

University of Brighton School of Business and Law

LW640: Law Dissertation

Leaving a Mark: UK Immigration Law as a Colonial Legacy /Legacy of Colonialism



I declare that this is my own original work. No part of it has been submitted to any other institute of learning in support of an application for an educational, professional or any other award. I have read and understand the relevant sections of GEAR (the University's Framework Regulations for the Undergraduate Modular Courses) & the General Notes for Guidance. This work complies with those Notes for Guidance and the Studying Law at Brighton Business School Handbook. I have read and understand the University's Guidance on Good Practice in Research Ethics and Governance. This work complies with that Guidance.

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Abstract.

This paper examines the development of UK immigration law as incorporative of colonial themes. The history of the UK is deeply intertwined with its role in shaping global relations through colonialism. This is evident principally through the creation of racial hierarchies and the enforcement of white (British) supremacy. In the realm of UK immigration law, this has historically shaped the way the country manages its borders. Relying on primary sources such as case law, as well as myriad secondary sources ranging from books to articles, official websites and news sources, this research demonstrates the ways that the colonial themes shaped by the UK's past as an empire, have borne a great and lasting influence on its immigration legislation. Thus, it argues that the development of UK immigration law is a legacy of this colonialism. This is shown in the sustaining nature of racial exclusion in social relations and access to the UK's colonially derived wealth and infrastructure. This view is shown to be especially lasting as these themes are evident in the most recent Immigration legislation; the Nationality and Borders Act 2022 and the Illegal Migration Bill

INTRODUCTION

The ‘Windrush Scandal’ of 2018 oversaw the wrongful targeting of Caribbean immigrants of the Windrush generation and their descendants.¹ Many, including some elderly and some disabled, ended up being forcefully evicted from the UK.² Some such as Charlene White’s aunt, faced death as a result of being forcefully deported while accessing life sustaining healthcare.³ This tragedy happened despite their legally recognised presence in the UK.⁴ After the eruption of the scandal, the presiding home secretary resigned.⁵ This however does not erase the fatal and lasting social consequences caused by the government, which they have been inadequate in addressing.⁶

In the same year, The Grenfell Tragedy claimed the lives of 72 people, over half of which were immigrants.⁷ Undeterred by the fact that the residents contested the deplorable and dangerous living conditions that led to the fatal scene. The housing officials and other authoritative bodies neglected to attend to the issues that led to the fire.⁸ The victims of this tragedy, with focus to the immigrants, were first subject to the immobilising and discriminatory costs of racialised migration and delivered a finishing blow by government austerity and neglect of duty in favour of profits.⁹

¹ ‘Windrush Scandal Explained’ (JCWI, 13 March 2020) < <https://www.jcwi.org.uk/windrush-scandal-explained> > accessed 10 April 2022

² Adina Campbell, Camilla Horrox, ‘My Son with Schizophrenia was ‘unlawfully deported’ to Jamaica’ BBC News (Jamaica, 13 August 2022) < <https://www.bbc.co.uk/news/uk-62462947> > accessed 10 April 2023

³ Charlotte Manning, ‘Charlene White shares heartbreak over late aunt’s deportation in Windrush scandal: ‘People have died waiting in limbo’ Metro News (23 June 2022) < <https://metro.co.uk/2022/06/23/charlene-white-shares-heartbreak-over-late-aunts-deportation-in-windrush-scandal-16880282/> > accessed 10 April 2023

⁴ Robin M White, ‘The Nationality and Immigration Status of the ‘Windrush Generation’ and the Perils of Lawful Presence in a ‘Hostile Environment’ (2019) 33 IANL 218–239

⁵ Heather Stewart Political editor, Amelia Gentleman, and Nick Hopkins, ‘Amber Rudd resigns hours after Guardian publishes deportation targets letter’ The Guardian (30 April 2018)

⁶ Amelia Gentleman, ‘Windrush: only one in four applicants have received compensation’ (Guardian 22 Jun 2022)

⁷ Holly Barrow, ‘Grenfell, Windrush and the Hostile Environment: Why We Must Not Forget’ Immigration News Network, (Dec 10 2019) < <file:///Users/towobolaodukoya/Zotero/storage/2AZJ3U4D/grenfell-windrush-and-the-hostile-environment-why-we-must-not-forget.html> > accessed 10 Apr. 23

⁸ Grenfellactiongroup, ‘THE ANNA STEC AFFAIR REVISITED’ Grenfell Action Group (23 May 2021) < <https://grenfellactiongroup.wordpress.com/> > accessed 10 Apr. 23

⁹ Jon Burnett, ‘Towards A Political Economy of Charging Regimes: Fines, Fees and force in UK Immigration Control’ (2020) Br J Criminal (2020) 60(3): 579–599

Finally, since 2021, the UK has witnessed the enforced and affirmed criminalisation of boat migrants by government law and policy.¹⁰ Boat migrants are forced to undertake dangerous and life-threatening routes to get to Europe, most popularly the Mediterranean known globally as the deadliest border on earth. A border which in the decade prior to 2017, has claimed the lives of over 33, 000 people.¹¹ Contrary to the view of government officials such as priti Patel, these journeys are not ‘unnecessary’¹² It has been extensively reported that boat migrants face myriad systemic barriers to accessing other routes to entry such as poverty,¹³ or are forced to undertake these journeys due to displacement crisis resulting from war,¹⁴ climate change,¹⁵ and insecurity amongst other experiences.

What these tragic scenarios have in common is that they occur in legal realm of UK Immigration legislation, a realm which prides itself on the values of ‘fairness’ and ‘respect’,¹⁶ but nonetheless contradicts itself in application. Fortunately, this is not always the case. This is evidenced by the extensive measures taken to ensure the safe passage and resettlement of Ukrainian victims of war into the country, including but not limited to, housing schemes, visa extensions,¹⁷ family reunification schemes¹⁸ and even financial assistance.¹⁹

While the multiple schemes represent an effort by the government aimed at meeting the needs of Ukrainian subjects, this scenario contrasted with the Windrush scandal and the general criminalisation of boat migrants through the recent illegal migration bill²⁰ show a clear difference

¹⁰ Home Office, ‘New Plan for Immigration: policy statement (accessible)’ (Policy paper, 29 March 2022) Chapter 8

¹¹ International Organisation For Migration, ‘New Study Concludes Europe’s Mediterranean Border Remains ‘World’s Deadliest’’ (IOM, 24 November 2019) <<https://www.iom.int/news/new-study-concludes-europes-mediterranean-border-remains-worlds-deadliest>> accessed 11 May 2023; United Nations ‘Mediterranean crossing still world’s deadliest for migrants – UN report’ (United Nations News, 24 Nov 2017) <<https://news.un.org/en/story/2017/11/637162>> accessed 12 May 2023.

¹² Home Office, ‘Home Office speech on Channel Deaths’ (2021) <<https://www.gov.uk/government/speeches/home-secretarys-speech-on-channel-drownings>> accessed 12 May 2023.

¹³ Poverty bars from legal routes, Hershah Walia’s Footnotes

¹⁴ War forces migration John Podesta, ‘The climate crisis, migration, and refugees’ Brookings (25 July 2019) <<https://www.brookings.edu/research/the-climate-crisis-migration-and-refugees/>> accessed 11 May 2023

¹⁵ Climate change disaster 2 articles

¹⁶ (n10)

¹⁷ UK Visas and Immigration, Home Office, *Apply to Stay in the UK under The Ukrainian Extension Scheme* (2022) <<https://www.gov.uk/guidance/apply-to-stay-in-the-uk-under-the-ukraine-extension-scheme>> accessed 12 May 2023

¹⁸ UK Visas and Immigration, Home Office, *Apply For a Ukraine Family Scheme Visa* (2022) <<https://www.gov.uk/guidance/apply-for-a-ukraine-family-scheme-visa>> accessed 12 May 2023

¹⁹ Department for Work and Pensions, Home Office, (press release) *Immediate Benefit Support For Those Fleeing Invasion In Ukraine* (2022) <<https://www.gov.uk/government/news/immediate-benefit-support-for-those-fleeing-the-invasion-in-ukraine>> accessed 12 May 2023

²⁰ For example

in treatment. This has reported and analysed to be a ‘double standard’²¹ amounting to ‘racial discrimination’²² or ‘racism’,²³ considering the Europeanness of the Ukrainian subjects and the non-whiteness of others such as the Windrush victims. As racism has been extensively theorised to be an ‘export of colonialism’²⁴ which humanises some and dehumanises others,²⁵ it may be argued that this double standard in the application of Immigration law is colonially informed.

