

## **IMMIGRANTS, ALIENS AND SETTLERS**

This discussion paper argues that, right from the start, members of the Windrush generation should not have been branded as 'immigrants.' The brand has brought them untold injustices since 22 June 1948. An understanding of this would especially help youths of Caribbean heritage to better appreciate their identity and sense of belonging. Let's look at history and the nationality laws. 'Britishness' and its socio-cultural meanings are not discussed.

After the 1707 Act of Union joining England and Scotland, 'English subject' became 'British subject'. Those who were not British subjects were regarded as 'aliens.' An 'alien' can be defined as a 'foreigner, especially one who is not a naturalised citizen of the country'.

Africans in British Caribbean colonies were 'British' on 1 August 1834 (Emancipation Day) when the Slavery Abolition Act 1833 came into effect. They were not considered 'fully-human' or 'citizens of the Empire' during the previous 210 years, but the 'property' of British enslavers. Very many enslaved Africans in the British Caribbean fought alongside British Army and Royal Navy officers in almost every war from the 1600s, including the Seven Years' War, the American War of Independence, the Haitian Revolution and against Napoleon's Army.

After 1 August 1838, anyone who could afford the passage and the cost of living in mother-country Britain could settle there. Those who could obtain a passport and travel to the UK did so without their British nationality or status being officially questioned.

In the 19th century, the expansion of trade created a need for an easy method for foreign merchants, and others settling in the UK, to acquire British subject status. As a result, the Government passed several Naturalisation and Nationality Acts over the following decades.

In 1947 a Commonwealth Conference was convened with all the self-governing Dominions (Australia, Canada, Ceylon, India, Newfoundland, New Zealand, Pakistan, Southern Rhodesia, the Union of South Africa, and the Irish Free State) to resolve citizenship and issues. Thereafter, a general agreement was reached on a new scheme to reconcile the citizenships of the individual Commonwealth nations with the overall status of British subject. This formed the basis of the British Nationality Act 1948, which came into force on 1 January 1949. It also introduced the status of citizen of the United Kingdom and Colonies whilst retaining the term 'British subject' to cover every citizen of a Commonwealth country, including the United Kingdom and the Colonies. Between 1947 and 1951, the nine Commonwealth countries that became independent (for nationality purposes) on 1 January 1949 introduced their own citizenship laws.

The British Nationality Act 1948 provided that: any CUKC or citizen of an independent Commonwealth country was classed as a British subject [s.1(1)]; British subject and Commonwealth citizen meant the same thing [s.1(2)]; nine countries, that were Dominions, ceased to be part of the United Kingdom and Colonies for nationality purposes on 1 January 1949 [s.1(3)]. These were: Canada, South Africa, Pakistan, Australia, Newfoundland, Southern Rhodesia, New Zealand, India, and Ceylon. On 1 January 1949, Eire (now Ireland) also ceased to be part of the United Kingdom and Colonies for nationality purposes. Under the 1948 Act, the status of British subjects without citizenship was also created as a temporary measure for individuals connected with one of the six s.1(3) countries (Australia, Newfoundland, South

Africa, Southern Rhodesia, India and Pakistan) which had not defined their citizenship laws by 1 January 1949.

Throughout the period 1 January 1949 to 31 December 1982, the British Nationality Act 1948 remained in force, albeit it was amended by both nationality and immigration legislations. The first modern immigration statute was the Aliens Act 1905 which, as the title indicates, applied to aliens only. As regards British subjects, they had a right to enter and reside in the UK by virtue of their nationality. More importantly, the immigration entitlements incorporated within British subject status were removed and independently developed between 1949 and 1983. The notion that the British Empire constituted a single territory, and that all British subjects were free to enter the United Kingdom, came to an end with the introduction of the Commonwealth Immigrants Act 1962. It limited the number of British subjects who could enter Britain.

In post-war years, colonies in the British Empire increasingly became independent and enacted their own citizenship laws. This process had a crucial effect on the citizenship status of those CUKC countries connected with them. When a colony attained independence, citizenship of the UK and Colonies was withdrawn from all but a few. On independence three things could happen: (1) the person became a citizen of the new country and lost CUKC; (2) the person became a citizen of the new country and retained CUKC; (3) the person did not become a citizen of the new country and remained a CUKC (i.e. was unaffected).

The Immigration Act 1971 introduced new changes. The idea of freedom from immigration control for a class of persons defined in terms of birthplace or ancestry culminated in the concept of "patriality". This term replaced the 1962 and 1968 Acts in their entirety and, together with the British Nationality Act 1948, represented the state of British nationality law from 1 January 1973 to the commencement of the BNA 1981 on 1 January 1983. The notion of partiality was intended to serve as a secondary status (e.g. an individual CUKC would also have been either a "partial" or a "non-partial"). A "partial" was a person who had a "right of abode" in the UK [s.2(6)] of the 1971 Act and who, as a result, was "free to live in, and to come and go into and from the UK without let or hindrance .....". A "non-partial", on the other hand, could only enter and "live, work and settle in the UK by permission ..."

