SIX

From the Race Relations Act 1968 to the Great Repeal Act 2018: Back to Square One in 50 Years?

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Fifty years separate the Race Relations Act 1968 and the European Union Withdrawal Act 2018 (known as the Great Repeal Act 2018). During this time, race discrimination law developed from a fragmented body of legislation and case law into a sophisticated structure of legislation, case law and policy. The UK Equality Act 2010 was the epitome of 'state of the art' harmonised anti-discrimination law that was the envy of European liberal democracies. Fifty years also captures the time frame within which Tariq Modood's research on racism, migration and multiculturalism made a crucial intellectual contribution to our understanding of how Britain could adapt to complex demographic change and increasing racial, cultural and religious diversity.

These are remarkable achievements in research, law and policy that put the UK in a prime position to adjust to the challenges of twenty-first-century migration and multiculturalism. This chapter explores this fifty-year time frame to understand why, despite fifty years of race relations law and policy, anti-migrant sentiment and racism 'pushed the Brexit vote over the line' to deliver a victory for Vote Leave. If, as I argue, a key driver for Brexit was anxiety about race, migration and a 'pure' vision of what it means to be 'British', then why did the seemingly progressive trajectory of race relation law, equality policy and vision of multiculturalism fail to address the racism that secured Brexit. Why Brexit, despite five decades of sophisticated race discrimination law and policy and multicultural politics?

In this chapter I want to explore the question of what has gone wrong in the last fifty years. I will focus on the early British race relations legislation, which later acted as the precedent for European race discrimination

law, and has been heralded by some as the epitome of British tolerance and fair play towards minorities. Last year, 2023, marked wide-ranging national public celebrations of the *Windrush* arrival that took place seventy-five years ago. In this chapter I want to push the analysis back further to the period before the *Windrush* arrival in order to engage with the legacies of the British Empire. I argue that this wider geographical and temporal analysis allows for a deeper understanding of race discrimination law and race relations policy. I treat the arrival of post-1948 Commonwealth migrants in Britain as the starting point for analysis, while at the same time acknowledging the significance of earlier historical periods. By setting 1948 or *Windrush* as the start date for analysis, there is a danger of minimising the significance of the legacy of the British Empire and its impact on the contemporary legal regulation of racism. This, in turn, prevents us from observing the clear patterns of colonial prejudice and racism that cross arbitrary geographical and temporal divides. Understanding the reverberations of the racial hierarchies from Britain's colonial past into the present is crucial not only for minorities, but also for the whole British population, who are enduring the negative political, social and economic consequences of Brexit.

Fifty years after the passing of RRA 1968, the debates that preceded the Great Repeal Bill of 2018 illustrate the tensions that Adrian Favell has mapped out in what he has described as 'Crossing the Race Line' in the Brexit debate. Yet, despite the introduction and enforcement of complex race discrimination legislation and policy in the fifty years that passed between RRA 1968 and the Great Repeal Bill 2018, a racialised discourse still pushed the Leave vote over the majority that it needed to secure Brexit, and thus destabilised decades of British achievements in racial equality and multicultural politics. How do we understand this startling – for some, shocking – success of UKIP and the Leave campaign that was able to benefit from the political mobilisation of racism? One key aspect of a better understanding of this period is to recognise that although the disciplines of law and politics are rooted in the present, the 'past is prologue'.

'What's Past is Prologue': From British Empire to Brexit Britain

Within the popular narrative of race discrimination law, the originating moment is often taken to be the arrival of *Windrush* in 1948, so prominently marked on the 75th anniversary on 22 June 2023 as National Windrush Day, with celebrations in schools, museums and public institutions. The '*Windrush* tale' has been promoted vividly through the dramatic visual image of a ship arriving on British shores full of Black

migrants, and subsequently those from less prosperous countries, who were all seeking economic advancement and a better way of life in Britain.

Yet any celebrations should heed the warnings of scholars such as Stuart Hall and Barnor Hesse that this comforting instrumentalising of *Windrush* distracts us from the challenge of a deeper understanding of the historical, social, political and economic role of empire that led to these citizens arriving on the shores of Britain. This deeper analysis of the '*Windrush* moment' is crucial to understanding the creation of racial hierarchies that were carried over from empire into Britain in the 1950s: the creation of racialised hierarchies whereby white Britons came to perceive themselves as more civilised and 'born to rule' (Colley 1992: 324); imperial roots of the racism that leads to the exclusion of some British citizens from social, political and economic goods; and the exclusion of non-white Britons from full citizenship.

At its zenith in 1922, the British Empire ruled over a vast geographical area and racial, religious and culturally diverse populations of nearly 458 million people, which had enormous consequences for the British people in its metropole. Professor Katherine Wilson, cited by Linda Colley in her analysis of 'Britishness and Otherness', suggests that Britons responded to this vast empire not only at the level of politics and trade, but also in popular awareness:

> Possession of such a vast and obviously alien empire encouraged the British to see themselves as a distinct, special and often superior people. They could contrast their law, their standard of living, their treatment of women, their political stability, and above all, their collective power against societies that they only imperfectly understood but usually perceived as far less developed. Whatever their own individual ethnic backgrounds, Britons could join together vis-à-vis the empire and act out the flattering parts of historic conqueror, humane judge, and civilizing agent.