Following this, this project will argue that the development of UK immigration is a legacy of colonialism. As such, this mistreatment is well established in its functioning. This argument will be evidenced by analysing historical and current legalisation to show that contrary to its positionality of ‘fairness’²⁶, It continues to reinforce colonial themes. For the purpose of this project, these colonial themes (as will be seen), will be focused but not limited to racial hierarchies/ exclusion and the preservation of imperial gains out of the hands of the racialised. Finally, this project will treat the argument in 3 parts. Part one will give ideological context of colonial themes as well as engage in historical analysis of early UK immigration law. Next, part 2 will analyse contemporary UK immigration policies to reveal the ways that colonial themes sustain. Finally, part 3 will examine the most current immigration legislation to show that these themes continue to be reinforced in this legal realm.

²¹ Abdoulie Njai and others, ‘Ukraine: The Refugee Double Standard’ (Foreign Policy In Focus, 15 March 2022) < <https://www.gov.uk/guidance/apply-to-stay-in-the-uk-under-the-ukraine-extension-scheme>> accessed 12 May 2023

²² Cathryn Costello and Others, ‘(Some) refugees welcome: When Is differentiating between refugees’ unlawful discrimination?’ (2022) 22(3) International Journal of discrimination and the Law, 244-280

²³ Lee Edwards, ‘Britain’s Post Humanitarian response to Ukraine: preserving a racist migration regime’ (MediaLSE, 10 March 2022) < <https://blogs.lse.ac.uk/medialse/2022/03/10/britains-post-humanitarian-response-to-ukraine-preserving-a-racist-migration-regime/>> accessed 12 May 2023

²⁴ Rodriguez, ‘The Coloniality of Migration and the refugee Crisis’ On the Asylum Migration Nexus, The transatlantic European Settler Colonialism, Migration and Racial capitalism’ (2018) 34(1) 16-28: Amie Cesaire, ‘Discourse on Colonialism’ (NYU Press, 2000)

²⁵ Weheliye, A, ‘Hebeas Viscus: Racialising Assemblages, Biopolitics and Black Feminist Theories of the Human’ (Durham NC, Duke University Press 2014)

²⁶ Home Office, ‘New Plan for Immigration: policy statement (accessible)’ (Policy paper, 29 March 2022) Chapter 1

1.0 HISTORY of UK Immigration law: Incorporation and use of colonial patterns of action

1.1 Introduction

This first chapter is significant to the project as it aims to show that the historical development of UK Immigration law is not separate from its colonial past but tied to it. It will show how, through regimes of state legitimated racialisation and other colonial patterns, UK immigration law in the 20th century began the process of defining and redefining the UK into the modern nation-state it now is. Subsequent analysis will show that this involved the dynamic connection and disconnection from colonial roots resulting in the conceptualisation of the UK's borders from wide to what has remained narrow. The analysis aims to show that this development was spurred by the colonial motivation of maintaining white supremacy and Imperial power. In the wider context of this project, the significance of this historical analysis is to show that this thinking is carried into the UK's contemporary 'immigration issues and their resulting laws/policies. Further, in addition to this historical context, this chapter will provide ideological context that will be integral for the subsequent analysis.

In light of this, the chapter will argue that colonial themes/ motivations were central to the historical development of immigration law. As will be seen in subsequent chapters, echoes of these themes continued to underscore the development of immigration law.

To do this, the chapter will first define and discuss the colonial themes that will be relied on. Following this, it will analyse three historically significant immigration laws, in light of these themes despite the UK's proposed values of 'Equality, freedom and fairness'²⁷. These laws are, Aliens Act 1905, Immigration Act 1971, and the British Nationality Act 1948.

1.2 Colonial Themes in focus (amongst others) racial hierarchies and preservation of 'empire spoils'

This section will define the ideological contexts for which further analysis will be based on. This will include colonial themes of racial hierarchy making and preservation of imperial spoils from the racialised. In addition, analysis will also cover imperialism and their connections to Immigration law through the ideals of preserving colonially extracted wealth and (white) racial superiority. The purpose of this is to

²⁷ 'House of Lords - The Ties That Bind: Citizenship and Civic Engagement in the 21st Century - Select Committee on Citizenship and Civic Engagement'
<<https://publications.parliament.uk/pa/ld201719/ldselect/ldcitizen/118/11805.htm>> accessed 30 March 2023.

reveal how the common themes that defined the UK's dominating role as empire for centuries has influenced its Immigration law and policies in particular.

To begin with, for the purpose of this project, colonial values or action patterns will follow the paradigm put forward by Quilbanjo, which primarily comprises the racialisation of groups from formerly (European) 'politically' colonised regions, to maintain colonially established hierarchies of power.²⁸ Colonialism is generally understood to have been 'formal system of political domination by western/ European societies over others'.²⁹ Other dimensions of colonialism, however, include the ideological justifications that affirmed empire in its resource exploitation and extraction.³⁰ Huttenback notes that one of such justification is the theory of the "white man's burden"; the self-proclaimed duty of 'a superior and civilised white or British race' to civilise the dominated groups.³¹ This creation of racial hierarchies is one that, as Identified by Rodney,³² was necessary for mobilising resources based on exclusion. These ideas are made relevant to immigration law when the area is understood as *"not the seemingly harsh but fair mode through which the deserving are separated from the undeserving. Instead, it is a crucial mechanism for ensuring that colonial wealth remains out of the hands of those from whom it was stolen."*³³ As will be seen, immigration law which conforms to ideas of racial superiority and resource mobilisation may be theorised as actively colonial as it continually uses these mechanisms to uphold imperial whiteness or white supremacy and preserve colonially extracted wealth.

Next, Imperialism is known as the successor of colonialism or the engine of colonialism³⁴. It is defined by Said as the theory and practice of a domineering metropole over a distant territory.³⁵ In other words, where one political society controls the sovereignty of another society. Imperialism is the process of this domination. While characterised by capital accumulation, like colonialism, it is sustained by beliefs of (racial) superiority to aid uninterrupted resource extraction. Thus, it has been theorised by Rodney that Imperialism was the engine of colonialism since colonialism was the formal rule, but imperialism was the mechanism of extraction. Moreover, he notes this to be integral to the capital accumulation of free market

²⁸ Anibal Quijano, 'COLONIALITY AND MODERNITY/RATIONALITY' (2007) 21 Cultural Studies 168.

²⁹ Ibid.

³⁰ Edward Said, 'Culture and Imperialism' (Vintage, 1994) 5

³¹ RA Huttenback, 'The British Empire as a "White Man's Country"-Racial Attitudes and Immigration Legislation in the Colonies of White Settlement' (1973) 13 Journal of British Studies 108
<<https://www.jstor.org/stable/175372>> accessed 9 March 2023.

³² Walter Rodney and others, How Europe Underdeveloped Africa (First published 1974, published 1981) 451

³³ Nadine El-Enany, (B)Ordering Britain: Law, Race and Empire (Paperback edition, Manchester University Press 2021).

³⁴ (n30) Said

³⁵ Edward Said, 'Culture and Imperialism' (Vintage, 1994)

neoliberal economies such as the UK as colonialism led to what he calls ‘Capitalist Imperialism’.³⁶ This is evidenced by the wealth of Britain largely being owed to what El-enany terms the ‘spoils of empire’. Within the context of this established neoliberal/imperialist state, racism is the belief and practice that engineers the continued exploitation for the benefit of a non-racialized few.

Furthermore, connecting these concepts once again to immigration law reveals that Imperial logics of racial inferiority and white supremacy maintain colonial unequal relationships manifest in the form of the UK, a former colonial power, dictating the mobility of the formerly colonised with the aim of defining the UK as an imperial ‘white man’s country’. It achieves that by the targeted exclusion of these racialised groups.

