

Citizenship and Rights, a Reflection on the Consequences of Brexit

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Abstract

During the 2016 referendum on EU membership, Brexit was sold as the ultimate example of democracy, 'taking back control' of borders, laws and money. Britain could 'have its cake and eat it': enjoy all the benefits already acquired without having to pay for membership or respect the 'rules of the club'. EU nationals resident in the UK and their 'ex-pat' British counterparts in Europe were denied participation in this critical vote on their future. Hostile environment immigration policies normalised xenophobic sentiment and set the backdrop to the Brexit vote. European Citizenship came with significant benefits and rights which were lost on 31 December 2020 at the conclusion of the transition period, but a lack of information means that most people in Britain have yet to fully understand the implications of their vote or the rights that they have forfeited.

(Keywords: Brexit, Windrush, Democracy, Human Rights, Immigration)

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When David Cameron called the Brexit referendum in June 2016 he did so to satisfy the appetites of the eurosceptic wing of the Conservative party. Convinced that the outcome of the referendum would be a resounding victory in favour of remaining in the European Union, Cameron decided that, rather than fighting an internal battle, he could silence dissent by putting a vote to the country as a whole. This national vote was decided with little preparation and without properly informing people of the fundamental changes that an eventual exit from the European Union would really entail. Eurosceptics including Nigel Farage, a founder member of UKIP (United Kingdom Independence Party) and a Member of the European Parliament, seized the opportunity to spread their message vociferously blaming the European Union for all the failures of internal policy that were troubling the country. In particular, leave campaigners sought to equate European freedom of movement with immigration as a whole and to blame the chronic underfunding of public services on stresses created by migration into the UK.

The results of the referendum are well known: although exit polls showed a slim majority for remain, the country awoke on 24th June 2016 to find, to the horror of many, that the people had voted by a small majority (51.9% and 48.1%) to leave the European Union. It became clear that this referendum, called too quickly and without preparation, had been a mistake; rather than dealing with the consequences of the result, Cameron promptly resigned, leaving chaos behind. Surveys following the referendum revealed that a number of leave voters had voted primarily in protest against the austerity policies of the Cameron government but with no understanding that their vote would result in the loss of rights acquired over several generations. On the other side, the 48%, as many remain-voting citizens called themselves, pointed out that the referendum question had been too broad, vague and open to interpretation, leading people to vote for a concept rather than a precise outcome. They called for a second referendum with clearly described outcomes, supported by informative campaigning and parliamentary debate.

Farage and populist former Conservative Mayor of London, Boris Johnson, had led effective social media supported campaigns to 'take back control', spreading misinformation that attributed the problems facing the country to the cost and demands of participation in the European Union. Johnson's famous red bus contrasted the '£350 million' weekly cost of EU membership with funding the National Health Service, implying a promise to spend more on a beloved national institution with the money saved on membership of a foreign club.

On top of this, Farage and Johnson aligned their propaganda with anti-immigration rhetoric, creating a narrative that simultaneously portrayed EEA jobseekers as stealing jobs from British people and having rights to remain that were given to no others, whilst stoking fears of uncontrolled refugee migration. The absolute freedom to study, reside, work and live in the UK granted by the European Union to all its citizens was unprecedented and resented by those who, to access such benefits had to pay for a visa, pay to access healthcare as well as having to demonstrate their economic self sufficiency and earn a fixed salary. None of these requirements applied to European citizens, and their freedom to come and go, work or not, study, access free health care and claim benefits became a trojan horse for the leave campaign.

The strong slogans and high visibility of the leave campaigns drove public debate and captured the collective imagination in stark contrast with the lacklustre 'Better Off In Europe' campaign which failed to provide compelling or resonant reasons to remain. The governing Conservative party, which officially adopted a neutral position, appeared to be convinced that voters would be able to choose what would be best for their future on faith alone, and chose not to oppose misleading allegations with factual data, or even illustrate how the freedoms enjoyed by EU jobseekers were the same as those offered to British ex-pats in Europe. Information on the real consequences of leaving the European Union was airily dismissed as 'project fear' by Brexit campaigners who promised that Britain could 'have its cake and eat it' by which they meant that the country could enjoy all the benefits of membership without having to contribute to the EU budget or be bound by its rules. These obfuscations of the real differences between remaining within the EU and leaving it, may have been determining factors in the referendum outcome.

