

The Radicalisation of Citizenship Deprivationⁱ

Citizenship, deprivation, revocation, failed citizens, counterterrorism

Abstract

This paper addresses the regulation of citizenship in the UK, in particular the recent increased powers of citizenship deprivation against individuals suspected of involvement in terrorism. It examines the genealogy of such a practice and explains the juridical context of its use. It argues that changes in citizenship policies, broadening state power and removing substantive and procedural safeguards, has eroded equal citizenship by creating a hierarchy among British citizens. This radical policy shift has been enacted in the context of counter radicalisation policies that posit commitment to British values as a key weapon in the ‘war on terror’. Muslims are at best ‘Tolerated Citizens’, required to demonstrate their commitment to British values. Muslims holding unacceptable extremist views are ‘Failed Citizens’ while the ‘home-grown’ radicalised terrorist suspect is conceived of as the barbaric Other to British values, whose failure as a citizen is severe enough to justify the deprivation of citizenship.

Introduction

The deployment of citizenship deprivation powers, provides an example of the unprecedented blurring of the boundaries of social and security policies. As a power that can be invoked by a government minister without the need for any trial or criminal conviction relating to terrorism, citizenship deprivation powers are grounded in the increasingly dominant logic of prevention and premised on the logics of suspicion and anticipation. Foregrounding security over equality, and echoing a colonial history of governing through a racialised conception of social order, citizenship is not a protected right but a reward for conformity to the bounds of government defined acceptable behaviour. The limited use of these powers belie the coercive and symbolic force that the threat of citizenship deprivation presents.

The United States Supreme Court described deprivation of citizenship as ‘a form of punishment more primitive than torture’.ⁱⁱ While the evolution of international human rights has extended universal protection to all individuals irrespective of their migration status, and blunted the sharpest edges of the distinction between citizens and aliens, citizenship nevertheless remains a ‘meta-right’ (Baubock and Paskalev, 2015: 16) structuring the relationship between the individual and the state, constitutive of national identity and belonging.

The assumption that once granted, citizenship is secure, is no longer true. In recent years, an increasing number of Western states have reasserted their power to revoke and remove citizenship. In Canada, the *Strengthening Canadian Citizenship Act* has expanded the grounds for the removal of citizenship from dual nationals and naturalised citizens to those convicted of offences related to terrorism or membership of an armed force or group engaged in armed conflict with Canada (Macklin, 2014). In 2015, the Australian government passed *Australian Citizenship Amendment (Allegiance to Australia) Act* automatically removing citizenship from dual nationals who engage in terrorist conduct, fight for a terrorist organisation or are convicted of a terrorism offence. In France, the Constitutional Court reaffirmed the state's power to remove citizenship from naturalised French citizens who are convicted of offences related to terrorism (Guardian, 2015); in 2010, President Nicolas Sarkozy proposed extending this to allow the state to remove French citizenship 'from any person of foreign origin who voluntarily threatens the life of a police officer'; his Interior Minister Brice Hortefeux went further, arguing that the measure should be extended to anyone involved in 'female circumcision, human trafficking or serious acts of serious delinquency.'ⁱⁱⁱ Proposals to strip citizenship from French-born dual nationals were also floated after the terrorist attacks in 2015 but these were withdrawn after criticism that they eroded the equality of French born citizens (Guardian, 2016). However, it is the United Kingdom that has been at the forefront of increasing the power of the state to remove citizenship.

The power of the British government to revoke the nationality of naturalised British subjects or citizens, first enacted in 1914 appeared to have fallen into disuse by the end of the century. The power, never extinguished, lay dormant and has now re-emerged, reinvigorated as an important tool in the 'war on terror'. Since 2001, there have been three acts of Parliament, each broadening executive discretion and extending the reach of the state against larger groups of British citizens, making their denationalisation easier. Between 2006 and 2015, at least fifty-three Britons had their citizenship removed (Macklin, 2015:17). Constrained by its international law obligation to avoid statelessness, Britain now proposes to exile those of its citizens it cannot denationalise, preventing their return to the UK.

The increasing resort to citizenship deprivation and exile in the fight against terrorism is a new departure in the social policy of citizenship deprivation. It constitutes a securitisation of citizenship policy operating through a racialised filter. Border control has always been a locus for security surveillance, as the state asserts its sovereignty over its territory. The practice of

stopping, searching and questioning individuals at ports of entry plays a central role in the production of 'suspect communities' (Hillyard, 1993; Pantazis and Pemberton, 2009; Choudhury and Fenwick, 2010).

