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Empire at the Border: Evaluating How Colonial Legal Logics Shape British Immigration Law, 1948–2025

Amirah Zulkifli

Abstract

This article examines how contemporary British immigration law continues to operate through legal logics inherited from the colonial era. Challenging the dominant narrative that the 2018 Windrush scandal was a bureaucratic error, it argues instead that such exclusions are systemic and rooted in Britain's imperial past. Through a postcolonial legal analysis inspired by Spivak's method of reading 'against the grain,' the study examines how colonial techniques, legal dualism, bureaucratic regulation, and the performance of legal neutrality have been incorporated into domestic immigration law since 1948. Drawing on case studies from Malawi, Zimbabwe, and Burma, it shows how colonial governance established racialised legal hierarchies that were repurposed in post-war nationality and immigration statutes.

The article critically analyses legislation from 1948 to 1981, the Windrush scandal, and policies such as the 2025 Immigration White Paper to demonstrate the ongoing operation of what Stoler terms 'imperial duress.' It concludes that British immigration law has not broken with the empire but internalised its methods, embedding exclusion within legal form. Recognising the specifically colonial nature of this persistence offers a clearer understanding of how law legitimates racialised exclusion and why meaningful reform requires confronting, not erasing, the imperial foundations of the modern British state.

1 Introduction

The 2018 Windrush scandal, in which long-settled Commonwealth citizens were wrongly classified as illegal immigrants, is often described as an administrative error. This article argues, instead, that Windrush was the predictable outcome of Britain's post-imperial legal regime — a regime that continues to govern migration through inherited colonial logics.

Windrush revealed not a malfunctioning system but one functioning as designed. Evidentiary burdens, bureaucratic indifference, and administrative exclusion echoed techniques historically used to govern colonised populations and later repurposed to regulate postcolonial migrants within Britain.

This study asks: To what extent have colonial-era practices of imperial governance been repurposed in Britain's post-1948 immigration framework, and how does recognising their colonial character help clarify the persistence of exclusions in contemporary law? While race remains central to immigration control, colonialism is understood here as a broader legal structure that governs through both exclusion and conditional inclusion.

Adopting a postcolonial legal approach inspired by Gayatri Spivak's call to 'read archives against the grain,' this article treats law, policies and administrative practices as historically situated in legal forms that continue to reproduce exclusion under the guise of neutrality.

This article analyses colonial case studies in which racialised legal structures were developed and refined, the legislation that reconfigured the empire's hierarchy, and how this transpired in the Windrush scandal. The article then turns to the present, assessing how recent policy developments mirror colonial-empire law.

Ultimately, this article argues that British Immigration law has not broken with its colonial past; it has internalised it. Empire endures not as memory, but as method.

2 Colonial Foundations

Contemporary British Immigration law reproduces governing techniques first refined within imperial administration, as evidenced by colonial case studies such as Malawi, Southern Rhodesia (Zimbabwe), and Burma. It identifies three interrelated mechanisms: legal dualism, bureaucratic regulation and performative legalities.

2.2 Mechanism I: Legal Dualism Abroad

Colonial rule rested upon what Mamdani calls a *bifurcated state*: a legal system that separated colonisers, governed by metropolitan law, from colonised populations subjected to so-called customary authority.[1] While presented as recognition of cultural difference, scholars like Chatterjee argue this dual structure was designed to institutionalise racial hierarchy within the legal order.[2]

In colonial Malawi, this dualism was reflected in separate court systems. The 1928 Thangata Ordinance transformed reciprocal communal labour into a coercive regime enforced through native courts. African tenants were compelled to provide labour for European estate owners, with breaches punishable by imprisonment or forced labour, and with minimal procedural protections.[3] European settlers, by contrast, remained subject to common law courts that retained recognised legal safeguards.

