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# The after rights of the Citizen of the UK and its Colonies: who is the subject of the rights of the citizen in Britain's hostile environment?

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## ABSTRACT

Radical democrats highlight the emancipatory potential of citizenship rights insofar as they enable the enactment of political subjectivity by those who lay claim to them. However, the conjuncture(s) within which citizenship rights originate (and are rearticulated) matters for the kind of political subjectivity they afford. This article traces the articulation of citizenship rights in Britain in relation to three historical conjunctures: 1948 (in which the introduction of the status of Citizen of the UK and its Colonies (CUKC) coincided with imperial decline); 1981 (in which the status of CUKC was displaced by that of British Citizen as Britain reinvented itself as a nation-state) and; 2012 (in which the hostile environment for irregular migrants was instituted amidst sustained austerity for its citizens). This conjunctural analysis enables us to recognise the good character requirement (that underpins the deportation of Black Britons to former colonies) and the Right to Rent (that deputises immigration control to landlords) as after rights of the CUKC, that is, rights depleted of their political significance as belonging to a free and equal member of the polity. This, I argue, significantly limits any emancipatory potential that enacting citizenship rights in Britain might otherwise enable.


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Taken out of context, one might be forgiven for presuming that the Right to Rent in Britain refers to a positive social right that protects the dignity of citizens by ensuring adequate housing for all. Far from signifying an entitlement that might be claimed for an emancipatory politics, however, the Right to Rent has been described by immigration lawyer, Colin Yeo, as ‘one of a new batch of “fake” rights that are used to separate “us” from “them” and which, in reality, represent restrictions on liberties that had previously been taken for granted.’<sup>1</sup> Introduced and elaborated through Immigration Acts in 2014 and 2016, the Right to Rent is integral to the deputisation of immigration control that is the defining feature of the UK's hostile environment. As such, the Right to Rent refers to

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the requirement for landlords to check the immigration status of prospective tenants. It makes it a crime to rent a property to those who cannot demonstrate their right to reside and requires landlords to report prospective tenants to the Home Office if their documentation is inadequate. How should we make sense of such 'fake' rights? And what might they reveal about who is the subject of the rights of the citizen in the UK today?

In the modern world, citizenship has primarily functioned as an inter-state technology for managing global populations. Nonetheless, theorists of radical democracy often insist on its emancipatory potential insofar as the subject of citizenship rights is supposed to be a free and equal member of the polity. As such, the political effectivity of citizenship rights is attributed to their dual aspect as both inscribed within a socio-legal order (that inevitably preserves social inequalities and exclusions) while being imputed to an insurrectionary moment in which a society of equals was instituted (and to which a regime retroactively appeals for its legitimacy). Indeed, this dual nature of citizenship rights means that they are available to be claimed, seized, or enacted on behalf of the whole political community by a 'part that has no part': those immanent outsiders who are dominated by, marginalised within, or excluded from a citizenship regime.<sup>2</sup>

This radical-democratic conception of citizenship rights has provided an insightful framework for interpreting the political significance of mobilizations by refugees and immigrants, such as the struggle of the *sans papiers*,<sup>3</sup> 'No One is Illegal' campaigns by non-status migrants in Canada,<sup>4</sup> the mobilisation of irregular migrants in the USA,<sup>5</sup> the banlieues uprisings in Paris<sup>6</sup> and the Refugee Protest March in Germany.<sup>7</sup> However, some immigration scholars have also questioned why we should turn to the concept of citizenship 'to name political subjectivity and resistance' when citizenship is being 'policed via ever more intensive and expansive modes of nativist exclusion/expulsion' while also being 'stripped of its positive content for the (provisional) insiders,' given the 'withering away of social rights, political inclusion, and even civil liberties for citizens.'<sup>8</sup> Luke de Noronha's pointed question orients my engagement with the theme of 'after rights' in this special issue in two related ways.

First, I consider how the emancipatory potential of citizenship rights is conditioned by the historical conjunctures in which they are instituted and articulated. It is no coincidence that the radical democratic understanding of citizenship rights has been significantly influenced by a post-1968 generation of French intellectuals (including Etienne Balibar and Jacques Ranciere) who sought to reclaim rights for a radical politics against the orthodox Marxist critique. For these political thinkers (for whom Hannah Arendt is an important point of reference), it is because the rights of citizens are imputed to a constituent moment that they can potentially be mobilised to contest the terms of political belonging in the present. As such, the 1789 Declaration of the Rights of Man and Citizen exemplifies a generative event, which enables ongoing struggles through which political subjects verify their equality. From this perspective, the reason to articulate political agency in the language of citizenship is that those rights that legitimate an inegalitarian and exclusive citizenship regime are supposed to be ideologically reversible. In other words, because the subject who holds them is supposed to be a free and equal member of the polity, they can potentially be seized by anyone and everyone to contest the constitutive partition between those who are qualified to participate in politics and those who are not.

In Britain, however, the legal status of citizen was not established until the introduction of the 1948 British Nationality Act (BNA). Moreover, the rights of the Citizen of the UK and its Colonies (CUKC) were not declared in a moment of revolutionary fervour but legislated for in a situation of imperial decline.<sup>9</sup> Shifting perspective to consider who is the subject of the rights of the citizen *after* the 1948 BNA (rather than the 1789 French Declaration of the Rights of Man and Citizen) reveals how citizenship rights might not necessarily enable an emancipatory politics. For, as I discuss in the first half of this paper, far from being a generative event through which the citizen replaced the subject, the 1948 BNA was an act of the constituted colonial power, which introduced the status of CUKC to *preserve* rather than replace the status of British subject. Moreover, the subsequent development and definition of the status of British Citizen in the 1981 British Nationality Act (BNA) made social and political belonging even more conditional and precarious for people racialized as ‘non-white.’ The 1981 BNA made the status of CUKC redundant by defining the new status of British Citizenship in terms of patriality while also removing birth right citizenship for those who did not have a parent or grandparent who was a patrial. The concept of patriality had first been introduced through immigration legislation in 1968 and 1971 to differentiate CUKCs from settler societies racialized as ‘white’ from CUKCs from other former colonies racialized as ‘non-white.’<sup>10</sup> While patrial CUKCs had a right to reside in the UK, non-patrial CUKCs could be treated as aliens for the purpose of immigration control. The historical perspective afforded by tracing the advent of the CUKC in 1948 to its displacement in 1983 by the status of British citizen provides a basis to assess the emancipatory potential of citizenship rights in the present political conjuncture.

In this context, I consider, secondly, to what extent the identity of the citizen within Britain’s hostile environment resembles that of a free and equal member of the polity. For radical democrats, the emancipatory potential of citizenship rights is inherent in the presupposition of a society of equals.<sup>11</sup> To comport oneself as a citizen is to see oneself as a rights-bearing subject so that an emancipatory politics begins when one puts those rights to the test. What it means to be a citizen thus takes shape as one lays claims to formal rights within conditions of social inequality. However, I suggest that the rights of the citizen within Britain’s hostile environment are less amenable to being claimed in the way that radical democrats presuppose because they lack the formal quality of being attributable to a free and equal member of the polity.

In 2012, Home Secretary Theresa May announced that she intended ‘to create here in Britain a really hostile environment for illegal migration.’ The hostile environment has since come to refer to all those policies designed to make life difficult for people who are unable to demonstrate their right to reside in the UK.<sup>12</sup> As I discuss in the second half of the paper, the deformation of the rights of the CUKC into after rights is evident in both the good character requirement for citizenship (that enables the deportation of those racialized as ‘non-white’) and the Right to Rent (that deputises immigration control to those racialized as white). I therefore employ the concept of after rights to capture the sense in which citizenship rights have been depleted of their emancipatory potential through the process by which immigration and nationality legislation have been entangled in the UK. Consequently, the after rights of the CUKC lack the political efficacy ascribed to citizenship rights by radical democrats because they have been deformed by their articulation as racializing technologies. Rather than invoking ‘after

rights' as beyond sovereign power (whether to 'reimagine rights not grounded by the sovereign figure of "Man"'<sup>13</sup>; to indicate a form of friendship predicated on an entitlement 'not to be abandoned'<sup>14</sup> or; as a basis to 'critique and imagine beyond the proprietorial subject of rights'<sup>15</sup>), I instead characterise 'after rights' as an effect of the intensification of sovereign power through which the civil, political and social rights normally associated with the development of full democratic citizenship are deformed. Far from being available to be seized by a 'part that has no part,' such after rights are actualised through the racializing technology through which immigration control is deputized to ordinary citizens.

