Deprivation of Citizenship in the United Kingdom: Citizenship as Privilege

1 Introduction

This chapter discusses the legal provisions on citizenship deprivation in the United Kingdom and their interpretation by the courts. The UK has experienced vivid debates regarding the meaning of citizenship and the rules of its attribution as a plethora of legislative acts have affected nationality law. The visible results of these changes include a stricter naturalisation policy combined with the expansion of executive powers regarding loss of citizenship. The power of the Secretary of State for the Home Department to deprive British citizens of their status has taken centre stage among the statutory grounds of loss of citizenship, as the deprivation provisions have been amended in 2002, 2006 and 2014. The British executive, irrespective of its political affiliation, has increasingly labelled UK citizenship a privilege that can be withdrawn from those unworthy of it. As the nexus between immigration, terrorism and nationality has been strengthened, nationality has lost some of its individuality as most changes introduced since 2000 are in fact meant to address immigration and terrorism issues.

2 British Nationality Legislation in the 20th Century: Subjects, Nationals and Citizens

Throughout the 20th century, British nationality legislation has undergone significant changes that mirror the trajectory of the British state itself. The result is a complex area of law comprising a variety of statutes and citizenships, all with different rights attached to them. While scholars agree that there is no domestic concept of British nationality as such, the trajectory of nationality

---

legislation documents the contested transition from ‘subjects’ to ‘citizens’.\textsuperscript{2} Citizenship per se is considered a new addition to the vocabulary of nationality and lacking the conceptual significance it commands in continental Europe.\textsuperscript{3} Initially, the relationship between people, state and territory was expressed by the notions of allegiance to the Crown and subjecthood, which involved a personal and vertical relation between the individual and the Crown.\textsuperscript{4} Likewise, national sentiment found its expression in the notions of indissoluble allegiance and Empire. Prior to 1915, the main nationality category was that of British subject status and anyone born within the Crown’s territory and allegiance was a subject (\textit{ius soli}).\textsuperscript{5} Thus, subjects were all those who had become British subjects by connection with a Colony and self-governing Dominion.\textsuperscript{6} This status was to a certain extent a nationality, as it entitled the person to a British passport, as well as, to diplomatic and consular protection. However, unconditional free movement rights across the Empire were not attached to it as subjects were allowed to enter only the UK and the territory upon which their nationality was based.

The 1914 \textit{Nationality Act} was the first attempt to introduce a standardized naturalisation procedure across the Empire and a common nationality status based upon allegiance to the imperial Crown (the so-called Common Code). Furthermore, the need to have common rules stemmed from fears that unworthy individuals would be encouraged to naturalise due to the generous welfare

\textsuperscript{2} Clive Parry quoted in A. Dummett and A. Nicol (1990) \textit{Subjects, Citizens, Aliens and Others – Nationality and Immigration Law}, London: Weidenfeld and Nicolson, p. 2. Dummett and Nichol argue ‘The law of nationality plays no part in standard political histories of the British nation. It is often omitted even from constitutional histories. Yet legal definitions of who belongs, and on what terms, to the several political units of the British Isles have inevitable expressed, consciously or unconsciously, different theories of the body politic over time. Together with various laws and policies on entry into the kingdom, they have influenced the character of the population and the sense of national identity.’


\textsuperscript{4} According to the \textit{Calvin} Case decided in 1608, allegiance was indissoluble, in the sense that it carried permanent obligations.

\textsuperscript{5} \textit{Ius soli} survived as the main mode of citizenship acquisition until 1983 when conditional \textit{ius soli} was introduced.

\textsuperscript{6} Some of the territories that made up the Empire maintained their own native rulers. Persons born within these protected territories were considered British Protected Persons. While internationally they were considered British, they were aliens in the domestic law of the UK. By 1945, the Empire numbered about 100 million British Protected Persons and 400 million British subjects.