificate of naturalisation and become a subject, but this certificate could be revoked. It similarly provided for certificates of imperial naturalisation for aliens in the empire that were revocable. Even at this early stage a distinction was made between British-born and imperial subjects. The statute's formal inclusion of deprivation or revocation for naturalised subjects solidified control over mobility in an imperialist system which provided for convict transportation, the slave trade and indentured labour (Troy, 2019; Kapur, 2010).

Whilst the British empire expanded, increasing numbers of racialised colonial natives also became subjects of the empire and therefore had the same status as British-born subjects. Later, as the empire began to wane, the 1948 British Nationality Act progressed subjecthood into a category of citizenship applied to Britons and colonial subjects known as Citizenship of the United Kingdom and Colonies. The creation of this single status sounds inclusive but was not intended to promote movement into the UK. It was in fact a response to the Canadian Government's decision to create Canadian citizenship (Hampshire, 2005). By obtaining Canadian citizenship, people could become British subjects at the same time without the British Government controlling the process. The 1948 Act was passed to ensure that imperial control was not lost over who could become a subject, now citizen of the UK. The origins of the legal status of citizenship are therefore imperial and designed to control colonial subjects and their migration to the imperial centre (Hansen, 2000). Analyses of English legal approaches to citizenship and its removal need to account for this. In terms of citizenship removal, the British Nationality Acts of 1948 and 1981 expanded the category of those subjected to these powers which was directly led by the decline of the empire (Gibney, 2013). However, these powers were used very little, and it was not until after the 9/11 attacks that the number of deprivations increased and the powers expanded for national security.

The current legal framework is outlined in the British Nationality Act 1981, section 40 (BNA 1981). This section of the statute outlines two categories of citizenship deprivation.² The first is applied if the 'Secretary of State [for the Home Office] is satisfied that deprivation is conducive to the public good' in section 40(2) and the second, if a person has become a registered or naturalised citizen by means of fraud; false representation; or concealment of a material fact in section 40(3). The decision to

deprive because of the public good in section 40(2) is limited by the risk of an individual being made stateless. Statelessness is defined in the 1954 Convention Relating to the Status of Stateless Persons Article 1(1) as when 'a person...is not recognized as a national by any State under operation of its law.' Article 15 of the Universal Declaration of Human Rights affirms the right to have a nationality reinforcing the importance of preventing statelessness.

However, Article 8(3) of the later 1961 Convention on the Reduction of Statelessness permits states to make an individual stateless under specific circumstances. The UK Immigration Act 2014 inserted section 40(4A) into the BNA 1981 allowing the Home Secretary to make a naturalised citizen who is not British-born stateless if satisfied: it is 'conducive to the public good'; that they have conducted themselves in a manner seriously prejudicial to the vital interests of the nation and there are reasonable grounds to believe they can become the national of another country under that country's law. This shows how migrants and members of the diaspora that are more likely to be dual nationals are more vulnerable to statelessness (Sawyer and Wray, 2014). Although all signatories to the 1961 Convention have retained the right to deprive an individual of their nationality, the powers to deprive have progressed the most in the UK (Lenard 2016). Other states including Norway, Australia and France are considering or have newly adopted laws to revoke citizenship, but the UK is re-deploying laws that have been on the books for decades. Citizenship deprivation is not a new concept to the UK like other states showing how advanced it is.³

CITIZENSHIP DEPRIVATION AND THE POSTCOLONIAL: A CONCEPTUAL FRAMEWORK

Deprivation powers date back to 1914 in English law but were rarely used (Troy, 2019). Sources indicate only ten British citizens were deprived of their nationality between 1949 and 1973 – individuals engaged in espionage-related activities during the second world war (Choudhury, 2017). They were not used for almost 30 years between 1973 and 2001 with only one deprivation between 2002 and 2006 (Zedner, 2016). We see a marked increase from 2006 to 2015 with at least 53 deprivations and in 2017 alone the number of decisions jumped to 107 (Choudhury, 2017; Van Waas and Jaghai, 2018).⁴ What has caused this jump? Are more individuals acting in ways that trigger section 40 BNA 1981? Can we explain this as solely a response to the 9/11 attacks? I argue that there are additional underlying forces at work which we can uncover by looking into the past.