### Who comes after the British subject?

Given their rejection of humanism, radical French thinkers after 1968 were preoccupied by the question of the subject in its dual sense as one who is constituted (or interpellated) through their subjection to power and as a political agent who is capable of shaping society. Yet, rather than view this duality of the subject as the symptom of an ideological ruse, they characterised it as a condition of possibility for an emancipatory politics. Etienne Balibar, for instance, exemplified this position in his response to the question posed by Jean-Luc Nancy to his fellow philosophers in France in the late 1980s: 'Who comes after the subject?' In posing the question, Nancy wanted to consider the ethical and political implications of the post-structuralist critique of the subject within radical French philosophy.<sup>16</sup> In response, Balibar offered a deceptively simple answer: after 1789 the 'constitution and recognition' of the citizen (as free and equal member of the political association) 'puts and end to the subjection of the subject' (who owes obedience to the sovereign).<sup>17</sup>

In its simplest sense, the event of the French Revolution is a concrete historical moment in which the recognition of the political subject as a citizen also signals a philosophical revolution. 'Even if we know that this date and the place it indicates are too simple to enclose the entire process of the substitution of the citizen for the subject,' Balibar says, 'the fact remains that 1789 marks the irreversibility of this process, the effect of a rupture.'<sup>18</sup> Yet Balibar's answer is apparently simple answer is deceptive since he qualifies it by saying that he is concerned with the question of the after in relation to 'an indeterminate, if not ahistorical, present.'<sup>19</sup> For, if, historically speaking, the free and equal citizen comes after the subject who owes obedience to the sovereign, the citizen does not, for that matter, entirely replace the subject but remains haunted by its subjection.<sup>20</sup>

Indeed, for Balibar (similarly to Rancière), the invocation of the rights of the citizen institutes the citizen-subject as a figure who is 'no longer the *subjectus*' (whose identity is determined through being subordinated to a sovereign) and 'not yet the *subjectum*' (who actualises their own identity through autonomous political action).<sup>21</sup> For, although citizenship is articulated as a universal ideal, it can only take shape within institutions that produce new forms of subjection. In making this point, Balibar remains indebted to Althusser's theory of the interpellated subject since he presupposes a mutually constitutive relation between the subject as *subjected* ('who submits to a higher authority and is therefore stripped of all freedom except that of freely accepting his submission') and as *autonomous* ('a centre of initiatives, author of and responsible for its own actions').<sup>22</sup> In

Britain, however, the status of citizen did not exist until 1 January 1949 and was instituted not in an insurrectionary moment but in the context of a declining empire.

### **The British Nationality Act 1948**

The 1948 BNA created the status of CUKC, which established the right of all British subjects within the Empire to live and work in the UK. In doing so, the 1948 BNA inadvertently facilitated the movement of British subjects racialized as ‘non-white’ within its colonies to the ‘mother country.’<sup>23</sup> Heralded by the arrival of the Empire Windrush in 1948, this so-called ‘migration’ of Black British citizen-subjects to the British Isles in the post-war period was in fact a movement of people *within* the polity formed by an empire-state rather than *between* nation-states.<sup>24</sup> As Gary Younge observed, members of the Windrush generation, such as his mother, did not cross the border to enter Britain after 1948: the border crossed them with the subsequent introduction of immigration legislation.<sup>25</sup>

In this context, the purpose of the 1948 BNA was not to extend full citizenship rights to colonial subjects throughout a declining empire-state.<sup>26</sup> Indeed, Winston Churchill’s call for the formalisation of the status of British citizen at a conference in 1911 was not realised until 1981 due to concerns about the mobility of colonized people within the Empire. For Churchill’s proposal for a single citizenship status presented the British government with the challenge of how to introduce such a universal status while maintaining those forms of racialized exclusion that had been integral to colonial governance and the upholding of the colour line (especially in settler colonies such as Australia, New Zealand, Canada and South Africa).<sup>27</sup> Consequently, a 1912 conference concluded that the retention of the status of British subject would ensure that the colonial distinction between persons of European and non-European descent would continue to define the regulation of mobility within the Empire rather than the nationality-based distinction between citizen and alien.<sup>28</sup>

Faced with the disintegration of Empire, the purpose of the 1948 BNA was, therefore, to preserve rather than replace the status of British subject.<sup>29</sup> In fact, it was a response to the Canadian government’s intention to introduce nationality legislation, according to which the status of British subject would derive from and become subsidiary to Canadian citizenship.<sup>30</sup> In contrast, the 1948 BNA would ensure that the status of British subject would continue to be determined in the metropole by the British government rather than being contingent on legislation in former colonies.<sup>31</sup> If the concept of citizenship implied an equality between people of European and non-European descent within the Commonwealth, this was supposed only to be symbolic: invoking an imagined political community across a disintegrating empire while presupposing the inferiority of colonised ‘citizens’ vis-à-vis those of the colonising nation.<sup>32</sup>

The subject of the rights of the Citizen of the UK and its Colonies was, therefore, racially differentiated from the outset. For, while the status of CUKC was intended to encompass ‘every person in the British Commonwealth and Empire who owes allegiance to the King’, two further statuses were also created alongside it: ‘Citizens of Independent Commonwealth Countries’ (CICC) and ‘British subjects without citizenship’ (BSWC).<sup>33</sup> On the one hand, persons from colonies that became independent lost their status as CUKCs and became instead CICCs who, despite retaining the right to enter Britain

until the 1970s, needed to register to become CUKCs once eligible (based on a period of residence in Britain). On the other hand, British people racialized as 'white' who had settled in colonies were accorded the status of 'British subjects without citizenship' to ensure that they remained British subjects regardless of citizenship legislation within newly independent countries, such as India. These differential statuses indicate that the purpose of the 1948 BNA was not to enable immigration to the metropole by colonised people as sometimes portrayed. Rather, the 1948 BNA sought to facilitate the free movement of British subjects racialized as 'white' while maintaining the British state's role as 'first among equals' within the Commonwealth.

In the same year that the status of CUKC was introduced, Hannah Arendt published her essay, 'The Rights of Man: What Are They?' Arendt saw the creation of superfluous people through the deprivation of citizenship as a symptom of the decline of the nation-state brought about by the rebounding of imperialism in European metropolises.<sup>34</sup> Yet, at this time, the British polity was not a nation-state but, as Gurminder Bhambra puts it, an 'imperial state with a national project at its heart.'<sup>35</sup> The imperial nature of the British state was apparent in relations of extraction (in the form of taxation), which had been disproportionately born by colonial populations; its national project was apparent in relations of distribution evident in the inception and post-war development of the welfare-state in the British Isles. Within the context of the British Empire, domestic legitimacy was secured through low taxation of subjects on the British Isles while a much heavier tax burden was imposed on populations in the colonies.

While the consolidation of the nation-state is often acknowledged as a necessary condition for the development of the social rights of citizens, the origin of the social resources distributed within a polity is usually ignored.<sup>36</sup> Indeed, such omission is apparent in TH Marshall's influential analysis of citizenship in his lecture on 'Citizenship and Social Class', which he presented at the LSE in 1949. Marshall outlined how the expansion of citizenship was achieved through struggle by working people demanding civil, political and social rights. Moreover, he shows how of all three forms of rights are integral to the recognition of the subject of the rights of the citizen as a free and equal member of a polity.<sup>37</sup> However, Marshall ignored both how colonial extraction conditioned citizenship and how citizenship was being claimed and contested by colonized British subjects.<sup>38</sup>

If Marshall highlighted the internally inclusive, beneficial aspect of citizenship associated with the development of the nation-state while ignoring its emergence within the context of the empire-state, Arendt recognised the exclusive and violent aspect of citizenship due to its external-facing function in relation to border control and the governance of mobility. Arendt claimed that 'we became aware of the right to have rights' when confronted by the unprecedented event of mass statelessness in interwar Europe. In doing so, however, she neglected how British subjects on the peripheries of the Empire had been well aware of the right to have rights through their own experiences of anti-black immigration laws.<sup>39</sup>