To conclude, this section aimed to show the connections between domination formal rule of the British and the ideologies that have historically and continually sustain an unequal relationship between the colonists and the colonised in the realm of immigration law. This includes colonial /imperial values of racial hierarchies with whiteness at the top, as well as the mobilisation of colonially extracted wealth for the exclusive use of the former empire. Next, it was discussed that the ways that this shows up in UK immigration law is the racist targeting of immigrants and the control of their agency. Following this, this paper will delve into analysis of historical Immigration laws to show the ways that they echo these themes.

Colonial/Imperial Undercurrent; UK Immigration law historical development

This section aims to analyse three historically significant UK immigration laws to expose a similar contradiction. It will show that the laws, through presented plainly and innocently have developed according to these same colonial patterns, whether for the purpose of preserving a white majority or the purpose of excluding non-white access to ‘empire spoils. Additionally, this analysis will lay the groundwork for subsequent analysis which will prove that current immigration laws are based on these exclusionary practices and are therefore contemporary expressions of empire.

³⁶ Walter Rodney and others, *How Europe Underdeveloped Africa* (First published 1974, published 1981) 453

1.3 The Aliens Act 1905

This section concerns the Aliens Act 1905, the first Immigration act in modern British history. First, it will discuss the context in which the act was introduced, followed by analysis into the contradictory nature of the way the bill developed. Finally, it will examine the aspects which show colonial patterns of action, as well as the ways in which it has set imperial precedent for the migration acts introduced much later, such as the Immigration Act 1971.

The context for the passage of this act, as observed by Freddy Foks and Alison Bashford, was to limit Jewish refugees fleeing to Britain.³⁷ The act was created as part of a trend of alien/ race exclusionary acts being passed in the dominion colonies such as the ‘White Australia Policy’ and the Canadian money stipulation policy.³⁸ The provisions given in the British alien’s act included the construction of an ‘Undesirable immigrant’ who, according to S.1(3)³⁹ was someone who could not financially sustain themselves and their dependents, someone deemed “*a lunatic or an idiot*” or an ill person likely to cost the state or ‘detriment’ to the public. An ‘undesirable immigrant’ also included someone with a foreign crime record. The act additionally, entrenched the right of asylum, in line with Britain’s ‘open door policy’.

Some scholars praise the act for its entrenchment of the right to asylum, in line with the UK’s reputation for having an open-door policy.⁴⁰ Others, more sensitive to the colonial motivation of Britain such as have however revealed, that hiding behind this mask of benevolence and reception, this law was crafted specifically to target Jews who were themselves fleeing war and persecution in places like Russia and from Pogroms in other European countries.⁴¹ Additionally, the law had dangerous consequences for already present Jews in the country because it made undesirable immigrant or alien synonymous with Jews in the way that it resulted in the growth of antisemitic hate.⁴² Moreso, Bashford in a different article, recounts that the narrative of Jews went beyond them being ‘undesirable’ and therefore unwanted ; they

³⁷ Freddy Foks, ‘Emigration State: Race, Citizenship and Settler Imperialism in Modern British History, c. 1850–1972’ (2022) *J Hist Sociol.* 35:170–199, Alison Bashford and Jane McAdam, ‘The Right to Asylum: Britain’s 1905 Aliens Act and the Evolution of Refugee Law’ [2014] *Vol. 32 Law and History Review*, 310

³⁸ RA Huttenback, ‘The British Empire as a “White Man’s Country”-Racial Attitudes and Immigration Legislation in the Colonies of White Settlement’ (1973) *13 Journal of British Studies* 108
<<https://www.jstor.org/stable/175372>> accessed 9 March 2023.

³⁹ Aliens Act 1905 S.1(3)

⁴⁰ Alison Bedford, ‘The Right to Asylum: Britain’s 1905 Aliens Act and the Evolution of Refugee Law’ [2014] *Vol. 32 Law and History Review*, 310

⁴¹ Alison Bashford & Catie Gilchrist. ‘The Colonial History of the 1905 Aliens Act’ [2012] 40:3, *The Journal of Imperial and Commonwealth History*, 409-437, 411

⁴² Nadine El-Enany, ‘(B)Ordering Britain: Law, Race and Empire’ (Paperback edition, Manchester University Press 2021) ch 2

were criminalised and touted as ‘invaders’, people that came to upset British culture, and blamed for social disasters like hygiene issues and diseases .⁴³

In addition to the contradiction of the hostile reality of Jews despite Britain’s ‘Open door policy’, In the following decades that saw the development of the alien act, Britain passed the 1925 coloured seamen act. This required constant registration with port officials and threatened deportation to Asian and Black seamen. In a stark contrast to this, the same period saw Britain’s facilitation and financial support for white Britons to migrate to other white dominions, such as Australia and Canada⁴⁴, through the 1922 Empire Settlement Act. What these instances show is that Britain’s first migration laws were established to exclude and criminalise racialised Immigrants while making migration for white Britons a smoother and well supported process.

Finally, following this, the Aliens act 1905 and the laws that developed alongside it may be argued to adhere to colonial patterns of action because they served the purpose of preserving white supremacy against ‘racial degeneration’ and correspondingly, imperial decline. In constructing and criminalising the migrant as an ‘alien’, this created justification for punishment and exclusion. This is echoed in the deportation and charging provisions of the Aliens act and its 1914 amendment. Another way the Alien act may be argued to be colonial is in the fact that it drew inspiration from British settler colonies built on genocide, displacement, and extraction,⁴⁵ who created similar laws to keep the colonies white such as the ‘White Australia policy’.⁴⁶ Finally, it is colonial in the way it created the lasting frameworks for further exclusionary laws, as will be explored, in ‘race-neutral’ language that would provide ‘racialising’ effects. Frameworks such as money stipulation policies, deportation, language checks and medical checks. Of particular significance is how it laid the groundwork for Britain’s immigration charging regime, perfected in its 1971 immigration act as will be explored.

In conclusion, the 1905 Aliens Act was the first comprehensive British immigration law. It developed to follow similar exclusionary laws being passed in the dominion colonies aimed at limiting racialised immigration. In Britain, its aim was to limit the number of Jewish Immigrants. In line with the dominion settlements, it achieved this through ‘race-neutral’ means to produce desired racialised effects. A contradiction is seen in the fact that simultaneous to the development of this law, Britain facilitated and

⁴³ (n36) 410

⁴⁴ Freddy Foks, ‘Emigration State: Race, Citizenship and Settler Imperialism in Modern British History, c. 1850–1972’ (2022) *J Hist Social.* 35:170–199, 173

⁴⁵ Drew inspiration from Canada and Australia’s alien acts

⁴⁶ National museum Australia, ‘White Australia policy’ <https://www.nma.gov.au/defining-moments/resources/white-australia-policy> accessed May 2023

financed migration for white Britons. Thus, the racialised character of this analysis has been shown to serve the colonial purpose of White supremacy preservation and protection against imperial decline. As the rest of the chapter will show, the provisions of the British alien's act created the framework for race-neutral ways that UK immigration laws continued to develop, to achieve racialised results.

1.4 The British Nationality act 1948, 1981

This section concerns the 1948 and 1981 British Nationality Acts. This section will address in particular the way that these two acts, while under the same name, were pivotal to the recognition and derecognition of racialised members of British colonies from commonwealth citizens to aliens. This development in itself was driven by racism. As such the colonial analysis will present all through.

Between the two Acts, legal identification swung in extremes, from “wide recognition to narrow”.⁴⁷ The 1948 version when created, granted access to people residing in the commonwealth and ex colonies. Hansen notes that, with the immigration of 500,000 non-white members of the commonwealth, the law was integral to creating the post-war image of a multicultural Britain.⁴⁸ This included the Windrush generation who are of present significance. Additionally, it has been noted that it was significant for entrenching the idea that Britain's borders were wide, being “everywhere and anywhere”⁴⁹.