The recent increase in deprivation decisions suggests it is a contemporary phenomenon. This begs the question of why looking into the past is useful for making sense of citizenship and its removal in the UK. Critical postcolonial perspectives are concerned with exposing and highlighting the effects of coloniality. By coloniality I refer to Grosfoguel's definition which encompasses the sexual, political, epistemic, economic, spiritual, linguistic, and racial domination and exploitation of racialised groups by the dominant majority group which occurred in the past due to colonial administration and continues in the present day across the European/ non-European divide (2007: 217). Although colonialism is positioned as happening in the past, it is ongoing. Colonialism has taken many forms, but European colonialism has been the most enduring in its transformation of the world (Mgbeoji, 2006). The imperialist ideology underpinning colonisation involved annexing land for the Empire to civilise the colonies. It was for the good of the colonies and colonised peoples because of their racial inferiority. In these conditions the social construct of race was formed to hierarchise humans and justify imperial supremacy (Roy, 2008). The annexation of land and the racial categorisation of people

combined to create a system where colonised people's movement was controlled by the imperial authorities. Citizenship is another way to control the movement and residence of people within the state. The concept of nationality was not developed as part of colonisation. However, the contemporary legal framework around it and its regulation by the authorities today reflects the imperialist priorities of controlling racialised people and communities who are linked to former colonies. How and where people could move and live in the empire depended on their race and this influences citizenship conferral today. Moreover, colonialisms gave rise to the movement of people around the world in ways that were not previously possible including from the colonies to the imperial centre (Mains et al, 2013). These movements occurred within colonial structures of domination and the current law around nationality and citizenship is designed to respond to fears about the movement of racialised colonial subjects.

In the early 2000s current affairs caused shifts in legal responses to citizenship and its removal in the UK. Whilst analysing whether legislative deprivation powers correspond with liberalising processes around citizenship, Gibney (2013) tells us that more recent statutory developments around deprivation were a response to terrorist attacks and racially charged events including the riots in Oldham in 2001, the 9/11 attacks and the July 2005 Tube bombings. This tells us that fears over national security and the war on terror have prompted the Government to dust off these powers and deploy them against a new overwhelming threat. The construction of national security is further relevant here. To achieve complete control over colonial lands and peoples, the coloniser relied on a 'militaristic concept of state security' (Mgbeoji, 2006: 858). Security was a key feature of the colonial mission with people's race determining whether they were a threat.

Securitisation, or the idea that citizenship and its deprivation are now a matter of security, applies a modern-day layer of colonising racialisation to us when we move between state territories. Racialised people are assessed more closely by authorities influenced by the colonial concept of race to see how much of a threat we are and whether we should be allowed into the state. This is due to the "war on terror" and the constant state of emergency we have been placed in but the colonial is also influential here. Naming certain activities and behaviours terrorism was a strategy of colonial authorities to use force against anti-colonial and anti-imperial resistance (Kapoor 2018; Kapoor and Narcowicz 2019). Counter-terrorism strategies are therefore founded on imperial strategies to stop colonised people from resisting oppression. In this "war on terror" one strategy is to class the threats facing the UK exceptional requiring a perpetual state of emergency, but this is not new. The state of emergency was used as a convenient way for colonial governors to "protect public safety" and "defend territory" without being subjected to the restraints of "everyday law" (Al Zubairi 2019). This is overlooked with analyses remaining fixated on the 9/11 attacks and the "war on terror" as the starting point for the state of emergency (Berda 2020). This is all part of the colonial inheritance and has manifested in contemporary immigration control, now a key feature of national security.

Existing literature has exposed citizenship deprivation as a securitising mechanism and the challenges it poses for statelessness, human rights, the rule of law and antidiscrimination policies (Baubock and Paskalev, 2015). There is scholarship which locates the practice in its historical context, but this is under-developed in law (El-Enany, 2020). For example, Deirdre Troy (2019) analyses debates around the British Nationality and Status of Aliens Act 1914 to show how citizenship deprivation is an intrinsic part of citizenship. Citizenship is defined by who can have it but also who it can be taken from which

is why we cannot separate the two.⁵ More recently, Devyani Prabhat (2020) notes that citizenship deprivation is embedded in the system designed to deal with aberrant individuals in the state of emergency the “war on terror” has created. Exceptional times calls for exceptional executive powers to deal with exceptional individuals acting in exceptional ways. The claim we constantly live in exceptional and unsafe times has led to the normalisation of the use of these deprivation powers. When the normal every day is exceptional, the exceptional individual has also become normal.

This has wide-reaching implications for minoritised communities stretching beyond national security cases. By only looking at the national security agenda, we risk overlooking the wider effects on these communities because citizenship deprivation powers are not just being used against individuals who are linked to terrorism. My analysis below contributes to the scholarship which recognises the colonialist context around the law and the ways it is bound up within colonial expressions of power. Further, I disrupt dominant discourses that frame citizenship deprivation as reserved for exceptional circumstances and the assumption that if you behave properly, you cannot possibly fall foul of these powers. These powers do not exist in a vacuum. They exist to subjectively divide and hierarchise individuals and communities into those who should and should not be within the “safe” boundaries of the nation-state using the concept of belonging. Belonging is important to identity formation on personal and collective levels. Belonging goes deeper than identity which are the stories we tell about who we are: it is our emotional investments and desire for attachments (Yuval-Davis, 2006). Belonging is feeling at home and safe. It is usually taken for granted but when it is under (perceived) threat, it becomes articulated and politicised (Yuval-Davis, 2004). Nira Yuval-Davis (2006) identifies three intertwined levels of belonging: social locations; individual identifications and emotional attachments to various groups; and ethical and political values systems with which people judge their own and others’ belonging. The level around values systems is where I mostly locate current understandings of citizenship.