In reflecting on who is the subject of the rights of the citizen it is therefore imperative, as Lara Putnam insists, to understand precisely 'what Marshall left out and Arendt recognized only among white people: the history of citizenship as a state-backed credential, whose protections could be vitiated by racism and indeed could be taken away.'<sup>40</sup> As one who asserts their entitlement as a free and equal member of the polity, the subject

of the rights of the citizen was enacted *before* the formalisation of its status in the 1948 BNA. Importantly, the citizen-subject emerged in Britain not only in class struggle within the metropole, as Marshall depicted, but also within public debates among British subjects on the peripheries of Empire, such as those activists, journalists and scholars in the Caribbean diaspora. However, the passage of the 1948 BNA, which was shaped by these struggles, did not replace the subject who owes obedience to the sovereign with the citizen as autonomous political agent. Far from marking a rupture with the subject, as Balibar says of France after 1789, citizenship was still seen to be *compatible* with subjection to the sovereign in Britain after 1948.<sup>41</sup>

### **The British Nationality Act 1981**

If the 1948 BNA presupposed a racialized distinction between those of European descent (who should be able to move freely around the Commonwealth) and those of non-European descent (who should remain in their place), the development of immigration legislation since 1948 formalised this distinction by differentiating between ‘patrial’ and ‘non-patrial’ CUKCs, as Britain reinvented itself as an island-nation through a willed amnesia about its colonial history.<sup>42</sup> Indeed, the post-war period saw a succession of immigration laws, which aimed to restrict the mobility rights of CUKCs racialized as ‘non-white’ while ensuring routes back to the metropole of people racialized as ‘white’ from ‘Old Commonwealth’ countries (i.e. the settler societies of Australia, Canada, New Zealand and South Africa). The Commonwealth Immigration Act 1962 made the right of abode conditional by allowing CUKCs to be treated as aliens for the purpose of immigration control. This enabled the introduction of a work voucher system designed to limit entry to the UK by ‘unskilled workers’ (a racializing category determined through administrative discretion). The Commonwealth Immigration Act 1968 further restricted the right of abode by limiting entry rights based on the country in which a British passport was issued. It also established the principle that those with an ‘ancestral link’ to the British Isles would retain their right to enter Britain.<sup>43</sup>

The 1971 Immigration Act, which coincided with Britain’s entry to the European Economic Area, ended the right of most CUKCs racialized as ‘non-white’ to enter Britain by distinguishing between patrial and non-patrial citizens. While patrial citizens (who were born in the British Isles or descended from a parent or grandparent who was registered as a citizen in the British Isles) had a ‘right of abode’ in the UK, non-patrial citizens (who could not trace their ancestry to the British Isles) no longer had this right. The immigration status of patriality therefore ‘made whiteness the primary basis for belonging’ in Britain by removing the right of CUKCs racialized as ‘non-white’ to enter Britain while enabling the mobility of CUKCs racialized as ‘white’ from settler colonies.<sup>44</sup> The 1981 BNA made the status of CUKC redundant by introducing that of British Citizen, which was defined negatively (in terms of the immigration control measure of ‘patriality’) rather than positively (in terms of the three generations of rights Marshall had identified in his 1949 lecture).<sup>45</sup> Perversely, however, the production of failed citizens within the United Kingdom after 1983 was legitimated by appealing to a Marshallian notion of citizenship at the same time as social rights were being withdrawn.<sup>46</sup>

In 2018, the Windrush scandal focused public attention on the conditionality of citizenship for people racialized as ‘non-white’ in Britain.<sup>47</sup> CUKCs who had moved to the



UK as children before 1973 from former British colonies in the Caribbean, such as Jamaica, and spent their working lives in Britain found themselves treated as ‘illegal migrants’ after 2013. Those unable to provide sufficient documentary evidence of their right to reside were made destitute since they were unable to work or access healthcare, welfare benefits or housing. Many were detained in immigration removal centres and some were deported or refused entry on their return from visiting family abroad. Significantly, one reason why Black Britons whose lives were ruined by the hostile environment were unable to demonstrate their right to be in the UK was that they had not applied for British Citizenship within the requisite five years from when the 1981 BNA came into effect on 1 January 1983.<sup>48</sup> Many people who were eligible to register as British citizens (having settled before 1973) did not do so. Some mistakenly assumed it was unnecessary since they believed themselves already to be British Citizens or else doubted it would make any difference to their everyday lives. Others were deterred by the bureaucratic process and fee or insulted by the demand that they should register to become British citizens in the first place.<sup>49</sup>

The illegalisation of people with heritage in Britain’s former colonies was not an unfortunate side effect of the 1981 BNA as often portrayed.<sup>50</sup> Rather, as Imogen Tyler highlighted some years before the Windrush scandal, British citizenship was ‘designed to fail’ people racialized as ‘non-white.’<sup>51</sup> Indeed, in 1981 Home Secretary William Whitelaw declared that it was ‘time to dispose of the lingering notion that Britain is somehow a safe haven for all those countries we used to rule.’<sup>52</sup> He argued that it was necessary to introduce the new status of British Citizen so that those recognised as CUKCs in former colonies would not be ‘encouraged to believe, despite the immigration laws to the contrary, that they have a right of entry’ to Britain.<sup>53</sup> As such, the 1981 BNA was, in fact, integral to the neoliberal reconfiguration of citizenship in the UK as a technology of government that produces ‘new abject classes of failed citizens and stateless citizens within the British state.’<sup>54</sup> As Nichola de Genova argues, illegality is a fundamentally political identity, which is ‘inseparable from citizenship.’<sup>55</sup> Consequently, to treat the category of illegalised migrant in abstraction is to be complicit in a state-centric view of those populations who are subjected to immigration control as a problem. In contrast, when viewed from the perspective of mobile populations, the state itself comes into view as the problem.

We can therefore recognise how nationality and immigration law produce illegality (or ‘illegalize’ populations) by attributing a status to a category of people who become the targets of policy interventions and bureaucratic procedures. Nowhere is this clearer than in the case of the 1981 BNA, which effectively enabled the far right’s demand to repatriate people racialized as ‘non-white’ who were already settled in Britain.<sup>56</sup> As Home Secretary William Whitelaw (cited above) acknowledged, the purpose of the 1981 BNA was not to prevent people racialized as ‘non-white’ from *entering* the UK since the Immigration Act 1971 had already accomplished that. Rather, the 1981 BNA produced aliens ‘within and at the borders of the newly circumscribed nation-state.’<sup>57</sup> By defining British citizenship in terms of the immigration status of patriality, the legislation divided the population according to immigration status in ways that exposed the subject of the rights of the citizen who was racialized as ‘non-white’ to state violence through policing, surveillance, immigration raids, indefinite detention, destitution, denationalisation and deportation. In this way, citizenship was scaled in ways that

did not simply exclude people from former British colonies from residing in the UK but enabled the management of populations who were racialized as ‘non-white’ within the British population. Through differentiating citizenship in this way, the *bordering* of Britain has also entailed the racial *ordering* of British society by differentially exposing the population to state and street violence.<sup>58</sup>

Indeed, in the lead up to the 1979 election, Prime Minister Margaret Thatcher empathised with those British citizens racialized as ‘white’ who feared their country being ‘swamped by people with a different culture’ while insisting that ‘if you want good race relations you have got to allay people’s fears on numbers.’<sup>59</sup> The 1981 BNA was intended to allay those fears not so much by restricting entry but by enhancing discretionary measures to remove CUKCs deemed not to have sufficiently integrated within British society. The 1981 BNA also illegalised CUKCs racialized as ‘non-white’ by removing birth-right citizenship for those whose parents did not already hold British citizenship. By defining British citizenship in terms of the immigration status of patriality, the 1981 BNA realised the national project at the heart of the empire-state.<sup>60</sup> Indeed, its redefinition of citizenship was an integral feature of Thatcherism, which sought to establish a new start for Britain in the wake of empire, even as it invoked a nostalgic image of Britain’s imperial past.<sup>61</sup> While the definition of citizenship was presented as a rationalisation of complex nationality legislation, its purpose was to prevent potential future claims to citizenship rights by CUKCs racialized as ‘non-white.’<sup>62</sup>