The racialized and gendered logic pervade bordering practices, defending the state against the threat posed by radicalised Muslim men and vigilant to the need for protecting vulnerable Muslim women, are deployed to control mobility in public spaces within the borders of the state (Basham and Vaughan-Williams, 2013). Of particular concern for Muslims has been the use of powers under Terrorism Act 2000 Schedule 7 enabling examinations to be carried out at ports and the border areas 'for the purpose of determining whether [the person being examined] appears to be a terrorist'. Crucially, while the purpose of these stops is to determine whether the person is a terrorist, there is no requirement to have reasonable suspicion of the person that is being stopped. This therefore grants significant and broad discretion to an examining officer in deciding which individuals to stop. In effect it requires the identification of individuals whose appearance, actions, or behaviour make them look like a terrorist. For Muslims the profiling involved in such stops 'raise painful questions about how they are seen and positioned by others': they experience shock, hurt and confusion from the failure of the state to see them as good citizens, as 'respectable, moderate, law-abiding and contributing members of society' (Blackwood, Hopkins and Reicher, 2013). They may seek to manage their 'risky' Muslim identities through performances of 'safe' identities (Mythen, Walklate and Khan, 2013 and 2009).

The legal practice and policy developments on the deprivation of citizenship examined here suggest that the locus of state security concern and control has extended, from the physical spaces policed by the state, to the boundaries of nationality and citizenship; a step not taken even at the height of the violence in the conflict in Northern Ireland. It therefore constitutes a significant development in the securitisation of nationality and citizenship policy.

There has been increasing academic attention to the 'return of banishment' (Macklin and Baubock, 2015). The analysis has focused on the legal changes, their efficacy in generating security (Macklin, 2015; Spiro, 2015); and the tension between policies of citizenship deprivation and liberal political theories of equal citizenship (Gibney, 2011, 2013; Bauböck and Paskalev, 2015; Mantu 2015). However, there remains a gap in understanding why the policy change has happened at this juncture. Western Europe is no stranger to the involvement of its own citizens in so called 'home-grown terrorism' linked to causes from

across the political and ideological spectrum. Yet ‘no one would have fathomed stripping’ the leaders of the Bader-Meinhoff gang of their German citizenship (Joppke, 2015: 11). In Britain, denationalisation and exile, as tools of counterterrorism policy, were not used during the conflict in Northern Ireland but are increasingly being used against British Muslims.

While most accounts point to the ‘war on terror’ as part of the context for these changes, only a few explore further the precise nature of the change that this has created. Drawing on the demarcation of ‘old’ and ‘new’ terrorism (Laqueur, 1998; Neumann, 2009), Joppke argues that the difference in approach reflects the changed nature of terrorism; the previously unthinkable is now permissible as the new terrorism is ‘one that transcends borders and is committed by people who explicitly posit themselves outside the political community of the nation-state’ (2015: 11). Those associated with the new terrorism are viewed as having revoked their own citizenship, placing themselves outside the political community by their actions, which are incompatible with the values of the national community.

Of course, citizenship as ‘legal status’ is only one aspect of a broader conception of citizenship, encompassing equality in the enjoyment of civil, political, economic and social rights. Citizenship is not only a legal status, but also a ‘social practice’ (Benhabib, 2004) that is embedded in a wider matrix, through which issues of national identity, belonging and values are addressed and articulated. Citizenship may be claimed through ‘acts of citizenship’ that ‘call the law into question’ (Isin, 2008: 39). Nevertheless, citizenship as legal status matters and policies removing citizenship ‘provide an indication of what constitutes the concept of citizenship and nationhood’ (Herzog, 2015: 20).

This paper traces the development of denationalisation as a policy tool; it argues that its use in counterterrorism policy at this juncture is made possible by a broader shift to a ‘pre-crime’, preventive paradigm in security policy and the “logics of suspicion, anticipation and prediction” (Raggazzi, this volume). Within this move to prevention, engagement in political violence is seen as the consequence of a process of ‘radicalisation’. Crucially, the government’s counterterrorism policy identifies holding ‘extremist’ views, defined as ‘vocal opposition to core British values’ as a key indicator of the risk of radicalisation (HMG, 2011: 109). Thus, promoting ‘Britishness’ and ‘British values’, through ‘muscular liberalism’ lies at the heart of the government’s approach to countering ‘extremism’ and preventing radicalisation. The radicalised British Muslim, perceived as lacking British values, signals the

ultimate failure of social policy to reform and integrate ‘deviants’ and so no longer deserves British citizenship.

Belonging, in the modern state, is no longer restricted to shared origins but encompasses ‘shared values’. While the concept of civic citizenship holds out the potential for a more inclusive national identity, compared to citizenship and belonging based on ethnicity, it nevertheless creates new normative boundaries of exclusion and categories of suspicion based on the failure to share common values. It constructs a hierarchy in which the formal equality of legal citizenship is hollowed out by the creation of the hierarchy that draws a distinction between the ‘good’ ‘tolerated’ and ‘failed’ citizen.