English citizenship law is overtly engaged with belonging. Earlier I mentioned that the creation of citizenship of the UK and the colonies gave both English and colonised people the same status in law. Whilst it was never intended for colonised subjects to take advantage of this and travel to Britain, immigration of this nature still happened. Later, to restrict this the Government and policymakers explicitly recast citizenship around belonging. Now, British-born individuals and descendants were “belongers” whilst the colonial-born were “not belongers” (Hampshire, 2005). This use of belonging manifested in the Commonwealth Immigrants Act of 1962 restricting the entry of British colonial subjects into the imperial centre. Hampshire (2005) further observes that this simplified dichotomy turned on race through the focus on descent to decide citizenship belongers. Belonging and nonbelonging in immigration law were coded along racial lines to prevent racialised colonial subjects’ movement into postcolonial Britain. The emphasis on descent remains today with the ways that (potential) dual nationals are treated.

Thus, belonging has and continues to decide if a person displays or presents the right (British) ethical and political values. Through this, citizenship has transformed into a technology of the politics of belonging. Crowley defines the politics of belonging as ‘the dirty work of boundary maintenance’ between those who do belong (us) and those who do not (them) (1999: 15). It involves deciding what being a citizen means and any associated status and entitlements (Yuval-Davis, 2006). So, whilst belonging is the emotional sense of feeling at home and safe, the politics of belonging is the collection

of political projects which shape these feelings for individuals and communities.⁶ Citizenship is a political project where the legacies of empire and orientalism govern the movement of people into and out of the nation state along with their individual status (Yuval-Davis, 2006).

Along with citizenship, I argue that citizenship deprivation is a distinct technology of the politics of belonging. It is a political project that unsettles communities' sense of belonging by highlighting their differences from the majority who already belong. The use of statutory powers creates hierarchies of citizens to sustain and reinforce the politics of belonging in the UK. Not only is citizenship deprivation a discrete technology of the politics of belonging, it is an orientalising and othering practice. Orientalism is a discipline focussing on the study of the Orient which involves: 'making statements about it, authorising views of it, describing it, teaching it, settling it, ruling over it' (Said, 1978: 3). This stems from an imaginary geographic division created by orientalists between the West (Occident) and East (Orient) based on the distinction between Europeans and non-Europeans that then underscores imperialist action and ideology. Orientalists emphasise what is different (or inferior) about the Orient by sharing "knowledge" that they then use to justify their mission to civilise the backward colonies. Orientalism is an othering process, creating an "us versus them" framework where if you do not fit in with "us" and our values you are one of "them" or "other" and therefore inferior. Citizenship deprivation is used to reinforce this by telling dual and/or racialised nationals with a heritage that is "other" they are more likely to be deprived of their citizenship. The law governing citizenship deprivation marks out naturalisation and dual nationality potential to confirm that these "others" will never achieve full membership. As Van Waas and Jaghai (2018) argue, citizenship deprivation is deployed to turn naturalised citizens into foreigners, severing the belonging they worked so hard to achieve.

In addition to the individual, citizenship deprivation has deeper and more damaging effects on migrant and diasporic communities. Even as we see how citizenship operates to exclude, it is positioned as enabling social cohesion because it fosters the perception of belonging and security. It alleviates some anxiety and tells the individual that they are now a member of the community, and the UK is their home (Yuval-Davis 2004; Fortier, 2017; Van Waas and Jaghai, 2018). However, this creates the impression that citizenship only connects the individual to the state when for racialised people it is more complicated. Citizenship is multi-layered, creating ties to various collectives according to factors including race, ethnicity, religion and location (Yuval-Davis, 2007). For the minoritised, this is especially true because they have more layers to negotiate in their identities as citizens with real or in the case of Shamima Begum assumed links to external polities. The effect of these extra layers is the perception that their belonging and membership are more fragmented. This fragmentation is made starker by the deployment of citizenship deprivation because it is obviously being used more against people from their communities. People they are tied to are being involuntarily removed and even if you are a citizen, you are not able to feel at home. Its disproportionate use against people from their communities sends the message that they will always foremost be foreigners. Being othered and not belonging are therefore 'constitutive of citizenship' and its deprivation (Kapur, 2010: 18). They are not consequences of behaving badly but embedded into the fabric of law and policy ensuring that citizenship deprivation is a form of internal colonialist control justified by orientalist pronouncements of who does not belong to the nation-state.