To return to the British Nationality Act 1948, it is worth noting that it does not mention the word 'immigration' or 'immigrant', but includes the word 'alien(s)' 32 times. A person from the British Caribbean settling or moving to live in the UK was not envisaged in the Act as 'migrating', as it is what an alien would do because of the latter's status. To quote Wendy Williams, in *Windrush Lesson Learned Review* (Williams, 2020: 53):

"Under the Act, people who came to the UK from then on and into the 1950s were citizens of the UK and Colonies (CUKC) if they had been born in or had a connection to one of the remaining colonies, or if their father was a CUKC at the time of their birth. They arrived and settled in the UK on their own or their parents' CUKC passports, with the same rights to come and go as the resident population. As their former countries became independent, unless they had a UK born father, they would become Commonwealth citizens who could register for UK and Colonies citizenship after living in the UK for 12 months. Since CUKC status included the

legal right to come to the UK, no one needed, and nor did they get, legal documents. Many lived, went to school and worked in the UK without any official immigration record...”

The words “official immigration record” assume that there should have been such a record held by the individual even though there were school records, or other oral evidence, for example, from parents, teachers, and others. In reality, the introduction of British immigration and nationality laws created aliens among Caribbean people who settled in the UK after 1 July 1962 if they were not travelling on a British passport. Someone from Ghana or Nigeria would have been considered an alien because the two countries had gained independence in 1957 and 1960 respectively and had their own nationality/citizenship laws. Jamaica became independent on 6 August 1962, but tens of thousands of her countrymen and women had already settled in the UK before then. Independence was granted to other Caribbean colonies during that decade, and it affected the status of their people in the UK.

Williams added (on page 54):

“The 1962 Commonwealth Immigrants Act included a system of employment vouchers that restricted entry to people with a job offer or skills in short supply. The legislation capped vouchers at 20,000 per year. It also encouraged people already in the UK to stay, as the law would stop them re-entering if they did leave, and it let migrants bring their families to join them...”

The Review very well explains what happened after 1 July 1962, as future immigration and nationality laws created untold miseries for the children of the early settlers from the Caribbean.

The hard-working, ambitious Caribbean men and women who settled in the UK before and after the Empire Windrush docked at Tilbury, Essex (on 22 June 1948), were often treated as aliens. Albeit, the British Nationality Act (July 1948) formally gave them the ‘right to settle’ here from 1 January 1949, not the status of ‘aliens’. The latter had to apply to become ‘British’. Independence from Britain changed the status of tens of thousands of Caribbean settlers in the UK and it was up to them to ‘reclaim’ their British status by applying to the British Government. Whilst the vast majority made applications, there were thousands who did not do so immediately. The Williams Review highlights the consequences and makes thirty recommendations to help the Home Office resolve what became known as the ‘Windrush scandal’.

Immigrants or Settlers?

After WWII ended in May 1945, between three and four thousand Caribbean ex-servicemen remained in the UK, married and raised families mostly with local ‘white’ women. They had been asked to stay to defend Britain, in readiness for war (if another soon started), and to help rebuild the country. I have had the privilege of interviewing some of those war veterans, who explained that they corresponded with their friends in the Caribbean and had encouraged some of them to return to the UK, especially those who had served King and Country in WWII. Consequently, British troopships, including the ‘Ormonde’ and ‘Almanzora’, brought hundreds of RAF ex-service personnel back to the UK before 22 June 1948.

The story of a WWII RAF serviceman named Allan Wilmot is a case in point. He returned on the *Almanzora* to the UK on 21 December 1947. However, he told me it was the 'Empire Windrush' that caught the attention of the British media and some Members of Parliament who were not entirely welcoming. The ship brought more than a thousand passengers, most of whom were Caribbean-British and ethnically diverse. That was not how many UK citizens saw the situation because the majority of the passengers were 'Black' and the descendants of enslaved Africans who toiled for meagre wages in Britain's sugar colonies. A Windrush passenger (who is still alive) has informed me that a few of the African-Caribbean women obtained jobs in NHS hospitals later in 1948. A minority of the passengers on the ship *Empire Windrush* were the descendants of indentured labourers: Asians, Chinese, and Portuguese. The fact that majority of the passengers were WWII ex-servicemen and women was disregarded by the general public.

Even before the *Empire Windrush* had docked at Tilbury, the passengers were viewed as 'immigrants' and not as 'Caribbean-British settlers' who had also settled here to help rebuild post-war Britain. They left colonies that were impoverished by the mother country for decades. Given that most of them had served King and Country in WWII, the unwelcoming attitude tied in with the thinking of the day ('No Irish, no coloureds, no dogs') and revealed the public's ingratitude and racial prejudice. The way in which their arrival was reported in the British media was, generally, negative. Public discourse was littered with racial undertones and this made life very difficult for the new settlers, who faced many challenges in the decades that followed.