While this was a positive development for the racialised colony members who now had proximity to empire spoils, Scholars note that this was an unintended consequence. The act was with passed with the colonial motivation of keeping the white Canadian settler colony from nationalising like the US had done. As a result, Hansen notes that legislators were “surprised” at the consequence.⁵⁰ The Unintentional nature of the act thus explains the exclusionary and discriminatory experience of the racialised nationals such as systematic exclusion from welfare programs, even though, like Goodfellow notes, they were integral to the stabilising of the welfare period, such as the strengthening of the NHS.⁵¹

In addition, the unaccounted racialised immigration drove the speedy implementation targeted Acts that followed, which accumulated into the 1981 amendment of the nationality act. The 1962 Commonwealth immigration Act and its 1968 amendment facilitated the displacement of families, the implementation of

⁴⁷ Nadine El-Enany, ‘(B)Ordering Britain: Law, Race and Empire’ (Paperback edition, Manchester University Press 2021) ch3

⁴⁸ Randal Hansen, ‘The Politics of Citizenship in 1940s Britain: The British Nationality Act*’ [1999]Vol. 10, No. 1, Twentieth Century British History, , pp. 67-95, 68

⁴⁹ *Ibid.* 70

⁵⁰ *Ibid.* 68

⁵¹ Maya Goodfellow, ‘Hostile environment; how Migrants became scapegoats’

quotas, and in particular, British nationality of racialised commonwealth members made useless. This resulted in large groups being displaced, such as south Asians⁵². Immediately, racialised immigrants became aliens. This regime was made perfect in the 1971 immigration act and the 1981 act which would entrench patrialty as the sole qualifier of entry. This follows the colonial pattern of racialisation as white members of dominion countries were not affected since they were most likely to have patrial relations who had white British ancestry.⁵³ in addition, this follows the colonial motivation of white supremacy, “keeping Britain white” to ensure imperial power.

Moreso, this iteration served the purpose of divorcing Britain from its colonial past and present to construct an identity of a ‘post-colonial’ state with no ties to the commonwealth countries. This is imperial in the sense Said explains where the colonial state strips the agency of formerly colonised people.⁵⁴ Here it pertains to movement. Nadine gives additional insight in exposing the fact whiteness became the defining factor in determining who was a citizen and who wasn’t, as white members of the commonwealth residing in the colonies were not negatively affected by this law.⁵⁵ On the contrary, free movement was made more possible for British subjects who wishes to migrate between the other colonies, such as Australia and Canada.⁵⁶ In addition to being Imperial, this can also be constructed as colonial state craft as it is reminiscent of what Huttenback describes to be seemingly neutral laws achieving the desired effect of targeting ‘undesirables’.⁵⁷

In conclusion, the 1948 British Nationality Act and its 1981 amendment are integral to analysing the colonial nature of UK immigration law. The 1948 unintentionally opened UK borders to racialised groups but maintained structural exclusion while benefitting from their labour. Nonetheless, with the Imperial prerogative of “keeping Britain white”, further immigration laws sought to correct this by limiting citizenship, “alienising” British citizens of colonies and finally, made perfect in the 1981 amendment, entrenching the patrialty clause. This would have the lasting effect of constituting a postcolonial break from the colonies, seeing Britain as an entity with narrow borders.

⁵² Saima Nasar, ‘We Refugees? Re-defining Britain’s East African Asians’ ‘Migrant Britain’.
(First Published 2018, Edition 1st Edition Routledge 2018)

⁵³ Nadine El-Enany, ‘(B)Ordering Britain: Law, Race and Empire’ (Paperback edition, Manchester University Press 2021) ch3

⁵⁴ The seen and not heard

⁵⁵ (n 48)

⁵⁶ 1925 Empire Settlement Act

⁵⁷ RA Huttenback, ‘The British Empire as a “White Man’s Country”-Racial Attitudes and Immigration Legislation in the Colonies of White Settlement’ (1973) 13 *Journal of British Studies* 108
<<https://www.jstor.org/stable/175372>> accessed 9 March 2023.

1.5 Immigration Act 1971

This act sits between the 1948 British Nationality Act and its 1981 amendment. As a result, its provisions of ‘partiality’ for example formed the basis of the amendment of the British nationality act, further entrenching it. Nonetheless, this immigration act remains in force though in an amended form. Analysis will however be focused on the original iteration of the law. This section will centre the s.2 provisions of ‘right of abode’ or patrialty as well as the context in which the act was passed, to expose colonial themes underpinned the original format and continue into the version maintained today. The purpose is to reveal the longstanding colonial nature of uk immigration law to prove that its contradictions are not mistakes, but rather have historically and continually served the colonial purpose of unrestricted access and preservation of extracted wealth and resources for the ‘white British race’.

To begin with, section 2 of the act introduced the concept of ‘patrialty’ which restricted the immigration of commonwealth citizens.⁵⁸ Accordingly, a partial was described as someone who is a citizen of the UK and its commonwealth or colonies, as well as one from a country with a ‘close connection’.⁵⁹ However, people who could not prove patrialty had to apply for a work permit. The act however was passed at the time of the uk entering the EEC and thus created a situation where free movement of European nationals became entrenched while they were reduced for commonwealth citizens. Some scholars argue that the move to guarantee movement of EU nationals only passed because it was a condition for joining the EU and thus it was not racially charged.⁶⁰ This however neglects the fact that close ‘ties to Britain’ as a qualifier was not open to all countries with the common history of British colonialism and occupation. Instead, a dichotomy was created to show old commonwealth and new commonwealth, new commonwealth being the one with more favourable ties as they held white majorities, these included New Zealand and Australia. This separation shows a racial preference carried through by the law despite the ‘non-discriminatory’ nature it was said to possess. Another point which clarifies the racist nature of the

⁵⁸ Immigration Act 1971 S.2

⁵⁹ Williams C, ‘Partiality, Work Permits and the European Economic Community: The Introduction of the 1971 Immigration Act’ (2015) 29 Contemporary British History 508
<<http://www.tandfonline.com/doi/full/10.1080/13619462.2014.1002775>> accessed 5 April 2023

⁶⁰ Ibid. 509

act in regard to the ‘partial clause’ was the fact that India, despite being known as the jewel of empire for its military force which strengthened the British empire, was rejected in its claim for ‘dominion status’ which the other new commonwealth had, and thus Indian nationals could not claim patrialty. Williams reports that several scholars observed this to be discriminatory on racial grounds as well as newspapers which reported the matter.⁶¹ This therefore shows that the patrialty clause was introduced with racial exclusion in mind despite its non-discriminatory nature, showing a colonial pattern.

Another issue with the partial clause is that by definition, it echoes the themes of white or “British race superiority” in the way that blood is a measure of deservedness of legal status and identity. This argument is expanded on by Harris who observes that during slavery whiteness became a claim to property both immaterial and material in this context, this manifests as citizenship.⁶² The patrialty clause thus echoes this sentiment in requiring parents and grandparents to be of British nationality before legal status can be regarded.

In conclusion, situated between the two nationality acts previously analysed, the 1971 act was analysed with focus to the s.2 provisions of ‘right of abode’ or patrialty as well as the context in which the act was passed, to expose colonial themes underpinned the original format and continue into the version maintained today. The patrialty clause was seen to have been introduced with work permits as the qualifier for ‘non patrials. This was analysed to be discriminatory and thus colonial given that the same period saw the UK joining the EEC, which would establish free entry for EU nationals. Further, it was analysed to be colonial in the way that it entrenched whiteness as a measure of deservedness. Finally, it exposes the colonial logic of race construction determining who is British, a logic which arguably served the purpose of limiting Britain to a particular place, which is false, given that British colonialism’s displacement and global empire legacies show that Britain has not been one place for a long time.