Legal historians have shown that 'customary law' was frequently a colonial construction rather than a preservation of indigenous practice. As Merry observes, what colonial authorities labelled customary law often reflected selected local practices reinterpreted to fit administrative priorities.[4] Archival records from Malawi illustrate this process: colonial officials instructed native courts to enforce labour obligations as customary practice, even when local chiefs

[1] Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (PUP 1996), 18–19.
[2] Partha Chatterjee, *The Nation and Its Fragments: Colonial and Postcolonial Histories* (PUP 1993), 16–17.
[3] Martin Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (CUP 1985), 91–98.
[4] Sally Engle Merry, 'Law and Colonialism' (1991) 25(4) LSR 889, 897.

challenged that characterisation, emphasising that maintaining estate labour was necessary for 'order and progress.'[5]

Some colonial administrators justified dual legal systems as a form of pragmatic pluralism. Lugard's theory of indirect rule portrayed customary authority as a means of preserving local governance structures while facilitating imperial administration.[6] Yet archival correspondence demonstrates that colonial officials actively shaped customary courts and judicial appointments to secure outcomes favourable to settler economic interests, undermining any claims that the system merely recognised pre-existing legal traditions.[7]

This differentiation between formal legal status and practical access to rights provides an important precedent for modern immigration control. Later British legislation reproduced comparable forms of stratified legal status, separating nationality from substantive rights of entry and residence.

2.3 Mechanism II: Bureaucratic Regulation of Everyday Life

Colonial administration extended beyond the courtroom into everyday life, where documentation, registration, and surveillance functioned as mechanisms of racial governance through bureaucratic control.[8]

These bureaucratic practices became particularly visible in colonial Southern Rhodesia through widespread 'vagrancy swoops' and mandatory pass-document regimes. Colonial officials regularly conducted street-level operations, demanding that African individuals produce identification papers or evidence of formal employment.[9] As in Malawi, despite being officially presented as necessary measures to ensure public order, archival records reveal their deeper function: maintaining a steady supply of controlled labour for white-owned farms and industries. *The Native Registration Act 1936* mandated that all adult African males carry

[5] John McCracken, *A History of Malawi, 1859–1966* (James Currey 2012), ch 9.
[6] Frederick Lugard, *The Dual Mandate in British Tropical Africa* (5th edn, Frank Cass 1965), 203–204.
[7] Partha Chatterjee, *The Nation and Its Fragments: Colonial and Postcolonial Histories* (PUP 1993), 91–98.
[8] Achille Mbembe, On the Postcolony (UCP 2001), 25–26; Didier Fassin, *Enforcing Order: An Ethnography of Urban Policing* (Polity 2013), 4.
[9] Jocelyn Alexander, ''Hooligans, Spivs and Loafers'? The Politics of Vagrancy in 1960s Southern Rhodesia' (2006) 47(1) JAH 103.

registration certificates, known as *situpas*, which recorded the bearer's employer, residence and tribal affiliation.[10] Government reports from 1956 show over 40,000 arrests under vagrancy laws, mainly for failure to produce registration certificates.[11] This logic echoed in modern immigration controls such as carrier sanctions, landlord checks, and documentation requirements within the UK's hostile environment.

2.4 Mechanism III: Rule-of-Law Theatre

Colonial authority further relied on performances of legality that masked coercion as justice. As illustrated in colonial Burma, British officials regularly employed detention without trial, ostensibly justified by claims of protecting public order.[12] Despite the lack of genuine judicial independence, colonial courts staged elaborate rituals.[13]

Such theatrics sought to publicly demonstrate Britain's commitment to law and fairness, even as detainees faced indefinite imprisonment without meaningful recourse.[14] These hearings expose a fundamental contradiction at the heart of colonial justice: courtroom decorum and procedural formalism coexisted seamlessly with the arbitrary exercise of state power. The performance of legality was not incidental, but a core technique of imperial rule, which Brown describes as the persistent restatement of the rule of law amid systemic judicial failure in Burma.[15]

Although some colonial officials pointed to acquittals in criminal cases as evidence of judicial fairness, the *Report on the Police Administration of Burma (RPAB)* reveals a more complex picture: courts were routinely criticised by colonial police for demanding high standards of evidence that led to the release of defendants deemed 'undoubtedly guilty,' prompting officers to resort to preventative detention in frustration.[16] Far from indicating genuine impartiality, these outcomes exposed the contradiction of a legal system that performed procedural rigour

[10] *Native Registration Act 1936* (Southern Rhodesia) Ordinance No 21 of 1936.
[11] Teresa Barnes, *We Women Worked So Hard: Gender, Urbanisation, and Social Reproduction in Colonial Harare, Zimbabwe, 1930–1956* (Heinemann 2000), 46.
[12] Ian Brown, 'Law and Order, the Rule of Law, and the Legitimation of the Colonial Presence in Late British Burma' (2022) 65 HJ 1081, 1088.
[13] Ibid, 1090.
[14] Ibid, 1091–92.
[15] Ibid.
[16] *Report on the Police Administration of Burma* 1919, 17; 1924, 13; 1936, 50.

