Chapter 3

Subjects and citizens: cordoning off colonial spoils

The historical account that follows is essential background to understanding how immigration law works not only to manage the movement of former colonial subjects, but also to ensure the maintenance of the racial project of a white Britain. British subjecthood and other legal statuses which have superseded it are products of Britain's colonial machinations and operate to legitimise its ongoing claim to white entitlement to wealth accumulated through colonial dispossession. The bestowal or extension of British subjecthood is necessarily a colonial act, one that is reproductive of a racial order. The 1948 British Nationality Act rolled out the colonial status of Citizenship of the United Kingdom and Colonies, which included a right of entry to Britain. The Act was a bid to hold together what remained of the British Empire and the Commonwealth. The principal reason for Britain's wide casting of the nationality net was the maintenance of white British supremacy through its migratory, political and economic relationship with the white settler colonies. An effect of the 1948 Act was to facilitate the arrival of racialised colony and Commonwealth citizens in Britain.

In the course of the 1960s, 1970s and 1980s, as the British Empire faced successive defeats, Britain transitioned from

empire to nation-state, effectively constituting itself as white. The imperial myth of unity and equality was jettisoned and the entitlement of racialised colony and Commonwealth citizens to enter and remain in Britain was ended. Through the concept of patriality the 1971 Immigration Act made whiteness intrinsic to British identity. Under the Act, only patrials, those born in Britain or with a parent born in Britain, had a right of abode, and therefore a right of entry and stay in Britain.[1] The concept allowed for the continued accommodation of white Commonwealth citizens' claims to Britishness, while the majority of racialised subjects and citizens were excluded. The 1981 British Nationality Act effectively announced Britain as post-colonial by drawing a geographical boundary around Britain as distinct from its colonies and the Commonwealth. This legislation, together with immigration laws targeted at racialised colony and Commonwealth citizens, was an act of colonial theft that remains unredressed. The spoils of colonialism are located within the borders of Britain and manifest in the form of infrastructure, health, wealth, security, opportunity and futures. Such losses as a result of colonialism can be more difficult to discern due to traditional understandings of property as being fixed and immobile.[2]

Immigration laws work to construct racialised people as not entitled to access vital resources. People without a legal right to enter Britain must make dangerous, often fatal, journeys.[3] Those inside Britain are denied access to crucial services as a result of internal borders implemented through policies such as the hostile environment.[4] Britain thus remains a colonial power, a place in which racialised people are disproportionately prevented from accessing colonially derived wealth and at risk of abuse, incarceration, deportation and death. In the course of tracing the

making of immigration and nationality laws between 1948 and 1981, I discuss the 2018 Windrush scandal to illustrate how strategies for racial justice and migrant solidarity that rest on recognition of legal status by the British government serve to reinforce mythological narratives of the British Empire as a project of global strength and inclusivity and leave unchallenged law as the structure that underpins racial violence.

British nationality in the age of empire: casting the net wide

> [G]ive me that map, blindfold me, spin me round three times and I, dizzy and dazed, would still place my finger squarely on the Mother Country.[5]

At a time when Britain was an established empire, the British Nationality and Status of Aliens Act 1914 set out a broad definition of who was to be considered a British subject. This definition existed in order to maximise the reach of British colonial rule. Under the 1914 Act British subjecthood flowed from allegiance to the Crown.[6] Subjecthood was acquired by birth within the Commonwealth, or by descent within one generation in the legitimate male line.[7] Although allegiance to the Crown determined subject status, the Act allowed for differential treatment of subjects by British dominions. According to the Act, colonial authorities were not precluded 'from treating differently different classes of British subjects'.[8] A 'natural-born British subject' encompassed any person 'born within His Majesty's dominions and allegiance' and anyone whose father was, at the time of birth, a British subject.[9] Persons born on board a British ship, the primary enabling tool of colonial conquest, whether in foreign territorial waters or not, were to be considered British subjects.[10] The 1914 Act,

which replaced the Naturalisation Act 1870, required a prospective 'alien' applicant for nationality to have lived in Britain for at least one year immediately prior to making the application, and four years in total, either in Britain or in another part of the Empire.[11] Further requirements included good character, command of the English language and an intention to continue to reside in a dominion or to serve the Crown.[12] The cost of applying for nationality at five pounds per person, the equivalent of about £300 today, was prohibitively expensive, and once an application was made it often took years to process.[13]

Thus, despite the expansive reach of British subjecthood, the rights that came along with it were contingent on racialisation and gender, and naturalisation was at the 'absolute discretion' of the Home Secretary.[14] The Home Secretary could, 'with or without assigning any reason, give or withhold the certificate [of naturalisation] as he thinks most conducive to the public good, and no appeal shall lie from his decision'.[15] Although Britain did not formally pass anti-miscegenation laws, it sought to deter interracial marriages through nationality law. The 1914 Act stipulated that 'the wife of an alien shall be deemed to be an alien'.[16] Thus when British subject women married 'aliens' and acquired the nationality of their husbands, they would lose their British subject status.[17] In 1923 a report from the Select Committee on the Nationality of Married Women offered an anti-miscegenation rationale for retaining this rule: 'the loss of nationality was the only argument which the Foreign Office as a rule found to prevail with British women in such cases in deterring them'. To change this law would 'encourage mixed marriages of this particular kind, which are in the women's case nearly always most undesirable'.[18] Here we can see both the fragility of British subject

status in colonial contexts as well as how nationality law is deployed in the service of white British supremacy.

The British Nationality Act 1948

> Mother thinks of you as her children.[19]

In the years between 1948 and 1981 the rights of British subjects expanded and retracted drastically. Over the course of this period legal statuses associated with the British Empire proliferated, their content and meaning shifting according to British colonial ambitions. The 1948 British Nationality Act passed by Clement Attlee's Labour government created the status of Citizenship of the United Kingdom and Colonies, of 'the United Kingdom and non-Independent countries', and 'of independent Commonwealth countries'. The Act therefore covered Britons together with all nationals of independent Commonwealth countries and those of British colonies. On 1 January 1949 a total of 48 territories, including the British mainland, were included in the description 'United Kingdom and Colonies'.[20] The statuses set out in the Act included 'an unqualified right to enter and remain in the United Kingdom'.[21] However, as Anderson has observed, the 1948 British Nationality Act is not to be regarded as part of immigration policy, but rather as 'a nationality policy with immigration consequences'.[22]

The Act was passed in response to Canada's introduction of the Canadian Citizenship Act 1946, which set out a definition of Canadian citizenship, stipulating that British subjecthood derived from it. Changes to Canadian nationality law were part of the settler colony's attempt to federate as a white nation, a process that continues to entail the destruction and dispossession of First Nations people.[23]

The British government's concern was that the effect of the Canadian legislation was to have 'completely shattered', in the words of the Labour Lord Chancellor, Sir William Jowitt, the relationship between the Crown and British subjects in Canada.[24] It was to be mediated through a concept of Canadian citizenship rather than stemming from a direct relationship between subjects and the king.[25] Pursuant to the 1946 Act, subject status could only be attained via Canadian citizenship. British subjecthood was thus demoted. Those with Canadian citizenship were to be entitled to British subject status.[26] The British government was faced with what it saw as an unacceptable erosion of its status as arch-sovereign with respect to Commonwealth nations. At the time the Old Dominions were 'central to British foreign and economic policy, and the British political elite viewed them with great affection'.[27] Introducing the Bill in the House of Lords, Jowitt stated that, 'of all the remarkable contributions which our race has made to the art of government, the conception of our Empire and Commonwealth is the greatest'.[28]

Alarmed by Australia's expressed intention to introduce legislation similar to that of Canada, and fearing that South Africa would follow suit, the British government concluded that unless British nationality and the principle of allegiance underlying subjecthood was restated anew, there was a risk that the Old Dominions would abandon their (subordinate) association with Britain and opt for an entirely distinct national identity.[29] The 1948 Act's renewed articulation of British subjecthood was, ironically, modelled on the Canadian legislation in making British subject status dependent on the status of Citizenship of the United Kingdom and Colonies, rather than by evoking an unbroken link between king and subject.[30] By creating a further category of 'British subjects without citizenship' in

the 1948 Act, legislators demonstrated that the position of white British settlers was of the utmost importance. This was a category intended to ensure that white British settlers would retain British subject status in the event of changes to local citizenship laws in post-independence contexts that might leave them without the status of United Kingdom and Colonies citizenship or independent Commonwealth citizenship.[31]

The principal beneficiaries of the British Empire's system of subjecthood were white Britons, who could move and settle throughout the Commonwealth. Colonial settlement was sponsored and facilitated through agreements with Australia, South Africa, New Zealand and Canada.[32] The Old Dominions were considered 'Britain abroad', known 'in the jingoistic heyday of imperialism' as '"greater Britain"'.[33] Settlement of white Britons in Commonwealth countries (euphemistically termed emigration) worked in favour of the Dominion governments' immigration policies, which were seeking to cement whiteness as the basis of their nationhood. For Britain, the presence of white Britons in the Dominions was considered to 'orient their populations' sentiment and their leaders' policy' towards the furtherance of its interests.[34] The 1948 Act was intended to buttress Britain's global identity as a colonial power and as 'first among equals' in the Commonwealth.[35] Equal rights to enter Britain for all British subjects was accepted in principle insofar as this was deemed necessary to maintain the Empire. Introducing the 1948 Bill in the House of Commons, the Home Secretary, Chuter Ede, stated that '[t]he maintenance of the British Commonwealth of Nations … is one of the duties that this generation owes to the world and to generations to come'.[36] He considered that 'the common citizenship of the United Kingdom and Colonies

is an essential part of the development of the relationship between this Mother Country and the Colonies'.[37]

That racialised colony and Commonwealth citizens would travel to and live in Britain was not contemplated in Parliament, though their theoretical right to do so was mentioned occasionally.[38] This omission, perhaps in part, allowed Jowitt to characterise the 'conception of the British Empire and Commonwealth' as being in the service of 'perfect freedom'.[39] He considered the Bill to be uncontroversial and went so far as to describe the principal advantage of the common status introduced as being 'mystical'. 'The conception of an all-pervading status or nationality is not primarily, not mainly, important because of its material advantage', he declared, '[i]t is, if you like, rather mystical. But none of us, I suggest, is any the worse for a little mysticism in our life. It is the mark of something which differentiates family from mere friends.'[40] The Act's introduction of the status of Citizenship of the United Kingdom and Colonies thus had nothing to do with encouraging or facilitating the immigration to Britain of racialised subjects. Lawmakers instead thought to be a magic trick of sorts, a legal sleight of hand that would conjure a British imperial polity anew and persuade the rest of the world that all was well in the British Empire. Indeed, fast forward to 1968, the year that saw the introduction of immigration controls targeted at racialised Commonwealth and colony citizens, and parliamentarians with living memory of the passing of the 1948 Act found themselves reflecting on their lack of foresight. Quintin Hogg, Shadow Home Secretary at the time, in the course of the House of Commons debate on the 1968 Commonwealth Immigrants Bill, reminisced about the state of mind he shared with former Prime Minister Clement Attlee, stating that 'neither he nor I had the smallest conception in 1948 of

what we now call the immigration problem. How could we? We thought that there would be free trade in citizens, that people would come and go.'[41]

Despite legislators' lack of foresight, the 1948 Act's provisions facilitated the arrival of around 500,000 racialised people from British colonies and the Commonwealth between 1948 and 1962. These people were exercising their right to enter, work and reside in Britain under the 1948 Act. They included the 492 West Indians who boarded the *Empire Windrush*, a formerly German-owned ship seized as a war trophy by the British, following the operating company's advertisement of cheap tickets to fill places on its return from Australia to Britain.[42] They were not the first racialised British subjects to travel to Britain. In 1947, 108 people arrived on the *Ormonde*. Racialised subjects had been present in Britain for centuries, with the population standing at 20,000–30,000 in the late 1940s. However, following the passing of the British Nationality Act, colony and Commonwealth citizens increasingly travelled to Britain.