1.6 Conclusion

To conclude, this chapter aimed to illustrate through ordered analysis, the ways that UK immigration law historically developed from its origins in the early 20th century, according to colonial themes, driven by a

⁶¹ Thomas Mohr, ‘The Irish question and the evolution of British Imperial law, 1916-1922’ D.U.L.J 2016, 39(2), 405-427

⁶² Cheril Harris, ‘Whiteness as Property’ (1993) 106 Harvard Law Review 1707

colonial motivation. This begun first by giving ideological context to the colonial themes upon which subsequent analysis will reference.

section aimed to identify colonial patterns. These were drawn by highlighting the connections between the formal colonial rule of the British empire and the ideologies that sustain the unequal relationship between the British and formerly colonised. These included Racialisation, racism and white supremacy which functioned to justify the continued accumulation of colonially extracted wealth and status.

Following this, this paper analysed the three laws of focus.

Beginning with the 1905 Aliens Act, the first comprehensive British immigration law. This was shown to have developed from and therefore shaped by similar racial exclusionary laws in British settler colonies. In Britain, its aim was to limit the number of Jewish Immigrants. Similar to the settler colonies, it achieved this through 'race-neutral' means to produce its desired racialised effects. A contradiction identified a further aspect that suggests a racial agenda is seen in the fact that simultaneous to the development of this law, Britain facilitated and financed migration for white Britons. Thus, the racialised character of the aliens' act has been shown to serve the colonial agenda of White supremacy preservation and protection against imperial decline. As the rest of the chapter will show, the provisions of the British alien's act created the framework for race-neutral ways that UK immigration laws continued to develop, to achieve racialised results with view to the identified colonial agenda.

Following this, the 1948 British Nationality Act and its 1981 amendment were analysed. The 1948 unintentionally opened UK borders to racialised groups but maintained structural exclusion while benefitting from their labour. Nonetheless, with the Imperial prerogative of "keeping Britain white", further immigration laws sought to correct this by limiting citizenship, "alienising" British citizens of colonies and finally, made perfect in the 1981 amendment, entrenching the patrialty clause. This would have the lasting effect of constituting a postcolonial break from the colonies, seeing Britain as an entity with narrow borders.

Finally, the 1971 Immigration act was addressed, with focus to the s.2 provisions of 'right of abode' or patrialty as well as the context in which the act was passed, to expose colonial themes underpinned the original format and continue into the version maintained today. The patrialty clause was seen to have been introduced with work permits as the qualifier for 'non patrials'. This was analysed to be discriminatory and thus colonial given that the same period saw the UK joining the EEC, which would establish free entry for EU nationals. Further, it was analysed to be colonial in the way that it entrenched whiteness as a measure of deservedness. Finally, it exposes the colonial logic of race construction

determining who is British, a logic which arguably served the purpose of limiting Britain to a particular place, which was proven false, given that British colonialism's displacement and global empire legacies show that Britain has not been one place for a long time.

2.0 COLONIAL THEMES IN THE DEVELOPMENT OF IMMIGRATION LAW; 'HOSTILE ENVIRONMENT POLICIES' OF THE PAST DECADE

2.1 Introduction

This chapter aims to show that the colonial developments of early Britain lingered into more contemporary times. Though the UK now posits itself as a modern space, the colonial constructions remain, although in a different form. As will be evidenced by the politics of the UKIP party, similar to post war Britain and its anti-immigrant immigration laws, contemporary Britain retains the 'expired empire dreams'⁶³ of white British supremacy. As a result of these politics for example, the Windrush generation would become victims twice. First a catalyst from the redundancy of commonwealth citizen status, and next, as will be seen, from the internal bordering of the state along racialised lines.

Following this, this chapter will argue that contemporary immigration law continued to incorporate the same colonial themes of racial othering and preservation of imperial power, resulting in failure to protect its subjects. This will be analysed through the 'hostile environment' policies of 2014- 2018. The focus will be on how it transformed the 'illegal' from an immigration status to an identity which, beyond defining core aspects of human life,⁶⁴ adheres to colonial logics of racial exclusion. As such, it will also be explored how this resulted in the harm of the policies' racialised subjects, most reputably the Windrush generation, showing therefore that the colonial themes in UK immigration law renders it unfit to protect its subjects, and as will be seen in this case, propagates harm.

To demonstrate this, this chapter aims to first define and give context to the hostile environment. Next, it will analyse the hostile environment's creation of the illegal as an identity and how it adheres to the colonial themes of racial othering and preservation of imperial power, which result in the harm of the intended subjects.

⁶³ (n) El-Elanany

⁶⁴ Gina clayton, 'Entry Clearance and Human Rights: Challenging the Boundaries of Jurisdiction' (2006) 20 IANL 255-269; Sheona York, 'The 'Hostile Environment' – How Home Office Immigration Policies and Practices Create and Perpetuate Illegality' (2018) 32 IANL 363-384

2.2 ‘Hostile Environment’, Scope and political Context

This section aims to briefly give context to what led to this regime of anti-immigrant politics and explain what is meant by the ‘Hostile environment’ and the policies it contains.

Goodfellow describes the hostile environment as a regime of anti-immigrant politics that can be historically followed through British politics ranging from the very first immigration act⁶⁵ to the rise of populist party UKIP.⁶⁶ This gives context to discussing the hostile environment as it shows the traceable nature of anti-immigrant politics leading to its introduction.

Following this, UK human rights group, Liberty⁶⁷ describes the hostile environment as a “*wave of attacks*”⁶⁸ on the human rights of undocumented people”⁶⁹. The name ‘Hostile Environment’ is coined from a speech given by former home secretary Theresa May where she declared an aim to “create a really Hostile Environment for illegal migration”⁷⁰. As Griffiths notes, this was in line with May’s commitment to increase removals and reduce entry of migrants.⁷¹ These policies, legally expressed through the 2014 and 2016 Immigration Acts,⁷² ranged in application from housing, schools, higher education, to healthcare, banking, and even driving. Beyond this, they authorised the police to conduct raids and target homeless people.⁷³ An example of the policy is seen in the ‘right to rent’ scheme which would require landlords to check the immigration status of tenants.⁷⁴ It has been recorded that failed to achieve the goal of deterring undocumented migrants and instead lead to unwarranted discrimination.⁷⁵ Regardless, this continues to be in force.⁷⁶

⁶⁵ Aliens act discussed in 1.3

⁶⁶ (n)Goodfellow; For extensive discussion, see Ceri Hughes

⁶⁷ In collaboration with migrant justice groups such as Against Borders for Children, Joint Council for the Welfare of Immigrants (JCWI), Migrants’ Rights Network (MRN)

⁶⁸ Emphasis mine

⁶⁹ Liberty group, ‘A Guide to The Hostile Environment; The Border Controls Dividing Our communities and How we Can Bring Them Down’ (Liberty, May 2019) < <https://www.libertyhumanrights.org.uk/issue/report-a-guide-to-the-hostile-environment/> > accessed 12 May 2023

⁷⁰ Guardian news, quoting the telegraph

⁷¹ Melanie Griffiths, ‘The UK’s hostile environment: Deputising immigration control’ Critical Social Policy (41) 4 [2021] 521-544

⁷² Immigration Act 2014; Immigration Act 2016

⁷³ (n7) These are discussed and explained in detail in the Liberty groups guide.

⁷⁴ Home Office, ‘Right to Rent Checks: a Guide to immigration documents for tenants and landlords’ (updated user guide, HO, March 2023)

⁷⁵ Sue Lukes, ‘Right to Rent’ (2017) 31 (1) J.I.A.N.L 51-69

⁷⁶ Nigel Lewis, ‘shelter says Landlords ‘still rejecting tenants based on race’ Landlord Zone (UK, May 2023) <https://www.landlordzone.co.uk/news/new-shelter-says-landlords-still-rejecting-tenants-based-on-race/> accessed 12 May 2023

In summary, this section has given context to, defines and given examples of the ‘hostile environment’ policy.