while simultaneously enabling arbitrary state power through parallel administrative mechanisms. Brown further demonstrates that colonial courts in Burma were plagued by perjury, witness intimidation, and police corruption. At the same time, the 1923 Crime Enquiry Committee reflected a racialised view of Burmese defendants that legitimised rather than challenged imperial domination. [17]

Colonial legal performance provides a lens for Britain's later nationality and immigration legislation. The British Nationality Acts (1948–71) and Windrush apologies echoed colour-blind fairness, while reproducing racialised exclusion first refined in colonial courtrooms.

Limited to three colonial sites, this section draws on their archival richness and clear doctrinal continuity with Britain's contemporary immigration regime to trace imperial legal logics into the present.

This section has traced how colonial techniques, legal dualism, bureaucratic regulation, and rule-of-law theatre were developed to manage racialised subjects. These forms of rule, first imposed abroad, re-emerged in statutes and practices that continue to structure racialised exclusion in Britain today. The next section turns from the colonial archive to the post-war legislature, examining how lawmakers redefined citizenship.

3 Building the Post-Imperial Border

In the decades following the formal end of the empire, Britain faced the challenge of redefining national identity, citizenship, and belonging in a rapidly changing geopolitical context. Immigration and nationality laws became a key site through which the state negotiated its retreat from empire while reasserting control over the racial and political boundaries of Britishness. This section examines a series of legislative interventions, the British Nationality Act 1948, the Commonwealth Immigrants Acts of 1962 and 1968, the Immigration Act 1971, and the British Nationality Act 1981, not simply as administrative responses to migration, but as instruments of racial governance. These laws allowed Britain to manage the consequences

[17] Ian Brown, 'Law and Order, the Rule of Law, and the Legitimation of the Colonial Presence in Late British Burma' (2022) 65 HJ 1081, 1087; *Report of the Crime Enquiry Committee* (Maymyo, 1923), 16.

of decolonisation without dismantling the imperial logics that had long structured its relationship to colonial subjects.

Framed as neutral, these laws used ancestry, documentation, and administrative discretion to redefine non-white Commonwealth citizens as outsiders, even those with British passports. They transformed the promise of shared post-imperial citizenship into a stratified system of belonging, where whiteness and ties to settler colonies shaped inclusion. In doing so, the law became a tool for reproducing colonial hierarchies within a national framework.

3.1 The British Nationality Act 1948

The British Nationality Act (BNA) 1948 created the legal status of the Citizen of the United Kingdom and Colonies (CUKC), granting a single, shared citizenship to subjects across Britain and its former imperial territories.[18] At first glance, the Act appeared to enshrine ideals of equality and mobility, an inclusive gesture aimed at consolidating imperial ties in the post-war era. Yet this promise of universal citizenship was deeply misleading. El-Enany argued that the Act's minimalist form was not ideologically neutral; it was deliberately sparse, offering no substantive protections against racial discrimination and leaving broad administrative discretion in place.[19]

This disjuncture between formal legal equality and practical racial differentiation was not oversight but the domestic re-inscription of colonial legal dualism. While all Citizens of the United Kingdom and Colonies (CUKCs) were equal in law, they were treated unequally. Historical records show that white migration from settler dominions such as Australia, Canada, and New Zealand was not only welcomed but also described as 'culturally similar,' and that relocating to the UK faced minimal bureaucratic obstacles.[20] In contrast, Black and Asian Commonwealth migrants faced restrictive screening, bureaucratic obstacles, and informal quotas.[21]

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[18] British Nationality Act 1948, Part I, Section 1(1).
[19] Nadine El-Enany, *Bordering Britain: Law, Race and Empire* (Manchester University Press 2020), 77–81.
[20] Amelia Gentleman, *The Historical Roots of the Windrush Scandal: Independent Research Report* (Home Office 2023) <https://www.gov.uk/government/publications/the-historical-roots-of-the-windrush-scandal/the-historical-roots-of-the-windrush-scandal-independent-research-report-accessible> accessed 8 June 2026, 12.
[21] Ibid.