The headline of the *Evening Standard* on Monday 21 June 1948 read: 'WELCOME HOME! Evening Standard plane greets the 400 sons of Empire'. Despite the somewhat jovial tone of the article ('The airplane circled for 15 minutes, and gradually apprehension turned to joy as the passengers realised they were receiving their first welcome to England'),[43] the headline's infantilising portrayal of racialised British subjects as children arriving in the motherland betrayed the racist and possessive regard in which these subjects were held in the British psyche. The British authorities reluctantly permitted the *Windrush* passengers to disembark. One passenger, Sam King, who had served in the RAF in England during the Second World War, reportedly asked two ex-RAF wireless operators to

> play dominoes innocently outside the ship's radio room and eavesdrop on incoming signals. They heard on the BBC that Arthur Creech Jones, then Colonial Secretary, had pointed out that: 'These people have British passports and they must be allowed to land.' He added that they would not last one winter in England anyway, so there was nothing to worry about.[44]

The assumption that people travelling to Britain from the colonies and Commonwealth were unsuited to a colder climate, or 'race-based environmental essentialism', was, as Ikuko Asaka has shown, at the heart of attempts across the British Empire to curtail the movement of colonial populations.[45] 'Tropicality' was thus a geographic concept which served as a 'transnationally operative tool of empire'.[46]

Contrary to popular mythological narratives, the *Windrush* arrivals did not receive a warm welcome.[47] This is reflected not only in government action and parliamentary debates, but also in public opinion polls,[48] and the racist street attacks faced by racialised subjects.[49] As the *Empire Windrush* was on its approach to Britain, Creech Jones issued a memorandum in which he stated that '[i]t will be appreciated that the men concerned are all British subjects. The government of Jamaica has no legal power to prevent their departure from Jamaica and the Government of the United Kingdom has no legal power to prevent their landing.' He insisted that its impending arrival 'was certainly not organised or encouraged by the Colonial Office or the Jamaican Government. On the contrary, every possible step has been taken … to discourage these influxes.' He went on to say that however desirable legislation preventing the outward movement of Jamaicans might be, 'Jamaica has reached such an advanced stage on the road to self-government that it would be impossible to compel them

to legislate in this sense by directions from London'.[50] The *Windrush* arrivals had taken the British government by surprise. The Colonial Office was so troubled by their arrival and the prospect of further such movements that it contemplated finding work for them in other parts of the empire, including British Guinea and British Honduras. Creech Jones even expressed the desire to send them to Africa, but for the 'psychological difficulties'[51] entailed in this prospect, presumably a clumsy reference to the slave origins of the Jamaicans now bound for Britain. Despite the racist hostility shown towards the arrivals, the introduction of controls was nevertheless initially resisted. There was a concern in some government quarters that the introduction of openly racist controls distinguishing between white and racialised subjects' rights to travel to Britain would jeopardise the stability of the Commonwealth as a whole.[52]

Despite Creech Jones's description of the movement of Jamaicans as a 'spontaneous [one] by [those] who have saved up enough money to pay for their passage to England',[53] their movement was entirely predictable when placed in the context of the economic and social conditions prevalent in colonial Jamaica. The *Empire Windrush* arrivals and those who followed were not only exercising rights granted to them under the 1948 Act, but were also escaping economic hardship and an absence of employment opportunities, along with other dispossessive effects of slavery and colonialism.[54] Jamaica was profoundly marked by both the transatlantic slave trade and colonialism. By the time the British colonised Jamaica in the seventeenth century, the country's 'indigenous peoples had already been wiped out by the Spanish, and [it] was populated mainly by enslaved Africans and white settlers'.[55] While the majority of those who travelled to Britain came unaided, some

arrived on the basis of work schemes arranged by British employers, such as London Transport and the National Health Service, which saw the potential for migration to ameliorate post-war labour shortages. Although some recruitment schemes were targeted at racialised colony and Commonwealth citizens, the government did not encourage them.[56]

Post-war labour shortages were primarily addressed through the facilitation of white European and other white labour.[57] As Gurminder Bhambra writes:

> In the five years after the end of the second world war, close on 100,000 Eastern European refugee workers from displaced persons camps in Italy, Germany and Austria were recruited directly to work in Britain. Those who passed the medical examination, 'were transported to Britain and allocated three years' state-directed employment, accommodation, social welfare and education. They were then permitted to naturalise' (incidentally, European Jews were explicitly prohibited from the scheme). In addition, approximately 128,000 people of Polish origin (specifically, Polish armed forces in exile in Britain, along with their dependants) settled permanently in Britain under the terms of the Polish Resettlement Act, 1947.[58]

When governors in the West Indian colonies encouraged West Indian migration following the Colonial Office's call for migrant labour, British mainland government officials warned them that controls on black British subjects might be introduced.[59] The British government worked hurriedly to fill labour shortages in multiple sectors ranging from agriculture and mining to textiles, construction work and health by arranging for the arrival of 180,000 prisoners of war from the United States and Canada.[60] Women were also encouraged to take up employment. In October 1947 the government put in place a Control of Engagement Order,

requiring people seeking work to apply through the Ministry of Labour, which could compel the unemployed to take up certain jobs. The British government introduced a labour voucher scheme, which the Home Secretary Rab Butler promoted for its race-neutral terms and racist effects. He stated that '[t]he great merit' of the labour voucher scheme 'is that it can be presented as making no distinction on grounds of race and colour'. While 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 operate on coloured people almost exclusively'.[61]

Civilian British subjects fell outside the jurisdiction of the Colonial Office, so their movement could not be controlled, as was the case with prior migration of military recruits.[62] A committee of ministers was established in 1950 to explore the means that might be adopted to limit migration to the British mainland of racialised colony and Commonwealth citizens.[63] Reporting to the committee were representatives from the Home Office, Labour and Housing ministries, who tended to be in favour of control. However, the committee, initially led by the Lord Chancellor and the Home Secretary, was influenced by its Colonial Office representatives, who cautioned against control.[64] In 1951 the committee recommended against introducing controls, stating that Britain 'has a special status as the mother country, and freedom to enter and remain in the United Kingdom at will is one of the main practical benefits enjoyed by British subjects'.[65] The committee considered that it was Britain's responsibility to preserve the content of British subject status, which was deemed 'the central issue at stake in controlling immigration'.[66] It reasoned that 'it would be difficult to justify restrictions on persons who are citizens of the United Kingdom and Colonies, if no comparable restrictions were imposed

on persons who are citizens of other Commonwealth countries'.[67] Ultimately the committee decided to accept immigration of racialised colony and Commonwealth citizens because it did not want to limit entry rights of white subjects from the Old Dominions and thereby jeopardise the project of global white British supremacy.

The Colonial Office opted instead to instigate informal practices designed to make immigration of racialised people difficult. Prospective arrivals were cautioned about the challenges they would face in Britain in finding adequate housing and employment. The Commonwealth Office worked tirelessly to reach agreements with Asian Dominions to limit the number of people travelling to Britain.[68] Passports were withheld from who did not have the financial resources to make the journey or were deemed unsuited to work. Further, in September 1949 the Home Office instructed immigration officers not to give permission to land to people without evidence of British subjecthood or British Protected Person status.[69] The government also sought to limit the number of passports issued to racialised colony and Commonwealth citizens. Populations in the West Indies strongly resisted passport controls and lobbied their governments for relaxation.[70] Domestic resistance to such controls in India led the Indian Supreme Court to hold that it was illegal to withhold passports from Indian citizens.[71] In 1959 the Ministry of Labour projected negative trends in economic growth and unemployment due to the migration of workers from the Irish Republic (estimated at 60,000 per year). In spite of this, controls on Irish immigration to Britain were not contemplated.[72] Instead, the Ministry of Labour argued that 'there must be a limit to the extent to which the economy can go on absorbing unskilled labour' and insisted that administrative checks

on West Indians as well as people from India and Pakistan remain vigilant.[73]

The pitfalls of reifying citizenship: an empire of unequals

> Here we come up against the use of the word 'British' and the unfortunate ambiguity which attaches to that word.[74]

The question of whether post-1948 arrivals were British citizens and whether the imperial status rolled out by the 1948 Act could be considered equivalent to British citizenship as we understand it today came to the fore in 2018 with the breaking of the Windrush scandal.[75] The argument that the Windrush generation were British citizens and thus should be recognised as such by the British government raises important legal, ethical and strategic questions in a context in which changes to British immigration law and policy have had the effect of disproportionately stripping racialised people of their rights.[76] While insisting on the immediate reinstatement of legal entitlements denied to the Windrush generation is crucial, it is important not to elide the colonial context in which the 1948 Act was introduced. Although the Act facilitated the arrival in Britain of racialised colony and Commonwealth citizens, the status of Citizenship of the United Kingdom and Colonies could only emerge in a context in which Britain had an empire, founded on white supremacist ideals, and retained colonial ambitions.