This is demonstrated by how citizenship legislation was passed in response to the Oldham riots contributing to the longstanding sense of insecurity that minoritised migrant and diasporic communities experience in the UK. The insecurity is further fed by how political and legal systems target measures against whole communities for the behaviour of individuals. The behaviour of individual rioters came to represent the community emphasising that the collective belonging of these communities is determined by the individual's belonging and vice versa. For example, the parents of rioters being unable to speak English was designated a cause of the riots. It is not just the rioters who are viewed as responsible but even those associated with them: their families and communities. This leaves communities in a collective state of anxiety with the state treating them as a single entity. They are all integrated, or none are, they all belong or none of them do (Healy 2020). This is further evidenced by the vulnerability expressed by community members proximate to those deprived of citizenship. For example, residents of Bethnal Green in London where Shamima Begum grew up have shared their fear about the government's decision regarding her citizenship and its implications for their British identity (Shackle, 2019). Citizenship deprivation affects communal belonging because belonging is not something that we can aspire to and achieve by ourselves, it is affected by the groupings we are a part of and our association with others. If one of our group is at risk of losing citizenship, we are also at risk. If one of us is at risk of losing their belonging, we all are.

THEMATIC ANALYSIS FINDINGS

Ignoring Racialising Colonial Influences on Citizenship Deprivation Today

I now move on to share several noticeable themes from my analysis of the case law. The first concerns the courts' understandings of the historical influences on citizenship deprivation. I argue that judicial understandings of this phenomenon focus on earlier historical influences which although have some bearing on the practice today, neglect the influence of coloniality. The courts' perception is displayed for example in *Pham v Secretary of State for the Home Department (Open Society Justice Initiative intervening)* [2015] UKSC 19 and *Pham v Secretary of State for the Home Department* [2018] EWCA Civ 2064. These judgments concerned a man who was born in Vietnam being deprived of British citizenship on the basis that it was conducive to the public good because he was suspected of committing terrorism-related offences:

The treason legislation would, if applied to the appellant's acts, have given rise to a viable case against him... (*Pham* [2015]: [16]).

The right to nationality...derives from feudal law where the obligation of the liege was to protect, and the obligation of the subject was to be faithful...treason was a betrayal of that trust and treason was recognised as such by the common law even before the Treason Act 1351... (*Pham* [2018]: [49]).

Here, the courts view citizenship and its deprivation as an exchange of obligations inspired by medieval feudal law, so citizens exchange their loyalty for protection from the state. The presence of the term 'disloyal' in citizenship legislation until 2002 confirms this version of history. To violate the state's trust is treason. Treason was a key tool in *criminal law* for addressing basic security threats. By 1718 treason had been reframed as an offence against the state rather than the liege (Larson, 2019). The reference to these medieval understandings of treason and loyalty in the courts neglect the ways legal attitudes

to citizenship deprivation are now influenced by racialised colonialist interpretations of these concepts. Loyalty and protection from imperial subjects were also key in the British empire and the later development of the nation-state. This reiterates how treason, loyalty and protecting the state have become bound up with the colonial which is not acknowledged in the case law. By concentrating on the medieval feudal context, colonialist influences on current approaches to citizenship deprivation risk being ignored. Moreover, the racialised imperialist classification here that leads to people from certain backgrounds being targeted and “exiled” without due process because of how disloyal or threatening they seem is being downplayed (Kapoor and Narcowicz, 2019a).

In the case law, one example of colonial influences on the state of emergency that citizenship deprivation is deployed under is where the Home Office deliberately deprives individuals of their citizenship when they are abroad so that they cannot return to the UK. The Home Office is ‘effectively ‘changing the locks’ whilst they are outside the country’ (Ross, 2014: 319). Deprived individuals argue that they cannot effectively participate in their appeal from outside the country affecting the outcome.⁷ Banishment and exile are well-documented consequences of treason stretching back to Ancient Greece and later became an integral part of the colonial project (Macklin, 2014). The British empire banished undesirable subjects through convict transportation and the establishment of penal colonies which enabled colonial expansion (Macklin, 2014; Troy, 2019). The colonial administration is banishing individuals from the nation-state even today. The courts adopt a largely deferential approach to the Home Secretary:

The appellant’s case must inhere in the proposition that the Secretary of State’s actions have frustrated the policy or purpose of the measures conferring the right of appeal. Such a case would certainly be made out if it were shown that the Secretary of State had acted so as to deprive the appellant of an in-country appeal for reasons of tactical advantage in the appeal process. That would be an improper motive...But that is not the factual position here (*L1 v Secretary of State for Home Department* [2015] EWCA Civ 1410: [21]).