As Paul highlights, Black and Asian migrants were constructed not merely as administratively inconvenient but as a social problem, posing cultural and racial challenges to a postwar Britain still clinging to imperial hierarchies supported by policy debates at the time.[22] These debates framed Commonwealth migration through assumptions of racial hierarchy, revealing how equal citizenship functioned alongside unequal mobility in practice.

3.2 Commonwealth Immigration Acts 1962 and 1968

3.2.1 1962

The Commonwealth Immigration Act (CIA) 1962 ended the automatic right of entry for CUKCs, replacing it with an employment-voucher system requiring prior government authorisation.[23] While framed as an administrative response to labour market pressures, this system allowed the government to regulate entry without explicitly invoking race, yet operated in practice as a racialised filter. Parliamentary debates made clear that the genuine concern was non-white migration from the Caribbean, South Asia, and Africa, with MP James Johnson noting: 'the real target of this Bill is coloured immigration. That is the reality, even though it is not stated in the text.'[24]

Statistical data from July 1962 shows approval rates remained high across the board, regardless of race or nationality.[25] However, despite these figures, individual accounts reveal a contrasting experience at the border. For instance, Paul noted examples of non-white Commonwealth citizens, especially from the Caribbean, being subjected to more intensive scrutiny at ports of entry compared to white migrants from settler dominions, despite holding identical legal status and documentation.[26] Hansen concurs with Paul's analysis, describing the 1962 Act as a 'de facto racial filter' that functioned in practice to privilege white CUKCs.[27] Neither Paul nor Hansen tries to balance the argument or justify the 1962 Act.

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[22] Kathleen Paul, *Whitewashing Britain: Race and Citizenship in the Postwar Era* (Cornell University Press 1997) 42; HC Deb 5 November 1954, vol 533, cols 2482–2484 <https://hansard.parliament.uk/commons/1954-11-05/debates/7d180f88-61e7-476f-b3d9-9e6d0eeaf2b6/ColonialImmigrants> accessed 8 June 2026.
[23] Commonwealth Immigrants Act 1962 (UK), s.1 and s.2.
[24] HC Deb 6 February 1962, vol 653, col 304; Commonwealth Immigrants Act 1962, s.2(4).
[25] HC Deb 11 July 1962, vol 663, cols 243–246.
[26] Kathleen Paul, *Whitewashing Britain: Race and Citizenship in the Postwar Era* (Cornell University Press 1997) 42, 73–75.
[27] Randall Hansen, *Citizenship and Immigration in Post-War Britain: The Institutional Origins of a Multicultural Nation* (Oxford University Press 2000), 71.

3.2.2 1968

This claim of colour-blind regulation was swiftly undermined in 1968 when Parliament passed the 1968 Act, barring British-passport-holding CUKCs from entry unless they, or a parent or grandparent, had been born, naturalised or registered in the UK.[28] Although the term *patriality* would not be codified until 1971, the 1968 Act effectively operationalised this logic: citizenship and belonging were no longer determined by legal status or birthplace (*jus soli),* but by ancestry (*jus sanguinis),* excluding many non-white CUKC's who possessed valid British passports but lacked qualifying lineage.[29]

The legislation emerged in response to anticipated migration by Kenyan Asians holding British passports following post-independence Africanisation policies that limited their economic and residential rights.[30] While the government framed the measure as necessary to preserve social cohesion rather than race-based exclusion, the ancestry requirement operated in practice as a proxy for ethnicity, disproportionately affecting East African Asians while leaving most white CUKCs untouched.[31]

Ministers maintained that the rule was formally non-discriminatory because it applied equally to all citizens lacking essential ties to Britain. However, this justification was later rejected in *East African Asians v United Kingdom* [1973], where the European Commission of Human Rights (ECHR) held that the ancestry test violated the Convention by targeting British passport holders based on racial origin.[32] The decision confirmed that formally neutral immigration rules may nonetheless be unlawful where their purpose and effect produce racial exclusion, exposing how post-imperial immigration control reproduced colonial hierarchies through lineage rather than explicit racial classification.