Effectively, then, the 1981 BNA was a response to Enoch Powell’s characterisation of the economic crises of the 1970s as, at once, a crisis of national identity. Indeed, in 1962, Powell had described the 1948 BNA as a ‘disastrous error’ because it had created ‘a citizenship to which no state, no reality, no actuality corresponded.’<sup>63</sup> Thatcher mobilised Powell’s combination of economic liberalism and political nationalism in the service of the New Right’s ‘authoritarian populism.’<sup>64</sup> This enabled Thatcher to position the conservative party on the side of the people (racialized as ‘white’ and threatened by immigration) and against the state (justifying its dismantling of social welfare entitlements). Following the passage of the 1981 BNA in Parliament, Powell proclaimed: ‘from the humiliation of having no nation to which we distinctively belong, the people of the United Kingdom are now themselves free.’ Since the 1981 BNA asserted Britain’s identity as a nation-state, Powell understood it to mark ‘the end of our imperial episode ... and the laying of that ghost, the Commonwealth.’<sup>65</sup>

As we have seen, far from being an insurrectionary moment, the 1948 BNA was an act of the constituted power of an empire-state, which introduced the status of CUKC to preserve that of British subject. Subsequently, the definition of British citizenship in terms of the concept of patriality through the 1981 BNA has not simply reflected but also mobilised and produced racism within the body politic.<sup>66</sup> In tracing the advent of the CUKC in 1949 to its displacement by the status of British Citizen in 1983, therefore, we have seen how political belonging has become more conditional and precarious for people racialized as ‘non-white’ in Britain as the lines between citizenship and immigration control have been blurred.<sup>67</sup> Rather than being the trace of an insurrectionary moment that could be appropriated for an emancipatory politics, the rights of the CUKC were used to manage populations by enabling the mobility of those racialized as ‘white’ while keeping those racialized as ‘non-white’ in their place.

## The after rights of citizens in the hostile environment

Hannah Arendt's germinal analysis of the plight of stateless people in interwar Europe resonates with the illegalisation of Black Britons within the UK's hostile environment today as evident in the Windrush scandal and the ongoing deportation of those treated as 'foreign criminals' to Britain's former colonies.<sup>68</sup> For Arendt, the unprecedented phenomena of mass statelessness revealed how the deprivation of citizenship was part of a process through which the nation-state system produces superfluous people.<sup>69</sup> Following Rancière, for Arendt, it seems, the subject of the rights of man must either be the citizen who enjoys their rights in common with others *or* the non-citizen who has no rights whatsoever.<sup>70</sup> If the rights of man coincide with the rights of the citizen, however, they are redundant: for what use are the rights of man to the citizen who already has their rights? Yet, if the rights of man belong only to those who have lost their citizenship, they turn out to be nothing but the 'paradoxical rights of the private, poor, unpoliticized individual' who is unable to make use of those rights outside any organised human community.<sup>71</sup> Appealing to the duality of the citizen-subject, however, Rancière insists that the subject of the rights of man is neither the citizen (who is already included in public life) nor the non-citizen (caught within a state of exception) but a liminal subject in whose name those who would make something of their rights might act.

In this context, Rancière treats the 1789 Declaration as a generative event, which enables ongoing struggles through which political subjects verify their equality. The inscription of rights within state institutions enables them to be mobilised by marginalised subjects to contest the terms of political belonging. As such, the rights that legitimate a social order are ideologically reversible. For they can potentially be seized by anyone and everyone, from Olympe de Gouges to the *sans papiers*, to contest the constitutive partition between those who are qualified to participate in politics and those who are not. To the question, 'who is the subject of the rights man?', then, Rancière answers: those who demonstrate that they have not the rights that they have and have the rights that they have not.<sup>72</sup> From this radical-democratic perspective, the emancipatory potential of citizenship subsists precisely in its formal quality: it enables the emergence of political subjectivity by making available the identity of citizen as a free and equal member of the polity, which can be claimed by immanent outsiders to the polity.

By reflecting on the hostile environment in the context of the reactionary development of the citizenship regime in Britain since 1948, however, we can recognise how citizenship rights in Britain increasingly appear as 'after rights' of an empire-state whose formal quality does not lend itself to reappropriation by those that the citizenship regime marginalises and excludes. This is revealed both in the good character requirement for citizenship and in the deputisation of immigration control within the hostile environment (which, taken together, further demonstrate the intertwinement of nationality and immigration legislation in the UK). The good character requirement for citizenship was included in the 1981 BNA. However, it has been used increasingly within the hostile environment as the basis for the deportation of Black Britons to former colonies as 'foreign criminals.' The Right to Rent was introduced as part of the 2014 and 2016 Immigration Acts that established the hostile environment. As an immigration measure, the right to rent is not a social right to housing for all citizens but an integral aspect of

the deputisation of sovereign power to ordinary citizens, which imposes significant penalties (including criminal sentences) on landlords who rent properties to people without sufficient proof of their right to reside.

Who, then, is the subject of the rights of the citizen in Britain's hostile environment? In contrast to Rancière's formulation, we can recognise, on the one hand, how the character requirement for citizenship (which provides the basis for making some people deportable) interpellates the subject of the rights of the citizen who is racialized as 'non-white' as *those who only conditionally have the rights that others have*. On the other hand, we can recognise how the 'Right to Rent' (which deputises immigration control to ordinary citizens) interpellates the subject of the rights of the citizen racialized as 'white' as *those who have only the rights that others have not*.

### **The good character requirement**

The widespread public indignation over the treatment of victims of the Windrush scandal in 2018 was, perhaps, surprising given the mainstream media's previous approval for Home Secretary Theresa May's announcement of the hostile environment in 2012.<sup>73</sup> The shocking treatment of Black Britons who could not prove their right of abode was exemplified in the case of Anthony Bryan, who had lived and worked in Britain for over forty years before applying for a British passport in 2015, after which he was informed that he was in the UK illegally and would be deported. Bryan lost his job since his employer would be fined under the Immigration Act 2014 if they continued to employ him. He was also unable to claim benefits since he could not provide the unreasonable amount of documentary evidence demanded by the Home Office to prove his status. Bryan was detained in an Immigration Removal Centre for almost three weeks and informed that he would be deported to Jamaica, a country he had not visited since he had moved to the UK at the age of eight. He was released due to what the Home Office said was a mistaken identity, only to be detained again some months later following the rejection of his appeal to remain in the UK. It was only due to interventions from his immigration lawyer and local MP and publicity surrounding his case that he was not deported and eventually granted leave to remain in the UK.<sup>74</sup> Although his experiences were made into an award-winning TV docudrama, Bryan (and many others like him) had still not received compensation in 2021, three years after the scandal and some time after the conclusion of an independent inquiry into the Home Office.<sup>75</sup>

Public outrage over the treatment of the Windrush generation produced a brief period of public scrutiny of the hostile environment. However, it also enabled the disavowal of state racism insofar as victims of the Windrush scandal, such as Bryan, were characterised as 'good immigrants': law-abiding, hard-working and tax-paying citizens who had integrated into British society. As such, the harm they suffered was presented as a social injustice, which was isolated from the treatment of more recent 'illegal immigrants' for whom the punitive measures of the hostile environment were intended.<sup>76</sup> In this way, outrage at the treatment of the Windrush generation as 'fellow citizens' was redirected to sustain and reproduce the common sense view that 'it is not racist to control immigration' and that the deportation of 'foreign criminals' is justified.<sup>77</sup> Indeed, the government announced that it would assist all those who had been wrongfully deported *unless* they

had a criminal record. Remarkably, as de Noronha points out, having a minor criminal record in one's youth was presented by the Home Secretary and widely accepted by the media as a proportionate response for the deportation of Black Britons who had rightfully resided in the UK as a CUKCs for over 45 years.<sup>78</sup>

The best way to judge if someone has been made superfluous, Arendt had written bitterly in 1949, is to consider whether they would benefit from committing a crime.<sup>79</sup> For while the criminal has the status of a 'recognized exception' for whom the law provides, the stateless person is an 'unrecognized anomaly' who finds themselves entirely outside the law. By committing a crime, then, the stateless person is afforded an opportunity to 'regain some kind of human equality' since they can expect to be treated in the same way as other law-breakers, so long as they are on trial or serving a prison sentence.<sup>80</sup> There is something in Arendt's ironic observation that speaks to the experience of victims of the Windrush scandal whose appeals to justice fell on the deaf ears of the Home Office. However, as de Noronha's research on the deportation of Black Britons demonstrates, Arendt's ideal-typical distinction between the situation of the rights-bearing criminal (inside the law) and the rightless stateless person (outside the law) is unsustainable in the context of multi-status Britain today (if it ever was).<sup>81</sup>