These assumptions that the British Empire was a 'civilising mission for the good of its subjects', with its 'imperial nationalism' and racial hierarchies that powered the distinct form of British colonial governance, all had dramatic implications for politics, economics and society in contemporary Britain. One of the saddest ironies of Brexit is that the pressing need to link the British present to its colonial past was distorted in precisely the opposite direction from what was needed to allow contemporary Britain to adjust to reality. Instead of a sober, realistic reckoning with the past as the basis for making sense of Britain's present challenges, Brexiteers glorified the British Empire as a precedent for how post-Brexit Britain could stand alone as a global superpower and reclaim its former glory at the head of a contemporary Anglosphere empire (Campanella 2019).

We must keep in mind a wider geography as part of our analysis of UK race relations law and policy, to make clear the connections between the governance of migrants within UK borders and jurisdiction and previous British colonial governance. After all, at the height of the British Empire just after the First World War, it controlled roughly a quarter of the world's population and land mass. The Commonwealth migrants who entered the UK in the 1950s and 1960s had been colonial subjects of this empire only a few decades before they arrived as migrant workers. An important part of understanding race discrimination law and policy, therefore, is to connect the presence of racial and cultural migrants as 'minorities over here in the metropole' to crucial continuities with the period when the British Empire treated them as subjects 'over there', where they were majorities subject to British colonial governance (Gilroy 1990).

After the Second World War, the transition from British Empire to New Commonwealth provides a crucial backdrop for understanding many of the key foundational concepts and contexts for the subsequent decades of UK race relations law and policy, including the fifty-year journey from RRA 1968 to Brexit. The geography of the British Empire may have shrunk, but this did not mean that the foundational premise of British colonial rule could be so easily or quickly 'de-colonised'. British colonial subjects had never been represented within British political and administrative systems in London: no matter how civilised, educated or 'liberal' these subjects may have become under British colonial rule, it was unthinkable that they would have any direct representation in London. The belief that white Britons were more superior and civilised than their 'coloured' colonial subjects and that Britain was 'a white country' continued beyond the transition of the British Empire into the New Commonwealth.

Britain's imperial legacy and the fictions that had underpinned it meant that the British Empire was a single legal entity exercising colonial governance over vast populations, and therefore large numbers of those very colonial subjects had the right to move to the UK. But when Black and Asian British subjects exercised their right to live in the UK, those beliefs that Britain was a 'white country' resulted in their being excluded through a pattern of violence, abuse and discrimination.

This was not the first time that concern about 'foreigners' and a distinct racial and religious minority entering UK borders had led to immigration controls. At the beginning of the century, the UK Aliens Act 1905 was introduced in response to Russian and Polish Jews who arrived in the East End of London fleeing persecution. Linking racism faced by these groups in its wider historical context and relating it to the wider

geography of the British Empire is important because all these historical racialised groups – Jews, Roma, Irish as well as non-white British subjects of the British Empire who arrived as Commonwealth immigrants – were included within one category of 'race' as a protected group in UK anti-discrimination law. It is crucial to note this early response to Jewish immigration, because the cultural racism that focused on their religious difference prefigured later instances of cultural racism and discrimination against Muslims, who were often excluded from the protection of anti-discrimination law. Tariq Modood's significant scholarship demonstrated the specific form of racism against British Muslims at a time when it was argued that they should remain outside the protection of race relations legislation and policy. Tariq Modood's scholarship on Muslims and cultural racism established a fundamental conceptual framework that anti-Muslim racism (or Islamophobia) was rooted in attributing to Muslims cultural or religious characteristics to vilify, marginalise, discriminate or demand their assimilation, thereby treating them unfairly and as second-class citizens (Modood 2018: 2). This crucial scholarship has transformed our thinking about racism and the accommodation of Muslims as a minority in liberal democracies: in the field of sociology (Modood 2020), and a range of other academic disciplines such as politics (Modood 1998) and theory (Modood 2013), as well as having an impact on concrete social policy through initiatives such as his contribution to the Commission on the Future of Multi-ethnic Britain (2000).

Both state and popular responses to postwar migration are complex. Polling data from this period confirms that there was consistent public opposition to non-white migration (Hansen 2000: 4–5). At the same time, the state response to non-white migration was more complex than a simple rejection and racialisation. As Randall Hansen has argued, the state's free entry policy for nearly a decade before restrictions were introduced cannot be understood as a simple process of racialisation. It was a complex set of factors: most notably a desire to maintain historic relationships with the old Dominions of Australia, New Zealand and Canada, which ensured a definition of British citizenship that included former imperial subjects and a resistance to immigration controls (Hansen 2000: 16–18). By the 1960s, when the first race relations legislation was introduced, this laissez-faire approach had shifted to restriction through immigration law and policies. Hansen concludes that British immigration policies have succeeded in reducing the numbers of immigrants arriving in the UK and keeping migration to lower levels than other European countries, despite claims by successive politicians and most recently Brexiteers that Britain has 'lost control of its borders' (Hansen 2000: 21–2).

Regulating Racism

After the Second World War, as the British Empire shrank and transitioned into the British Commonwealth, immigration controls were passed to limit the numbers of Black and Asian migrants entering the UK who were exercising their right to citizenship by moving from the peripheries of the British Empire to live in the 'metropole'. There was public debate about the status and treatment of the new Britons and race relations law. This was a national moment at which there could have been a deeper conversation enabling Britain to come to terms with its colonial past. Yet instead of treating this transition as a moment of open debate, there was instead a 'foreclosure' within theory, politics and society, representing a tragic missed opportunity.