Bridgette Anderson (2013) has shown how, in nations conceived as ‘communities of value’, the ‘Good Citizen’ exists in contrast with the ‘Tolerated Citizen’ and the ‘Failed Citizen’. The ‘Tolerated Citizen’ is only contingently accepted, and required to patrol the borders of good citizenship:

“...contingent acceptance turns tolerated citizens, who must often struggle for acceptance into the community of value, into the guardians of good citizenship...those who are not formally established in the community of value, must endlessly prove themselves, marking the borders, particularly of course by decrying each other to prove they have the right values.” (Anderson, 2013: 6)

The ‘Failed Citizen’, the ‘benefit scrounger’ with too many children, the prostitute, the rioter, and convicted criminal, encompass those ‘who are imagined as incapable of achieving, or failing to live up to, national ideals’ (Anderson, 2014: 4). For Anderson, the Failed Citizen and Non-Citizen, while existing as citizenship’s Other, remain distinct from one another. The Failed Citizen retains their citizenship, even as their rights are curtailed to the point where there is ‘bare toleration of their presence on state territory’ (Anderson, 2013: 5). The radicalised British Muslim appears to blur this distinction, traversing the border between Failed Citizen to non-citizen. Yet, this is not the first time that the legal rights of British citizens have been curtailed or withdrawn from those deemed too racially and culturally different to belong.

2. Citizenship and Empire

For modern states, the uncomfortable and unspoken role of racial and gendered hierarchies implicated in their construction threaten to undermine their ideals of liberal democratic equality (Anthias and Yuval-Davis, 1992; Goldberg, 2002). These contradictions and tensions are evident in the post-war legislation that saw both a racialised narrowing of the definition of nationality, which revoked key rights accompanying citizenship, if not the formal citizenship, of British nationals in Britain's former colonies, while at the same time creating liberal routes to citizenship for Commonwealth citizens already in the UK.

The changes reflected the anomalies that arose from the fact that at the start of the twentieth century, Britain was an empire with no citizens, only subjects of the Crown. Being a subject, much like being the Sovereign, was an accident of birth. The British Nationality and Status of Aliens Act 1914, confirmed the common law tradition ensuring everyone born within the Empire and Commonwealth, was a British subject, and enjoyed the privileges of their status on an equal footing with fellow subjects of the King Emperor. The elegant symmetry of this imperial structure, while never perfect, was unable to withstand the strain of former colonies asserting their independence (Hansen, 2000). The British government responded with the British Nationality Act (BNA) 1948, which defined British citizenship for the first time and made British subjecthood derivative of citizenship of the United Kingdom and its colonies, or citizenship of independent Commonwealth states. However, it was the desire to avoid distinctions between different types of royal subjects that led the BNA 1948 to guarantee, to both British and Commonwealth citizens, the right to enter, reside, and work in the metropolitan heart of the empire and Commonwealth. This was to have an unforeseen but profound impact on the ethnic and cultural diversity of Britain as increasing numbers of citizens of the New Commonwealth arrived seeking employment in post-war Britain.

The need for new immigration controls was soon linked to the perceived threat to social cohesion. Restrictions on immigration were argued as necessary in allowing new immigrants to be 'absorbed' or 'assimilated' into the host society. Black immigration from the 'new Commonwealth' was viewed as giving rise to tensions in relations between those of different 'racial' groups. Measures controlling or restricting immigration were justified as a prerequisite to adopting policies supporting integration. This policy was most aptly described at the time by the Labour MP Roy Hattersley who said, 'Integration without (immigration) control is impossible, but (immigration) control without integration is indefensible'.^{iv}

Soon the restrictions extended beyond Commonwealth citizens to British nationals in the colonies, who found themselves exiled and banished as their citizenship was decoupled from the right of abode in the UK. This was not a revocation or deprivation of their citizenship but a curtailment on their rights as citizens to unrestricted access to the UK; through the partiality rule, only the children and grandchildren of British citizens born, adopted or naturalised in the UK enjoyed the same rights as British citizens born in the UK. The rule operated as, 'a polite way of allowing whites in and keeping 'coloureds' out' (Kundnani, 2007: 21). The British Nationality Act 1981 reinforced the racialized ethnic national identity. It applied a restrictive approach to British citizens from outside the UK, leaving British citizens in its former colonies, who could not claim an ancestral connection to Britain, exiled with either British Overseas Citizenship or British Dependent Territories Citizenship, both of which amounted to 'virtually worthless second class citizenships' that gave them nowhere to go (Parekh, 2000: 206).