The convergence between criminal justice and immigration control is apparent in the diminution of legal personhood, the increasing authorisation of extra-judicial practices and the institution of spaces in which these exceptional practices occur.<sup>82</sup> Within the hostile environment, the blurring of these processes is evident in the ways that criminal justice and immigration control often overlap and target the same populations of people who are racialized as 'non-white.' In this context, far from being improved by a 'little theft', as Arendt put it, the situation of someone with irregular status who is racialized as 'non-white' and commits a crime is likely to deteriorate as they are illegalised. Indeed, the practice of deportation in the UK has been targeted and justified in relation to the figure of the 'foreign criminal' who is more likely to have grown up in the UK than to have entered as an adult. Continued disproportionate policing of Black communities in the UK leads many young men toward deportation. Moreover, deportation is pursued not only in the case of those who have served prison sentences of at least twelve months but increasingly also for minor and non-custodial sentences (such as possession or supply of drugs, carrying a knife or anti-social behaviour).<sup>83</sup>

We see this in the case of Ricardo who moved to the UK at the age of ten to live with his father and older brother in Birmingham. After a couple of years, he and his brother went to live with their auntie (a British Citizen), who raised the boys together with their cousins (for whom she was stepmother) and four of her own biological children. Ricardo was arrested for suspected robberies over a hundred times without being charged as the police would come to the park to pick him up from the time he was about fifteen. By the time he was seventeen he started staying at home to avoid the police. However, because he became 'known to the police' for robberies, despite having never been charged, he was assigned a personal officer and was under continuous surveillance. He was often stopped and questioned and had a camera set up directly outside his house. He was issued an ASBO (anti-social behaviour order) for graffiti and causing annoyance in public, which restricted his movements and associations and made him vulnerable to criminal sanctions if he violated its terms. In this way, 'Ricardo's criminalisation relied on pre-criminal forms of social control.'<sup>84</sup> Ricardo was eventually convicted for burglary

when he was caught looking out at the door of a house for his friends while they were inside. He served just under three years in prison before being deported to Jamaica in 2014. While Ricardo was convicted of a criminal offence, he, like other deportees, was more likely to be surveilled, arrested, charged and convicted because he was Black.<sup>85</sup>

The legal process by which Black Britons are made deportable relies on the character criteria for citizenship, which has become the principal reason used for citizenship refusals in recent years. The ‘good character’ requirement for citizenship was introduced with the 1981 BNA and revised in 2009 under the Labour Government’s ‘Path to Citizenship’ reforms. It presupposes that citizenship should be earned based on an individual’s contribution to social and economic life. Judgment of character is therefore supposed to function as a basis on which to distinguish deserving immigrants of reputable character who integrate well into society from those of bad character who are deemed undeserving of citizenship due to deviance or delinquency. Prior to the Brown government reforms, ‘bad character’ was primarily determined according to whether individuals had a criminal record for serious offences. However, the criteria for criminality has been expanded considerably so that ‘non conducive, adverse character, conduct or associations’ now inform Home Office decisions on application for settlement in the UK.<sup>86</sup> This includes the use of ‘deception and dishonesty’ in any interaction with the state, which can include entering the country with false or misleading documents or trying to access state support that one is not entitled to.<sup>87</sup>

As such, character assessment works as a racializing mechanism, which makes citizenship more conditional and precarious for those racialized as ‘non-white.’<sup>88</sup> This is because the good character requirement reproduces racializing representations of figures such as the bogus asylum seeker, the black gang member, the foreign criminal or Muslim ‘terrorist.’<sup>89</sup> Citizenship has been refused for bad character due to administrative irregularity (e.g. a discrepancy in the date of birth provided) and minor criminal infractions (e.g. a speeding fine) where there is increasingly a convergence between immigration control and policing. Consequently, the ‘assessment of character functions as a way of sustaining the racialized dynamics of the nation-state, creating a durability to the precarious status of ‘non-citizens’ while also enhancing the armoury of disciplinary practices available to the state for potential use against ‘failed citizens.’<sup>90</sup>

The way that discretionary judgments by state actors about deportation based on character has developed since the introduction of the 1981 BNA indicates how the good character requirement for citizenship is integral to its function as a racializing technology. As we have seen, a fundamental way in which immigration control produces racialized group vulnerability is through the scrutiny of character, which licenses forms of control such as detention and removal. In this way, the scrutiny of character interpellates the subject of the rights of the citizen racialized as ‘non-white’ as *those who only conditionally have the rights that others have.*<sup>91</sup>

### **The right to rent**

At the same time as citizenship for ‘non-patrials’ is made conditional on demonstrating good character within the hostile environment, the social rights of British citizens have been withdrawn through prolonged austerity. As Gargi Bhattacharyya et al observe, what should have been learned from the Windrush scandal is that the ‘exclusionary logic of

immigration controls – according to which ‘migrants’ take jobs, resources and public goods and therefore need to be excluded – operates to justify and obscure the wider dis-entitlement and abandonment of citizens.<sup>92</sup> In this context, the right to permanent residence appears as one of the few privileges that distinguishes (most) citizens from non-citizens.<sup>93</sup> Within the hostile environment, the subject of the rights of the citizen is therefore also produced by interpellating citizens through the deputisation of immigration control, which not only facilitates the ‘everyday production of illegality’ but conveys ‘a sense of entitlement to white British citizens.’<sup>94</sup>

The Right to Rent was introduced through 2014 Immigration Act and elaborated in the 2016 Immigration Act. As such, it is one of several ways in which border control has been deputised so that ordinary citizens are made responsible for surveillance, detection and enforcement of immigration controls through laws that require them ‘to regulate migrants’ access to public goods, spaces and institutions.’<sup>95</sup> Indeed, the deputisation of border policing to employers, bank employees, marriage registrars, the Driver and Vehicle Licensing Agency (DVLA), landlords, police, healthcare professionals, teachers, lecturers and homelessness service providers is the defining feature of the hostile environment.<sup>96</sup> By compelling civil servants and ordinary citizens to engage in everyday bordering, deputisation mobilises and produces racism and intensifies social exclusion with the expressed intention that ‘heightening the precariousness of daily life will compel self-deportation.’<sup>97</sup> Far from institutionalising the right to an adequate standard of living (as per article 25 of the 1948 Universal Declaration of Human Rights), the Right to Rent imposes a responsibility on landlords to prevent undocumented people from accessing housing. The Immigration Acts require private landlords to act as border police by obtaining, checking and copying tenants’ identity documents. Under the provisions of the Act, private landlords are required to conduct document checks on prospective tenants or face fines of up to £3,000 for each tenant who does not have the right to rent and a criminal sentence of up to five years for renting to someone knowing, or having reasonable cause to believe, that they do not have the right to rent.<sup>98</sup>

As such, the Right to Rent amounts, at best, to a negative right of British Citizens racialized as ‘white’ not to be formally excluded from the English housing market. In practice, however, the Right to Rent produces exclusion of, hostility towards and discrimination within the private rental sector against both non-citizens and citizens who are racialized as ‘non-white’, exacerbating historic housing inequalities due to a combination of subjective, institutional and structural racisms.<sup>99</sup> While the purpose of the policy is to restrict undocumented people’s access to housing, the complexity and onerousness of checks required by the Home Office has led to a reluctance on the part of landlords to rent to anyone who does not hold a current British passport. This is because landlords often feel they lack the competence to assess other forms of eligible identity documents and fear prosecution in case they make a mistake.<sup>100</sup> Moreover, landlords often screen people who they presume not to be British based on their name when they inquire about a property to avoid having to assess any identity documents with which they are unfamiliar.