2.3 Hostile environment incorporating colonial themes through the ‘illegal’.

This section will discuss the Hostile environment’s transformation of the illegal from legal status to social identity, followed by how this adheres to colonial themes of racial exclusion and imperial preservation. To begin with, the hostile environment is argued to have shifted the understanding of what it means to be illegal into a social identity. This view is affirmed by scholars such as York who theorise that this is due to the intentional ‘overlapping of immigration policies with social services’⁷⁷ and thus the most intimate aspects of life, such as housing and healthcare, leading to the *active* ‘creation and perpetuation of illegality’.⁷⁸ The ‘Windrush scandal’ may be analysed to be an instance of this. As scholars such as White note, the ‘Windrush generation’ and their descendants had lived peacefully in the UK with recognised nationality,⁷⁹ so uncontested that they held positions in public service jobs such as the NHS.⁸⁰ Rightly, some scholars have pointed to the state enforced hostile environment checks as responsible for what would lead to nationwide destabilisation of this group of people,⁸¹ however, beyond that, it has also been observed that the lack of legal redress⁸² and inadequate legal remedies⁸³ maintained the disaster, rendering the Windrush people illegal and isolated.⁸⁴ As such some scholars investigate the role of structural racism as an explanation for the racialised targeting,⁸⁵ thus drawing connections to colonialism.⁸⁶

⁷⁷ Gina clayton, ‘Entry Clearance and Human Rights: Challenging the Boundaries of Jurisdiction’ (2006) 20 IANL 255-269

⁷⁸ Sheona York, ‘The ‘Hostile Environment’ – How Home Office Immigration Policies and Practices Create and Perpetuate Illegality’ (2018) 32 IANL 363-384. For further discussion, see also- Richard Warren, ‘Private Life in the Balance: Constructing the Precarious Migrant’ (2016) 30 IANL 124-141 and Jon Burnett, ‘Towards a Political Economy of Charging Regimes: Fees Fines and Force in UK Immigration Control’ (2020) 60 British Journal of Criminology 579-599

⁷⁹ Robin M White, ‘The Nationality and Immigration Status of the ‘Windrush Generation’ and the Perils of Lawful Presence in a ‘Hostile Environment’ (2019) 33 IANL 218–239

⁸⁰ Karen Bonner, ‘Windrush and the NHS – an entwined history’ (NHS Blog, 22 june 2020) <<https://www.england.nhs.uk/blog/windrush-and-the-nhs-an-entwined-history/>>

⁸¹ (n76), Maya Good fellow

⁸² ‘Private Life in the Balance: Constructing the Precarious Migrant’ (2016) 30 IANL 124-141 and Jon Burnett,

⁸³ Luke May ‘Only 17% of Windrush scandal victims have received pay-outs as figures show £2.9m has been paid to 300 people after 1,761 compensation claims’ (Mail online, 28 jan2021)<<https://www.dailymail.co.uk/news/article-9198405/Only-17-Windrush-scandal-victims-received-payouts.html>> accessed 12 May 2023

⁸⁴ (n76)

⁸⁵ Timothy Jacob-Owens, ‘Justice For Windrush? Redress, Reform Repeat’ (2022) 36 IANL 131-143.

⁸⁶ (n) Rodriguez

Following this, the argument that this construction of the ‘illegal’ or ‘illegal immigrant’ adheres to colonial themes will be considered. To begin with, the ‘illegal’ becoming the social identity of a person follows Said’s analysis of imperialism as a practice but also a culture sustained through controlling the “description, communication and representation” of the dominated.⁸⁷ In the case of the hostile environment, this is seen in the ‘discursive control’⁸⁸ of those deemed illegal. This view is seconded by Bhatia who notes the objectifying and degrading ways that these people are conceived by the British government; as “illegal,” “bogus” and “undeserving.”⁸⁹ As El-refaie reports, this is also a prominent theme in the media.⁹⁰

Furthermore, the racialisation of the ‘illegal’ is integral to the argument that it follows colonial themes as racialisation is in line with the theme of racial hierarchies in which the European or white British sits at the top. Weheliye describes racialisation as when the ‘category’ of race is invoked for the purpose of “interpreting order and structuring social relations”.⁹¹ As seen noted in section 1.2, this is according to colonially informed hierarchies in which European/white British people sit at the top.⁹² As Cohen observes, this is a process of racial othering/ordering, an integral process to defining the white British identity, which is said to define itself by everything that it is not.⁹³ This racialisation though targeted usually at visibly non white people,⁹⁴ is known to be flexible towards any group deemed threatening to the ‘British identity’⁹⁵. This is evidenced by the well-established racialisation of EU migrants, who were also racialised as ‘illegal’ in the lead up to Brexit.⁹⁶ It has therefore been shown that the ‘illegal’ follows the colonial theme of racialisation or racial othering.

⁸⁷ Edward Said, ‘Culture and Imperialism’ (first published 1993, Vintage 1994)

⁸⁸ Hersh Walia, discursive control

⁸⁹ Monish Bhatia, ‘Migration and Racist State Violence’ (2022) 1 State Crime Journal, 5-11, 7

⁹⁰ Elisabeth El-Rafaie, ‘Metaphors we discriminate by; Naturalised themes in Australian newspaper articles about Asylum Seekers’ (2001) 3 Journal of Sociolinguistics 352-371; Ron Kaye, ‘Redefining the Refugee: The UK Media Portrayal of Asylum Seekers’ in Khalid Koser and Helma Lutz (eds), *The New Migration in Europe: Social Constructions and Social Realities* (Palgrave Macmillan UK 1998)

⁹¹ (n87), ‘Weheliye, A, ‘Hebeas Viscus: Racialising Assemblages, Biopolitics and Black Feminist Theories of the Human’ (Durham NC, Duke University Press 2014)

⁹² Quilbanjo analysis of coloniality

⁹³ Edward Cohen, Migration And its enemies’

⁹⁴ Hostile environment findings

⁹⁵ Steve Huttenback, ‘The British Empire as a White Man’s Country’

⁹⁶ Reine Reichel Luthra, ‘Mitigating the hostile environment: the role of the workplace in EU migrant experience of Brexit’ (2020) Journal of Ethnic and Migration Studies; Jon Fox, ‘The Racialisation of the New European Migration to the UK’ (2012) 16(4) Sociology

Finally, the colonial theme of protection against imperial decline⁹⁷ can also be argued to be central to the making of the ‘illegal’ identity. This is because by constructing groups of people as ‘illegal’ and creating policies such as the hostile environment, they are essentially cut off from access to otherwise accessible services and infrastructure which were built “via imperial spoils”.⁹⁸ Historically, this is evidenced by the Welfare state, particularly the NHS and transport systems which were in its early days built and staffed by racialised members of the British colonies (commonwealth).⁹⁹ Here these workers were cut off from Britain through the stripping of their legal right to remain, essentially making them illegal. This is more recently evident in concerns about migrants being seen as ‘competition for resources’¹⁰⁰ and the resulting laws that force them to ‘contribute the most’¹⁰¹ in form of mandates like Immigration health surcharge and high visa processing fees,¹⁰² and money stipulation policies such as the 18,600 pound minimum income requirement for family reunification.¹⁰³ These have been observed by scholars such as Burnett to force destitution and illegality on present residents, while creating unfathomable requirements for non-present migrants.¹⁰⁴ Furthermore, Rodriguez notes that because people need to migrate for many reasons including personal and structural reasons such as war, this does not deter prospective migrants, but forces them into this subhuman space of illegality.¹⁰⁵ Given this governing racialised people from access ‘colonial accumulated wealth’¹⁰⁶ Nadine theorises Britain to be a “contemporary colonial space”. Thus, it has been shown that the construction of the illegal adheres to the colonial theme of preserving imperial wealth from the racialised.

To conclude, this section has argued that the construction of the ‘illegal’, through anti-immigrant policies such as the ‘hostile environment’, adheres to the colonial themes central to this project which are racial exclusion/ othering, and the preservation of imperial power (wealth) out of the hands of the racialised.