At the level of liberal theory, as Barnor Hesse notes in his critique of traditional liberal political theory, there was a 'colonial racial foreclosure' as exemplified by Mill's defence of the colonies and most recently Isaiah Berlin's *Two Concepts of Liberty* published in 1958; this was a statement of the liberty/freedom issue which failed to address the complicity of liberal political thought in Western colonialism and racial governance (Hesse 2014: 288), although Berlin did address the challenge of representation and freedom for formerly colonised peoples in his brief lecture on Tagore and nationalism (Baum and Nichols 2012).

Outside Britain, ideas of racial and civilisational superiority provided the justification for projects that exported liberalism and democracy to the former colonies, based on the belief that 'the only right ordering of all humanity globally is the gradual establishment of European style, ideal republican or constitutional states that legally recognize individuals as negatively free, formally equal and substantively unequal, and dependent on a single system of laws and representative government' (Tully 2008: 144). This foreclosure had a profound hold on political theory and practice, despite the dramatic social change that was taking place as a result of Commonwealth immigration. Decades later, multiculturalism as a theory and policy broke through this denial, developing a sophisticated analysis of how liberal societies could respond to the social fact of diversity.

In the 1950s, as British influence in the world waned, there was another missed opportunity for an honest confrontation of the British nation and state's continuing deep connection to empire, which needed to be discussed and reconfigured in the new situation of imperial decline. This could have been a moment to challenge and define what it meant to be 'British' without a British Empire, particularly if, as David Marquand has argued, Whig imperialism was central to British

national identity (Marquand 1995). Yet instead of defining a different image of modern Britain, the period that preceded the introduction of the first Race Relations statutes (1958 and 1965) continued to be dominated by public assumptions of British exceptionalism and ethnically charged nationalism, which emerged as the basis for national identity just as non-white immigration from the former colonies was increasing.

Writing about this period of British history, Chris Waters has argued that the period between 1947 and 1963 saw a fragmentation of the previous British national unity that had been sustained during the national struggle against a common enemy (fascist Germany). Waters argues that the end of the Second World War led to an erosion of stable national identity and a crisis of national self-representation that was compounded by the rapid emergence of the United States (rather than the United Kingdom) as the military, political and economic hegemonic global power. Instead of an open debate that addressed the imperial decline of the UK, there were attempts to recreate this role through the Commonwealth. At this time of imperial decline, Waters argues, questions of race became central to questions of national belonging. He concludes:

> Especially in the 1950s, discussions about the rapid increase of 'new Commonwealth' migration to Britain could not wholly be separated from discussions of what it now meant to be British. In that decade, the characteristics of Black migrants in Britain were mapped against those of white natives, serving to shore up definitions of essential Britishness. (Waters 1997: 208)

As Harry Goulbourne has argued (Goulbourne 1991), the 'most powerful and influential attempts to redefine the post-imperial British national community have depended on a conception of the nation which excludes non-white minorities who have settled on these shores since the Second World War'. This definition of the post-imperial British nation provided a context for the racism faced by newly arrived non-white migrants in the UK; and, moreover, for the Race Relations Act 1965 (RRA 1965), which was a direct response to the Notting Hill riots and increased migration. All these developments need to be understood in a longer historical, geographical and temporal context.

So, concerns about non-white migration into the UK provided the key backdrop for the introduction of the RRA 1965; this was the first specific UK legislation to prohibit racial discrimination, on the grounds that it was becoming a social problem that justified legal regulation. The Act determined the use of criminal law against those who discriminated

against racial minorities. The key social problem that RRA 1965 identified was public disorder; its focus, therefore, was to regulate racism in public places by making 'incitement to hatred on the grounds of colour, race, or ethnic or national origins' an official offence. The immediate context for RRA 1965 was the UK Nationality Act 1948, which allowed entry into Britain by Commonwealth citizens. In 1958 there were race riots in Notting Hill, when white gangs, encouraged by fascist troublemakers and far-right organised political parties, went on the rampage in areas where Commonwealth citizens had settled.

The central misdemeanour that RRA 1965 addressed was the outward manifestations rather than the root causes of the Notting Hill riots. In relation to RRA 1965, the Labour Home Secretary Sir Frank Soskice, who led the legislation, stated, 'Basically, this Bill is concerned with public order' (House of Commons 1965). Yet the term 'public order' is not a sufficient explanation of the Notting Hill riots or the complex dynamic of racism that was a response to non-white migration in the 1950s. In 1958, the Notting Hill riots were frequently framed as either hooliganism and individualised acts of violence or a response of white working-class communities who were competing with newly arrived non-white migrants for scarce jobs and public services such as housing. Yet blaming the riots on young white men, violent Black communities and dysfunctional working-class communities fails to address the structural causes for these public acts of violence or the possibility that the centuries-old racial hierarchies of the past that had underpinned the British Empire continued to have material impact in the present.