In July 2016, following Cameron's resignation, and the surprise withdrawal of leave-supporting leadership candidate Andrea Leadsom, Theresa May became Prime Minister. Whilst she had been a supporter of remaining in the EU, as Home Secretary she had implemented hard line immigration policies that aligned with the anti-immigrant rhetoric that can be seen to have led to Brexit. In government, May surrounded herself with many of the most extreme supporters of Brexit, giving them key positions in her cabinet. The referendum had provided the eurosceptic right wing of the Conservative party with an opportunity to take power and they had effectively seized it. Characterised by her empty phrase 'Brexit means Brexit' May sought from the outset to avoid giving meaningful answers to questions about her policies, whilst creating negotiation 'red lines' aimed at ending free movement, repealing human rights legislation and leaving the European Court of Justice.

Theresa May's apparent obsession with immigration stemmed from her role as Home Secretary in the Cameron government from 2010 to 2016. Pushing for a hard line policy and for the adoption of a 'hostile environment' strategy, May implemented a zero-tolerance policy toward those who did not have the correct paperwork to be in the United Kingdom. Reflecting the growing popularity of UKIP, she set about demonstrating that the government was combating illegal immigration. A 2013 'communications pilot' named *Operation Vaken* sought to use hostile messaging as a means to increase voluntary departures (Home Office, 2012). During a one month trial run from 22 July to 22 August 2013 mobile billboard vans bearing the slogan "In the UK illegally? Go home or face arrest" toured six London boroughs; leaflets and posters continued to be distributed for a further two months. Although the pilot resulted in just 60 voluntary departures during the trial period, most of whom had made contact following the leafleting campaign, media coverage of the pilot and its unfortunate code-name reinforced the perception of a government cracking down on immigration. Quoting Bob Kerslake, a former head of the civil service, Guardian columnist Simon Hattenstone reflected on how May's policy was "almost reminiscent of Nazi Germany" with its name redolent of the antisemitic literature and songs of the Nazis (Hattenstone, 2018).

In parallel with this xenophobic and aggressive messaging, hostile environment legislation in the Immigration Acts of 2014 and 2016 complicated the process of applying for leave to remain and tasked the NHS, local authorities, banks, employers and landlords with enforcing immigration controls. Removing access to social support, benefits and healthcare, these policies sought to make the country unliveable for undocumented migrants as well as EEA jobseekers. Immigration enforcement raids on workplaces and blanket checks of venues assured that those found without work permits would be taken to an expulsion centre and forcefully repatriated by plane, without the possibility of even returning home to collect their belongings. Homeless rough sleepers were also targeted for repatriation. These visible and widely publicised expulsions had the purpose of reinforcing the idea that, if made aware of the danger of being arrested, people would choose to leave voluntarily.

These policies had a particular impact on Commonwealth citizens and in particular the generation of Caribbean people who had arrived in the United Kingdom in response to postwar labour shortages. Often referred to as the Windrush generation, taking the name of the HMT Empire Windrush which had carried the first migrants. Between 1948 and 1971 nearly half a million people are believed to have arrived in the UK.

This wave of migration ended with the 1971 Immigration Act which, whilst granting Commonwealth citizens resident in the UK indefinite leave to remain, required that a British passport holder born overseas could only settle in the UK with both a work permit and proof of a parent or grandparent being born in the UK (BBC News, 2020).

In 2017 it emerged that, as a consequence of the hostile environment, hundreds of Commonwealth citizens had been wrongly detained, denied legal rights and threatened with deportation. Since the Home Office had no record of those granted leave to remain and had issued no paperwork, it was effectively impossible for Windrush arrivals to prove their legal status when requested. Compounding the problem, in 2010 the Home Office had actually destroyed thousands of landing card slips recording arrival dates and with it any proof of legal status for many older migrants. As citizens of the UK and Colonies granted leave to remain, Windrush arrivals reasonably believed themselves to be British citizens, but under the hostile environment, and in the midst of austerity-based cuts to public services, they found themselves unable to prove their status. At least 83 people were wrongly deported by the Home Office including many who had been born in the UK and had had no contact with their alleged country of origin. State pensions, healthcare and other fundamental rights were removed or denied to many others, separating families and leaving pensioners without medical care or social support.