Hansen, Anderson and Bhambra have each made the point that referring to people who arrived in Britain from colonies and Commonwealth countries following the 1948 British Nationality Act as 'migrants' is legally inaccurate because they were 'British citizens' according to the law.[77] This

argument is premised on the assumption that Citizenship of the United Kingdom and Colonies, or British subjecthood, is equivalent to British citizenship. Yet British citizenship was not introduced as a discrete legal status until 1981. Indeed, in explaining the status rolled out by the 1948 Act in the House of Lords, the Lord Chancellor emphasised that 'the citizenship which for the first time we prescribe is not "citizenship of the United Kingdom," but citizenship "of the United Kingdom and Colonies." That is the species.'[78] It is clear that the catch-all status was not 'British citizenship' in its contemporary iteration. Lord Altrincham, calling the new status 'a sham' in view of racially discriminatory immigration laws in place in the Dominions, proposed in its place a more geographically limited concept of British citizenship, one that would be more akin to its contemporary form:

> Clearly, there must be established a United Kingdom citizenship. That I fully accept. But why should that not be called simply 'British citizenship'? That name covers, by ancient tradition, the peoples of England, Scotland, Wales and a large part of Northern Ireland. It is also a modern reality, for it denotes a great geographical, social and historic union which has made an exceptional mark on the history of the world.[79]

No such conception of British citizenship would emerge until 1981. How could it when Britain retained such fervent colonial ambitions? Indeed, the articulation of Citizenship of the United Kingdom and Colonies was done with the purpose of making clear the expansive geographical and jurisdictional reach of the British Empire. Chuter Ede thus stated that

> there has grown up a tendency to regard the term 'British subject' as meaning a person belonging to Great Britain, and to obscure its true meaning of a person belonging to any

> country of the Commonwealth who is a subject of the King. We think it highly desirable that a definition should be discovered which will make it quite clear that that is a term which applies to every person in the British Commonwealth and Empire who owes allegiance to the King.[80]

Further, not all colony and Commonwealth citizens entering post-1948 were citizens of the United Kingdom and Colonies. They had varying legal statuses that permitted residence in Britain, ranging from British subjects to Commonwealth citizens.[81] Until the 1981 Act's creation of British citizenship, there were citizens of the United Kingdom and Colonies, British subjects without citizenship, and citizens of Commonwealth countries, known collectively as Commonwealth citizens.[82] Under the 1948 Act people could register as citizens of the United Kingdom and Colonies after twelve months' residence in Britain, but this was not automatic, and not all post-1948 arrivals in Britain chose to do this. Once colonies won independence, their citizens, including those residing in Britain, lost their status as citizens of the United Kingdom and Colonies and became Commonwealth citizens. Commonwealth citizens could still travel to Britain until changes to immigration laws introduced in the 1960s and 1970s, but had to register as citizens of the United Kingdom and Colonies once eligible to do so in order to attain this legal status.

The possibility of registering as a citizen of the United Kingdom and Colonies was ended with the 1981 British Nationality Act, which articulated for the first time a concept of British citizenship tied to a territorially defined Britain as distinct from its colonies and the Commonwealth. The 1981 Act, discussed below, was thus the final tool of alienation for all racialised British subjects associated with the British colonial project who had not already qualified

for entry and settlement in Britain, and, as the Windrush scandal demonstrates, also for many of those long-settled, but who did not become citizens under the new regime. It is therefore legally inaccurate to argue that colony and Commonwealth citizens arriving in Britain following the 1948 Act were 'British citizens'. Indeed, there was such consternation in Parliament at the use of the word 'citizen' because of its 'republican flavour' and 'derogatory revolutionary' connotation, that Ede had to offer reassurances that the use of the term 'citizen' was merely a 'gateway' to British subjecthood.[83]

Even if Citizenship of the United Kingdom and Colonies was accepted as a citizenship of sorts, it is difficult to regard it as in any way equivalent to the status of British citizenship as articulated in the 1981 British Nationality Act. The fact that the 1948 Act's articulation of citizenship distinguished in name between the *United Kingdom* and *Colonies* demonstrates that legislators did not attribute the same meaning to these places and their citizens, regardless of the rhetoric of imperial unity and equality. Indeed, Ede spoke of the intention of finding a term to describe British subjects in another manner, because to Pakistan and Ceylon, then newly independent Commonwealth nations, 'the word "subject" unfortunately has the significance of being a member of a subject race'.[84] While denying that the government saw them thus, Ede's language demonstrated otherwise. He spoke patronisingly of these nations as having been 'trained' by Britain 'so that they are able to participate in this great self-governing group of nations', and accepted that 'we cannot admit all these backward peoples immediately into the full rights that British subjects in this country enjoy'.[85] Citizenship of the United Kingdom and Colonies was thus little more than a euphemism for British subjecthood.

It is also important to recall that not only did British subjecthood assume various forms that carried highly divergent material effects, but that a meaningful distinction between subject and citizen was contemplated by some legal minds at the time of the British Empire. As Renisa Mawani writes, S. L. Polak, a notable lawyer and honorary secretary of the Indians Overseas Association in South Africa, considered that

> the inhabitants of the empire were sharply divided into two classes, 'British citizens' and 'British subjects.' The latter … were believed to be 'subordinate to the former […]. "British citizens," merely by their being self-governing, in the political sense […] are fitted to control the destinies of the subordinate class of "British subjects."' Indeed, 'it is their "supreme duty" to do [so], until the latter have achieved the sublime heights of self-government already gained by the more fortunate and superior – in fact, the Imperial – class.'[86]

The distinction between subject and citizen was thus a 'foundational dividing line in British colonial and imperial governance, a method of categorisation configured just as much by race as geography and territoriality'.[87] Indeed, Jowitt emphasised in the House of Lords that 'common nationality does not necessarily confer rights in other [Commonwealth] member States'. Citing Australia as an example, he made clear that the rolling out of the status of Citizenship of the United Kingdom and Colonies would not affect Australia's 'whites only' immigration policy, stating that Australia 'is perfectly entitled to legislate for herself as to whom she shall admit into her territory as settlers. She may insist upon certain qualifications with regard to character, intelligence, creed or colour.'[88] Even the 'not inconsiderable advantages' attached to British subject status in

comparison with alien status, which Jowitt could identify, he acknowledged as contingent:

> The British subject is free from those disabilities and restrictions which apply to aliens. He is entitled to enter or leave the country at any time, he qualifies for the franchise, he can become a member of the Privy Council or of Parliament, and, save in war-time, under certain limitations, he can become a member of the Civil Service, and he can own a British ship. As I say, there are various material advantages. It is for each particular territory, each particular country, to decide for itself, from time to time, what privileges are to be allowed and to what extent they are to be conditioned with regard to British subjects or anyone else.[89]

The 1948 Act was also configured according to gender. It amended the law so that 'alien' women who married a British subject would no longer automatically become British subjects.[90] The rationale behind this was set out by Jowitt, who told the Lords,

> previously, an alien woman, on marrying a British subject, automatically became British. I know of cases in the courts of women of very undesirable character who came over here and, when they got to Dover, married somebody whom they would never see again. They did that with the sole object of precluding their deportation from this country.[91]

The intersection between racialisation and/or the absence of legal status and class thus worked to disproportionately and more severely affect women.

The difficulty in determining the content, meaning and applicability of the various colonial legal statuses in part stems from the broader difficulty of defining what Britain is in view of its imperial identity. At the heart of colonial ideology is the idea that there are people who are uncivilised and that they should be civilised, by force where necessary. Colonial dictum required that uncivilised cultures

be stamped out and replaced with that of the coloniser. The idea that certain people and cultures were uncivilised thus provided the normative justification for colonial conquest and exploitation. Certain cultures were presented as having failed to progress according to Western understandings of linear time and thus required colonial intervention. This developmental rationale justified the fatal violence that underpinned the colonial civilisational project. In such a context, citizenship was to remain 'a privilege of the civilised; the uncivilised would be subject to an all-round tutelage'.[92] Colonised peoples were violently forced into the category of British subject. As Mawani has written, '[t]he inauguration and imposition of British law in colonial contexts, no matter how negotiated or translated, was always already an act of racial and colonial violence'.[93]

Recognition-based arguments for the inclusion of racialised people in the colonial project that is 'Britain' thus have the effect of reifying British citizenship and can inadvertently reproduce colonial logics that justify differential treatment on the basis of a supposed absence of civilisation. As I discuss in Chapter 4, regimes of legal status recognition, such as citizenship laws, operate according to a colonial civilisational logic. Determining whether an applicant meets the criteria for citizenship is a form of sorting the civilised from the uncivilised and has racialising outcomes. The discretionary 'good character' test is, for instance, increasingly used as a means of refusing applications to naturalise.[94] Further, following the public outcry at the treatment of the Windrush generation, the government refused to include in the numbers of those wrongfully expelled so-called 'foreign criminals'.[95] The exclusion of people deported following criminal conviction from restitution measures marks them as uncivilised, as unworthy of legal rights because they have

not met the standards for inclusion set by the colonial state. This is an example of the way in which British subjecthood, even in its contemporary forms, remains a fragile status for racialised people, who can be cast out, or treated as 'aliens' for legal purposes, when this suits the objectives of the colonial state.

Britain's relationship with its colonies was one of domination and exploitation and maintained for the economic and political advantages that accrued to Britain. Despite euphemistic descriptions of the British Empire adopted by some scholars, such as 'global institution',[96] it was no multi-racial paradise. Crucially, as Mawani notes, the British Empire 'was never founded on a centralized, unified, or contiguous authority emerging in the metropole and extending outward'. Instead, 'imperial authorities produced an assortment of jurisdictional spaces that held unequal claims to sovereignty, legality and political autonomy'.[97] The 1948 Act cannot therefore be understood as a recognition of the full humanity and entitlement to equal rights of racialised colony and Commonwealth citizens. Indeed, each instance of bestowal or extension of British subjecthood in any legal form is a colonial act, one that is necessarily reproductive of a white supremacist racial order. The 1948 Act was an attempt to reinforce Britain's position at the helm of its empire in the face of nationalist moves in various parts of the Commonwealth. British politicians themselves acknowledged the lesser worth of any citizenship status accorded to racialised colony and Commonwealth citizens.[98] Any recognition by the British government of its colonial subjects that flowed from the 1948 Act was designed principally to bolster colonial relationships of domination.[99] As will become apparent, as the British government's imperial ambitions waned in the face of the Empire's defeat, it

quickly discarded the imperial lie of unity and equality and introduced racially exclusive immigration controls.

The Commonwealth Immigrants Act 1962: alienating subjects

In 1962 the first legislative steps were taken towards controlling the immigration of racialised colony and Commonwealth citizens and thereby physically depriving them of access to wealth accumulated via colonial dispossession located on the British mainland. While colonialism continued to exist following legislative changes to immigration and nationality law over the 1960s, 1970s and 1980s, British subjects were treated as aliens for legal purposes in the time-honoured fashion of expedient colonial rule. In this way, the 1962 Act, along with those that followed, are instances of colonial violence. Although informal measures had been introduced following the 1948 British Nationality Act in order to curb the movement of racialised people, the Commonwealth Immigrants Act 1962 was the first of a series of formal measures.