Recent research on the Notting Hill riots challenges this explication. Christopher Hillyard's research is an analysis of arrest data that maps where the violence took place; comparing those facts with where the rioters lived confirms that few of the white people involved in the riots lived alongside Black people or competed with them for housing (Hillyard 2022). As Hillyard concludes, this way of charting the Notting Hill riots suggests that the race riots were more complex than individualised disorder:

> In any case, historians have long been warned against assuming that popular protest can be read off material conditions without culture getting in the way. Rather than a 'spasmodic' response to economic conditions, collective violence is often an attempt to reassert a conception of the proper order of things. (Hillyard 2022: 11)

In the case of the Notting Hill riots, the 'proper order of things' had been disrupted by the presence of Black and Asian migrants and social

change. Although officials and the police had tried to play down the role of racism as a trigger for the violence, internal police files that have recently been released confirm that the Notting Hill riots were predominantly led by 300–400-strong 'Keep Britain White' mobs who deliberately went 'nigger-hunting' among West Indian residents of Notting Hill (Travis 2022).

The strategy of denying racism and treating resistance to organised political racism as natives running 'amok', 'riots', public disorder and common affray was a common strategy in response to political resistance to colonial governance and racism (Jenkinson 2009; Van Rossum 2013). RRA 1965 treated racism as a problem of public order rather than addressing the deeper root causes of the racial hierarchies that defined the order of things as 'white' Britons being inherently superior free citizens who were justified in exercising power over less civilised non-white subjects. The presence of Black and Asian individuals in the metropole who claimed rights as equal citizens was a shock to this world view of what it meant to be British.

This could have been a moment for a national debate: to look back at the decades since the arrival of former colonial subjects, to understand why they had left their homes to come to Britain. There was an opportunity for understanding why migrants self-identified with the category 'British', their understanding of themselves as subjects of the British Empire, and their enthusiasm for migration to Britain as a basis for a modern conception of what it means to be British. This conception of being British could have integrated the perspective of citizens' own emotions, identification and grassroots practices of daily living side by side with white Britons. Instead, a focus on immigration control and legislation made Britishness ever more narrowly defined as a juridical category through the prism of immigration law and concerns about public order and race relations (Perry 2018).

The focus on connecting race to public disorder was within the comfort zone of the public officials who drafted RRA 1965; they were actually drawing on the anti-sedition laws used to suppress resistance to colonial rule in British India. The conceptual legal structure of early race relations legislation transplanted definitions of racial incitement that were themselves borrowed from colonial legal regulation in British India; these had prohibited incitement to racial and religious hatred and criminalised the political speech of Indians who challenged colonial rule (Malik 2011).

What developed now was a tense and increasingly contradictory lockstep in legislation: on the one hand attempts at public order to quell the riots, and the passing of race relations legislation in 1962 and 1968

to protect those racial minorities who were already in Britain; on the other, attempts to limit immigration in the face of public discourse that the increasing presence of non-white Britons was changing the 'face of Britain' or 'British culture'. These two strands of legislation – race discrimination law and immigration law – were and remain intimately and paradoxically connected.

As Colin Yeo has noted (Yeo 2020a), UK immigration law evolved from the British Nationality Act of 1948 that created early subdivisions of UK citizenship, through to the Commonwealth and Immigrants Act of 1962 that abolished the right of British subjects whose British passports had formerly been issued by colonial authorities to arrive at UK borders and live in the UK A parallel skilled-workers scheme at the time was, as Yeo notes, designed to allow 'white' Commonwealth subjects from Australia, Canada and New Zealand to enter, live and work in the UK

Throughout the 1950s, the Labour Party position had been to oppose immigration controls: their reasoning was, inter alia, the need for migrant labour because of economic demand; and a commitment to the Commonwealth as a sphere for international influence and community (Miles and Phizacklea 1984: 35–45). Although in the general election of 1964 Wilson's Labour government won a slim overall majority, the Smethwick West Midlands constituency, which should have been a safe Labour seat and where there was a significant Sikh immigrant minority, was won by Peter Griffiths, who had run an anti-immigrant campaign that had gained national media coverage.

There had been Private Members' Bills to prohibit race discrimination throughout the late 1950s and 1960s, and they were gaining increasing support among some MPs, especially Labour MPs, and civil society. Harold Wilson was committed to introducing race relations legislation to defend what he stated was the country's international image as a tolerant, multiracial society that respected equality in the rule of law. But at the same time, the political lesson from the Smethwick by-election was that Commonwealth immigration could be a liability among voters who viewed Britain as an island nation that needed to be defended against a siege of newly arrived non-white migrants. The lesson that the Labour leadership learnt from the Smethwick seat – that was to be later echoed by New Labour and then by many in the Labour Party before and after Brexit – was summed up in a statement by Labour Minister Richard Crossman (Crossman 1975: 160–75): 'since the Smethwick election it has been quite clear that immigration can be the greatest potential vote-loser for the Labour Party'.

Wilson's Labour government pursued a dual strategy: on the one hand, his immigration policy specifically targeted non-white migration

through immigration controls; at the same time, there was a focus on addressing the social 'problem' of non-white immigrants through race relations legislation (Perry 2018: 190–202). This dual strategy ensured that immigration control to exclude non-white migrants was a constant shadow in public debates about race relations.