⁹⁷ Discussed in 1.1

⁹⁸ *Bordering Britain*

⁹⁹ Jack Saunders, ‘The Making of NHS Staff as a worker Identity 1948-85’ (2022) *Posters Protesters and Prescriptions*

¹⁰⁰ Whelan, Leah Peters, ‘regulatory Focus and Attitudes to Migrants’ (2010) 45(3) *International Journal of Psychology* 190-201

¹⁰¹ Govt new plan for migration

¹⁰² As reported by Jon Burnett (n16)

¹⁰³ Michelle Yik Yu Wong, ‘The Unequal Price of Love: A Critical Race Feminist Critique of the £18,600 Minimum Income Requirement for Family Reunification under Article 14 ECHR’ (2019) 33 *IANL* 302–331

¹⁰⁴ Jon Burnett, ‘Towards a Political Economy of Charging Regimes: Fees Fines and Force in UK Immigration Control’ (2020) 60 *British Journal of Criminology* 579-599

¹⁰⁵ Rodriguez, ‘The Coloniality of Migration and the refugee Crisis’ *On the Asylum Migration Nexus, The transatlantic European Settler Colonialism, Migration and Racial capitalism* (2018) 34(1) 16-28

¹⁰⁶ Siddhant Issar, ‘Theorising racial colonial primitive accumulation: Settler colonialism, Slavery and racial capitalism’ (2021) 63(1) *Institute for race relations* 23-50

2.4-Conclusion

This chapter set out to analyse the hostile environment policies as anti-immigrant controls which further colonial themes of racial othering and preservation of imperial wealth out of the hands of the racialised, and therefore create a legal framework that strips its subjects from protection. This was done by analysing the Hostile environments creation of the illegal. It was analysed that the hostile environment transformed this into a social identity and resulted in the discrimination of racialised subjects. Further, it was seen through analysis dependent on the works of Said and Quilbanjo that this follows colonial themes of racial exclusion. Finally, the second theme of preservation against imperial decline was analysed through Nadine's understanding of Britain as a contemporary colonial space.

3.0 Colonial Themes Reinforced in Current Legislation

3.1 Introduction

As has been shown, in contemporary times, UK immigration law maintains colonial themes through the political construction of the ‘illegal’. The most recent legislation has however seen this construction legitimised in wording and provision, through the ‘*illegal immigrant*’ of the ‘Illegal migration bill’ and the provision of physical expulsion from the UK¹⁰⁷ through the ‘Nationality and Borders Act 2022, but central also to the bill. As the prior chapter also established, the illegal is a flexible concept.¹⁰⁸ In its most recent form it is said to be targeted at ‘people smugglers’.¹⁰⁹ The reality however is that it defines boat migrants as a whole, the majority of whom do not have access to safe and legal routes.¹¹⁰

With respect to this, this chapter will argue that the most recent Immigration legislation, which are the Nationality and Borders Act 2022 (NABA), and the illegal migration bill, are explicit in their motivations of racial hierarchy making and the exclusion of racialised groups from the British imperial core, thus showing that the colonial dimension continues to define British immigration law.

To this end, this chapter will start by analysing the Illegal migration bill to show how it reinforces the colonial theme of the racialised ‘illegal’. Next, it will analyse an underpinning provision of the legislation, the ‘UK-Rwanda deal’ as a means preservation of ‘empire spoils’ in its border externalisation, amounting to border imperialism, through its ‘collaboration’ with the Rwandan government to tackle the topical ‘illegal’ migration.

3.2 Colonial themes reinforced: ‘Illegal immigrant’.

This section will argue that the construction of the ‘illegal’ is reinforced in the naming of the current legislation, and as such reinforces in modern times, the colonial themes of racialisation or racial othering.¹¹¹

To begin with, the previous chapter has shown the ‘illegal’ to be a constructed identity echoing the colonial theme of racial othering through racialisation and in particular the ‘discursive control’¹¹² of the

¹⁰⁷ David Cantor, ‘Clause 11, Nationality and Borders Bill: Why Two-Tier Refugee Status is a Bad Idea’ Refugee Law Initiative, (March 28 2022) < <https://rli.blogs.sas.ac.uk/2022/03/28/clause-11-nationality-and-borders-bill-why-two-tier-refugee-status-is-a-bad-idea/> > accessed 11 May 2023

¹⁰⁸ Section 2.2

¹⁰⁹ Home Office, ‘Policy paper, Illegal Migration Bill: overarching factsheet Updated 11 May 2023’ (Home office 11, May 2023) <https://www.gov.uk/government/publications/illegal-migration-bill-factsheets/illegal-migration-bill-overarching-factsheet> accessed 12 may 2023

¹¹⁰ UNHR,’ UNHR Legal Observations on The Illegal Migration Bill 2 May 2023) (UHHR, 2 May 2023) < <https://www.unhcr.org/uk/media/unhcr-legal-observations-illegal-migration-bill-02-may-2023>> Accessed 12 May 2023

¹¹¹ Nadine

¹¹² Walia

people it targets¹¹³. It has also been shown that this identity is flexible in scope, evidenced by the racialisation of European migrants¹¹⁴ in addition to other colonially defined races.¹¹⁵ When applied to the recent ‘Illegal migration bill’, the definition expands to communicate boat migrants who usually have no other means of reaching the UK.¹¹⁶ Nonetheless they are constructed under the criminalising rhetoric of the ‘illegal’.¹¹⁷

Next, beyond the political analysis of the ‘Illegal’ in the prior chapter. The identity sees reinforcement through state recognition, in the naming of the bill and by extension its provisions,¹¹⁸ which completely define a person by their means of entry. The colonial dimension is further restated when considering its similarity to the colonial Aliens Act 1901.¹¹⁹ Passed while Britain was an empire, it sought to limit Jewish migrants by legislating against them using the race neutral ‘undesirables’¹²⁰ to achieve the racialised effects of preserving the ‘white British character’¹²¹. Similarly, over a century later in what should be ‘Post-Colonial’ UK, the Illegal Migration Bill is fulfilling the same purpose of racial exclusion. This evidenced by the home secretary delivering the plan for the bill as a promise to the ‘British Public’,¹²² where white Britishness continues to be the most legitimate claim to legal presence in the UK.¹²³ As the next section will show, this racial exclusion is made more explicit through the plan to expel all those deemed illegal and completely stop them from reaching the UK through the UK-Rwanda Asylum Partnership Plan. Thus, it has been argued that the illegal Migration Bill reinforces the colonial theme of racial exclusion even in recent times.

To conclude, this section has shown that through the naming of the Illegal Migration bill and its provisions, the ‘Illegal’ which has previously been established to be a colonially constructed identity, has

¹¹³ Section 2.2 Engages this analysis at length

¹¹⁴ Ibid.

¹¹⁵ Quilbanjo

¹¹⁶ (n 108)

¹¹⁷ Hamza Mohamed, ‘Demonising Refugees’: Uk Plan To Stop Boat Migration Draws Fire’ (Aljazeera, 17 March 2023) < <https://www.aljazeera.com/news/2023/3/17/what-is-the-new-plan-to-stop-migrants-coming-to-the-uk-illegally> > accessed 12 May 2023

¹¹⁸ Home Office, ‘Policy Paper, ‘Illegal Migration Bill: Overarching Factsheet’ (Home Office, 11 May 2023) < <https://www.gov.uk/government/publications/illegal-migration-bill-factsheets/illegal-migration-bill-overarching-factsheet> > accessed 12 May 2023

¹¹⁹ analysed in 1.3.

¹²⁰ (n) Bashford

¹²¹ (n 37) Huttenback

¹²² Home office, ‘Borders Act to overhaul asylum system becomes law’ Home office (28 April 2022) Priti Patel statement in new policy for migration ; “This is a huge milestone in our commitment to our promise to the British public - a fair but firm immigration system.”

¹²³ As evidenced by the racial targeting of non-white people for legal documentation as a result of the hostile environment

been made legitimate. As such, it represents the incorporation of colonial themes in current UK legislation.

3.3 Border Imperialism in the recent Immigration Legislation

This section aims to argue that the UK- Rwanda ‘Asylum Partnership Agreement’ is a project of border externalisation amounting to border Imperialism. As will be seen, this imperial factor demonstrates already a colonial dimension. Another colonial dimension is further seen in the disregard for racialised lives concerning the application of the agreement.