By the time Parliament came to discuss the Commonwealth Immigrants Bill in 1961, officials had already begun to speak of citizens of the United Kingdom and Colonies as immigrants rather than British subjects. Whereas previous Home Secretaries had been at pains to emphasise that those to whom the status introduced by the 1948 Act applied were subjects, in 1961 the Conservative Home Secretary Rab Butler spoke to the House of Commons of his fear of 'virtually limitless immigration'.[100] Of particular concern were people travelling to Britain from 'the West Indies, India, Pakistan and Cyprus, and to a lesser extent, from Africa, from Aden and from Hong Kong'.[101]

Butler made sure to convey the government's 'gratitude' to countries such as India and Pakistan 'who [had] tried to help' control outward movement to Britain via the introduction of 'fairly stringent measures'.[102] However, in spite of such efforts, he considered that 'a rapidly increasing number of immigrants [were] managing to come here from all these countries'.[103] Despite the language of 'immigration', prior to the 1962 Act there remained a legal distinction between Commonwealth and 'alien' migration since the former was not subject to control. Butler, aware of this distinction, clumsily used both categories in his speech.[104] The speech was aimed at convincing parliamentarians that Commonwealth citizens, a phrase that he said was 'synonymous with British subjects',[105] should be treated as aliens for the purpose of immigration control.

The shift in the official mindset from an imperial to a national concept of Britain was beginning to take hold in the 1960s. In contrast to the way in which relations with the Commonwealth were presented as being of the utmost importance when considering questions of legal status in 1948, Butler's presentation of the rationale behind the 1962 Act betrayed a tension between imperial and national interests. On the one hand he warned of the 'strain' on relationships between 'immigrants and resident British subjects' and the negative impact this might have on 'Commonwealth relations'.[106] At the same time, he expressed concern about the difficulty of integrating larger numbers of 'immigrants' into 'our national life'.[107]

While retaining the status of Citizenship of the United Kingdom and Colonies, the 1962 Act allocated the right of British subjects to enter Britain according to how their passports were issued.[108] The fragility of British subjecthood was revealed once again with the 1962 Act's stipulation

that certain subjects would be treated as aliens for the purpose of immigration control. Subjects exempt from control were the (majority-white) citizens born in Britain or Ireland, or who held a British or Irish passport issued by either one of these governments, rather than one issued by a dependency government.[109] Butler described the 'objective' behind the Act as being to 'except from control – and, therefore, to guarantee their continued unrestricted entry into their own country – persons who in common parlance belong to the United Kingdom'.[110] It is clear from the exemptions set out above that the government considered such persons to be white. Although the Act did not specify the exclusion of racialised persons, they formed the vast majority of those whose right of entry was removed by the Act.

The Act required all those in possession of a Commonwealth passport and seeking to travel to Britain to apply for a work voucher from the Ministry of Labour.[111] Even those in receipt of work vouchers could be refused entry for a number of reasons. This echoed in several respects legislation designed to control the entry of 'aliens', discussed in the previous chapter. Rights of entry were subject to a significant degree of discretion granted to the Home Secretary. Entry could be denied where a medical inspector determined an individual to have a mental illness or to be otherwise deemed undesirable for health reasons.[112] Those suspected of having been convicted of a criminal offence subject to extradition,[113] or being a risk to national security[114] could be refused entry. A Commonwealth citizen aged above 17 and convicted of an offence punishable by imprisonment could be deported on recommendation by any court.[115]

The 1962 Act followed decades of official neglect of racialised people who had arrived from colony and Commonwealth

countries. Despite being aware of the housing, employment and other racism-related issues they faced, the government refused to ameliorate the situation. They were expected 'to go it alone'.[116] The Cabinet Committee on Commonwealth Immigration considered that providing housing and other support and advice services would encourage more racialised people to travel to Britain. It stated that,

> as long as immigration remained unrestricted, the use of public funds for that purpose could only serve as an added attraction to prospective immigrants and would frustrate the efforts we were encouraging Commonwealth and Colonial governments to make to reduce the rate of emigration from their territories to the United Kingdom.[117]

Meanwhile British government ministers argued that legislation outlawing racial discrimination in Britain would be 'unworkable and unenforceable'.[118]

While British legislators considered how to go about reducing the numbers of racialised people in Britain, they monitored developments taking place in the United States with respect to the civil rights movement.[119] Fears about similar uprisings in Britain led to increased support among politicians for the introduction of immigration controls. Butler was of the opinion that 'some form of control was unavoidable if there was not to be a colour problem in this country on a similar scale to that of the USA'.[120] The 1958 attacks by the far right on West Indian communities in Nottingham and Notting Hill were ideologically constructed in terms of immigration, which had become code for race.[121] This racist street violence was crucial in laying the ground for the institutionalised racism that followed in the form of the Commonwealth Immigrants Acts of 1962 and 1968.[122]

Official and media responses to the attacks rarely made

explicit reference to 'racism either as a feature of British society or as a specific determinant of the riots'.[123] Some politicians presented the attacks on West Indian communities as evidence of the need for immigration control.[124] The Conservative MP Norman Pannell stated that

> [t]he Nottingham fighting is a manifestation of the evil results of the present policy and I feel that unless some restriction is imposed we shall create the colour bar we all want to avoid. Unless we bar undesirable immigrants and put out of the country those who commit certain crimes we shall create prejudice against the immigrants, particularly the coloured immigrants.[125]

Cyril Osborne, Conservative MP, argued that if all Commonwealth and colony immigration was not banned for one year there would follow 'serious unemployment' and

> the trade unions will impose the rule 'last in, first out' and there will be trouble. It will be black against white. We are sowing the seeds of another 'Little Rock' and it is tragic. To bring the problem into this country with our eyes open is doing the gravest disservice to our grandchildren, who will curse us for our lack of courage. I regard the Nottingham incident as a red light to us all.[126]

The Labour MP George Rogers was reported as having informed a government minister that the government was responsible for the violence because it had not dealt with the 'racial problem'.[127] He considered the major issues to be crime and overcrowded housing, 'which is badly needed by white people'.[128] Thus, rather than understanding racial violence in the US and Britain as being the product of colonial ideology, British politicians considered racism to be the result of the presence of racialised people in majority-white societies. Similarly, rather than understanding

anti-colonial uprisings in the colonies and on the British mainland as struggles for freedom from oppression, such resistance movements were dismissed by the British authorities as racial conflict, and 'regarded as being inevitable by virtue of being biologically determined'.[129] Robert Miles has argued that the imperial ideology that divided colonised populations into physically distinct and culturally inferior 'races' and was used to legitimise colonial expansion 'came to constitute part of the common sense of all classes in Britain'.[130]

Even rationales that drove opposition to immigration control rested on colonial ideology and mythology. Hugh Gaitskell, leader of the Labour Party between 1955 and 1963, had an imperial military family history.[131] He had been passionately opposed to the introduction of the 1962 Commonwealth Immigrants Act, believing in the idea that a peaceful world was dependent on Britain retaining its status as a global power at the centre of a multi-racial Commonwealth system. Gaitskell feared a situation that would see Britain 'reduced to playing the role of a regional power', and thus firmly resisted any prospect of European Economic Community membership.[132] Some Conservative MPs, such as Robin Turton, also heavily opposed to European integration, tactically opposed the removal of entry rights for racialised colony and Commonwealth citizens, viewing this legislative move as the first step towards transforming Britain into 'a more European oriented nation'.[133] In the course of debate in the Commons on the 1961 Bill, one Labour MP interjected in protest, '[r]oll in the Common Market and our own people out'.[134]

The Conservative government's Commonwealth Immigrants Act 1962 was eventually passed. As mentioned above, it contained favourable conditions for white

Commonwealth migrants and exempted the Irish from control. The Act did not affect the Common Travel Area between Ireland and Britain.[135] However, the government secured the support of party backbenchers who had been opposed to the legislation in part by accepting that Irish citizens seeking to enter Britain from anywhere other than Ireland would be subject to control. The government considered that in reality Irish citizens would be granted entry by immigration officers who would assume that that they were travelling back to Britain after a holiday abroad or transiting to Ireland.[136] To understand how racism operated in the 1962 Act, it is helpful to draw on the work of Radhika Mongia. In her study of immigration legislation introduced to restrict the entry of Indian citizens to Canada, Mongia shows how racism is 'instituted by bureaucratic discretion'.[137] For the law to operate as intended, that is, to keep racialised Commonwealth citizens out, its 'spirit' must be given meaning through exercises of discretion by immigration officials. The 1962 Act, despite seeming to capture Irish citizens travelling to Britain from outside Ireland along with racialised colony and Commonwealth citizens, nevertheless produced a different effect for the Irish. The discretion granted to immigration officials, combined with the everyday assumptions made about who belongs in a British polity imagined as white, meant that Irish citizens would in fact cross the border with ease, whereas racialised subjects would not.

Figures on people entering Britain were approximate, consisting of annual Home Office estimates based on shipping and air transport passenger lists, as well as those calculated by bodies such as the Migrant Services Division of the Jamaican Colonial Government (until 1956), by the British Caribbean Welfare Service (until 1958) and by the

Migrant Services Division of the Commission in the UK for the West Indies, British Guiana and British Honduras.[138] These latter agencies, being concerned with welfare provision, concentrated on recording group arrivals and therefore tended to underestimate overall numbers of migrants. Moreover, it was impossible to differentiate those who remained long-term from those who were short-term visitors on the basis of available figures. Between 1955 and 1960, the Home Office estimated there to have been around 161,450 Caribbean entrants, 330,70 from India and 17,120 from Pakistan. In the two years prior to the coming into force of the 1962 Act, the number of those entering Britain rose considerably as individuals sought to pre-empt the restrictive effect of the Act: 42,000 Indians, 50,170 Pakistanis and 98,090 West Indians were thought to have arrived between 1 January 1961 and the pre-Act deadline of 30 June 1962.[139] The statutory controls served to cut the total number of annual racialised colony and Commonwealth entrants from an estimated 136,400 in 1961 to an official 57,046 in 1963.[140] The passing of the Act meant the introduction of an official documentation system consisting of the collection of annual official statistics under the terms of the Act. However, the 1962 Act did not serve to prevent the entry of colony and Commonwealth citizens altogether. Their overall presence in Britain increased throughout the decade. The total number present in Britain by 1971 stood at 1,151,090 (2.4% of the general population), having risen from an estimated 522,933 in 1961.[141] As we will see in the following section, officials' increasing focus on numbers operated to produce the racialised migrant as a threat to white British supremacy.