In her 2020 independent review of the Windrush scandal and the events that led to it, Wendy Williams, Her Majesty's Inspectorate of Constabulary, commented that members of the Windrush generation and their children had been poorly served by the British Government and that they had every right to live in the United Kingdom and should never have been caught in the immigration net. The many stories of injustice and hardship she had come across were heartbreaking, with jobs lost, lives uprooted and untold damage done to many individuals and families. Based on interviews with 164 victims, the report identified "the organisational factors in the Home Office which created the operating environment in which these mistakes could be made, including a culture of disbelief and carelessness when dealing with applications, made worse by the status of the Windrush generation, who were failed when they needed help most." Her executive summary concluded that "[these citizens] had no reason to doubt their status, or that they belonged in the UK. They could not have been expected to know the complexity of the law as it changed around them" (Williams, 2018, p.7). The report fell short of defining the Home Office as institutionally racist, but described it as characterised with "institutional ignorance and thoughtlessness", with ministers failing to

recognise that “immigration is ultimately about people and policy”, and that whatever is the objective, this must be rooted in humanity. Through policies designed to combat illegal migration, the Home Office denied people access to work, housing and services. Some lost their jobs, their homes, and in many cases their sense of identity and well-being. Inevitably, their families also paid a price.

These two episodes of internal policy illustrate the political climate that preceded and followed the Brexit vote. An atmosphere of fear and intolerance towards non-British immigrants, refugees and those generally in need, had long been building up in the UK, aided and strengthened by policies which legitimised intolerance. As one senior official quoted in the Williams Report put it, the aim of the hostile environment was “to try to make the business of countering illegal migration something that was everybody’s business to do” (Williams, 2018, p.61).

During her six years as Home Secretary, Theresa May presided over seven immigration bills and 45,000 changes to the immigration rules (Hill, 2017). When she introduced the hostile environment policy in 2012, she aimed to make illegal immigration almost impossible in the UK. The unexpected consequences of this policy however, also affected those British citizens that wanted to bring their foreign spouses to the UK. May introduced a minimum income threshold and rigid documentation checks that left many people in limbo. Whilst spouses from the EU were able to settle and work in the UK without permit, it was made almost impossible for those who were not.

Whilst EU citizens had enjoyed a relatively protected status within the hostile environment, following the 2016 referendum the enforced deportation of EU citizens rose sharply. During the referendum campaign, Theresa May had issued new guidance to allow immigration enforcement to deport rough-sleeping European citizens leading to the removal of 5,301 EU nationals in the year ending June 2017, an increase of 20% on the preceding 12 months (Hill, 2017). As prime minister, May focused on the concept of closing the borders, in complete opposition to one of the fundamental principles of the European Union: the free movement of people.

This removal of fundamental rights mirrored the electoral disenfranchisement of the referendum itself. Although Irish and Commonwealth citizens are allowed to vote in general elections in the UK, European citizens residing and paying their taxes in Great Britain but not holding a British passport are not. In the 2016 referendum, some 3 million EU citizens in the UK were unable to vote on the issue and British

citizens resident in the EU were similarly disenfranchised. Consequently, the people most affected by Brexit were left without any say in the matter.

For the entire three and a half years from the outset of negotiations, the part of the population that had not voted in favour of Brexit tried to argue for the rights of those who did not want to leave the EU. Their preoccupation was shared by British citizens who had chosen to live in the European Union, and whose right to do so and to enjoy equal terms with other members of the Union had been suddenly jeopardised. They were also particularly worried of losing their right of access to health care.

Protest marches in opposition to Brexit and in support of a second referendum were organised by the People's Vote campaign and whilst they were attended by hundred of thousands of people with nearly a million taking part in the fourth march in October 2019, these vast demonstrations failed to secure a second vote (Forsdike, 2019). They were, however, reflected in a Parliament that repeatedly rebuffed May's attempts to ratify withdrawal agreements with the EU. Dependent upon a fragile majority and the support of the Democratic Unionist Party of Northern Ireland, the government continued the practice of concealing the implications of Brexit and was found in contempt of Parliament for failing to lay before it the legal advice it had been given during the negotiations. Narrowly escaping two votes of confidence in December 2018 and January 2019, May's government then failed to gain support for its Brexit deal, resulting in four consecutive rejections of the deal in the House of Commons. By the end of March 2019 May's position had become untenable. In late May she announced her decision to stand down as leader of the Conservative Party and consequently as Prime Minister, paving the way for her replacement by Boris Johnson, whose increasingly hard line on Brexit was supported by the rank and file membership of the Conservative Party.