The BNA 1981 adopted a liberal approach to naturalisation for those living within the UK; a language competency requirement that existed in theory was not enforced, making time spent living in the UK the main criteria for naturalisation. This allowed the post-war labour migrants from the Commonwealth to naturalise as British citizens, to maintain dual citizenship and be joined by their families. Furthermore, all children of foreign nationals settled in the UK had an automatic right to British citizenship. This approach recognised that post-war labour migrants were not temporary guest workers but a permanent feature of the demographic landscape; by 2011, there were 3.4 million British citizens who were born overseas (Office for National Statistics, 2013). The BNA, by creating a largely 'procedural' pathway to citizenship based on time spent in the UK, avoided discussion on 'British values'; nor was citizenship leveraged in any instrumental way to encourage or support steps towards integration.

The exercise of powers to remove citizenship provides a further indicator of who truly belongs and is deserving of citizenship. The power of the British government to remove or revoke the citizenship of its subjects, and to limit their right to enter and remain in the UK are conditioned by its obligations in international law. International agreements aimed at preventing and reducing the number of individuals who are stateless further limits the ability to remove or revoke nationality. The 1961 UN Convention on the Reduction of Statelessness requires State Parties to grant citizenship to individuals who would otherwise be stateless. It also prohibits the removal of citizenship, 'if such deprivation would render him stateless';

however, this too is not an absolute prohibition as it permits deprivation of nationality, notwithstanding the risk of statelessness, where an individual commits acts inconsistent with a duty of loyalty to his or her country of citizenship by engaging in conduct that is 'seriously prejudicial to the vital interest of the state'. A state can avail itself of this exception if, at the time of signature, accession, or ratification of the Convention, the state's law already provided for this and a declaration was made to that effect. However, any action by the state to deprive a person of their citizenship must be in accordance with law and allow for a fair hearing by a court or independent body. In signing the Convention in 1966, the United Kingdom made the relevant declaration in order to retain the power that already existed in British law to remove citizenship from a person whose conduct was 'seriously prejudicial to the vital interests of the state' even where it rendered an individual stateless.

This power to revoke citizenship was first introduced in the British Nationality and Status of Aliens Act 1914. Section 7 of the Act allowed the Secretary of State to revoke a certificate of naturalisation on a number of grounds, including false representation, fraud, or concealment of material circumstances in securing the naturalisation; and conduct suggesting disloyalty or disaffection to the Crown. Section 7 was further amended in 1918 to allow revocation of naturalisation for: unlawfully trading or communicating with the enemy during a time of war; knowingly engaging in any business that would assist the enemy in such a war; conviction within the first five years of naturalisation; an offence with a sentence of more than one year of imprisonment or a fine of £100; failing to live in the dominion of the Crown; and finally 'remaining according to the law of a state at war with His Majesty a subject of that state'. A person who met any of these conditions risked having their naturalisation revoked if the Secretary of State took the view that their continued naturalisation was furthermore 'not conducive to the public good'.

The British Nationality Acts of both 1948 and 1981 retained a broadly similar approach to the deprivation of citizenship for those who are citizens by naturalisation or registration. As before, in addition to the specific grounds for deprivation, before acting the Secretary of State needed also to be 'satisfied that it is not conducive to the public good that that person should continue to be a citizen of the United Kingdom and Colonies'.^v Thus, from the start a 'conducive to the public good' test was applied in determining whether to remove citizenship, where a person fell within the preliminary grounds for removing citizenship; importantly, it was a secondary test, which operated as an additional hurdle rather than an opening gateway to the exercise of executive power. This cautious approach to removing citizenship was

reflected in the limited application of the power in practice. The powers were used rarely; in the 1950s and 1960s they were mainly used against citizens engaged in espionage in the Cold War; it was used for the last time in the twentieth century in 1973 (Gibney 2013: 646; Macklin, 2014). The marginal position of deprivation powers in citizenship policy was reflected in the lack of attention they received during the major review of citizenship laws that led to the enactment of the BNA 1981.

3. Values and Citizenship in the War on Terror

Citizenship deprivation policies, reawakened after 2001, were operating in a policy landscape that had increasingly identified young Muslims as targets for policy intervention. The perception and stereotype of young Muslim men has, at least since the protests against the publication of the *Satanic Verses*, transformed from that of passive, studious and well behaved Asian pupils, so called 'behaviours and achievers' to 'believers', self-segregating, fundamentalists whose presence is seen as a threat to tolerance and diversity (Archer, 2003). The 1990s saw increasing vocal and visible assertion of a religious identity among many British Muslims. The political mobilisation around demands of religious equality can be read as a sign of integration into the framework of multicultural equality (Modood, 2006) and a positive source of empowerment (Gardner and Shaker, 1994). However, in the public discourse Muslims emerged as the new 'folk devils' embodying fears of religious fundamentalism that threatened liberal values (Alexander, 2000).