The Commonwealth Immigrants Act 1968: a white Britain policy in the making

> This country cannot take upon itself the whole legacy of the Empire.[142]

In the late 1960s there was an increase in the number of East African Asians entering Britain, many of whom possessed a British passport issued by the Kenyan authorities.[143] This movement followed the introduction of policies discriminating against Asians in Kenya by President Jomo Kenyatta. British colonial authorities bore much of the responsibility for the divisions in Kenyan society.[144] Although Asians had lived in East Africa for centuries, the majority arrived as labourers and traders following the expansion of the British Empire over the area.[145] In legal terms, the continued ability of Kenyan Asians to enter Britain following the 1962 Commonwealth Immigrants Act was a result of its method of determining entry rights of citizens of the United Kingdom and Colonies. Entry rights turned on the question of the authority under which passports were issued.[146] Although formally, Kenyan Asians were subject to control under the 1962 Act, when Kenya won independence in 1963 the colonial governor became the high commissioner. The result was that passports that had been issued by the colonial governor were then issued under the authority of the British government, meaning that their holders were not subject to immigration control.[147]

According to some parliamentarians, this was not a legal loophole but a pledge in operation. Those affected had reportedly been promised by the previous British government that they could rely on their status as citizens of the United Kingdom and Colonies should the need arise. As

a result, many East African Asians did not take up local citizenship. The Labour MP Sir Dingle Foot, in the course of the debate on the 1968 Commonwealth Immigrants Bill, queried

> [a]re we to tear up the obligations which we quite deliberately assumed in 1963, which we have recognised ever since, and upon which those concerned have relied. We are not dealing with a draftsman's error to be put right through subsequent legislation. In 1963 the Government knew perfectly well what they were doing.[148]

The existence of a pledge was disputed by Conservative MP Duncan Sandys, who argued that the Kenya Independence Act merely contained assurances that citizens of the United Kingdom and Colonies in Kenya would not be deprived of their status, but that this 'did not affect their position under the Commonwealth Immigrants Act [1962] one way or the other'.[149] There is no doubt that Kenyan Asians regarded the 1968 Act and British politicians' denial of the existence of a pledge as a betrayal. Placards held up at a protest against the 1968 legislation by Kenyan Asians at Nairobi airport were emblazoned with slogans such as 'Sandys – humanity will never forgive you!' and 'Great British Betrayal'.[150]

For all the talk of pledges, it is clear that those in Parliament who pushed hardest for control were concerned primarily about the entry of racialised Commonwealth and colony citizens as they watched the Empire being defeated. Thus, Sandys warned that

> we must bear in mind the problem which will arise when our other remaining Colonies become independent. It would, I suggest, be very difficult to refuse similar rights of entry to racial minorities in, say, Mauritius or Fiji … We have to face the fact – and this is one of the inevitable consequences of the process of dismantling an empire – that once we have

> granted independence to a Colony we are no longer in a position to look after the interest of its inhabitants as we did before.

After providing this skewed presentation of British rule as being about protection rather than exploitation, Sandys had the gall to present racist immigration controls as being 'in the interests of the immigrants themselves' to save them from experiencing racism in Britain.[151] Some supporters of the legislation were quite happy to acknowledge that the legislation was 'of course … a question of colour', such as Labour MP Charles Pannell, who insisted that if it had been white Rhodesians (now Zimbabweans) seeking entry to Britain, it 'would have opened its gates to the lot of them'.[152]

Despite concern in some corners of the Cabinet about the prospect of legislation being seen by Commonwealth countries as 'a purely racial move',[153] and the effect this might have on the stability of the Commonwealth, the government moved swiftly towards legislation to bar the entry of Kenyan Asians. The Commonwealth Immigrants Act was passed on 1 March 1968 and supported by large majorities in the House of Commons from the incumbent Labour government and the Conservative opposition. It was rushed through in under three days, much as the 1914 Aliens Restrictions Act had been, though on this occasion, as Dallal Stevens notes, 'there was no war to justify the unusual haste'.[154] The 1968 Act made no mention of asylum, not surprisingly since its principal targets were people in flight from persecution. Kenyan Asians were not only citizens of the United Kingdom and Colonies, but were also refugees. Although the Labour Home Secretary, James Callaghan, denied that the Act was racist, preferring to describe the exclusive test adopted as 'geographical, not racial',[155] the fact that the legislation was racially

targeted was clear from his reasoning that 'the problem' at issue was 'potentially much larger than that of the Kenya Asians. It includes all the Asians in other parts of Africa and this very much larger number of citizens totalling 1 million or more.'[156] Moreover, regardless of the views held by those who passed the legislation, or the terms in which it was expressed, its effects were racist. As Dingle Foot emphasised, the ancestry test deployed in the Act would ensure that 'the effect of this legislation, inevitably, will be that the great majority of Europeans who have not elected for Kenya citizenship will be able to come here. The overwhelming majority of Asians will not.'[157]

In 1967 there had been significant news coverage of Asians arriving in Britain. Public opinion data demonstrated majoritarian support for legislation restricting Kenyan Asians' entry to Britain.[158] Rather than seek to persuade the public to welcome them, Callaghan moved to restrict their entry. The usual procedure of referring the matter to a Home Affairs committee was not followed. Instead, Callaghan set up a special Cabinet committee on immigration, which he chaired. He was dismissive of his critics and 'dominated the proceedings'.[159] In a Cabinet memorandum, Callaghan argued for immigration controls by constructing them as quid a pro quo for protection from race discrimination in the form of the Race Relations Bill of 1965.

> Our best hope of developing in these Islands a multi-racial society free of strife lies in striking the right balance between the number of Commonwealth citizens we can allow in and our ability to ensure them, once here, a fair deal not only in tangible matters like jobs, housing and other social services but, more intangibly, against racial prejudice. If we have to restrict immigration now for good reasons, as I think we must, the imminent Race Relations Bill will be a timely factor in helping us to show that we are aiming at a fair balance all

> round. Conversely, I believe that the reception of the Race Relations Bill will be prejudiced in many minds, and support for it weakened, if people think that the numbers entering are unlimited or unreasonably high.[160]

Much can be gleaned from Callaghan's reasoning and justification for stripping Kenyan Asians of their right of entry on racial grounds. Callaghan failed to understand that British racism is 'a product of imperial and colonial power'.[161] His presentation of racial prejudice as being an 'intangible matter' demonstrates his failure to understand racism as having serious material consequences for racialised people. The reasoning Callaghan deployed to justify the 1968 Act is perversely counter-intuitive in the trade-off presented as both necessary and desirable. His argument was that creating a 'multi-racial society free of strife' necessitated action consisting of yielding to racist demands by passing racist legislation. Essentially, he offered up the rights of racialised Commonwealth citizens in exchange for white Britons' acceptance of anti-discrimination laws. Callaghan's concern that the 1965 Race Relations Bill would garner less support without the imposition of racism in the form of immigration controls raises doubts about both the quality of protection contained in the Race Relations Bill and the ability of the British authorities to deliver protection from race discrimination. It further raises the question of the meaningfulness of the support of those who hold their willingness to abide by anti-racist norms conditional upon racist exclusion. The tactic of presenting a 'package deal' involving a tightening of immigration controls along with laws prohibiting racial discrimination in Britain had long been entertained by Harold Wilson's Labour government, in particular by a former Home Secretary, Frank Soskice.[162] Soskice had described the Race Relations Bill of 1965 as

being part of a two-pronged government policy of achieving 'effective control of numbers' of racialised Commonwealth arrivals on the one hand, and the creation of 'one class of citizen each with equal rights' on the other.[163] A similar mantra would be repeated by many a Home Secretary to come.

The final line quoted from Callaghan above, that support for race relations legislation would be weakened 'if people think that the numbers entering are unlimited or unreasonably high', is revealing of the way in which numbers of racialised people were an object of fear in white supremacist Britain. The descriptor 'high' is in itself racist in suggesting that there is an ideal number of racialised colony and Commonwealth citizens who would be entering a predominantly white Britain. Frantz Fanon, in *Black Skin, White Masks*, challenged the racism of an interlocutor concerned with the number of black people in France, writing 'for you there is a problem, the problem of the increase of Negroes, the problem of the Black Peril'.[164] To illustrate the racism in white dominant societies' fears about the numbers of racialised people present, Fanon cynically imagines himself 'lost, submerged in a white flood composed of men like Sartre or Aragon', claiming he would like nothing better.[165] For Callaghan, it did not matter how many racialised people were actually entering Britain, but whether white British people would *think* the numbers were 'unlimited or unreasonably high'.

It is worth nothing that despite the racist hysteria apparent in the House of Commons debate on the Bill, Britain was experiencing a net outflow of migration at the time the 1968 Act was passed, a point commented on in the course of the debate on the Bill.[166] Those who made this point were ignored. For instance, the Liberal MP David

Steel argued that 'we are not an overcrowded island as is so often supposed', and tried to convince MPs not to pass controls, but instead to 'reassure the public mind about the state of immigration'.[167] In *Policing the Crisis*, Stuart Hall reflected on the structural relationship between the media and official discourse, observing that the important point is the establishment of the 'initial definition or *primary interpretation* of the topic in question'.[168] For example, he writes:

> once race relations in Britain have been defined as a 'problem of numbers' … then even liberal spokesmen, in proving that the figures for black immigrants have been exaggerated, are nevertheless obliged to subscribe, implicitly, to the view that the debate is 'essentially' *about numbers*.[169]

In this way, the official and media reaction is not to any actual threat to society, but to 'a perceived or symbolic threat',[170] that is, what the racialised Commonwealth citizen was taken to represent: a threat to white British supremacy at home.

The 1968 Act provided that only Commonwealth citizens with an existing ancestral link with the country retained their right to enter Britain. For others, the Act put in place a quota system of entry vouchers. Section 1 removed the 1962 Act's exemption from control of citizens of the United Kingdom and Colonies with a passport issued by the British government. Not all citizens who had passports issued by dependency governments had taken local citizenship, and in some cases they were deprived of it in the course of independence processes.[171] The effect of the 1968 Act was to create a group of citizens of the United Kingdom and Colonies who did not have an immediate right of entry into Britain despite the fact that the only passports they held were British.[172] Two hundred thousand East African Asian British passport holders were abandoned, made stateless by

the Act for lack of an alternative citizenship.[173] In general, the Act had wide cross-party support, despite its devastating consequences for Asians whose lives and futures depended on escaping persecution in Kenya. Tellingly, concern was raised about the preferential treatment of 'aliens' in comparison with Commonwealth citizens, betraying once again the fragility and deceptiveness of the distinction between subject and alien in imperial contexts. Lord O'Hagen, for instance, queried the government on

> what would happen if two British white sisters got engaged, one to a German, one to a Pakistani, and subsequently both pairs got married. Is not the position at the moment that the Commonwealth citizen would probably not be allowed to remain here, while in due course of time the alien probably might be?[174]