Home Secretary was advised that the threat posed by W2 was best managed outside the UK. Deprivation while he was known to be in [his country of origin] was the best means of achieving that goal. Home Secretary’s attention drawn to the effect of a particular decision of SIAC about removals to that country “as a reason for not pursuing deprivation while W2 was in the UK” (*Regina (W2 and another) v Secretary of State for the Home Department* [2017] EWCA Civ 2146: [15]).

The courts recognise decisions to deprive may be made when appellants are outside of the country but if the decision to deprive is lawful, then the timing of the order is irrelevant. In *L1*, the appellant was on holiday in Sudan with his family when he was deprived of his citizenship. Later, in *W2*, the Home Secretary was advised that making the order when the appellant was not in the UK would be more effective because an older case indicated that pursuing deprivation whilst he was in the UK would leave them unable to remove him to his country of original nationality on human rights grounds.

Kerr (2019) observes that every identified deprivation order made whilst an individual has been in the UK has been made with the intention to remove them from the UK. The Home Office’s strategic approach to the timing and intentions of these orders is a form of banishment and exile. The colonial

regime was dependent on controlling the movement of native bodies within and across imperial borders. Out-of-country deprivations are only possible when a person has potential access to an alternative nationality or is a dual national. It is those from a migrant or diasporic community that are disproportionately at risk of being deprived of citizenship whilst abroad showing how the neo-colonialist nation-state operates to “other” them, controlling their access to the state by banishing or exiling them at will.

Out of country deprivations dump undesirable citizens and force another state to manage ‘the danger that the person supposedly represents’ (Sawyer and Wray, 2014: 18). The rest of the world is a penal colony for the UK government where they can abandon undesirable citizens through modern-day exile. By overlooking these colonialist priorities in the Home Office’s approach, we lose sight of how citizenship deprivation is used to reproduce racial and colonial state control. For example, appellants who are “exiled” whilst abroad have not generally been prosecuted for a crime. Further, in national security cases, the Home Secretary only needs to be satisfied it would be conducive to the public good for an individual to have their citizenship removed. By excavating and making sense of citizenship deprivation concerning the movement and residence of racialised migrants, we can recognise how it is used to reproduce colonial dominance over them. This is under-scrutinised because the people it affects most are viewed as less loyal and desirable to the nation-state by virtue of their heritage.

More recently, there is a growing acceptance of the challenges of conducting an out-of-country appeal. In *R (Kiarie) v Secretary of State for Home Department; R (Byndloss) v Secretary of State for Home Department* [2017] UKSC 42, the Supreme Court examined the government’s “deport first, appeal later” immigration policy finding that the barriers to appeal whilst outside of the country explained why no individual’s appeal against their deportation from abroad had yet succeeded (Kerr, 2019). More recently, in *Shamima Begum v The Secretary of State for the Home Department* [2020] 2 WLUK 60 it was confirmed that due to Shamima being out of the country:

[she] cannot play any meaningful part in her appeal, and that, to that extent, the appeal will not be fair and effective (*Begum*: [143]).

The Court of Appeal later held in *Begum v Special Immigration Appeals Commission (SIAC)* [2020] EWCA Civ 918 that Shamima should be given leave to enter the UK to participate in her appeal. The Supreme Court has since held that the Court of Appeal did not give the Home Office’s assessment of the risks posed by Shamima ‘the respect which it should have received’ (*R (on the application of Begum) (Appellant) v Special Immigration Appeals Commission (Respondent)* [2021] UKSC 7: [134]). The judicial deference along with the privileging of the nation-state’s interests is clear:

...the Court of Appeal mistakenly believed that, when an individual’s right to have a fair hearing of an appeal came into conflict with the requirements of national security, her right to a fair hearing must prevail. (*Begum* [2021]: [135]).

National security is the priority: a priority with a well-documented colonial basis and its privileging over human rights to secure the country is reminiscent of colonial governors circumventing mainstream laws by arguing that there was state of emergency to stop anti-colonial resistance. The acceptance of citizenship deprivation as a measure to control the movement and residence of people for security according to colonial racialising processes around nationality has wider implications for

migrant and diasporic communities. The courts' limited perceptions of citizenship deprivation mean that the imperialist racial underpinnings of national security and treason along with deference to colonial governance are being ignored. Cases are being decided in conditions which are not live to these oppressive effects of the executive's actions. That a person can go on holiday as in *L1* but later be told they cannot return to the place they have made a home with their family is terrifying. Citizenship deprivation may be deployed at any time against those who have the potential to claim another nationality. As a result, these minoritised communities' belonging and sense of home are kept insecure to uphold national security.