Promising that, with or without a deal, the UK would leave the EU on 31 October 2019, one of Johnson's first acts as Prime Minister was to prorogue Parliament for five weeks leaving it just two sitting days to discuss a renegotiated deal (Elgot, 2019). Rebuffed by a Supreme Court decision (The Supreme Court, 2019), having lost his working majority in Parliament at the beginning of September and forced to seek a further extension to 31 January 2020, Johnson called a snap election. Ultimately, parliamentary MPs ability to stymie first May and then Johnson had proved pyrrhic. Promising to deliver an 'oven ready' Brexit deal, targeting leave-voting formerly Labour supporting constituencies in the NorthEast, and facing a weak and fractured opposition, Johnson was able to capitalise on the election, gaining the majority that had eluded his predecessors (Wainwright, 2019). Through deliberate time-wasting, exploitation of parliamentary process

and single issue focus, Johnson and his eurosceptic supporters had eliminated any chance of parliamentary scrutiny and with it any hope of a second referendum to redress the democratic deficit of the first one. The opportunity to discuss the Withdrawal Agreement had been lost, along with the chance to scrutinise in any detail the consequences of its implementation on the practicalities of everyday life, on the economy, on the rights of EU citizens in the UK or on those of British subjects in Europe. On 20 December 2019 a bill to ratify the Withdrawal Agreement was passed in the House of Commons, becoming law on 23 January 2020 (UK Parliament, 2020). A final blow was given to this process by the end of John Bercow's mandate as Speaker of the House of Commons. Openly sceptical of Brexit, Bercow had given space to moderates to express their opinions in Parliament (Bercow, 2019). After standing-down at the 2019 general election, his approach was held against him, denying the peerage that was customarily given to former Speakers (Diver, 2020).

Despite his electoral promises to the contrary, Johnson was unsatisfied by much of the content of the Withdrawal Agreement that he had agreed to but that had largely been drafted by the May team. He used his parliamentary majority to pass the United Kingdom Internal Market Act 2020 which, breaching international law, created further discontent in the House of Commons and amongst lawyers who advised that it would diminish Britain's standing in the eyes of other powers (UK Parliament, 2020b. Bowcott et al., 2020b). Johnson's determination to force this Act through, provoked a number of high profile resignations including Jonathan Jones, the Head of the Government Legal Department, Rehman Chishti, the Special Envoy on Freedom of Religion or Belief, Baron Keen the Advocate General for Scotland and Amal Clooney, the UK Special Envoy on Media Freedom, the latter noting in her resignation letter that "it is lamentable for the UK to be speaking of its intention to violate an international treaty signed by the prime minister less than a year ago" (Boffey et al, 2020. Bowcott. et al, 2020a).

During the tortuous negotiations of 2017 and 2018, Theresa May had accepted the request that European Union citizens already in the UK, or arriving before the 31 December 2020, would be granted indefinite leave to remain through a new classification called Settled Status. This was to be granted to those who could demonstrate 5 years of continuous residence in the UK; for those who could not, a Pre-Settled Status would be granted giving them time to acquire the full status within the space of five years. A pilot was started in the summer of 2018 inviting European citizens working in UK universities or for the national health system to apply. From January 2019 Settled Status applications were officially opened and extended to all

with the possibility of applying closing at the end of June 2021. After that date, much like for the Windrush generation, there will be specific requirements to enter and reside in the United Kingdom.

However, there have already been numerous cases of EU citizens rejected by the automated system and notified that they must leave the country within 14 days or face deportation. The substantial legal expenses and stress that follow these notifications might be responsible for the limited number of applications made. As of 31 December 2020, 4.88 million applications had been made for Settled Status of which 4.49 had been concluded. Data for the period illustrates the number of successful applications. Between refusals, withdrawn, void or invalidated applications, 130,200 applicants were unsuccessful, each one a person, a life, a forced change of direction.