The 1968 Act accorded preferential treatment to white British settlers. Exempted from control were citizens of the United Kingdom and Colonies born in Britain or with at least one parent or grandparent born in Britain, people naturalised in Britain, or people who became citizens of the United Kingdom and Colonies by virtue of being adopted in Britain, or by registration under the British Nationality Acts in Britain or in a specified Commonwealth country.[175] The exemption granted to those with a parent or grandparent born in Britain meant that the 1968 Act effectively allowed (predominantly white) British settlers in any colony, protectorate or protected state to retain their right to enter Britain as a citizen of the United Kingdom and Colonies.[176] In this way lawmakers avoided the use of an explicit racial test for exclusion. Instead, the approach of legislators was to achieve their desired effect of racial exclusion by narrowing 'down the category of those who are deemed to "belong"' to Britain.[177]

The effect of the carefully crafted exceptions to immigration control set out in the Act was to deem white people as belonging to Britain to the exclusion of racialised colony and Commonwealth citizens. By 1967 government memoranda no longer referred to East African Asians as 'coloured' British citizens, but as 'citizens of the United Kingdom and Colonies who do not belong to the United Kingdom'.[178] The Act thus treated racialised citizens of the United Kingdom and Colonies as 'aliens' for the purpose of immigration control in the interests of protecting white British supremacy on the British mainland. Although the Act's primary target was East and Central African Asians, it deprived more than a million individuals worldwide of their right to enter Britain, including those in Malaysia, Singapore, South Yemen and the Caribbean.[179]

The 1968 Act was, for a minority of parliamentarians, 'the most shameful piece of legislation ever enacted by parliament, the ultimate appeasement of racist hysteria'.[180] The Act's genesis marked a significant departure in British politicians' attitudes towards the Commonwealth. The 1950s had been marked by official concern about the souring impact of immigration controls on relationships with the Commonwealth. By 1968 most Conservative and Labour party politicians were aligned in their eagerness to strip racialised colony and Commonwealth citizens of their right to enter Britain. In spite of their rallying around racist legislation, their hypocritical discomfort at being considered to be racists was very much on display in the course of the House of Commons debate on the Bill, along with an almost complete lack of acknowledgement of the British Empire's role in prompting the movement of colony and Commonwealth citizens to Britain. This was despite the presence in the Commons of parliamentarians such as Duncan Sandys, who

made no secret of the fact that he was 'so closely concerned with the arrangements for Kenya's independence'.[181] His conclusion, ostensibly 'after much thought', was that 'it is not reasonable to expect us to open our doors to a vast number of people who have no direct connection with Britain and who do not in any way belong here'.[182] Sandys further considered that 'if they wish to leave Kenya, they should return to their countries of origin', a statement met with shouts of 'Where?' from MPs opposed to the legislation. In the time-honoured fashion of British politics – that of exporting 'problems', imperial by-products of its making – he gave the feeble reply: 'India and Pakistan'.[183] Quentin Hogg, the Shadow Home Secretary, asked the House, 'what have [we] done wrong and why [should] the right hon. Gentleman [Callaghan] be accused of being a racialist, when all that he is trying to do is to cope with a situation which he did not create'.[184] When faced with a question that pinpointed the origin of the persecution of the Kenyan Asians in 'the break-up of our own Empire', Hogg completely ignored it.[185]

The priority across the political spectrum was to pander to a growing far right and racist opposition to immigration of racialised colony and Commonwealth citizens. Hogg stated in the Commons that 'racial prejudice is often based on insecurity, and insecurity is largely the result of want of control, and want of control is precisely the thing which the Government are trying to get rid of by what admittedly is a measure which none of us like'.[186] This statement on 'control' evokes the slogan 'Take Back Control', which became the rallying cry of the anti-immigration Leave campaign in the course of the 2016 EU referendum. Rather than eliminating 'want of control', the 1968 parliamentarians' profound failure to understand racism as being a consequence of British colonialism, along with their misconception,

whether genuine or otherwise, that the solution to racism lay in immigration control, had the effect of feeding the very racism that continues to drive demands for control. What is clear is that politicians, then and now, enact racism while denying that this is what they are doing and locating it instead in an imagined 'white working class'.

The 1968 Act demonstrated that British politicians were willing to weigh up the perceived domestic political costs of maintaining imperial ambitions. They came down on the side of mitigating those costs in an era in which the British Empire was facing defeat. As colonial populations ousted the British and won their independence, amnesia and disassociation from the British imperial project began to take hold in the British psyche. As though the white supremacist project of the British Empire had never existed, in 1968 Enoch Powell, in his infamous 'rivers of blood' speech, sought to differentiate the US from Britain in terms of the inevitability of the presence of racialised people: 'The tragic and intractable phenomenon which we watch with horror on the other side of the Atlantic but which is there interwoven with the history and existence of the States itself, is coming upon us here by our own volition and our own neglect.'[187] Powell conveniently skipped over the aspects of British history that have determined the presence of racialised people in Britain. Not only did Britain actively foster the idea of a British motherland in the course of its imperial expansion, but the wealth accumulated via colonial dispossession, both material and temporal, is located on the British mainland. British slave owners and the British economy reaped the financial proceeds of transatlantic slavery.[188] Wealth, resources and produce from the colonies was imported to Britain at the cost of the colonies.[189] As Ambalavaner Sivanandan has explained, 'colonialism and immigration were part of the

same continuum … The purpose of my aphorism "we are here because you were there" was to capture the idea of the continuum in a sentence intelligible to all.'[190]

Between 1970 and 1973 more than 200 East African Asians lodged complaints with the European Commission of Human Rights on the issue of the 1968 Commonwealth Immigrants Act's removal of their right to enter Britain.[191] In 1970, 31 such applications were declared admissible and for the first time the Commission issued a report in an individual case against Britain.[192] The Commission did not consider itself confronted with 'the general question whether racial discrimination in immigration control constitutes as such degrading treatment', but only whether the 1968 Act as applied in the cases before it 'discriminated on the ground of race or colour' and whether that treatment met the threshold of degrading.[193] Concentrating on the revocation of a previously granted right of entry for British subjects, the Commission found that Britain was in breach of Article 3 of the ECHR, which prohibits torture and inhuman or degrading treatment or punishment.[194] The Commission stated that race-based discrimination was 'a special form of affront to human dignity which, in aggravating circumstances, can amount to degrading treatment in breach of Art. 3'.[195] It found that the 1968 Act had 'racial motives and that it covered a racial group' and that 'it was clear that it was directed against the Asian citizens of the United Kingdom and Colonies in East Africa and especially those in Kenya'.[196]

Analysis of the Commission's report in the *East African Asians* case demonstrates that despite the apparent strength of its condemnation of the actions of the British government, the practical outcome and reasoning meant that its progressive content was limited.[197] The Commission refused

to recognise the parity in the situation of British subjects and British Protected Persons denied entry to Britain.[198] It found that Article 3 was only breached in relation to the applicants who were citizens of the United Kingdom and Colonies. The Commission did not therefore consider 'whether a colonial power had some moral – and thus human and legal rights – duties towards her former colonial subjects'.[199] The Commission distinguished the situation of British Protected Persons from that of citizens of the United Kingdom and Colonies by stating that 'although not aliens, [they] are not British subjects', they had been made subject to immigration control under the 1962 Immigration Act, their position had not changed following the 1968 Act, and the 1968 Act 'did not distinguish between different groups of British protected persons on any ground of race and colour'.[200] Essentially, the Commission rubber-stamped Britain's alienation of British Protected Persons, a category of people with colonial connections to Britain but who had not been granted British subjecthood under the 1948 British Nationality Act. By contrast, the Commission was willing to reach its finding of a breach of Article 3 in the case of British subjects falling into the category of citizens of the United Kingdom and Colonies, despite this group also having been treated as 'aliens' for the purpose of immigration control via the 1968 Act.

It is possible to read the Commission's decision in the *East African Asians* case as reinforcing the position adopted by European colonisers of 'fierce and successful resistance to any claim that [they] should admit on their territory ex-colonial subjects-turned migrants'.[201] Marie-Bénédict Dembour has argued that the *East African Asians* case shows that '[o]nce colonialism had ended', the Strasbourg institutions were guided by the 'same exclusionary philosophy'.[202]

Yet colonialism has not 'ended'. The world remains colonially structured as do the domestic spaces of former colonial powers. Not only does Britain still have overseas colonies, but it is also the place where colonial spoils are located and disproportionately withheld from people with histories of colonisation both within and outside its borders. In such a context, legal status recognition processes, including those framed in terms of human rights, cannot respond adequately to reparative demands. The Commission thus limited itself to considering whether the 1968 Act was contrary to Article 3, leaving aside the broader questions of the legitimacy of processes of granting and refusing legal status in imperial contexts.

The Immigration Act 1971: whiteness as belonging

The Conservative Party's 1970 manifesto promised to 'establish a new single system of control over all immigration from overseas', declaring that the 'Home Secretary of the day will have complete control, subject to the machinery for appeal, over the entry of individuals into Britain'.[203] The stated purpose of the Conservative government's 1971 Immigration Act was to introduce 'permanent' immigration 'legislation of a comprehensive character' and to 'enable help to be given to those wishing to return abroad, and for services connected therewith'.[204] Its introduction was preceded by a persistent and violent campaign by the far right National Front.[205] The Act targeted racialised colony and Commonwealth citizens for further control, once again treating them as 'aliens' for the purpose of immigration control. The Home Secretary, Reginald Maudling, at times used the terminology 'coloured immigrant' when referring to colony and Commonwealth citizens whom he considered would be affected in various

ways by the legislation during debate on the Bill in the Commons.[206] However, when it came to describing those exempted from control, primarily those born in Britain or with a parent born in Britain (the vast majority of whom were white), the government came up with a new word, 'patrial'. According to Maudling, 'the great advantage' of the term was to 'get away from' the word 'alien', which he claimed to have 'always disliked'. 'I do not think', he said, 'that it is sensible to describe other human beings as "alien" if one can avoid it.'[207] As though the British Empire had never existed, Maudling spoke of the need to have 'regard both to those who have always lived here and those who are here as immigrants'[208] (notice the use of this descriptor rather than that of subjects). Maudling talked of Britain as though it had always been a contained place rather than an empire which spanned continents. '[W]e must give assurance', he said, 'to the people who were already *here* before the large wave of immigration that this will be the end and that there will be no further large-scale immigration.'[209] However, the discourse of 'immigrants' was not wholly established. There were protestations in the Commons in the wake of the proposal that Commonwealth citizens should register their work permits with the police. On seeking to minimise what might look like a 'tyrannical' suggestion, Maudling stated that the 'condition of registration' had been accepted by '[a]ll Americans and Scandinavians who have come here over the years'. This statement was met with cries of 'They are not Commonwealth citizens', 'They are foreigners'.[210]