In this way, the Right to Rent exposes those whose citizenship is more likely to be scrutinised to insecure, unaffordable and exploitative housing. It exacerbates socially produced vulnerabilities that are often associated with being undocumented since people who are elderly, homeless, victims of modern slavery and/or domestic violence are

more likely to be unable to provide documents.<sup>101</sup> Indeed, in 2018 the High Court found the Right to Rent had a disproportionately discriminatory effect on British citizens from minority ethnic backgrounds and foreign nationals who had a legal right to rent and was therefore in breach of human rights legislation.<sup>102</sup> While the government successfully appealed the decision, the Court of Appeal recognised that some landlords do discriminate against prospective tenants who do not hold a British passport despite holding that the scheme was justified as a 'proportionate means of achieving its legitimate objective.'<sup>103</sup>

The Right to Rent thus exemplifies an 'after right' of the CUKC due to its deformation of those civil, political and social rights that Marshall associated with the development of full democratic citizenship. Rather than protecting citizens from arbitrary coercive power of the state, the Right to Rent exposes citizens racialized as 'non-white' to state violence in the form of destitution, detention and deportation. Instead of enabling citizens to participate in the political process of deliberating and deciding about public policies, the Right to Rent requires citizens to participate in border policing, interpellating them as 'watchful citizens.'<sup>104</sup> In doing so, the Right to Rent not only legitimises and encourages discrimination by landlords but racially orders society.<sup>105</sup> Rather than ensuring citizens' dignity by providing for their social welfare, the Right to Rent is designed to prevent undocumented people from accessing basic services and discourages even those who are entitled from engaging with services. As such, the Right to Rent is a negative right in the sense that it is not an entitlement to housing but, rather, a freedom that remains to those citizens who have not been deprived of it. This is apparent in a response by the Home Office, which conceded that even if the hostile environment is ineffective in reducing 'illegal immigration' the policy will be maintained because it is the 'right thing to do' and 'the public would not find it acceptable' for 'illegal migrants' to have access to the same benefits as citizens.<sup>106</sup>

As an after right of the empire-state, the Right to Rent can be recognised as a governmental technique that intensifies the logic of sovereign power. Indeed, as suggested by Scott Veitch, we might recognise the enactment of the Right to Rent in Britain as the dark side of what Jeremy Waldron calls law's 'self-application'.<sup>107</sup> According to Waldron, law protects human dignity not only by proclaiming and enforcing rights but by presupposing the dignity of legal subjects to function. Rather than ruling by command, law depends on the voluntary application of its general norms. As such, Waldron argues, legal systems 'work by using, rather than short-circuiting, the agency of ordinary human individuals' and therefore presuppose that 'ordinary people are capable of acting like officials – recognising a norm, apprehending its bearing on their conduct, making a determination, and acting on that.'<sup>108</sup> It is this formal aspect of citizenship rights, too, which, according to Balibar and Rancière, enables political subjectivity to be exercised through claiming citizenship since the legal subject has 'a view or perspective of their own to present on the application of the norm to their conduct and situation.'<sup>109</sup>

In the case of the Right to Rent and the deputisation of immigration control, however, we can see how law interpellates the subject of the rights of the citizen as one who applies the law in withdrawing it. In other words, the citizen is subjectified by withdrawing rights from others. While the landlord who enacts the Right to Rent might identify as the subject of the rights of the citizen through withholding that right from some, they are



unlikely to have any use for the Right to Rent themselves since they are more than likely to be a homeowner (and, indeed, might not even be a citizen or resident of the UK). Through policing the after rights of the empire-state, landlords invoke the subject of the rights of the British Citizen who appears as a spectral figure in the context of the housing and wider cost of living crisis in Britain in which most people's lives are increasingly precarious. In carrying out the work of immigration law, by policing the Right to Rent, citizen-landlords engage in the joint enterprise of instituting the hostile environment. Insofar as they are verified by citizens, therefore, the after rights of the empire-state function not only to amplify historical injustices but to produce new ones. In this sense, the subject of the rights of the citizen in Britain's hostile environment are *those who have only the rights that those racialized as 'non-white' have not*.

## Conclusion

The subject of the rights of the citizen is usually pictured in relation to the state of which they are (or are not) a member. This presupposition underpins a developmental understanding of citizenship as the progressive realisation of universal principles through the intersection of three inter-related processes: the expansion of civil, political and social rights within Western democratic states; the division of the world's population into citizens of independent territorial states, and; the emergence of supranational forms of citizenship through the recognition of human rights.<sup>110</sup> However, as we have seen, this picture of citizenship rights is complicated when we recognise that citizenship does not only bring together populations within nation-states to promote their interests but makes the global population governable by dividing it into racialized categories of people.

In shifting our perspective on the subject of the rights of the citizen from France after 1789 to Britain after 1948, I have explored the limitations of the internal perspective on citizenship that often informs emancipatory conceptions of the politics of rights. This is apparent not only in Marshall's influential conception of citizenship but in radical democrats' characterisation of the history of citizenship as emerging from the dialectical tension between insurrection (in which citizenship rights are mobilised in emancipatory moments of constituent power) and constitution (in which citizenship rights are institutionalised in ways that sustain oppressive social relations). As we have seen, for radical democrats, the citizen comes after the subject since the inscription of citizenship rights within the institutions of the state enables its ongoing democratisation. Importantly, the replacement of the subject by the citizen within an insurrectionary moment is not achieved once and for all since institutions continue to produce new forms of domination and exclusion, which must be contested.

The question of the subject of the rights of the citizen is therefore never settled but is reconstituted anew through an emancipatory politics in which citizen-subjects enact the right to have rights within conditions of social domination and exclusion. The inscription of rights within the institutions of the state is, in this sense, a condition of possibility for an emancipatory politics through which citizenship rights develop. Understood as such, an insurrectional moment refers both to a past event which 'forms the symbolic foundation of any popular constitution' and its anticipated return, which 'forms a constant possibility in the face of the limitations affecting the realization of democracy in its current constitution.'<sup>111</sup> For instance, the inscription of the insurrectional moment of

the French Revolution in the Declaration of the Rights of Man and Citizen in France in 1789 might be understood as a condition of possibility of its return in the demonstrations of the *sans papiers* when they occupied Saint-Bernard in 1996.

It is difficult to see, however, how British citizenship affords any such emancipatory horizon within the hostile environment in the United Kingdom today.<sup>112</sup> As Engin Isin observes, insofar as citizenship is treated ‘as a phenomenon of the nation-state rather than the empire-state’ within political theory, it ‘provides contained and isolated images of its workings.’ Throughout this paper, I have sought to loosen the grip of this image of citizenship within the radical-democratic imaginary by tracing the articulation of citizenship rights within the United Kingdom in relation to three historical conjunctures through which nationality and immigration legislation have been intertwined. The conjunctural analysis I have outlined was intended to problematise two presuppositions that theorists of radical democracy often take for granted when insisting on the emancipatory potential of citizenship: the possibility of reappropriating an insurrectional moment and the availability of the formal identity of citizen as a free and equal member of the polity. In the absence of these, the question of whether we should turn to citizenship to name political subjectivity and resistance is best answered, as Luke de Noronha would himself agree, by a strategic consideration of what might constitute the most effective counter-hegemonic intervention within the present political conjuncture.<sup>113</sup>

## Notes

1. Colin Yeo, *Welcome to Britain: Fixing Our Broken Immigration System* (London: Biteback Publishing, 2020), 26–27.
2. Jacques Rancière, ‘Who is the Subject of the Rights of Man?’, *South Atlantic Quarterly* 103, no. 2/3 (2004): 297–310.
3. Anne McNevin, ‘Political Belonging in a Neoliberal Era: The Struggle of the Sans-Papiers,’ *Citizenship Studies*, 10, no. 2 (2006): 135–51.
4. Peter Nyers, ‘No One is Illegal Between City and Nation,’ *Studies in Social Justice* 4, no. 2 (2010): 127–43.
5. Nicholas De Genova, ‘The Queer Politics of Migration: Reflections on “Illegality” and Incurability,’ *Studies in Social Justice* 4, no. 2 (2010): 101–26.
6. Ayten Gündoğdu, ‘Disagreeing with Rancière: Speech, Violence, and the Ambiguous Subjects of Politics,’ *Polity* 49, no. 2 (2017): 188–219.
7. Helge Schwiertz, ‘Radical democratic theory and migration: The Refugee Protest March as a democratic practice,’ *Philosophy & Social Criticism* 48, no. 2 (2022): 289–309.
8. Luke de Noronha, ‘Hierarchies of membership and the management of global population: reflections on citizenship and racial ordering,’ *Citizenship Studies* 26, no. 4–5 (2022): 434.
9. Rieko Karatani, *Defining British Citizenship: Empire, Commonwealth and Modern Britain* (London: Routledge, 2003): 107–44.
10. Commonwealth Immigrants Act 1968; Immigration Act 1971
11. Engin F Isin, ‘Citizenship’s Empire’ in *Citizenship after Orientalism: Transforming Political Theory*, ed. Engin Isin (London: Palgrave, 2015), 275.
12. Jessica Elgot, Theresa May’s ‘hostile environment’ at heart of Windrush scandal,’ *The Guardian*, 17 April 2018, Available: Theresa May’s ‘hostile environment’ at heart of Windrush scandal | UK news | The Guardian; Amelia Gentleman, *The Windrush Betrayal: Exposing the Hostile Environment* (London: Guardian Faber, 2019); Maya Goodfellow, *Hostile Environment: How Immigrants Became Scapegoats*. (London: Verso, 2020).