The Race Relations Act 1968 was introduced by a Labour government alongside the Commonwealth Immigrants Act 1968 that prohibited Kenyans holding British passports from coming to the UK. Commenting on these early immigration controls, Colin Yeo concludes:

> And this is why British immigration law and debate about immigration was and continues to be tainted by racism. Immigration laws did not divide the world into *citizens* who had a right to live in the country and *non-citizens* who did not. Instead, citizenship was massively and widely defined and then immigration laws were introduced to limit which citizens were to be allowed into the United Kingdom. These laws were devised specifically in order to prevent Black and Asian citizens from doing so. (Yeo 2020b)

RRA 1965 did contain legal innovations, with the potential to address racial discrimination and the disadvantages facing Black and Asian Britons. There was potential within RRA 1965 to address racism as a structural problem: a group of Labour lawyers lobbied for a US model to address private discrimination in housing and employment and the introduction of an innovative administrative body (the Race Relations Board) with some investigative and enforcement powers (Lester and Bindman 1972). That potential depended on a number of key factors, including, inter alia: securing the confidence of minorities to take complaints to the body and abide by its decisions; support by trade unions and business interests to integrate minorities into the labour market on fair and equal conditions; and, crucially, political and financial support by successive governments (Hepple 1969: 256–7).

In the years that followed, these factors for success were never put in place to allow this remedial mechanism to succeed. Trade unions excluded and discriminated against Black workers, as exemplified most dramatically by the refusal of the TGWU to support Asian women workers during the Imperial Typewriters strike in Leicester (Virdee 2000). Governments failed to provide the support that the Race Boards and their successor, the Commission for Racial Equality, needed to fulfil their function, as testified by Peter Newsam, Chairman of the Commission for Racial Equality, in 1982 (Newsam 1987; Solomos 2022). During the three years between the RRAs of 1965 and 1968, immigration control, race riots and public violence remained the crucial backdrop to the early

UK race discrimination legislation and the prism through which Black and Asian migrants were made visible in the public sphere.

RRA 1965 did nothing to prevent or provide a remedy for the racism in the public and private sphere that generated the 'colour bar' against Black and Asian migrants in fields such as housing, employment and education. As Sheila Patterson recorded in 1969 (Patterson 1969: 96–7), of the 309 complaints received between the implementing of RRA 1965 and 31 March 1967, the overwhelming majority related to employment, housing or financial services (only 85 out of the 309 complaints fell within the scope of RRA 1965).

This lacuna in RRA 1965 in turn entrenched systemic discrimination and disadvantage for newly arrived Commonwealth immigrants in key spheres such as employment, housing and public services (PEP 1967; Daniel 1968). Subsequent race relations legislation in 1968 did remedy the lacuna by extending the scope of unlawful race discrimination to housing, employment and some key public services, which became the basis for modern UK discrimination law in RRA 1976 and the Equality Act 2010. Yet this legislative framework treated discrimination as a problem of individual acts, rather than a systemic problem that was related to the historical and economic legacy of British colonialism.

While the underlying aims of immigration law were to limit non-white immigration, RRA 1968 and subsequent race relations legislation were premised on the principle that those New Commonwealth citizens who had the right to enter the UK were British citizens with the right to equal treatment. Once again, public debates that preceded RRA 1968 missed the opportunity of honestly addressing and untangling definitions of Britishness from their imperial legacy. This longer history and framing of racism as a problem of public order and immigration policy, that was predicated on a definition of British citizenship as non-white, exacerbated rather than addressed the structural problem of racial hierarchies that had their origins in the British Empire and impacted on all aspects of British institutions and British identity.

Political and public debates continued to treat racism as a problem of individual acts that went against the grain of the superior civilised British values of tolerance and fair play. The Smethwick election, Powellism and violent racism led to the development of a paradigm that treated racism as a social, political and electoral challenge coming from within white working-class communities. The central image of RRA 1965 was of white working-class communities confronting angry Black men; and this focus on legislation to deal with incitement to racial hatred sent the signal that racism was a problem of speech that was leading otherwise good British people astray. This suggested an assumption that

racism was a problem that could be rooted out and overcome, 'stamped out' through the assertion of a general political will that would regulate individual conduct. By focusing on racism as a problem of individuals rather than a historical and structural legacy linked to the British Empire, RRA 1968 and subsequent race discrimination law were never able to address the structural causes of discrimination and disadvantage faced by minorities who had been workers in the periphery colonies of the British Empire, and had subsequently become racialised migrant workers in the metropole.

Diamond Ashiagbor's work sets out a research agenda for this analysis (Ashiagbor 2021: 521) by pointing out the process through which migrant workers continue to be exploited when they move from the periphery of what was the British Empire to the core metropolis: through coercive immigration law that structures the terms of entry of migrants into the labour market; the segmentation of host labour markets between migrant and non-migrant sectors; and exclusion from collective bargaining processes that leaves migrants vulnerable to exploitation in precarious forms of employment.

The individual employment contract that was the focus for RRA 1968 and subsequent race discrimination law assumed an atomised bilateral relationship and bargaining power between the employer and employee. Direct race discrimination, and later indirect race discrimination, was prohibited in access to employment, housing, education and some private services. Yet in the key area of access to labour markets, which is a precondition for migrants' life chances, the narrow strictures of the law ignored the wider structural context that framed this relationship, which was in turn rooted in legacies of colonialism that structured patterns of global migration as well as labour markets.