In the 1950s, public discourse on immigration or immigrants painted a picture of 'aliens', 'foreigners', 'undesirables', 'inferior', 'scroungers', and 'Blackness' was associated with those images. It was an era of the 'Teddy Boys' who roamed inner-city streets, especially in London, physically terrorising and assaulting members of the early Windrush generation in efforts to 'chase them back to the colonies.' During those days, Caribbean men, their wives or partners, mostly white women, were constantly under attack in Notting Hill (London) and Nottingham. There were riots in August and September 1958, and many individuals on both sides were injured, but the racist gangs were defeated, temporarily. Tension continued and on 17 May 1959, an Antiguan man named Kelso Cochrane, aged 32, was knifed to death in the Notting Hill area. Sadly, the police, to date, have failed to find his murderers. It is regrettable that Kelso's murder was not included in the Windrush Lesson Learned Review 'Timeline' (Williams, 2020: 60).

In the 1940s and 1950s, 'racism' was overt ('in-your-face') and there were no laws against it. Members of the early Windrush generation led the campaign for the race relations and equality laws of the 1960s/1970s and built also the socio-economic platform for Black Britons today. They included key figures like Claudia Jones, David Pitt, Jocelyn Barrow, Amy Ashwood Garvey, Sam B. King (Windrush passenger) to name but five from the Caribbean community. Racism, treating individuals or groups less favourably than 'White' people because they are 'Black' or 'Coloured', has been the main reason for the actions of most British politicians and members of the public during those days.

From the 1600s, British people have 'settled' (not as immigrants) in many other countries, like North America, Australia, Canada, the Caribbean to name but four places. What if

Members of Parliament and the British public had readily accepted Caribbean people as 'settlers' in the UK after June 1948? Would there have been notices like: 'Keep Britain White'? Would Enoch Powell MP have made his 'Rivers of Blood speech' in 1968? Windrush passengers settled mainly in England and Wales in the same way as the English did in Scotland, Ireland and Wales; Welsh, Northern Irish and Scottish settlers live in England and are British. The situation should not be different for Caribbean people who are also 'Stakeholders' in the UK Their ancestors helped to build the British Empire from the 1600s and the Windrush generation helped to rebuild Britain after WWII. It was unjust to have applied to them immigration and nationality laws after 1 July 1962. The so-called 'Windrush scandal' was inevitable because the Home Office disregarded the fact that every member of the Windrush generation was British before and after 1 July 1962. They deserved the 'respect' accorded to the Scottish, Welsh and Northern Irish 'settlers' in regions of the UK.

To quote from page 568 of the book: 'British Social Trends since 1900' edited by A.H. Halsey (1993), that says "... The legislation of the 1960s was rationalised and formalised into a new Immigration Act of 1971... Those who had come before the Act came into force in 1973 were settlers and those who entered after were simply migrant workers. Immigration legislation had led to the establishment of discriminatory nationality laws..."

Also: "Most of those who entered Britain in the twentieth century, including the post-war years, were simply moving from one part of the British empire to another as *British Citizens*..." Winston James' paper: Black Experience in Twentieth-Century Britain, in *Black Experience and the British Empire*, edited by Phillip D. Morgan and Sean Hawkins (2004).

Immigrants or migrants are people who move to a different country that has had no political, social or relevant links with the one they have left, as they seek residency and/or nationality status. This was not so for the people who came from the British Caribbean that survived more than 340 years of colonialism. They settled in the heart of 'Empire' after WWII. Therefore, members of the Windrush generation should not be branded as 'immigrants' or the 'children of immigrants'! A proper understanding of colonial history and Britain's nationality laws before 1962 would have helped Members of Parliament and the general public to appreciate the fact that members of the Windrush generation from the Caribbean were British, from the start. It was an act of gross injustice as thousands of their children were made victims of the Government's 'hostile environment'. Most of them were over the age of 50 when they were harassed by 'immigration enforcement/Home Office police' who readily saw them as 'suspects' because they were 'Black'.

A case in point is that of 'Gloria' who told Wendy Williams:

"I came to England on the 30/11/1970 and my mum took me to the doctors on the 31/12/1970. I sent them everything. I sent them my doctor's files...they just kept on and kept on...I wish that they had just said in the first place and been honest and says, 'Well, we can't locate you,' but I couldn't understand [why] they couldn't locate me? I went to the library...and I could locate myself there, they located all my reports, my school reports."

*Gloria*

“We even contacted HMRC and got a National Insurance contribution breakdown from 1976 to 2011. They said that wasn’t enough.” *Gloria’s daughter, Chaninca* (Williams, 2020: 98)

No financial compensation scheme can ever mitigate the distress suffered by these members of the Windrush generation, harassed by Home Office personnel who treated them like ‘illegal immigrants’, and less favourably, while they were as British as the British.

Further reading:

<https://www.gov.uk/government/publications/windrush-lessons-learned-review>

<https://www.theguardian.com/uk/2002/aug/24/artsandhumanities.nottinghillcarnival2002>

<https://www.bbc.co.uk/programmes/b019f9h7> (BBC broadcast: Kelso Cochrane / Stephen Lawrence)

[www.windrushfoundation.com](http://www.windrushfoundation.com)

*Arthur Torrington, July 2020*