The decision exposed the fragility of the colour-blind justification. In condemning the statute, the Commission's judgement affirms that the language of colour is embedded in British

[28] Commonwealth Immigrants Act 1968 (c 9); HC Deb 27 February 1968, vol 759, cols 1240–44 (James Callaghan).
[29] Ibid; Immigration Act 1971 (c 77) s 2(1)(b); Randall Hansen, *Citizenship and Immigration in Post-War Britain: The Institutional Origins of a Multicultural Nation* (Oxford University Press 2000), 99–100.
[30] HC Deb 27 February 1968, vol 759, cols 1240–44 (James Callaghan).
[31] Ibid.
[32] *East African Asians v United Kingdom* (European Commission of Human Rights, 6 March 1973).

legislation and that the post-imperial border regime perpetuates colonial hierarchies of citizenship, now camouflaged by lineage rather than by overt references to colour.

3.3 The Immigration Act 1971

The IA 1971 consolidated the post-imperial border by codifying patriality through the 'right to abode', making ancestral connection the gateway to unconditional residence.[33] As Hansen argues, the Act separated nationality from entry and residence: individuals could hold CUKC status yet remain subject to immigration control if they lacked patriality.[34] This institutionalised a familiar logic of legal dualism—formal status in law, stratified access to rights in practice.

The Act also entrenched bureaucratic governance. By requiring non-patrials to obtain leave to enter or remain, and by delegating extensive rule-making power to the Home Secretary, it enabled immigration control to develop through executive discretion rather than sustained parliamentary scrutiny.[35] This framework produced legal uncertainty for many Commonwealth immigrants. It rendered Caribbean CUKCs newly vulnerable to immigration enforcement, laying the groundwork for later hostile-environment harms in which lawful residence had to be proved retrospectively. Having defined the purpose of the 1971 Act, the following section will focus on the 1981 Act, which dismantled the shared status of CUKC, replacing it with stratified national categories, further entrenching racialised and geographic distinctions within the legal fabric of British belonging.

3.4 The British Nationality Act 1981

The BNA 1981 restructured British nationality law in response to decolonisation and shifting migration patterns. Its primary objective was to clarify national status by replacing the unified CUKC category with three new classifications: *British Citizen*, *British Dependent Territories Citizen (BDTC)*, and *British Overseas Citizen (BOC)*. Only British Citizens, primarily defined by birth or descent in the UK, retained the right of abode.[36]

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[33] Immigration Act 1971, s.2(1)(b).
[34] Randall Hansen, *Citizenship and Immigration in Post-War Britain: The Institutional Origins of a Multicultural Nation* (Oxford University Press 2000), ch 5.
[35] Immigration Act 1971, s.3(2); Colin Yeo, *Welcome to Britain: Fixing Our Broken Immigration System* (Biteback 2020), 88–91.
[36] British Nationality Act 1981, s.11(1).

The Act also revised the principle of *jus soli*, requiring that at least one parent be a British citizen or settled in the UK so that a UK-born child can acquire citizenship automatically.[37] This change was presented as a modernisation of British nationality law, aligning it with practices in other European states that based citizenship primarily on descent rather than birthplace.[38]

This trend was further reflected in the selective treatment of BDTCS. While most Hong Kong residents were denied automatic access to British citizenship before the 1997 handover, full citizenship was granted to predominantly white Falkland Islanders in 1983, raising questions about the consistent application of legal criteria.[39]

This divergence suggests that ancestry-based citizenship criteria, though formally neutral, operated unevenly in practice, reinforcing exclusionary concepts of belonging under the language of modernisation.

3.5 Limitations

While this analysis focuses on how immigration and nationality laws were used to create racialised boundaries of belonging, these developments were shaped by wider social, economic and political concerns such as fears about jobs, housing, and Britain's changing role after decolonisation. Additionally, much of the evidence comes from official records and court rulings, which do not fully capture the lived experiences of those affected. Its emphasis therefore remains on legal structures and state policy, but further work could examine how migrants themselves responded to, resisted, and navigated these changes in their daily lives. Despite these limitations, the legal developments examined here clearly show how race was embedded in the evolving definition of who could belong in Britain.