Moreover, as Ashiagbor argues, this standard form of employment contract does not fit well with the labour market experiences of migrant workers, who are often clustered in precarious and informal forms of work that fall outside the scope of employment protection law. Race relations legislation seeks to remedy these exclusions, but it does nothing to address the structural causes of labour market disadvantage faced by non-white minorities. Moreover, political and economic developments subsequent to RRA 1968, that is, the Race Relations Act 1976, made the situation worse. The White Paper that preceded RRA 1976 had always envisaged that the legal regulation of race discrimination would be accompanied by supply-side measures to ensure equal treatment in employment, education and housing. However, immediately after the introduction of the new race discrimination law, an economic recession and a turn to neoliberal economic policies cut the budget for

these measures, as well as for the Race Relations Board and later the Commission for Racial Equality.

The Thatcher years led to the marketisation of the public sector, and a greater use of non-standard forms of contract had a disproportionate effect on racialised minorities: with a greater concentration in zero-hours contracts; agency work; and into insecure forms of employment (Ashiagbor 2021: 529, n. 34; Modood et al. 1997). Research by Yaojun Li and Anthony Heath confirms that ethnic minority groups (particularly Black African, Black Caribbean, Pakistani and Bangladeshi) continue to face an ethnic penalty and are more likely to face unemployment and greater barriers to re-employment (Li and Heath 2020).

While the focus on labour markets and employment is understandable, race relations legislation also seriously overestimated the extent to which labour market disadvantage was the only source of discrimination and disadvantage, or the main source of concern for minorities themselves. As Tariq Modood's work demonstrated, culture and religion were also significant, and increasingly prominent, factors in discrimination and disadvantage. This was especially true for British Muslims, who self-identified as Muslims, and who were subject to increasing securitisation after the 9/11 and 7/7 suicide bombings in the US and UK respectively. Definitions of racism and anti-discrimination law from the 1950s and 1960s that focused on colour and ethnicity were insufficient to capture the claims of British Muslims, particularly after the Salman Rushdie affair and the increasing securitisation of British Muslim communities between 2001 and 2015 (Modood 2004).

Moreover, in relation to British Muslims, the Salman Rushdie affair and the protests over the Danish cartoons, as well as the condemnation of Muslim veils as a barbaric misogynist practice, had set up a stark dichotomy between being Muslim and being British. Liberals, who should have been allies for a minority group such as British Muslims and especially British Muslim women, invoked freedom of speech or gender equality as necessary conditions for 'being British'. A closer examination of these 'British' values (Mamdani 2008; Ridley 2021) would have revealed a more complex reality. Certainly, the racialisation of Islam and British Muslims played an important role in the political mobilisation of racism to 'get Brexit done', as Favell argues in his analysis of how subliminal representations of Muslims assisted the UKIP case for taking back control of British borders (Favell 2020). The racialisation of Muslims during this time followed a similar process to other Western European states and has deep historical roots (Daniels 2009; Malik 2010), even as there were differences in the form of racism in the specific social, political and economic context of different European member

states. For example, while veiling was criminalised in some European countries such as France and Germany, it was mainly permitted in the private and public spheres in the UK (Brems 2014). In the UK, however, the specific anxiety was with ideas of migration and Britishness that were the political context of the rise of UKIP as a political force in mainstream UK politics. Anti-European politics in the governing Conservative Party coincided with popular sentiments of hostility to refugees and migrants stemming from nativism, racism and anti-Muslim prejudice to produce a narrow majority for the Brexit vote.

Brexit and Back to Square One?

Despite the evident disadvantages suffered by Black workers, debates from the 1950s all the way to Brexit usually prioritised the 'white working class', who were said to have been marginalised by increasing migration and diversity. As with the lesson of the Smethwick by-election, racism is consistently understood within the paradigm of placating the white working class, rather than a structural challenge for the whole population on how to adjust their national identity after the end of the British Empire. Nevertheless, as noted by Satnam Virdee, what distinguished the key period of the 1950s and 1960s with the emergence of the welfare state settlement, 'was the extent to which the state, employer and worker came to adhere to a common belief in British nationalism underpinned by a shared allegiance to whiteness' (Virdee 2014, in Ashiagbor 2021: 523). While these earlier forms of racism focused on ideas that Britishness was synonymous with an allegiance to 'whiteness', later forms of racism took specific forms that focused on civilisation, culture and religion in relation to British Muslims (Modood 2014) as well as refugees, migrants and Eastern European workers (Rzepnikowska 2019).

There were also, before Brexit in 2018, positive moments of solidarity and inclusiveness that co-existed with social processes that excluded non-white Britons: for example, multiethnic and multicultural national celebrations such as the opening celebration of the Olympics in 2012 are significant national moments that complicate any attempt to draw a straight line between the 1950s and Brexit (Uberoi and Modood 2013). More recently, the multiculturalist approach to the Coronation of King Charles III continues this vein of optimism of an inclusive, diverse polity that can find a place for diverse minorities (Uberoi 2023).

This argument of prioritising the white working class reverberated decades later during Brexit, when not only UKIP but also respectable political commentators justified racism as the understandable response of white working-class communities to migration. Commentators such

as David Goodhart criticised liberal elites defending open borders and multiculturalism (Goodhart 2013), arguing that they would erode the solidarity necessary for a welfare state, without scrutinising the racial origins of these constructed solidarities. While seeking to identify and 'represent' white working-class communities, these commentators sought to be well-intentioned 'friends' in the fight against racism. This representation relies heavily on essentialist method, through which the white working class are represented as a homogeneous block who oppose migrants without any critical deconstruction or understanding of the structural root causes for the disadvantage of white working-class communities (Portes 2013). Nor is there an engagement to examine and unearth the complex relationship of working-class communities with the category of 'British', but there was a tradition of cooperation and solidarity across racial and ethnic boundaries (for example, in relation to diverse categories such as Irish, Scottish, Catholic) (Virdee 2014). John Holmwood has accurately summarised the error of this essentialist method in analysing race and working-class solidarity in his observation, 'The point is not that immigration has now begun to undermine solidarities, but that solidarities were formed on a racialized politics of colonial encounters' (Holmwood 2016, in Ashiagbor 2021: 525).