The civil disturbances in the post-industrial mill towns of the north of England in the spring of 2001 raised further questions of integration, belonging and identity. The new policy agenda, which emerged out of the reports into the disturbances, called for a focus on fostering 'community cohesion'. In that context, the earlier emphasis on multiculturalism was criticised by Ministers and some leading commentators as emphasising the value of diversity at the expense of common values. A greater emphasis on a shared British citizenship was seen as part of the solution.

Questions about the identity, belonging, loyalty and values of British Muslim intensified after the terrorist attacks on New York and Washington in September 2001 and again after the 2005 bombings in London. The government framed terrorism inspired by Al-Qaeda as an attack not only on the population but on its values. Its counterterrorism strategy argued that those who 'reject and undermine our shared values' create 'a climate in which people may be

drawn into violent activity' (HMG, 2009: 87). The questions posed to Muslims in newspaper surveys revealed an underlying assumption that Muslims did not share the values of the wider British community (Sobolewska 2010). Echoes of the criticism that Muslims had failed to be sufficiently vocal in their condemnation of terrorist attacks in the West (Guardian, 2001), could be heard in government policy targets for increasing the 'extent to which domestic Muslim communities reject and condemn violent extremism' (HMG, 2009: 158). This suggested that 'domestic Muslim communities' were now at best 'Tolerated Citizens'; contingently accepted, to the extent they patrolled the borders of good citizenship. Their opposition to terrorism and commitment to British values was not assumed, but something that needed to be evidenced and enacted. A number of Muslim civil society groups responded to the call for clear, unequivocal and more visible condemnation of terrorism was the creation of campaigns such as 'Islam is Peace' which ensured that within days of the July 2005 bombings and the failed attacks on London and Glasgow in 2007 there were full-page adverts supported by more than fifty Islamic organisations in major national newspapers condemning the attacks.

The need for Muslims to prove their loyalty and belonging set the stage for more radical changes in citizenship attribution and deprivation policies. One part of the response was stricter rules on access to citizenship. The traditional liberal approach to citizenship - on the basis of time spent in the UK - was soon abandoned because citizenship was now seen as a policy tool for developing 'a sense of civic identity and shared values' (Home Office, 2002:32). Sharing British values became a more explicit criterion for access to citizenship; the Prime Minister argued that 'people who want to be British citizens must share our values and way of life' (Blair, 2005). In a wide ranging paper on constitutional reform, the government set out further its thinking on citizenship, noting that British citizenship needed to be seen as 'valued and meaningful' and that it included 'a set of values which have not just to be shared but also accepted' (Ministry of Justice, 2007: 57).

The construction of what it means to be a good British citizen was also expressed through the a 'citizenship test' first introduced in 2005 for those applying for British citizenship. The test was later extended to those who applying for indefinite leave to remain. Viewed in the public and media debate as a test of 'Britishness', the Life in the United Kingdom test, aimed in part to reassure an anxious public that access to citizenship is limited to those who understood the values needed to be a good citizen. It established 'a normative ideal of what a citizen - and a new citizen in particular - should be (or at least what they should know)' (Byrne, 2016: 5).

Plans for a points-based system of ‘earned citizenship’ in which points were deducted for failing to integrate into the British way of life, or showing active disregard for UK values (Home Office, 2009: 17) were drawn up but never implemented following the change of government in May 2010.

A second part of the response was a significant broadening of powers to remove and revoke citizenship. The Nationality, Immigration and Asylum Act 2002 created a new single standard for removing citizenship. The new test was whether the Secretary of State believed that the individual has done anything that was ‘seriously prejudicial to the vital interest’ of the United Kingdom or a British Overseas Territory.^{vi} This new test, in part mirrored the provisions of the European Convention on Nationality 1997, as well as the language in the 1961 UN Convention on the Reduction of Statelessness, both of which were cited in justification of these changes (Gibney, 2013). However, a further radical widening of the State’s power to remove citizenship came in the aftermath of the 7 July 2005 bombings. The Immigration, Asylum and Nationality Act 2006, replaced the ‘vital interests’ test with an even weaker threshold that allowed deprivation of citizenship if it was considered ‘conducive to the public good’. This in effect applied the same test for the exercise of citizenship deprivation powers as used for the deportation of aliens.

Most controversially, the power of citizenship deprivation was extended to all British citizens; the danger of having citizenship removed was no longer restricted to naturalised or registered British citizens, but included those born with British citizenship. However, citizenship could not be revoked or removed if it rendered a person stateless (unless the citizenship was obtained by fraud or misrepresentation). This exception, ensuring adherence to the UK’s international law obligations, created two classes of British born citizens; a first class ‘secure’ citizenship applied to those who had no other citizenship, while those with dual nationality retained an insecure second class citizenship that could be revoked by executive discretion.