Postwar immigration legislation transformed imperial citizenship into a system grounded in ancestral connection and administrative control, narrowing access to belonging without explicit racial classification. Rather than marking a rupture with empire, these reforms reorganised

[37] Ibid, s.1(1).
[38] HL Deb 22 June 1981, vol 421, cols 1095–1097 (Lord Belstead).
[39] Home Office, *British Nationality Law: Outline of Proposed Legislation* (Cmnd 7987, 1980), [30]; British Nationality (Falkland Islands) Act 1983.

earlier hierarchies within the legal framework of the post-imperial state, redefining British membership through formally neutral mechanisms of regulation.

The next section turns to the Windrush scandal to examine how these legal transformations materialised in practice. It traces how the exclusionary frameworks established in this period laid the groundwork for the bureaucratic violence experienced by long-settled Commonwealth citizens decades later.

4 The Windrush Scandal as Case Study in Colonial Legal Persistence

Britain's 2018 Windrush scandal has been narrated as an embarrassing bureaucratic accident. This article instead argues that Windrush was the foreseeable culmination of how these policies transformed former imperial subjects into deportable 'others' and embedded a dual regime of rights and exception within British law.

This section will first outline the intersection of the Windrush scandal and the Hostile Environment policy, before demonstrating how the legal frameworks and racialised logics traced in the previous section materialised in practice.

4.1 Background

The Windrush scandal refers to cases that came to public attention in 2018, in which Commonwealth citizens were wrongly classified as illegal immigrants despite having lived in the United Kingdom for decades.[40] Many were denied access to employment, housing, healthcare, and public benefits, while others faced detention or deportation.[41]

The scandal was closely linked to the 'hostile environment' policy framework, which aimed to make life untenable for undocumented migrants by embedding immigration enforcement

[40] Mike Slaven, 'The Windrush Scandal and the Individualization of Postcolonial Immigration Control in Britain' (2022) 45(16) ERS 49, 50–51.
[41] Wendy Williams, *Windrush Lessons Learned Review* (Home Office, March 2020), 6–9.

across everyday services.[42] Under this policy, individuals were increasingly required to prove their legal status in interactions with employers, landlords and other institutions.[43] For members of the Windrush generation who lacked formal documentation, often because none had been required at the time of their arrival, this shift rendered them newly vulnerable to immigration enforcement, despite their lawful residence.[44] The scandal prompted widespread public and political condemnation, raising broader questions about the fairness, accountability, and racial implications of Britain's immigration regime.[45]

4.2 The Structural Roots of the Windrush Scandal

While the Windrush scandal is often framed as an administrative failure or a technocratic oversight, this interpretation overlooks the deeper legal and racial structures that produced it. The prevailing narrative suggests that victims were simply unintended casualties of a policy, particularly the 2012 'hostile environment' measures, designed to target undocumented migrants.[46] The Home Office, alongside the *Windrush Lessons Learned Review*, has reinforced this view, attributing the scandal to 'institutional ignorance and thoughtlessness' rather than systemic racism.[47]

However, this explanation fails to account for the scandal's racial specificity. Approximately 57,000 Commonwealth migrants were potentially affected by the Windrush scandal, with around 15,000 from Jamaica alone, meaning that over a quarter were Jamaican.[48] Other affected individuals came from countries such as India, Pakistan, Kenya, and South Africa, but the impact was disproportionately concentrated among Black Caribbean communities.

Notably, there are no documented cases of white migrants from settler dominions such as Australia, Canada, or New Zealand being caught up in the Windrush scandal, despite also holding Commonwealth citizenship. While exact figures are difficult to determine due to their

[42] Melanie Griffiths and Colin Yeo, 'The UK's Hostile Environment: Deputising Immigration Control' (2021) 41(4) CSP 521, 523–525.
[43] Ibid, 526–528.
[44] Wendy Williams, *Windrush Lessons Learned Review* (Home Office, March 2020), 28–30.
[45] Ibid, 11–14.
[46] Wendy Williams, *Windrush Lessons Learned Review* (Home Office, March 2020), 11–13.
[47] Amelia Gentleman, *The Historical Roots of the Windrush Scandal: Independent Research Report* (Home Office 2023) <https://www.gov.uk/government/publications/the-historical-roots-of-the-windrush-scandal/the-historical-roots-of-the-windrush-scandal-independent-research-report-accessible> accessed 8 June 2026, 44–49.
[48] Wendy Williams, *Windrush Lessons Learned Review* (Home Office, March 2020), 15.

classification at the time of entry, substantial numbers of people from the white dominions migrated to the UK during the same period, often temporarily and without being classified as immigrants, due to their perceived cultural proximity and shared British subject status.[49]

If immigration enforcement policies were truly race-neutral, the harms would have been randomly distributed across all migrant groups. Instead, the overwhelming majority of those affected were Black Caribbean and Commonwealth-born individuals, many of whom had arrived legally as CUKCs decades earlier.[50] Their exclusion was not incidental; it was the outcome of a legal system that, since decolonisation, has gradually redefined British citizenship in ways that disproportionately disadvantaged colonised, non-white populations.