The popular narrative linking immigration, race and the welfare state, especially around Brexit, also ignored the fact that racial minorities were disproportionately poor, and concentrated in low-paid, precarious work. In fact, as Robert Shilliam has demonstrated, Brexit was never about defending the interests of the poor. Rather, underlying Brexit was a key ideological construction (Shilliam 2018) that distinguished between the 'deserving poor' (associated with hard-working white Britons) who were pitted in competition against the 'undeserving poor' (non-white migrants who had recently arrived to take advantage of Britain's generous welfare state).

Looking forward, it is instructive to note the response of the Brexiteers to the rise in lawful migration in May 2023. The Brexiteers and their intellectual enablers remain dissatisfied that lawful migration to the UK remains high, even after they had supposedly gained control of migration from the EU and introduced domestic policies that delivered high-skilled immigration. Could it be that the issue was never about unlawful or low-skilled migration, but rather an objection to any and all migration and – crucially – a visceral aversion to migrants? Aditiya Chakrabortty summarised this reality in punchy terms (Chakrabortty 2023): 'First, it was no to Polish plumbers, then Afghan refugees. Now the right doesn't want any migrants at all: [. . .] the furore over entirely legal migration proves it was never the kind of foreigner you were, simply your foreignness.'

Brexiteers who called for a points-based system to deliver high-skilled migration remain dissatisfied – or as Chakrabortty puts it, 'men who got everything they wanted now have a case of buyers' remorse'. This response to lawful high-skilled immigration should not be understood as an unfortunate 'paradox' or a contradiction. Instead, this Brexiteers' 'buyers' remorse' when they got what they wanted demonstrates the fundamental fallacies of Brexit. It was always, and still remains, false to assume that the job of 'getting Brexit done' can provide closure on the central global dilemma of how a complex services economy such as the UK's can manage its demand for labour migration, which in turn ensures that racial, religious and cultural diversity are, and indeed always have been, permanent facts about British society. In fact, as Adrian Favell argues:

> One of the ironies of the virulent anti-'immigration' politics that, as I will argue, drove the Leave vote to victory, is that its triumph will very likely land Britain with far higher levels of unregulated 'neo-liberal' immigration than was ever likely under the hated obligations of EU freedom of movement. (Favell 2020)

These contradictory responses and the incoherence of the arguments used to justify Brexit should encourage us to ask a more fundamental question: was Brexit fundamentally about migration, or were there other forces driving the politics of Brexit? It is important to scrutinise the Brexiteers' own arguments about whether their concern was over illegal migration or indeed any type of migration. But to accept that Brexit was largely about migration is to miss important continuities between the Brexiteers' vision of Britishness, their visceral response to non-white migration – whether illegal or legal – and the fact that the same politicians who led the Brexit debate had also never really accepted that established racial or religious minorities (BAME) communities were 'really British'. Once this crucial connection is documented and scrutinised, it becomes easier to understand that the Brexit debate inevitably crossed what Adrian Favell has called the 'race bar'. As Favell and the recent 'Brexit regret' over lawful migration that was introduced by Brexiteers themselves suggest, the anxieties that powered the Brexit vote were not only about EU Eastern European migration or Syrian refugees who might get to France and then cross the Channel to the UK; Brexit was also about a racialised vision of what it means to be British in terms of racial hierarchies. As Favell notes, one of the most pernicious aspects of the politics of Brexit is that it has unsettled what many BAME communities assumed were settled issues of belonging; for post-Brexit they too have been rendered foreigners and migrants in the country in which they were born and where they have lived for generations.

Brexit illustrated that EU nationals who had entered the UK as part of their right to free movement within the EU were racialised as non-British 'foreigners', just as previously after the Second World War, British subjects of the British Empire had become 'foreigners' when they had exercised their right to enter Britain. The mobility of refugees and migrants from the Global South to Europe and then to the UK were represented not only in the far right or UKIP fringes but in the Leave campaign and in almost all sections of the media and mainstream political debates as an invasion of the British body politic. These images and language drew on and reinforced 'the racialized mix of knowledge and historical amnesia that reproduce age old hierarchies of the colonial systems' (Polowska-Kimunguyi 2022). Within this UKIP and Leave political discourse, an ideal vision of Britain being a 'white' and 'bordered' nation echoed the debates about immigration after the Second World War: about who constituted the 'true' British population.