13. Louiza Odysseus, 'After rights, after Man? Sylvia Wynter, sociopoetic struggle and the "undared shape,"' *The International Journal of Human Rights*.
14. Bal Sokhi-Bulley, "'After rights" is friendship: on abandonment, obligation and the stranger,' *The International Journal of Human Rights*.
15. Taylor Borowitz, 'After property? The Haitian Revolution, racial capitalism, and the foundation for a universal right to freedom from enslavement,' *The International Journal of Human Rights*.
16. Jean-Luc Nancy, 'Introduction' in *Who Comes After the Subject?*, eds. Eduardo Cadava, Peter Connor & Jean-Luc Nancy (London: Routledge, 1991), 4.
17. Étienne Balibar, 'Citizen Subject: Response to Jean-Luc Nancy's Question "Who Comes After the Subject?"' in *Citizen Subject: Foundations for Philosophical Anthropology* (New York: Fordham University Press, 2016), 24.
18. Balibar, 'Citizen Subject', 24.
19. *Ibid.*, 23.
20. Christian Boonen, 'Étienne Balibar on the dialectic of universal citizenship,' *Philosophy and Social Criticism* 48, no. 6 (2022): 907.
21. Balibar, 'Citizen Subject', 31.
22. Althusser cited by Warren Montag & Elsayed Hanan, 'Introduction: Balibar and the Citizen Subject' in *Balibar and the Citizen Subject*, eds. Warren Montag & Hanan Elsayed (Edinburgh: Edinburgh University Press, 2018), 2.
23. Lara Putnam, 'Citizenship from the Margins: Vernacular Theories of Rights and the State from the Interwar Caribbean,' *Journal of British Studies* 53, no. 1 (2014): 163.
24. Ronald Cummings, 'Ain't no black in the (Brexit) Union Jack? Race and empire in the era of Brexit and the Windrush scandal,' *Journal of Postcolonial Writing* 56, no. 5 (2020): 593–606.
25. Gary Younge, 'The NHS, Windrush and the debt we owe to immigration,' *The Guardian*, 22 June 2018, Available at: <https://www.theguardian.com/commentisfree/2018/jun/22/honour-nhs-built-on-immigration-windrush>, Accessed: 4/1/2023.
26. As Nadine El-Enany observes, '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.' Nadine El-Enany, *Bordering Britain: Law, Race and Empire* (Manchester: Manchester University Press, 2020), 90–94.
27. Colonial political leaders and administrators were concerned that the introduction of the status of British citizenship would foment political dissent within the colonies should it exclude people of colour.
28. Putnam, 'Citizenship from the Margins,' 171–72.
29. Kathleen Paul, *Whitewashing Britain: Race and Citizenship in the Postwar Era* (New York: Cornell University Press, 1997), 115.
30. Anne-Marie Fortier, *Uncertain Citizenship: Life in the Waiting Room* (Manchester: University of Manchester Press, 2022), 59.
31. That the status of CUKC was 'little more than a euphemism for British subjecthood' was apparent in the assurances given in Parliament, in response to concerns regarding the republican connotations of the concept, that the status of citizen was primarily a 'gateway' to that of British subject. El-Enany, *Bordering Britain*, 90.
32. Paul, *Whitewashing Britain*, 22.
33. El-Enany, *Bordering Britain*, 89.
34. Hannah Arendt, 'The Rights of Man: What are they?' *Modern Review* 31, no. 1 (1949): 24–36.
35. Gurminder Bhambra, 'Relations of extraction, relations of redistribution: Empire, nation, and the construction of the British welfare state,' *British Journal of Sociology* 73, no. 1 (2022): 4–15.
36. Even less likely to be considered are the entitlements of 'those broader constituencies who have contributed to the building up of those collective resources, but who are under the rule

- of the political community without being seen to be part of it.’ Bhabra, ‘Relations of extraction,’ 9.
37. T.H. Marshall, ‘Citizenship and Social Class’ in *Citizenship and Social Class*, eds. TH Marshall & Tom Bottomore (London: Pluto Press, 1992).
  38. See Putnam, ‘Citizenship from the Margins,’ 186.
  39. Putnam, ‘Citizenship from the Margins,’ 188. See also Stuart Ward, “How come England did not know me?” The “rude awakenings” of the Windrush era,’ in *The Break-up of Greater Britain*, eds. Christian D. Pedersen and Stuart Ward (Manchester: Manchester University Press). As Putnam observes, West Indians who had been residing and working outside the British Empire had ‘a detailed understanding of the racialized and global hierarchies that made rights in practice unequal even in nominally colour-blind politics, and they had developed a vernacular theorization of imperial citizenship, an ideal continually betrayed.’ Putnam, ‘Citizenship from the Margins,’ 164.
  40. Putnam, ‘Citizenship from the Margins,’ 188.
  41. Thus, in 2002, the Home Office could declare that there is ‘no contradiction’ between promoting active citizenship while ‘upholding our status as subjects of HM The Queen.’ Cited in Fortier, *Uncertain Citizenship*, 52.
  42. Stuart Hall, ‘Racism and Reaction’ in *Selected Political Writings: The Great Moving Right Show and Other Essays* (Duke: Duke University Press, 2017); Paul Gilroy, *After Empire: Melancholia or Convivial Culture* (London: Routledge, 2004).
  43. El-Enany, *Bordering Britain*, 107.
  44. *Ibid.*, 119. While the legislation recognised the settled status of all CUKCs who had already entered and were ordinarily resident in Britain before 1973, it also fatefully included a clause that placed the burden of proof on the individual to provide evidence of their status if called into question - as would be demanded of the Windrush generation following the passing of subsequent Immigration Acts in 2014 and 2016, which established the hostile environment.
  45. David Dixon, ‘Constitutionalising Racism: The British Nationality Bill 1981,’ *Critical Social Policy* 1, no. 2 (1981): 97; El-Enany, *Bordering Britain*, 126; Fortier, *Uncertain Citizenship*, 69; Bhattacharyya, Gargi, Adam Elliott-Cooper, Luke de Noronha, Kerem Nisancioglu, Kojo Koram, Dalia Gebrial & Nadine El-Enany, *Empire’s Endgame: Racism and the British State* (London: Pluto Press, 2021).
  46. Tyler, *Revolting Subjects*, 59.
  47. See Mike Slaven, ‘The Windrush Scandal and the individualization of postcolonial immigration control in Britain,’ *Ethnic and Racial Studies*, 45, no. 16 (2022): 49–71; Cassadee Orinthia Yan, ‘Windrush Scandal: Postcolonial Authoritarian Racism and its Reflection in Contemporary British Immigration and Nationality Law,’ *Migration Letters* 20, no. 7 (2023): 165–82; Maja Zehfuss, ‘Time, the State System and the Double Chronopolitics of Managing ‘Migrants’: Implications of the Windrush Scandal,’ unpublished manuscript.
  48. I use Luke de Noronha’s phrase ‘Black Britons’ here to recognise those people who have been illegalized by the state as British regardless of their actual citizenship status or their ability to prove that status.
  49. El-Enany, *Bordering Britain*, 129–30.
  50. I use the term illegalization here to recognise how this status and the subject of ‘illegal migrant’ is produced by immigration legislation. See Cecilia Menjivar, ‘The Racialization of “Illegality,”’ *Daedalus* 150, no. 2 (2021): 91–105.
  51. Tyler, *Revolting Subjects*, 53.
  52. cited in El-Enany, *Bordering Britain*, 15.
  53. *Ibid.*, 125.
  54. Tyler, *Revolting Subjects*, 53.
  55. Nicholas De Genova, ‘Migrant “Illegality” and Deportability’ in Everyday Life’, *Annual Review of Anthropology* 31 (2002), 422.
  56. See Gilroy, *Ain’t No Black*.
  57. Tyler, *Revolting Subjects*, 53.
  58. El-Enany, *Bordering Britain*, 13.