This pattern is best understood through the lens of critical race theory. As Crenshaw argues, 'structural racism does not require overt racial animus; it arises when ostensibly neutral laws produce racially unequal outcomes because they are layered upon historical inequities.'[51] In the British context, that historical structure is the empire. El-Enany further contends that Britain's post-war legal architecture did not mark a clean break with colonialism but instead sought to retain the material and symbolic privileges of empire while excluding its racialised subjects.[52] Legal categories such as ancestry, partiality, and right of abode functioned to preserve whiteness as the unspoken norm of national belonging, transforming former imperial insiders into legal outsiders.

The Windrush scandal must therefore be understood not as an aberration, but as a structural outcome of Britain's post-imperial legal regime. It exposed how the racial hierarchies of empire remain embedded in contemporary citizenship law, less visible, but no less consequential. What appeared in 2018 as a policy failure was the legal system working as designed.

4.3 Documentation and Administrative Processes

[49] Amelia Gentleman, *The Historical Roots of the Windrush Scandal: Independent Research Report* (Home Office 2023) <https://www.gov.uk/government/publications/the-historical-roots-of-the-windrush-scandal/the-historical-roots-of-the-windrush-scandal-independent-research-report-accessible> accessed 8 June 2026.
[50] Satnam Virdee, *Racism, Class and the Racialized Outsider* (London: Palgrave Macmillan, 2014), 92–97.
[51] Kimberlé Crenshaw, 'Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law' (1988) 101(7) HLR 1331.
[52] Nadine El-Enany, *Bordering Britain: Law, Race and Empire* (Manchester University Press 2020), 52–58.

The Windrush scandal not only exposed the racialised restructuring of British citizenship but also revealed how bureaucratic systems and administrative procedures can operate as mechanisms of exclusion. The hostile environment policy tasked landlords, employers, and other civil actors with enforcing immigration rules. Under this framework, individuals were required to demonstrate their continuous lawful residence in the UK to access employment, housing, healthcare, and banking services. For many in the Windrush generation, who had arrived legally between 1948 and 1973 under CUKC status, this demand was challenging to meet. They had never been required to formalise their legal status, nor were they issued documentation upon arrival.[53]

A significant moment that came to symbolise this administrative indifference was the Home Office's destruction of the landing card archives in 2010.[54] These records, which noted arrival dates for many Commonwealth citizens, might have helped substantiate long-term residence in some cases. Although they were not determinative of legal proof of residence, their removal reflected a bureaucratic culture in which the presence of post-war migrants was neither institutionally valued nor systematically recorded.[55] While the loss of the landing cards did not directly cause the scandal, it contributed to a broader evidentiary vacuum. It exemplified the lack of institutional memory regarding post-colonial migration.

The consequence of these administrative practices is best understood through the lens of bureaucratic violence, a form of harm inflicted, not through overt racial hostility, but through evidentiary burdens, institutional omission and procedural indifference. As Gren, Abdelhady and Joormann argue, bureaucratic violence operates through seemingly neutral administrative processes that are, in practice, 'constraining, humiliating, soul killing and sometimes life-threatening,' materialising in the Windrush scandal.[56]

Individuals were required to produce documentation covering every year of residence in the UK, often dating back several decades, even though the British state had neither required such

[53] Wendy Williams, *Windrush Lessons Learned Review* (Home Office, March 2020), 7–8.
[54] Rajeev Syal, 'Home Office Destroyed Windrush Landing Cards, Says Ex-Staffer' *The Guardian* (London, 17 April 2018).
[55] Namitasha Goring, Beverley Beckford and Simone Bowman, 'The Windrush Scandal: A Review of Citizenship, Belonging and Justice in the United Kingdom' (2020) 22(3) EJLR 266, 267.
[56] Nina Gren, Dalia Abdelhady and Martin Joormann, 'Unmasking the Impact of Bureaucratic Violence' (2024) 39(2) Refuge 1, 2–4 <https://doi.org/10.25071/1920-7336.41163> accessed 8 June 2026.

records at the time of arrival nor preserved them.[57] As a result, long-settled Caribbean Britons lost employment, housing and pensions; were denied National Health Service (NHS) treatment for serious illnesses or were detained and deported to countries they had not seen in over fifty years.[58] The violence lay not only in exclusion itself but in the moral indifference of a system that masked these harms behind the logic of compliance and technical legitimacy.