The 1971 Immigration Act definitively ended the right of colony and Commonwealth citizens to enter Britain, but granted the right of abode (the right to enter, live and work in Britain) to those already settled in Britain ('being ordinarily resident [for a period of at least five years in Britain

at any time] without being subject under the immigration laws to any restriction on the period for which he may remain'). At the time the Act was introduced, Maudling claimed that one of its 'main objectives' was to 'reassure the immigrants already here as part of our community that they will have no loss of status under the Bill, that in this country there will be no first and second-class citizens'.[211] Yet following the introduction of the hostile environment policy and its implementation through the 2014 and 2016 Immigration Acts, there were numerous reports of people of the Windrush generation and their descendants facing unemployment, denial of access to healthcare, detention and expulsion because they could not prove their immigration status.[212] The 2014 Act removed the exemption from immigration control for Commonwealth citizens who were lawfully in Britain prior to 1973 after having been granted short-term stays for study or work, but who had since lost their status.[213] The 2014 and 2016 Acts required government agencies, public and financial service providers and private landlords to withhold services in the absence of proof of a secure legal status. Many people could not prove this for lack of documentation, in part due to Home Office actions.[214] The 1971 Act did not protect people from having to submit to the onerous and often impossible burden of proof. Indeed, it invited the devastating effects of the hostile environment, providing that '[w]hen 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*'.[215]

Meanwhile, those exempted from control under the 1971 Act were primarily those born in Britain or with a parent born in Britain, thereby linking the right to enter Britain with whiteness.[216] The 1971 Act thus effectively

made whiteness the primary basis for belonging in Britain. Citizens of the United Kingdom and Colonies who were 'patrials', those born in Britain or with a parent born in Britain, had a right of abode and therefore a right of entry and stay in Britain.[217] The effect of the requirement to show a 'patrial' connection was to discriminate against racialised colony and Commonwealth citizens. In 1971 a person born in Britain was most likely (98%) to be white.[218] This point did not escape the government of the day, though it nevertheless denied that the legislation was racially discriminatory:

> It is said that most of the people with patrial status will be white. Most of us are white, and it is completely turning racial discrimination on its head to say that it is wrong for any country to accord those with a family relationship to it a special position in the law of that country.[219]

Similarly, some parliamentarians, for instance James Callaghan, who was by then on the opposition bench, sought to argue that because in theory a racialised person could be a 'patrial' (if she or he was born in Britain for example), the law could not be described as racist.[220] The patriality provision in the Act was drafted so as to allow many citizens of Australia, Canada and New Zealand to retain the right to enter Britain, while racialised colony and Commonwealth citizens could not.[221] Irish citizens were exempt from control so long as they entered Britain through the Common Travel Area. Kathleen Paul has thus argued that the 1971 Act reconfigured British subjecthood by differentiating in legal terms 'between the familial community of Britishness composed of the truly British – those descended from white colonizers – and the political community of Britishness composed of people who had become British through conquest or dominion'.[222] The right of abode was also granted to people who had arrived in Britain from the Commonwealth or colonies with

a labour voucher and had resided in Britain for five years.[223] However, they were the exception, and their position was not in reality secure. As I have argued, fragility of legal status disproportionately impacts racialised people. The 1971 Act's equating of Britishness to whiteness has haunted the administration of immigration law and policy, as the 2018 Windrush scandal demonstrates. The 1971 Act, along with the Commonwealth Immigrants Acts of the 1960s, demonstrate that in colonial contexts legal status differs in material terms according to whether and how a person is racialised. Although the British Nationality Act 1948 remained on the statute books in order to appease Commonwealth governments, its provisions were in large part replaced by the 1971 Act.[224] In response to the publication of the Bill, the Indian government ended visa-free travel for Britons.[225] Following the 1971 Act, the British government took further measures to deter the immigration of racialised Commonwealth citizens, including the introduction of 'virginity tests' which entailed forcing women arriving from India to be married in Britain to undergo vaginal examinations.[226]

The 1971 Act empowered the Home Secretary to set immigration rules before Parliament. Having failed to persuade Parliament to adopt the first set, the government set out revised rules on 25 January 1973. These treated Commonwealth citizens and non-Commonwealth citizens from outside the EEC as 'aliens' in relation to rights of entry and work, thereby assigning them a detrimental status as compared with EEC nationals.[227] Britain had finally joined the EEC in 1973, a process discussed in Chapter 5. The government implemented the provisions on the free movement of EEC workers through the immigration rules. Questions were raised in Parliament about the differential treatment between Commonwealth citizens and EEC nationals.[228] The

government made assurances that people from Australia, Canada and New Zealand would not be in a worse position as regards their entitlement to enter Britain as compared with EEC nationals.[229] The original patrial provision in the 1971 Bill had entitled those with a grandparent, as well as a parent, born in Britain to a right of abode. After the clause was defeated in Parliament, the right was limited to those with a parent born in Britain. In spite of this, the clause's formulation inclusive of the grandparent connection, known as the 'UK ancestry route', was reinstated through the 1973 immigration rules and still exists today.[230]

The Ugandan Asian crisis

> They said if you was white, should be all right.[231]

On 5 August 1972 the Ugandan leader, General Idi Amin, ordered the expulsion of all Asian British passport holders within 90 days. This order was the culmination of a series of measures which significantly restricted the rights of Asians to live and work in Uganda.[232] An estimated 60,000 Asians lived in Uganda at the time, half of whom held a British passport. Their ancestors had travelled to Uganda from all over the Indian subcontinent in the era of the British Empire, some as traders and others as indentured labourers.[233] Tellingly, the *Sunday Telegraph* referred to the Ugandan Asians as 'the white man's "heavy new burden"', betraying the prevalent British colonial psyche combined with ignorance of the history of the Asian presence in Uganda.[234] Although the Ugandan Asian crisis has been argued by some to have elicited a generous response from the British authorities,[235] the reality is that it was yet another instance of the British government's alienation of

racialised citizens of the United Kingdom and Colonies, further illustrating the fragility of colonial legal status for racialised populations.

Edward Heath's Conservative government increased the British Asians quota from 1,500 to 3,000 in May 1971, but from this quota only 100 entry certificates were allocated to Ugandan Asians annually. Those who attempted to flee without securing an entry certificate to Britain found themselves 'rejected and shuttled around the world'.[236] In 1972 the Home Office set up a resettlement board to coordinate the reception of a number of Ugandan Asians.[237] In doing so, it sought to distance itself from the resettlement programme. The Heath government also called on 'local authorities and private individuals to volunteer vacant housing stock' while concealing the fact that state funding was being directed to the process.[238] The government introduced a policy that can accurately be described as racial segregation for the accommodation of Ugandan Asians who were resettled in Britain. It included the designation of dispersal zones as '"red" ("no-go") and "green" ("go") areas', zones which were previously described as 'black' and 'white' in internal communications.[239] Enoch Powell attacked the government's measures as a breach of their pledge not to allow further immigration.[240] Consistent with the correlative relationship between the violence of the colonial state and the racial terror this elicits on the ground, in August 1972 London's meat porters marched with National Front members chanting 'Britain is for the British' and 'Keep the Asians Out'.[241] Although public opinion fluctuated on the issue, only 6 per cent of respondents in the first public opinion poll supported the admission of Ugandan Asians with British passports, a figure that later rose to 54 per cent.[242]

Britain's reception of the Ugandan Asians has been widely understood as 'a humanitarian and morally laudable act of a former "mother country" to an expulsion of a racial minority'.[243] Anthony Lester has drawn attention to the difference in approach between Harold Wilson's administration, which passed the 1968 Commonwealth Immigrants Act in response to the arrival of Kenyan Asians, and 'the much more generous approach of Edward Heath's government' towards the 71,000 Ugandan Asians expelled.[244] However, Yumiko Hamai has demonstrated 'foot-dragging' in the British government's approach towards the Ugandan Asians for fear of public criticism, from the slow processing of entry certificates to the active discouragement of early departure by Asians seeking to flee prior to Amin's deadline of 7 November 1972.[245] The Home Office had delayed departures in the hope of securing alternative countries of destination and to allay the anti-immigrant sentiment of Heathrow airport staff who were refusing to process Asians arriving in Britain.[246] The British government asked more than fifty countries to take Ugandan Asians. Ultimately, Britain admitted only 28,608 citizens of the United Kingdom and Colonies from Uganda. Canada accepted around 6,000 and India 10,000, while New Zealand, Malawi and Kenya admitted hundreds.[247]

The capacity to treat subjects as 'aliens' for legal purposes is the colonial state's ultimate expression of power. The British government's position on Ugandan Asians who did not hold passports it had issued was that to accept them 'would be putting on this country a burden which is not ours'.[248] Despite being subject to immigration control pursuant to the Commonwealth Immigrants Acts of the 1960s and the 1971 Immigration Act, many of the Ugandan Asians were citizens of the United Kingdom and Colonies under

the 1948 British Nationality Act. The British government's obligation under international law to accept the Ugandan Asians in the absence of alternative settlement options was thus of little practical consequence in light of the immigration control measures in place.[249] Instead, the government sought to present the Ugandan Asians as 'unfortunate refugees' and a 'burden' to be shouldered internationally. A Home Office civil servant noted at the time that 'it seems preferable to accept the [Asians] from Uganda on the basis that they are "refugees" whether or not they are technically refugees'.[250] The refugee category was thus invoked out of convenience by an administration wishing to frame its actions towards the Ugandan Asians as charitable or humanitarian, rather than in terms of legal or reparative obligation.[251]

The treatment of white subjects in the course of successful independence movements can be usefully juxtaposed with that of the Ugandan and Kenyan Asians. As Gurminder Bhambra and John Holmwood note, 'considerable sympathy' was shown for '"patrial" white settlers in South Africa and Rhodesia/Zimbabwe', in comparison to that proffered to South Asians.[252] The British government's approach towards Ugandan residents with ancestral links to Britain is illustrative of how the legal status of Citizenship of the United Kingdom and Colonies applied differently in material terms to white subjects. White Ugandan residents comprised a group of 7,000, and were known by British officials as 'belongers'.[253] Unlike racialised subjects, their whiteness gave rise to an automatic relationship of belonging to the British polity. With belonging came material privileges in the form of protection, including an evacuation plan. Although Idi Amin had not expelled white Ugandan residents, the British government's preparation for their

departure began early and the plan was constantly revisited. The government even countenanced military intervention should the risk to white residents' safety escalate.[254]

The British Nationality Act 1981: the final act of colonial appropriation

> It is time to dispose of the lingering notion that Britain is somehow a haven for all those whose countries we used to rule.[255]