More than this, as Favell notes, Brexit had consequences beyond newly arrived EU citizens and for all non-white Britons who had previously been included within the categories BAME, Black British and Asian British. The political discourse on refugees and migration that played a crucial role in the Brexit vote also reopened what were assumed to be settled public debates about the role of race relations and anti-discrimination law: this vision had been assumed to be that BAME communities should be integrated and accommodated through law and policies. As Favell notes:

> The return of Powellite 'immigration' discourse, in the era of UKIP, Farage and Leave, to classify and distinguish 'foreigners' indexed by colour or nationality, that means they can never really be indigenous or 'true' or original British (code for 'white English'), is thus one of the most egregious and disturbing (aspects) of the Brexit era. (Favell 2020)

Five decades have passed between the early Race Relations Acts and this Powellite immigration and race discourse, but we are not back to where we started in the 1960s, when the first race relations legislation was introduced. Unlike then, Tariq Modood and other theorists have provided theoretical and practical frameworks for multiculturalism that resist the earlier foreclosure of concepts of liberty and equality that excluded minorities, and therefore continue to have relevance to key questions for our societies. The UK also has the Equality Act 2010, which remains untouched despite the Brexiteers' rhetoric and resistance about 'woke' liberals. Attempts to roll back progress, such as the widely criticised Sewell Report, were sidelined by a government committed to Brexit, rather than enthusiastically implemented (Syal 2022).

The Great Repeal Bill 2018 formally ends the supremacy of EU law: and from the date of its enactment, UK courts are not required to consider the jurisprudence of the Court of Justice of the European Union (CJEU) – a binding precedent, although the two bodies of jurisprudence can continue to be in dialogue with that body of case law by having regard to CJEU judgements. Yet this does not necessarily mean a regression for the protection offered by UK discrimination law. At an ESCRC-funded Chatham House rules seminar on 28 September 2017 at the British Academy, an expert group considered the impact of Brexit on equality law. Noting the resistance to the label 'European', the conclusion of the round table was to frame the discussion around values such as equality, rather than European origins. The expert round-table report concludes:

> The feeling around that table was that the future flexible relationship between the CJEU and the UK courts could have benefits for the development of equality law in the UK. One view was that Brexit is a chance to leave behind CJEU jurisprudence that curtails the growth of equality, particularly in the area of affirmative action, and that there may be future areas of equality law where the UK can surpass the CJEU. (Oxford Human Rights Hub 2017)

At the same time, one lesson from fifty years of regulating racism in the UK and USA is that law in the form of judicial action is a necessary but not sufficient means for addressing structural racism. One lesson looking back at the impact of the 1968 and 1976 RR Acts is that judicial action needs to be accompanied by a legislative will to achieve viable social change (Malik 2007; Rosenberg 2008).

Moreover, to be effective and sustainable, it is essential that progressive legal forms are rooted in social practices and attitudes, rather than grafted on to the daily lives of individuals and communities (Malik 2000). To that end, while theoretical concepts, public ideas and political leadership are essential to support the goals of race discrimination law, it is also crucial that law is supported by local action and social movements with deep roots in communities.

There is no doubt that Brexit was a victory for those who find comfort in a national vision that Britain's Empire was a 'civilising mission', justified by the superior British values of the rule of law, tolerance and freedom of speech. As Caroline Elkins has demonstrated, this vision underlies the image that powered the Brexiteers' vision of the 'Great' in Britain. Elkins notes that memories of the British Empire played a significant role in the Brexit campaign, citing for example (Elkins 2022) Boris Johnson's evocation of Churchill and empire when he stated: 'Churchill

was right when he said that the empires of the future will be empires of the mind and in expressing our values I believe that Global Britain is a soft power superpower and that we can be immensely proud of what we are achieving.'

At the same time, despite the narrow victory for Brexiteers, there remains substantial resistance to this false narrative and an alternative vision. Churchill may be cited by Brexiteers to justify their imperial fantasies, but there are many others who challenge this view. In 2020, after the murder of George Floyd in the US and the emergence of the Black Lives Matter movement, protesters marched to Parliament Square chanting 'Churchill was a racist'; they stopped at Churchill's statue and spray-painted the words 'was a racist' after his name. Following the Rhodes Must Fall movement, the statue of Edward Colston, a former Royal African Company director, was toppled in Bristol in 2020. Despite a backlash against these movements, the mainly young demographic of the protesters and their willingness to protest confirm that there is significant support for these ideas and political movements. Despite concerted government attempts to hinder the dissemination of these ideas (Trilling 2022), the ideas that animate these movements are 'out' and cannot be 'put back in the box'.

At the level of social practice, too, there are some reasons for optimism. Despite the unrelenting commentary that white working-class communities resent non-white migration, new research from the UK ESCRC-funded project 'Northern Exposure: Race, Nation and Disaffection in "Ordinary" Towns and Cities after Brexit' confirms that there is potential for solidarity and alliances. It concludes:

> Amid these dislocations and risks, we find delicate, differentiated, and predominantly informal infrastructures of community governance and intervention attempting to build alliances and resolve tensions: a grounded local-view that belies the kind of image of the North established in mainstream national understandings of the dramatic politics of Brexit and after. (Wallace and Favell 2022)

These green shoots of solidarity require well-designed public politics and funding to respond to the needs on the ground; social and political movements that allow us to confront and debate the truth about Britain's imperial past, such as the Black Lives Matter and Rhodes Must Fall movements, which are crucial to constructing a post-imperial British identity. As the costs of a Brexit victory secured through the political mobilisation of racism mount up for all British citizens, it is becoming clear that an honest national debate about the issues raised by Black Lives Matter and Rhodes Must Fall are not just 'woke' peripheral issues for non-white minorities; they are crucial to the prosperity of all Britons.

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