The Immigration Act 2014 went even further, removing the protection against statelessness from naturalised British citizens. The change in the law was introduced to allow the Home Secretary to denationalise naturalised British citizens who did not have another citizenship, hence they would become stateless, but who the government believed were eligible for another nationality (in most cases their previous nationality). The government argued that such individuals could avoid statelessness by taking up their other citizenship. Given the

serious consequences for the individual from being rendered stateless, deprivation would be based on the earlier test of whether the person ‘has conducted him or herself in a manner seriously prejudicial to the vital interests of the United Kingdom’ (Mackin, 2014). The government was moving further and further towards a policy of exporting its way out of the threat from home grown terrorism.

By 2015, increasing concern within the government about the threat of terrorism from British citizens involved in the Syrian civil war led to a further radical development in citizenship policy. Thus far, the approach has been to remove citizenship as a first step to the exclusion of risky individuals from the territory of the UK; by removing their citizenship, the UK was ensuring that it was excluding aliens rather than exiling its citizens; however, this was in effect a ‘two step’ process of exile (Macklin, 2015: 1). The ‘two step’ process could only be applied to those who were naturalised or British born dual nationals, or naturalised British citizens without dual nationality. However, the Counter Terrorism and Security Act (CTSA) 2015, applies directly to British born citizens with no other nationality, taking us back to old fashioned one step exile. The Act empowers the Secretary of State to issue Temporary Exclusion Orders (TEO) preventing British nationals from re-entering the UK for a period of two years, subject to subsequent renewal.

Taken together measures on citizenship deprivation and exile, developed since 2001, constitute a dramatic rebalancing of the relationship between the citizen and the state. Nevertheless, they have met with limited political or public opposition. They have been enacted with severely limited procedural safeguards against improper use of the power, further eroding the notion of equal citizenship.

For example, under the CTSA 2015, the imposition of a TEO requires only reasonable suspicion on the part of the Secretary of State that the individual has been involved in ‘terrorism related activity outside the UK’ and that the TEO is considered ‘reasonably...necessary’ to protect the British public in UK from terrorism. This low threshold permitting executive action is accompanied by judicial oversight limited to determining whether the issuing of the order is ‘obviously flawed’; such a determination can be made by the Home Secretary without the citizen affected having any right of representation or advance notice.

The breadth of the discretion granted to the executive to revoke citizenship became clear after a set of ‘unacceptable behaviours’, initially identified to remove aliens and refuse entry to

those applying for a visa to travel to the UK, were extended to the approach for determining whether it was ‘conducive to the public good’ to deprive citizenship from a British national. The indicative list of unacceptable behaviours includes expressing views which:

“...foment, justify or glorify terrorist violence in furtherance of particular beliefs; seek to provoke others to terrorist acts; foment other serious criminal activity or seek to provoke others to serious criminal acts; or foster hatred which might lead to inter-community violence in the UK” (Home Office, 2005 cited in Gower, 2015).

The Joint Committee on Human Rights noted its concern that under the new test ‘a British born citizen will be liable to be deprived of their citizenship if they have said something which in the Secretary of State’s view “justifies” terrorism’ (2005: 54).

The broad discretion pertaining to the deprivation powers is compounded by a paucity of procedural safeguards on the use of the power. As citizenship deprivation is an exercise of executive power, the Secretary of State can act without the need to go before a judge. The burden is then on the denationalised individual to challenge the government before the British courts. The realistic prospect of such judicial challenge is curtailed by two further factors. Firstly, the decision to revoke citizenship has immediate effect. Secondly, citizenship can be revoked while an individual is abroad. The exact number of British citizens that have found their citizenship withdrawn while abroad is kept secret on the grounds of protecting national security (Anderson 2016: 8). The Bureau of Investigative Journalism has identified ten cases in which individuals were abroad when their citizenship was revoked. Thus, a British national while abroad can find their citizenship revoked, their passport cancelled and left without any rights to consular assistance, with only 28 days in which to mount a legal challenge to the Secretary of State’s decision. Furthermore, the power can be exercised without the need for an individual to have been convicted of any terrorism related crime. The expansion of executive powers of citizenship deprivation therefore reflect broader shift in policy that seeks to deal with terrorism as pre-crime.

4. Radicalisation and Failed Citizenship

After 2005, counterterrorism policy increasingly focused on the criminalising conduct that fell outside the scope of direct involvement or incitement of terrorism. This change was set out in the Terrorism Act 2006, which as well as indirect encouragement and glorification of

terrorism also criminalised the dissemination of terrorist publications, acts preparatory to terrorism, training for terrorism, and attending a place used for terrorist training. The law, in these cases, criminalising activities and conduct on the basis that they are likely to lead to terrorist action, which is so harmful in its scale that it justifies this early intervention.