In 1981 the Home Secretary William Whitelaw declared that a new articulation of British citizenship was necessary so that holders of the status of Citizenship of the United Kingdom and Colonies 'may not unnaturally be encouraged to believe, despite the immigration laws to the contrary, that they have a right of entry' to Britain.[256] The 1981 British Nationality Act, passed by Margaret Thatcher's Conservative government, was ostensibly about defining a legal status of British citizenship for those who are 'closely connected' with Britain and who 'belong' to Britain 'for international or other purposes'.[257] Previous iterations of immigration control had made clear that Commonwealth citizens who were 'closely connected' to and deemed to 'belong' to Britain were white. The 1981 Act continued this process of racial exclusion by constructing British citizenship on the foundation of the 1971 Act's concept of patriality, tying citizenship to the right of entry and abode.[258] In a manner that denied the relevance of the British Empire in producing the category of Citizenship of the United Kingdom and Colonies, Whitelaw denied these citizens 'close ties' with Britain, claiming that they did not 'actually belong' in Britain.[259]

The popularity of the National Front was at its peak in the lead-up to the passing of the 1981 Act.[260] Despite

being couched in terms of citizenship and nationality, the 1981 Act was an immigration control measure designed to deliver on the Conservative Party's 1979 election manifesto promise of firm immigration controls targeting racialised Commonwealth migration to Britain.[261] This was underlined by the need for Commonwealth citizens to register as British citizens within five years of the Act coming into force or lose their entitlement to citizenship.[262] Immigration control was once again presented as a prerequisite for the enactment of race relations legislation.[263] Although the 1981 Act retained the quota system for Commonwealth immigration set out in the 1968 Act, the criteria were strict and there was a cap of 5,000 per year.[264]

The 1981 Act repealed the British Nationality Act 1948, all but abolishing the status of British subject.[265] British citizenship was tied to membership of a British polity exclusive of the colonies and Commonwealth. Dora Kostakopoulou and Robert Thomas have argued that '[t]he consolidation and legitimation of modern states' depends on the 'drawing of firm boundary lines which delimited the area of the state's jurisdiction'.[266] While in reality Britain's jurisdiction continues to extend over its remaining colonial territories, the 1981 Act drew a hard border around 'the motherland', effectively announcing Britain as post-colonial, making it impermeable to its former racialised subjects. Geographically the Act limited British citizenship to the landmasses known as England, Scotland, Wales and Northern Ireland.[267] The Act thus conjured up a post-colonial notion of Britain and British citizenship in order to divorce Britain conceptually and physically from its former empire. By linking citizenship with a right of abode granted to those with a patrial connection to Britain, the 1981 Act reinforced the idea that Britishness is commensurate with whiteness. Whiteness

as an 'embodied national identity' is, as Karen Wells and Sophie Watson have argued, a 'highly exclusionary notion of Britishness that essentially conflates being British/English with being white, Anglophone and Christian'.[268] There was objection at the time from members of the Labour opposition and the Church of England, whose bishops released a statement in which they argued that '[a]ny new nationality law should state as a matter of principle that our national identity is multi-racial, thereby avoiding the potential racial conception of national identity'.[269] In drawing a border around Britain as we know it today, the 1981 Act embodied an assertion of white possession of the spoils of colonialism, whether in the form of wealth, infrastructure, healthcare, security, employment or opportunity. The Act, in barring access to Britain for colonised populations, was a final act of seizure of stolen colonial wealth.

The 1981 Act introduced the status of British citizen and defined the conditions for its acquisition. Those with a right of abode were granted British citizenship. Under the Act, a person born in Britain is a British citizen if at the time of birth her father or mother is a British citizen or is settled in Britain.[270] The Act thus removed the automatic right of acquisition of citizenship for those born in Britain, thereby excluding from the post-imperial British polity many racialised subjects already living in Britain and children born to them. Its exclusionary effect would fall primarily on racialised people, yet the government denied that the legislation was racially discriminatory.[271] Roy Hattersley, shadow Home Secretary, criticised the position of the government:

> What is racist is that the difference between the two categories always works out, or almost invariably works out – or 90 per cent of the time works out – in a way which disadvantages the black community and gives corresponding

> advantage to the white. That is why I again describe the Bill, irrespective of the Home Secretary's good intentions, as racist in outcome.[272]

The Act introduced a 'good character' requirement for the acquisition of citizenship, thereby 'extending the border from the point of entry and admittance into the nation-state to a more fluid point of inclusion/exclusion encroaching into everyday life of racially marginalised communities'.[273] The Act abolished the status of Citizenship of the United Kingdom and Colonies. Persons who had fallen into this group were divided into three categories: British citizens, which included citizens of the United Kingdom and Colonies with the right of abode in Britain; British Dependent Territories citizens, which applied to persons in territories that were still British colonies at the time (Hong Kong, Bermuda, the British Virgin Islands, Gibraltar and the Falkland Islands) – this group could register as British citizens after five years' residence in Britain; and finally, British Overseas citizens, which comprised all citizens of the United Kingdom and Colonies to whom neither of the other statuses applied. These comprised approximately 190,000 individuals who had no right to enter Britain and were treated as 'aliens' for the purpose of immigration control and naturalisation.[274] Primarily they were stateless East African Asians and persons in Malaysia seeking entry to Britain.[275] For Hattersley, the category of British Overseas citizenship was 'not so much a status as subterfuge'.[276] Although it included former citizens of the United Kingdom and Colonies living in former British colonies, 'it offer[ed] them virtually nothing'.[277] Once again we see the fragility of colonial legal status, which not only marks its subject as colonised, but can also be emptied of meaningful content at the whim of the colonial state. The defeat of the

British Empire allowed Enoch Powell to say in the course of parliamentary debate on the 1981 Bill that the 1948 British Nationality Act had been a 'disastrous error' and to express surprise at the fact that colonial statuses such as British Overseas and British Dependent Territories citizenship did not 'correspond to States'.[278] Yet it is not in the least surprising that they do not correspond to states. They correspond to an empire, the memory and acknowledgement of which was fast fading, even by those closely connected with its administration. Powell himself had long harboured a dream of being Viceroy of India, dashed when India won its independence in 1947.[279]

The effects of the changes to immigration and nationality legislation outlined above came into stark view in 2018 in the course of the Windrush scandal. In its submission to the Windrush review in 2018, Amnesty International pointed out that the 'injustice done' by changes to immigration and nationality legislation in the 1960s, 1970s and 1980s 'was compounded' because not enough was done to 'ensure that people were aware of the changes; understood they were affected … and how; and assisted and enabled to exercise, where these were available, rights to mitigate the changes and their effects'.[280] For a number of reasons many people who were eligible to register as British citizens under section 7 of the British Nationality Act did not take up this right. As Amnesty International pointed out:

> Some people were not aware of their right or need to do so because they continued to believe themselves to be British or saw no immediate change to their day to day lives, unaware of the future implications of not doing so by reason of legislative, policy and operational developments they could not possibly have predicted. Other people were deterred from doing so by the fee or by the bureaucracy. Some people were simply insulted at the demand that they register as British

> (citizens), including paying a fee, given their arrival in the UK as British (subjects) and their contribution to British society and public service.[281]

Under the 1971 Immigration Act people with a settled status had an ongoing right of re-entry regardless of the duration of their absence from Britain. It is possible that the existence of this right led some people to choose not to register as British citizens following the 1981 Act, considering that there was a cost attached to doing so. However, this right of re-entry was subsequently removed by the Immigration Act 1988 for those absent continuously for two years.[282]

The 1981 Act, together with previous post-war immigration controls, crafted as white supremacist a Britain as possible, short of introducing an explicit 'White Britain policy'. Through the 1981 Act racialised colony and Commonwealth citizens were told that their present or historical connections to the British Empire neither entitled them to Britishness as an identity nor to access Britain as a place. Much more than merely the right to cross a border is at stake in the enactment of immigration controls. Depriving colonised populations of the right to enter Britain simultaneously deprives them of access to stolen colonial wealth as it manifests in Britain, in the form of infrastructure, employment, healthcare, welfare, safety and opportunity. Colonialism entailed the extraction and accumulation of material and temporal resources. Colonial theft of intangibles such as economic growth prospects, opportunities, life chances and futures is difficult to discern in colonial relationships which are traditionally understood to have come to an end. Yet Britain, built on wealth accumulated via colonial dispossession, *is* the spoils of colonialism. Immigration law, in this way, is the modality through which Britain transitioned from being a colonial power in the traditional overseas extractive

sense, to a space of domestic colonialism masquerading as a post-colonial nation.

Britain, in being the place where colonial spoils are located, must be understood as a live colonial space, and one that is necessarily contested. There is nothing clear-cut about the idea that Britain is a place first and foremost for white British people. The notion that Britain is a contested space is even invoked by the staunchest of right-wing, anti-migrant ideologues. Enoch Powell, for instance, stated that '[i]t is … truly when one looks into the eyes of Asia that the Englishman comes face to face with those who would dispute with him the possession of his native land'.[283] The argument for a white Britain is thus repeatedly made by racist nationalists precisely because its history would suggest otherwise.

As a consequence of Britain's transition from an empire to a nation-state, and its constitution of itself as white, the presence, and claim to Britishness, of racialised persons already on the British mainland has since been in question. This is evident in official and scholarly discourse which continues to refer to the descendants of racialised British citizens as 'second-', 'third-' and 'fourth-' generation migrants, terminology that is not applied to the descendants of white European post-war migrants.[284] The questioning of racialised people's entitlement to be present in Britain also manifests in mutually reinforcing street and institutionalised forms of racial violence. The 1981 Act's declaration that Britain was a physically distinct and legitimately bordered space populated by white British citizens required the implementation of colonialism domestically. The same power relationships that underpinned the British Empire were relied on to ensure that wealth accumulated via colonial conquest and located in Britain was seen to be in its

rightful place. Colonialism was configured domestically so as to maintain the white supremacist order of the British Empire within the post-1981 borders of Britain. The enactment of immigration and nationality laws that excluded racialised colony and Commonwealth citizens from the British polity was thus a crucial transitional move from primitive accumulation via overseas extractive colonialism to colonialism in the imperial metropole.

Britain, in its post-colonial iteration, has long projected a notion of itself as being under siege by racialised colony and Commonwealth citizens. Paul Gilroy writes, 'black settlement has been continually described in military metaphors which offer war and conquest as the central analogies for immigration'.[285] Such descriptors have included 'unarmed invasion, alien encampments, alien territory and the new commonwealth occupation'.[286] As Bhambra and Holmwood note, 'it was precisely the idea of an "immigrant-descended", non-white, population that came to be regarded as a threat to national identity'.[287] The idea that racialised people posed a threat to Britain carried consequences for Commonwealth and colony citizens on the inside. Once 'alien cultures' came to 'embody a threat, which in turn, invited the conclusion that national decline and weakness have been precipitated by the arrival of blacks', this not only provided the impetus for expulsion, but also for the enactment of internal forms of racial exclusion in respect of those who could not easily be removed.[288] Internal bordering became a new mode of colonialism, producing and sustaining the post-colonial project of a white Britain. This has occurred in part through the institution of policy and legal regimes which effectively construct 'a border in every street'.[289]