Conducive to the Public Good: An Orientalist Paradigm for Belonging

The second theme concerns the 'conducive to the public good' criterion for which there is no statutory definition (Mantu, 2014). The Home Office describes this as: 'involvement in terrorism, espionage, serious organised crime, war crimes or unacceptable behaviours' (UK Visas and Immigration, 2017: [55.4.4]). By contrast, the judicial definition in *S1 v Secretary of State for Home Department* [2016] EWCA Civ 560 asks: 'whether or not each appellant poses a threat to national security; and we will determine that issue by reference to our findings about the past and present conduct of each appellant, made on the balance of probabilities' (*S1*: [19]). National security is a common denominator for both understandings, but the Home Office takes a much broader view with "unacceptable behaviours".

Therefore, there are cases where an individual is convicted of a crime that is not directly related to national security and then deprived of their citizenship. In *Ahmed and Others (deprivation of citizenship) v SSHD* [2017] UKUT 00118 (IAC), members of the Rochdale grooming gang convicted of multiple sexual offences were deprived of their citizenship because it was conducive to the public good and they were Pakistani dual nationals. The Upper Tribunal held:

it was rationally open to the decision maker to conclude that the Appellants' offending was embraced...under the rubric of "unacceptable behaviours" (*Ahmed*: [62]).

This approach was later relied on in *GZB v Secretary of State for the Home Department* (2018) DC/00014/2016 where the appellant had been convicted of a child sex offence.

In the second Court of Appeal judgment for *Pham* the test was expanded even further. It was determined that:

this requirement could be satisfied in many ways, including the conclusion that the Crown should not have to provide protection to a person who has in the past so fundamentally repudiated the obligations which he owes as a citizen (*Pham*, [2018]: [52]).

These obligations are not defined anywhere but the court explained away further scrutiny stating: '[t]he precise grounds are a matter for the Secretary of State' (*Pham*, [2018]: [52]). The expanding use of the ground from the *S1* judgment to include criminal offences and repudiating obligations has worrying implications for individuals and communities.

When your citizenship is assessed against this ground, your character is implicitly being assessed because the authorities look at what leads your conduct i.e., your character. Character-based assessments are instrumental in deprivation decisions and feature throughout Britain's racialised history of immigration (Kapoor and Narcowicz, 2019b). Concerns over imperial subjects with undesirable character obtaining naturalisation led to the insertion of character-based clauses into the British Nationality and Status of Aliens Act 1914 (Troy, 2019). Such clauses are a continuation of imperial logics to code and categorise subjects according to who the imperial authorities want to exclude.

The test is applied subjectively:

This is not a question of fact. Rather, as the word "satisfied" indicates, it is a matter of evaluative judgment on the part of the Secretary of State (*Ahmed*: [67]).

It is the Home Secretary's standards which are applied leading to questions around what those standards are and how they are constructed. The springboard for the test is the notion that citizenship is a privilege (Home Office, 2013). Entitlement to citizenship is something you must prove which forms part of the wider narrative that led to the expansion of deprivation powers from 2002 mentioned earlier to sanction those who have not integrated into the community since they do not speak English. The focus on integration is understood as a drive towards testing whether citizens subscribe to 'shared British values' which are vital to protect national security and the public good (Choudhury, 2017: 234).

Kerr challenges these undefined British values questioning how they differ from 'generic liberal...values held by other democracies' (2018: 120). However, they are different because they are shaped by the UK's imperial history and racialised othering of immigrants. These values are applied negatively: they focus on how one fails to be conducive to the public good. Thus, individuals are defined by what they are not. They are not loyal enough; not integrated enough and the racialised imperial logics around character which are reproduced and then imposed upon them lead to sanctions like citizenship deprivation for the public good. More troubling is the phrase 'public good'. From the start, orientalist views of the othered colonies were used to destroy lives with a clear motive: to improve the natives (Thornton, 1961-1962). It was for the native's own *good* that they were being subjected to the violent colonial regime. This is echoed in contemporary citizenship deprivation decisions. The concept of public good and its application are inspired by colonial abuses of power justified by orientalist understandings of what is "good for everyone".

Applying the public good ground to situations outside of national security that would usually be covered by domestic criminal law illustrates how normalised and unexceptional its use has become. The added sanction of deprivation once convicted of a serious crime is only applied to dual nationals and those whose citizenship results from naturalisation. If a person with only British heritage commits an offence, they are convicted but retain their citizenship. Citizenship deprivation is a modern-day form of banishment targeting racialised subjects which is hidden by the over-emphasis on national security protection, so the creeping expansion of citizenship deprivation is given little attention. National security concerns were used to great effect by colonial powers to stamp out anti-colonial resistance exposing the origins of this racialising strategy that has been used to oppress communities in the past.