These developments can also be seen as part of a shift from a post-crime society, in which ‘crime is conceived principally as harm or wrongdoing’ to a pre-crime society that ‘shifts the temporal perspective to anticipate and forestall that which has not yet occurred and may never do so’ (Zedner, 2007: 262). Such offences may be better characterised as aimed at ‘pre-emption’ rather than ‘prevention’ since the latter describes a desired outcome that can never be proven (McCulloch and Pickering, 2009). MacDonald refers to these as ‘precursor crimes’, noting that the ordinary criminal law of attempts ‘criminalises acts that are more than merely preparatory’ while ‘precursor crimes focus on various forms of preparatory conduct’ (MacDonald, 2015: 132). The problem with such offences is that they ‘hold a person responsible now for her possible future actions’ (MacDonald, 2015: 134). The further away temporally from the harmful action, the less reliable the prediction of future harmful acts that the offence is seeking to pre-empt. In such circumstances, measures ‘based on what is described as ‘circumstantial evidence’ come perilously close to criminalising risky types (rather than risky acts) and thoughts (rather than deeds)’ (McCulloch and Pickering 2010: 21).

Central to this new approach is the urgent need to identify those most at risk of becoming involved in terrorism. A key role here is played by the concept of radicalisation; a framework developed by policymakers and practitioners attempting to understand the pathway or route by which ordinary citizens become terrorists. Young Muslim men, born and raised in the UK were identified as particularly ‘at risk’ of such radicalisation (Home Affairs Committee 2012, 9). The problem for government policymakers and security practitioners is the lack of predictive power in the models of radicalisation. Each highlight different factors that are understood to contribute to the process, and posit various models of the relationship between ideological, social and psychological factors, as well as group and individual dynamics (Sageman 2008; Wiktorowicz 2005), but remain unable to identify which individuals holding radical ideas will cross the line into terrorist violence. Counter-radicalisation policies fall back on identifying ‘indicators’ of risk that widen the reach of counterterrorism policies, justifying the use of greater levels of surveillance deeper into Muslim communities,

examining not only actions of individuals but also their values and beliefs (Kundnani 2015; Githens-Mazer and Lambert, 2010; Heath-Kelly 2013).

As support for terrorism is associated with weak values, effective counter radicalisation strategy is argued to involve ‘standing up and promoting our shared British values’. Furthermore, intolerant ideas ‘hostile to basic liberal values’ contribute to creating ‘a climate in which extremists can flourish’ (Cameron, 2015). The risk of serious repercussions for failing to share the required British values intensifies with the shift in the Prevent Strategy from a focus on violent extremism to ‘non-violent extremism’. This broadening of the scope of counterterrorism policy, from violent to non-violent groups not only brings into the reach of counterterrorism policy, groups that hold unpalatable political or religious views who are not otherwise breaking the law, but as Arun Kundnani notes, ‘it is used primarily to refer to Muslims who are perceived to make radical criticisms of Western culture or politics’ (2015: 26).

Once radicalisation is seen as resulting from a failure of adherence to British values, and linked to a perceived failure of integration caused by too much multiculturalism, it becomes possible for the Prime Minister, in a speech on tackling the threat of ISIS, to talk of the need not only to counter Islamist extremist ideology but to broaden the scope of counterterrorism to encompass ‘uncomfortable debates – especially cultural ones’ about female genital mutilation, forced marriages, sharia courts, and child sex abuse (Cameron, 2015). It also becomes possible for the Home Secretary to consider using citizenship deprivation powers against Muslims convicted for child sex abuse (Daily Mail, 2016). Drawing upon pre-existing notions of the Oriental Muslim, in which the Muslim male is ‘simultaneously barbaric, premodern, hyper-aggressive and hyper-sexualised but also displaying homophobic and patriarchal tendencies’ (Kapoor et al, 2013:2), the Prime Minister’s speech places British values at the centre of saving ‘imperilled Muslim women’ from the threat of the ‘dangerous Muslim man’ (Razack, 2008). Empowering Muslim women becomes a cornerstone of government counter radicalisation policy, even as the policies operate on a gendered logic that values women’s contribution through their roles as wives, mothers and sisters to dangerous radicalised men; it essentialises their experiences and presumes cooperation based on natural maternal instincts to support peace and reject violence (Brown, 2013).