To begin with, Bhatia observes that the ‘illegal’ is a status given by the government to explicitly communicate their ‘violent intentions’¹²⁴. When applied, the NABA is a legal expression of this intention, given its section.29 provision of removal to a ‘safe third country’ which relies on the immigration deal with Rwanda known as the ‘Asylum Partnership Agreement’¹²⁵. Given this, the intention is made violent as due to the closing off of its borders to the vulnerable people falsely labelled as illegal.¹²⁶ This forms the core function of the agreement, which is to provide for asylum seekers trying to reach the UK to be shipped to Rwanda instead for their claims to be processed there.¹²⁷ What seems to be a ‘partnership’ here however amounts to the practice known as ‘border externalisation’. This is defined as “the process of shifting functions normally undertaken by a State within its own territory, so they take place, in part or in whole, outside its territory”.¹²⁸ In other words, the outsourcing of government functions.

¹²⁴ (n 87) Bhatia

¹²⁵ Home Office, Memorandum of Understanding Between The Government Of Great Britain And Northern Ireland And The Government Of The Republic Of Rwanda For The Provision Of An Asylum Partnership Arrangement, Home Office, April 2023

¹²⁶ *ibid*

¹²⁷ (n123)

¹²⁸ David Cantor And Others, Externalisation, Access to Territorial Asylum, And International Law
Int J Refugee Law (2022) 34 (1): 12

In addition to this agreement being an instance of border externalisation, it is also argued that this theme amounts to ‘border imperialism’. To demonstrate this, the scope of imperialism must be (re)determined.¹²⁹ Scholars such as Harvey conceptualise Imperialism simply as a process of “overseas expansion”¹³⁰ beyond this, to borrow from the first chapter, Said expands this theory to mean the “theory and practice of a domineering metropole over a distant territory”.¹³¹ Necessarily, Imperialism must be understood as the engine or logic of colonialism¹³². Thus, the relevant case of the UK and Rwanda shows an imperial relationship where the UK is the ‘dominant metropole’¹³³ domineering over Rwanda. With this understanding, Walia coins the term ‘Border Imperialism’ to describe the phenomena of border externalisation where “the definition of a border increasingly refers *not* to the territorial limit of the state *but* to management practices directed at where the migrant is”¹³⁴. **The UK- Rwanda agreement therefore shows an imperial relationship where the UK exercises control over the overseas territory for the purpose of managing its borders against racialised people/migrants, and since imperialism is the working logic of colonialism, this may be construed as colonial.**

In addition, a further colonial aspect of the agreement may be seen in the disregard for racialised lives evident in its application. The foremost instance of this is the fact that the government neglected to take into consideration the safety profile of Rwanda, especially along the axis of gender and sexuality.¹³⁵ Next is the fact that it offshores migrants but contains no legal framework for justice to be accessed in the case of wrongdoing.¹³⁶ Finally, it has been reported to go against both the refugee convention and the convention which protects stateless people.¹³⁷ It has therefore been shown in these instances that the framework of the Rwanda agreement in application communicates a disregard for racialised lives. To add to this however, Scholars such as Prakash,¹³⁸ and Walia¹³⁹ have shown that the irony of this disregard lies

¹²⁹ See 1.2 for more in-depth discussion.

¹³⁰ James Harvey; Beard Robinson, Charles Austin, Development of Modern Europe (Boston: Ginn., 1929)

¹³¹ Edward Said, ‘Culture and Imperialism’ (Vintage, 1994)

¹³² Ibid

¹³³ Leonid Grigoryev & Alexandra Morozkina (2022) Colonialism Matters: Benefits of Metropolises with a Focus on India and Great Britain, Strategic Analysis, 46:6, 585-600

¹³⁴ Harsha Walia, Robin DG Kelley and Nick Estes, Border and Rule: Global Migration, Capitalism, and the Rise of Racist Nationalism (Haymarket Books 2021).

¹³⁵ Khatondi Soita Wepukhulu, ‘Rwandan LGBTIQ people warn: It’s unsafe to send queer asylum seekers here’ (Open Democracy 16 April 2022)< <https://www.opendemocracy.net/en/5050/rwanda-lgbtqi-asylum-seekers-refugees-priti-patel/>> accessed 12 May 2023

¹³⁶ Gazette Reporter, ‘Rwanda Asylum deal not legally binding: Law Society’ (Law Gazette,30 August 2022)< <https://www.lawgazette.co.uk/law/rwanda-asylum-deal-not-legally-binding-law-society/5113506.article>> accessed 12 May 2022

¹³⁷ (n 108)

¹³⁸ Prakash, Gyan. , ‘After Colonialism: Imperial Histories and Postcolonial Displacements’, Anonymous Translator(, Princeton, N.J, Princeton University Press, 1994;1995;).

¹³⁹ (n) Walia

in the fact that the displacement today can be directly linked to the colonial practices of the of the Global North in the global south, where it has been observed that the majority of displaced people migrate from.¹⁴⁰

3.4 Conclusion

In conclusion, this chapter has argued that the most recent Immigration law have not departed from colonial themes but continue to entrench them. This was analysed principally through the Nationality and Borders Act 2022 (NABA), and the illegal migration bill. First the Illegal migration Bill was treated, and it was shown that through the wording of the Bill it legitimises the creation of the illegal. The colonial dimension was seen particularly in the way it echoed the same ‘undesirables’ logic of the Aliens act 1905. Next, the UK-Rwanda ‘Asylum Partnership Agreement’, central to the enforcement of the NABA was analysed to be an expression of border externalisation, which was later analysed according to Walia’s observation, to amount to ‘border imperialism’. The colonial dimension here was echoed through the imperialism central to the theme but was additionally examined through the instances of the Agreement’s application, to show that it communicated a deep disregard for its racialised targets.

Conclusion

Overall, the project aimed to identify the ways in which UK immigration legislation may be considered a legacy of colonialism. To this end, the central argument was that Uk legislation has historically developed into current times, to uphold colonial themes.

To begin with, the first chapter started by giving ideological context to these colonial themes which would form the basis of the subsequent analysis. Relying on the works of the likes of Said and Quilbanjo, the scope of the thematic dimension of colonialism was explored. Concluding, the subsequent analysis would weigh analysis centrally against the formation of racial hierarchies, which was seen to serve the purpose of racial ordering/exclusion for the purpose of defining the (white) British character.

¹⁴⁰ (n) Rodriguez

Following this, the next half of the first chapter engaged in thorough analysis of historically relevant Immigration law. This included the Aliens act 1901 which was seen to be the first UK immigration law. Next was the 1948 nationality act, and finally the 1971 act which was introduced in post-colonial Britain. The common theme in these laws was seen to be the fact that they incorporated 'race neutral laws' with the aim of achieving racialised effects. The Aliens Act constructed the Undesirable for the purpose of racial exclusion of Jewish migrants, the 1948 act was incorporated for the purpose of maintaining political power over the white 'dominion settlement' of Canada, with the unintended consequence of commonwealth immigration. In Post-Colonial Britain, though construed as 'multicultural', the 1971 Act sought to reverse this racialised immigration by tying citizenship and legal presence to ancestry, effectively closing off its borders according to British blood.

The following chapter, chapter 2 aimed to show the way these racial politics lingered into contemporary times. The political creation of the illegal in the anti-immigrant atmosphere are analysed to be significant contributors to these lingering politics. Nonetheless, to show the similarly racialised nature of immigration law in this period, it was seen that the Windrush generation were targets in different periods, for similar racialised reasons.

Finally chapter 3 demonstrated through careful analysis of the most recent immigration legal framework, the way that these colonial politics still define the governing of Britain's borders, or the lack thereof, as seen in the externalisation of government functions relating to catering to asylum seekers. Here, it was analysed that the Nationality and Borders Act, along with the Illegal Migration Bill, incorporate an expanded version of the 'Illegal' crystallised from the Hostile environment politics of chapter 2. This construction now defines the way in which people cross into the UK. Nonetheless, It was seen that this construction is still racialised. Finally, it was shown that the asylum partnership agreement represents a particularly explicit manifestation of the UK closing its borders to the racialised migrants it deems illegal. Despite the fact that it was contested for human rights violations it continues to operate. In addition, the resulting border imperialism was analysed to echo colonial themes of metropolitan control. Combined with racialised expulsion, it was concluded that the recent Immigration legislation construed Britain to be a 'contemporary colonial space'.

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