Concluded applications by outcome type as of 31 December 2020					
Settled	Pre-settled	Refused	Withdrawn	Invalid	Total
2,422,100	1,936,500	33,700	47,400	49,100	4,488,800
54.0%	43.1%	0.8%	1.1%	1.1%	

(Home Office, 2021)

Indeed, under the cover of the COVID-19 emergency, the British government has been pressing for ever more extreme positions on immigration. In 1981 Great Britain had introduced a new law to remove the right of citizenship from children born in the United Kingdom but with only one British parent. In the past ten years, it has added also a test of ‘good character’ providing a further reason to deny citizenship. Priti Patel, current Secretary of State in the Johnson government, was born in London to a Ugandan-Indian family (Malik, 2020) but she has implemented a fiercely aggressive policy against immigrants and especially refugees, which would have denied her own parents admission when they emigrated to the UK. Patel’s sensationalist rhetoric once again feeds a highly negative portrayal of migration, putting even the lawyers that fight for the rights of the victims of hostile immigration policy at risk: “no doubt those who are well-rehearsed in how to play and profit from the broken system will lecture us on their grand theories about human rights. Those defending the broken system – the traffickers, the do-gooders, the lefty lawyers, the Labour party – they are defending the indefensible” (Grant, 2020).

Patel’s language, policies and attitude mirror and recall actions promoted by authoritarian governments, and a number of lawyers defending immigrants and refugees have become worried for their

safety. Still fresh in people's minds, the killing in 2016 of the MP Jo Cox by a far right extremist set a worrying precedent. Cox took care of refugees and immigrants issues and this made her a target in an atmosphere of increasing anti-immigrant hysteria. The motives of her killing are described in a Guardian article:

Brexit campaigners were claiming that a remain vote would result in 'swarms' of immigrants entering the UK, that it could trigger mass sexual attacks. Just hours before the murder, UKIP unveiled its infamous 'breaking point' anti-immigration poster. Mair [the killer] came to regard Cox as one of 'the collaborators', a traitor to his race. [Jo Cox] The passionate defender of immigration and the remain campaign was a legitimate target in his eyes (Cobain et. al. 2016).

A common trait connects EU citizens working and residing in the UK with the Windrush generation and it raises real concerns for the future: neither group were given the necessary documentation to prove their status. In her report on Windrush, Wendy Williams noted that:

The 1971 Immigration Act entitled people who had arrived from Commonwealth countries before January 1973 the 'right of abode' or 'deemed leave' to remain in the UK. But the government gave them no documents to demonstrate their status. Nor did it keep records. This, in essence, set the trap for the Windrush generation (Williams, 2018, p.9).

Bizarrely, the same situation could easily be replicated in the case of EU citizens who have been granted Pre-Settled or Settled Status. As the Settled Status notification is sent by the Home Office by email or through a text message, but with no physical documentation to follow, lobbying groups have raised the dangers of this policy choice and there have been continued episodes of people denied entry at the borders. As recently as 16 January 2021, Doreen Kathambi, a nurse living and working in Scotland, was forbidden to board her flight from Kenya because her digital EU Settled Status documentation was rejected (Taylor, 2021). Whilst the Home Office has implemented the Settled Status scheme as a digital permit that can be verified through a digital ID by logging onto a government web page (GOV.UK, n.d.), authorities abroad require a printed ID or a stamp on passports.

The research project 'European Citizenship, Constitution and Rights: Education as an Instrument of Democracy', analyses how citizens of countries that had a totalitarian regime, relate to their new position as free citizens. They had to learn a new way of being citizens of a Europe without borders and how to balance the rights and duties that such enlarged citizenship entails. Gradually, they discovered the benefits of being

citizens of 27 nations with the right to live, study and work within the territory of the Union, and the opportunity to learn and understand different behaviours, points of view and to challenge themselves, to improve and grow.

The British case shows an opposite approach: the sudden, and for many unwanted and unexpected, interruption of that wide citizenship of the Union with the consequent removal of the right to live, work and study freely in another country that came with it. Whether they voted for Brexit or to remain, this change affects the entire country and whilst it may not be a problem for older citizens, it has particular impact on younger generations from whom those possibilities of development have suddenly been removed, abruptly diminishing their horizons.

The right to vote and the responsibilities that it brings have to be taken seriously both by governments and citizens. It is through their right to vote that citizens can change their future, and indeed they did, in the case of the Brexit vote. The wilful exclusion of the people most affected by Brexit from what ultimately was a referendum on their future represented a significant democratic deficit allowing one of the greatest liberal democracies in Europe, which had for many years been seen as a safe haven for political refuge, to become an increasingly hostile country. The paradox of this vote to 'take back control' is also that the British people will be deprived of rights enjoyed for almost 50 years and that came as part of the membership of the European Union. Although many are now starting to understand this, it is too late.

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