The deployment of the ground is orientalist and the vague tests around character enable it to be used to maintain the boundaries of belonging (see also Aliverti 2019). Under usual circumstances, committing a criminal offence does not entail the added loss of one's home. In this situation, there is a clear disparity in treatment between mono-nationals and those considered outsiders. These tests have combined with orientalist assumptions about racialised people to impose expectations on them reminiscent of the thought processes in 1870 that foreigners should not have irrevocable citizenship. They can never be trusted and so they can never fully and securely belong. The ground and its assessments enforce the boundary between those that belong and those that do not. Even more worrying is the inclusion of "unacceptable behaviours" in the ground. There is no definition of this, and it may not even relate to a criminal offence. Unacceptable behaviours could be anything if the Home Secretary is satisfied. This extensive test goes vastly beyond national security. It disproportionately allows certain people to lose their home and nationality just because of who they are and how they or their family entered the country.

This ground around public good cannot be separated out from the assumptions about who deserves to belong and who does not: it is one of the manifestations of citizenship deprivation as a technology of the politics of belonging. Through this, citizenship deprivation creates a hierarchy of belonging with migrants and members of diasporic communities positioned as inferior. Although the criminal law would be enough for mono nationals from the white majority, it is not for these racialised subjects. They must instead be turned (back) into foreigners and banished even if they were born here like Shamima Begum and have only ever held British citizenship (Van Waas and Jaghai, 2018). The effects of this ground and its subjective use are not limited to the individuals deprived of their citizenship. The use of public good justifications has citizenship deprivation take on a menacing effect reminding minoritised communities that their presence is more likely to be viewed as against the public good and so their belonging and sense of home are constantly at risk.

Citizenship Deprivation Adjacent: Wider Implications

The final theme is about cases that are adjacent to citizenship deprivation. These individuals were not deprived of their citizenship, but their situations illustrate the effects of involuntary loss or denial of citizenship in a broader sense and dealt with issues related to deprivation. In *R. (on the application of MM) v Secretary of State for the Home Department* [2016] 1 WLR 2858 a woman and her 2 children applied for naturalisation and were rejected despite being personally beyond reproach and fulfilling statutory requirements because her husband was a listed Al-Qaeda associate. The Home Secretary relied on section 6 of the BNA 1981 which provides for naturalisation to be granted on a discretionary basis arguing that the discretion was also for rejecting naturalisation. The rejections were framed as a deterrent to potential extremists telling them that their families would suffer for their actions. The appeal was upheld, and the rejections quashed. The High Court held that the discretionary power was too limited for this use and in this case:

There is real unfairness, on the face of it, in refusing naturalisation to someone who qualifies in all other respects, in order to provide a general deterrent to others, over whom the applicant has no control... (*MM*: [33]).

It was held that the power had been used unlawfully because there was no connection between the real targets of the decision i.e., potential extremists and the subjects of the decision.

Further questions arose in *R (on the application of Salma Rasul) v Secretary of State for the Home Department* [2017] EWHC 1036 (Admin). Salma Rasul was born in Bangladesh and came to the UK in 2003 aged 14. Her citizenship by descent flowed from her father's British citizenship. She returned to Bangladesh in 2009 to marry her husband who entered the UK in 2011 as the spouse of a British citizen. It was later discovered by the Home Office that her father had purchased the identity of an individual with entitlement to British citizenship and obtained naturalisation under that identity. He had never been a British citizen and was convicted of passport fraud. Salma remained unaware of her father's fraud and conviction until her husband applied for indefinite leave to remain. His application was refused because his entry clearance was based on Salma's citizenship and unbeknownst to her, her passport had been revoked. Her subsequent application for indefinite leave to remain was refused as her residence had not been lawful. In recognition of her faultlessness, the Home Secretary gave her 30 months of limited leave to remain. She appealed this relying on the guidance policies for deprivation and nullity of citizenship acquired through deception when she was a minor. These were not applicable because she was not deprived of her citizenship. If this were the case, there would have been no retrospective effect. Her citizenship was nullified, and the nullity guidance states that because she had never registered or been naturalised as a citizen, her citizenship had never existed. Because of this, the results were different for her:

A person who is in the UK pursuant to the right of abode from their having citizenship by descent is disadvantaged as compared to a person whose right of abode is derived from citizenship which has been acquired by way of registration or naturalisation...but actual or perceived unfairness cannot avoid the clear provisions of the statutory regime (*Rasul*: [17]).