59. Margaret Thatcher, "TV Interview for Granada World in Action ('rather swamped')", Margaret Thatcher Foundation. 30/1/1978. Available: <http://www.margaretthatcher.org/document/103485>. Accessed 5/1/2023. See El-Enany, *Bordering Britain*, 107.
60. Dixon, 'Constitutionalising Racism,' 97; Bhambra, 'Relations of extraction.'
61. David Dixon, 'Thatcher's People: The British Nationality Act 1981,' *Journal of Law and Society* 10, no. 2 (1983): 164.
62. Dixon, 'Thatcher's People,' 163.
63. Powell cited in Dixon, 'Thatcher's People,' 172.
64. Stuart Hall, 'The Great Moving Right Show' in *Selected Political Writings: The Great Moving Right Show and Other Essays* (Duke: Duke University Press, 2017); see also Robbie Shilliam, 'Enoch Powell: Britain's First Neoliberal Politician,' *New Political Economy* 26, no. 2 (2021), 239–49.
65. Powell cited in Dixon, 'Thatcher's People,' 172.
66. de Noronha, *Deporting Black Britons*, 22–26.
67. Devanyi Prabhat, 'The blurred lines of British citizenship and immigration control: the ordinary and the exceptional' in *Citizenship in Times of Turmoil? Theory, Practice and Policy*, ed. Devanyi Prabhat (London: Edward Elgar, 2019.)
68. Nisha Kapoor, 'Removing the right to have rights,' *Studies in Ethnicity and Nationalism* 15, no. 1 (2015), 105–10.
69. Hannah Arendt, *The Origins of Totalitarianism*, revised edition. (New York: Schocken Books, 2004), 381.
70. Jacques Rancière, 'Who is the Subject of the Rights of Man?', *South Atlantic Quarterly* 103, no. 2/3 (2004): 302.
71. Rancière, 'Who is the Subject?', 298.
72. *Ibid.*, 302.
73. Cited in Goodfellow, *Hostile Environment*, 2. On the response to Bryan's case see, for instance, Piers Morgan on Good Morning Britain, ITV, 24/4/2018.
74. See Gentleman, *The Windrush Betrayal*.
75. Nadine White, 'Anthony Bryan: 'My Windrush drama won a Bafta but I still haven't received compensation,' *The Independent*, 8 June 2021. Available: <https://www.independent.co.uk/news/uk/home-news/anthony-bryan-windrush-scandal-bafta-b1861184.html> Accessed: 7/9/2022; Wendy Williams, *Windrush Lessons Learned Review*. Independent review (London: OGL, 2020). Available at: <https://www.gov.uk/government/publications/windrush-lessons-learned-review>.
76. Bhattacharyya et al, *Empire's Endgame*, 28.
77. El-Enany, *Bordering Britain*, 32–35.
78. de Noronha, *Deporting Black Britons*, 14.
79. Gündoğdu, *Rightlessness*, 96–98.
80. Arendt writes that 'the same man who was in jail yesterday because of his mere presence in this world ... may become almost a full-fledged citizen because of a little theft ... He is no longer the scum of the earth but important enough to be informed of all the details of the law under which he will be tried. He has become a respectable person.' Arendt, *Origins of Totalitarianism*, 364.
81. Ayten Gündoğdu, *Rightlessness in an Age of Rights: Hannah Arendt and the Contemporary Struggles of Migrants* (New York & Oxford: Oxford University Press, 2015), 96–98.
82. While criminal justice (and its instantiation in the prison) is supposed to reintegrate the rights-bearing delinquent citizen into the polity, immigration control (and its instantiation in the detention centre) is supposed to exclude the 'illegal migrant' from the polity. However, the boundaries between these two systems and accompanying justificatory logics are increasingly blurred with mass incarceration and erosion of the personhood of incarcerated citizens occurring at the same time as the expansion and increasingly punitive detention of undocumented migrants. See Kathleen R Arnold, *Arendt, Agamben and the Issue of Hyper-Legality: In Between the Prisoner- Stateless Nexus* (New York & London: Routledge, 2018), 70, 77–78.

83. de Noronha, *Deporting Black Britons*, 16–19.
84. *Ibid.*, 71.
85. *Ibid.*, 73.
86. Nisha Kapoor & Kasia Narkwicz, 'Characterising Citizenship: Race, Criminalization and the Extension of Internal Borders', *Sociology* 53, no. 4 (2019): 653.
87. Kapoor & Narkwicz, 'Characterising Citizenship,' 662.
88. *Ibid.*, 663.
89. *Ibid.*, 657.
90. *Ibid.*, 667.
91. As the concept of the patrial citizen has been inscribed in the 1981 BNA, British citizenship can be seen to have taken form as a 'conspiracy' against outsiders racialized as 'non-white.' See Barry Hindess, 'Citizenship in the International Management of Populations', *American Behavioral Scientist* 43, no. 9 (2000): 1488.
92. Bhattacharyya et al, *Empire's Endgame*, 28.
93. Bridget Anderson, Matthew J Gibney & Emanuela Paoletti, 'Citizenship, deportation and the boundaries of belonging', *Citizenship Studies* 15, no. 5 (2011): 548.
94. de Genova, 'Migrant "Illegality"', 429; El-Enany, *Bordering Britain*, 29–30.
95. James P Walsh, 'Watchful Citizens: Immigration Control, Surveillance and Societal Participation,' *Social & Legal Studies* 23, no. 2 (2014): 242.
96. Melanie Griffiths & Colin Yeo, 'The UK's hostile environment: Deputising immigration control,' *Critical Social Policy* 41, no. 4 (2021): 524–29.
97. Walsh, 'Watchful Citizens,' 242.
98. Griffiths & Yeo, 'The UK's hostile environment,' 527; Kim Mckee, Sharon Leahy, Trudi Tokarczyk, and Joe Crawford, 'Redrawing the Border through the 'Right to Rent': Exclusion, Discrimination and Hostility in the English Housing Market,' *Critical Social Policy* 41, no. 1 (2021): 93.
99. Mckee et al, 'Redrawing the Border,' 94–96.
100. *Ibid.*, 101.
101. *Ibid.*, 105.
102. *Ibid.*, 93.
103. Cited in Gentleman, Amelia, 'Right to rent rule 'justified' finds UK appeal court,' *The Guardian*, 21 April 2020. Available: <https://www.theguardian.com/politics/2020/apr/21/right-to-rent-rule-justified-finds-uk-appeal-court>. Accessed: 13/12/2022.
104. Walsh, 'Watchful Citizens.'
105. Griffiths & Yeo, 'The UK's hostile environment,' 534.
106. Cited in Giffiths & Yeo, 'The UK's hostile environment,' 530.
107. Scott Veitch, 'Observations on Hong Kong', *Critical Legal Thinking*, 19 October 2021. Available: <https://criticallegalthinking.com/2021/10/19/observations-on-hong-kong/>, accessed 3 January 2023; Jeremy Waldron, 'How law protects dignity', *Cambridge Law Journal* 71.1 (2012), 200–222.
108. Waldron, 'How law protects dignity', 206, 208.
109. *Ibid.*, 210.
110. Barry Hindess, 'Divide and rule: The International Character of Modern Citizenship,' *European Journal of Social Theory* 1, no. 1, 59.
111. Étienne Balibar, 'The "impossible" community of citizens: past and present problems,' *Environment and Planning D: Society and Space* 30 (2012): 438.
112. Balibar recognizes the impact of de-democratization associated with neo-liberal capitalism, including the dismantling of social rights and intensification of border control that produces failed citizens. Moreover, he also recognizes how the threat of authoritarian populism, as exemplified by Thatcherism, inevitably haunts the dialectic of insurgency and constitution through which citizenship rights are supposed to unfold. Nonetheless, Balibar places his faith in the ongoing heterogenous resistances, which indicate the possibility of insurgent and diasporic citizenships, to provide a counter-tendency to the exclusions produced by the nation state. Balibar, 'The "impossible" community,' 442.

113. Luke de Noronha, 'Stuart Hall's Familiar Stranger – deportation and different lives lived between two islands,' *Identities* 25, no. 1 (2018), 7–13; Ida Danewid, 'Policing the (migrant) crisis: Stuart Hall and the defence of whiteness,' *Security Dialogue* 53, no. 1 (2022), 21–37.

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