While their close proximity to radicalised men, make Muslim women valuable potential allies of the state it also posits them as potential enablers and supporters of radicalised men; their

failure to cooperate as informants for the state opens them up to the risk of prosecution for offences of withholding information relating to terrorism. Concerns about creating an ‘informer society’ as well as a presumption that that the criminal law should focus on acts rather than omission have prevented the development of a general offence of withholding information in relation to crime. Thus, these offences are an exception that exist in the context of terrorism (Walker, 2011). The offence was not initially included in the Terrorism Act 2000, and was only reintroduced by the 2001 Anti-Terrorism Crime and Security Act. Since then it has provided the primary legal tool for the prosecution of the wives and sisters of men involved in terrorism (Walker, 2011). While for many decades the offence of withholding information existed in the anti-terrorism legislation relating to Northern Ireland, it was rarely used. The increased use of the offence since 2001 reflects a move away from a policy of only using the offence in extreme cases where withholding information might lead to death or serious injury. The prosecutions since 2001 have arisen from investigations after terrorist attacks which have found that family members had information or knowledge which suggested they knew of the planned attacks. The good citizen must cooperate with the state and share any information with the police.

The duty to inform underpins the Prevent Strategy. The initial approach of developing partnership with communities appears to have given way to a far greater emphasis on the role of public sector agencies in identifying young people ‘at risk’ of radicalisation. This is solidified through the Counter Terrorism and Security Act 2015 which places a legal duty requiring public bodies, in carrying out their functions, to have ‘due regard to the need to prevent people from being drawn into terrorism’.^{vii} The duty came into effect in July 2015, the first twelve months after its introduction saw the number of referrals to the counter-radicalisation ‘Channel’ programme increase by 75 per cent to a total of 4,611, including an increase in referrals from school from 537 to 1121 (Daily Telegraph, 2016). Thus, through this duty those at the front line of delivering social policy – educationalists, health workers, social services – are required to patrol the borders of citizenship and identify the failed radicalised citizen.

Conclusion

Removal of citizenship is a draconian exercise of state power. Throughout the last century Britain retained the power to revoke the nationality of naturalised citizens. Over the course of

two world wars and the Cold War, the power was rarely used and never in the context of domestic terrorism.

The terrorist attacks for 2001 prompted a radical expansion of state discretion and executive power to deprive British nationals of their citizenship. The UK's obligation in international law and its commitments to reduce statelessness has only provided limited constraints to the development of government policy responding to national security imperatives. The danger of executive overreach is heightened as the test for revoking citizenship is reduced to a judgement of whether the retention of citizenship is 'conducive to the public good'. This marks a significant departure and securitisation of citizenship policy. Access to citizenship has become more restricted on the basis that it is a privilege not a right, yet at the same time the protection it offers has become less privileged. The British citizen of dual nationality appears to be no more secure than that of alien permanent residents and British citizens who cannot be deported face exile.

While official statements note that this policy is applied to all forms of terrorism and all forms of extremism, the powers have so far been used almost exclusively against British Muslim men. Fear about the values of migrants and minority outsiders, as well as the construction of Muslims as a threat to Britain, is not new. However, while citizenship, national identity and British values have occupied the centre of a counterterrorism policy that has shifted its focus from tackling violence to non-violent extremism, the need for the Good Citizen to adhere to 'British values' has intensified, and transformed into a matter of national security. Counter radicalisation policies locate most Muslims in the category of 'Tolerated Citizens': contingently accepted but needing to constantly prove their belonging to the community of value through speaking out and condemning terrorism. Muslims holding unacceptable extremist views are 'Failed Citizens' whilst the radicalised terrorist is the 'barbaric, irrational and uncivilised' Other (Kapoor, 2015), whose failure as a citizen is severe enough to pave the way for them to be deprived of the right to citizenship. Through expanding the scope of counterterrorism policy into the arena of 'extremism', citizenship deprivation powers, justified on the need to tackle terrorism, can be used to target British Muslim citizens in an ever wider range of social policy areas. These recent changes of citizenship deprivation policy - making British nationality less secure and more precarious, expanding the exercise of executive discretion with insufficient safeguards for review - are likely to increase marginalisation and the risks of radicalisation government policy hopes to reduce while hollowing out the core values they seek to protect.

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ⁱⁱ *Trop v. Dulles* (No. 70) 1958 356 U.S. 86 , at 101.

ⁱⁱⁱ <http://www.worldaffairsjournal.org/content/opposition-slams-sarkozys-plan-revoke-immigrant-citizenship> (accessed 15 September 2015)

iv House of Commons Hansard, vol 709, cols 378-85

v British Nationality Act 1948, s.20(5).

vi British Nationality Act 1981, s.40(2) as amended by Nationality, Immigration and Asylum Act 2002, s.4.

vii Counterterrorism and Security Act 2015, s. 26(1).