Individuals' citizenship status and retention can be severely impacted by the actions of others and there are several alarming implications. First, the purported limitation of citizenship deprivation, nullification and rejection for exceptional situations is a myth. Unexceptional people like Salma are still vulnerable to losing their citizenship through no fault of their own. There is no avoiding the clear statutory provisions even when there is 'actual or perceived unfairness' plus 30 months of leave to remain was sufficient consolation. In *MM*, even though the appeals were allowed, that does not detract from the Home Secretary's attempts to treat the applicants as deserving of exceptional punitive measures. These live examples show how embedded law and policy are in colonialist understandings of citizenship and its retention. The encouraged perception is that citizenship is only taken away in exceptional situations, but this obscures the fact that unexceptional people are still subjected to exceptional administrative powers. There is less attention given in mainstream society to the wider implications of these powers and their use because of who they are used against.⁸ The dominant white majority are hardly at risk of waking one morning to discover they are no longer a British citizen despite living as one for a long time. The marginalised migrant and diasporic communities in the UK are most at risk with colonialist attitudes towards controlling their lives still permeating law and policy.

The political motivations behind these cases are also alarming. In *MM* the Home Secretary's attempted use of power to send a wider public message exhibits the ways in which removing or preventing conferral of citizenship is a political project that constructs the boundaries between those who do and do not belong. Similarly, Salma's case showcases how the boundaries of belonging are

formed and maintained so that even unfairness in the statutory regime is dismissed. In both cases, the applicants' sense of belonging was contingent on others. In *MM* it depended on potential extremists to whom the applicants were not even connected; for Salma, the actions of her father before she was born. Citizenship revocation is weaponised by those who establish, maintain and police the boundaries between "us" and "them". It is a distinct technology of the politics of belonging founded on orientalist understandings of the racialised, immigrant other even when they were born and/or grew up in the UK. It unsettles members of racialised migrant and diasporic communities. It tells them that they are the imposters and that their citizenship can be revoked because they are different; they are automatically assumed to be disloyal no matter how much they uphold British values and the public good. As part of a regime steeped in colonial violence and oppression, citizenship deprivation is used to impose colonialist control over those associated with the colonies even today.

CONCLUDING THOUGHTS

I have shown the insidious ways that the law and policy around citizenship deprivation unsettles and destabilises more than the individual. I made two conceptual arguments to shed light on judicial approaches to citizenship deprivation. First, that colonial histories and legacies influence the use of citizenship deprivation in the present day as part of the framework around national security. Second, that citizenship deprivation is a technology of the politics of belonging which orientalises and divides people into 'us' (those who belong) and 'them' (those who do not belong). The latter are marked as inferior based on their differences to justify their non-belonging. This orientalist dividing process leads to individuals and their communities being subject to the threat of deprivation which makes them more vulnerable.

I shared the findings from my analysis of the case law to make three thematic arguments. First, that the courts see citizenship deprivation as a continuation of medieval feudal rights and obligations. This hides the ways that contemporary approaches to citizenship deprivation are heavily embedded in colonial and racial logics. The racialised imperialist hierarchisation of people according to descent dictates their likelihood of being stripped of their citizenship. The second theme related to the expanding use of these powers to subject dual nationals and naturalisation-linked citizens to deprivation when it is conducive to the public good. I demonstrated the ways that this character-based ground is orientalist and acts to code subjects along lines of racialised imperialist thought. This stretches beyond the individuals and into communities leaving them insecure. They face the knowledge that mono nationals from the majority white community have secure citizenship but as those with a perceived weaker connection to the UK, they could additionally be deprived of their citizenship and deported. This tells them that their sense of home, safety and belonging can be removed at any point because they are simply not 'as British as everyone else' (Shackle, 2019).

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¹ Prabhat's work stands out as particularly instrumental in this regard. See Prabhat 2016a; 2016b; 2018 and 2019.

² Although nationality and citizenship are not the same, they are used interchangeably in mainstream discourse. For consistency, I use the terms citizenship 'deprivation' and 'revocation' which reflect the language of the legislation.

³ A fuller comparative analysis of these different jurisdictional approaches is outside the scope of this paper, but the literature is developing in this area. For example, Tripkovic (2021) examines the legal frameworks around citizenship deprivation for 37 European democracies to argue that rather than a punishment, citizenship deprivation is a stand-alone administrative sanction. This comparative work indicates how developed the law is in each of the states.

⁴ There is no clear explanation for the lack of deprivation cases until this period, but Gibney (2013) suggests it is likely a combination of the approach to citizenship as a right along with a perceived commitment to liberal ideals before the war on terror.

⁵ See also Karatani (2002) which focuses on the period leading up to the Immigration Act 1971.

⁶ By political project I mean an activity, process or structure that affects how people are governed and govern themselves in society.

⁷ There are cases where an individual was already outside of the country like Shamima Begum and the deprivation decision is still enacted.

⁸ Attention has been given to similar situations such as the Windrush scandal and its implications for the Windrush generation; their descendants; and communities. This broader focus that stretches beyond the individual and the effects on individual and collective belonging has not been considered to the same extent in citizenship deprivation cases.