Proponents of the documentation requirement argue that it reflects the legitimate need for a state to maintain clear and consistent immigration controls. Ryan contends that requiring individuals to prove their lawful residence is not an act of exclusion but an expression of the rule of law and administrative fairness.[59] Documentation requirements serve to prevent fraud, ensure equitable access to public services, and maintain accurate records in an increasingly data-driven governance environment.[60] The state, they argue, cannot be expected to provide rights and entitlements without verifiable proof of eligibility.[61] Moreover, responsibility is seen as shared: while the state may have failed to issue documentation upon arrival, individuals had decades to regularise their status and respond to evolving administrative expectations.[62]

This argument, however, overlooks the historical and racialised context in which such evidentiary burdens emerged. It assumes a level playing field, ignoring that the Windrush generation arrived under the CUKC framework, which granted a right of abode and required no further documentation at the time. The expectation that individuals retrospectively produce continuous records spanning decades, despite the state's failure to need, provide, or preserve such records, amounts to an institutional sleight of hand. It shifts the burden of proof onto those whom the state had previously invited, then denied. This is not merely a bureaucratic oversight; it is a form of bureaucratic violence, as it disguises exclusionary outcomes behind the veil of neutral procedure. The invocation of legality thus becomes a tool of racialised governance, selectively applied and historically disconnected from the very conditions the state itself created.

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[57] Amelia Gentleman, *The Historical Roots of the Windrush Scandal: Independent Research Report* (Home Office 2023) <https://www.gov.uk/government/publications/the-historical-roots-of-the-windrush-scandal/the-historical-roots-of-the-windrush-scandal-independent-research-report-accessible> accessed 8 June 2026.
[58] Ibid.
[59] Bernard Ryan, 'Theorizing Immigration Control as a Function of the State' (2005) 61 PL 330, 332–334.
[60] Ibid.
[61] Home Office, *The Border, Immigration and Citizenship System: A Strategy for the Future* (Cm 7346, 2008), [5.5].
[62] Home Affairs Committee, *The Windrush Generation* (HC 990, 2017–19), [14].

Mbembe's concept of *commandment* clarifies this continuity. In colonial rule, bureaucratic sovereignty depended on selective legibility: only those inscribed in colonial records were recognised by law.[63] In Windrush, absence from a Home Office database was treated as nonexistence. Legal status, identity, and belonging were contingent upon visibility within a bureaucratic framework never designed to accommodate Britain's postcolonial subjects. In this sense, the Windrush scandal does not reflect a new or exceptional failure, but rather the persistence of a colonial logic in which exclusion is enacted through the very tools of state administration.

4.4 Immigration Control and Legal Exceptions

Contemporary British immigration law reflects not merely exclusion, but a system of legal exceptionalism. Noll defines legal exceptionalism as a system in which specific individuals or groups are governed outside the regular legal order, subject to special rules, discretionary authority, or suspended protections.[64] In contrast, others continue to enjoy the full rights and safeguards of the law.[65] It denotes a departure from the principles of legal universality and equal treatment, often justified by appeals to national security, sovereignty, or public interest.

In the context of immigration law, legal exceptionalism refers to the governance of migrants, particularly racialised and postcolonial populations, by a parallel legal regime that permits indefinite detention, limited access to judicial review, reduced procedural safeguards, and broad executive discretion. These measures are often viewed as exceptional because they would be unconstitutional or impermissible if applied to citizens.

This form of governance does not emerge from recent migration pressures alone but is rooted in Britain's colonial legal history. As the first section established, the British Empire ruled through legal dualism, creating separate legal systems for colonisers and colonised, justified by race and cultural hierarchy. Today, immigration law reproduces this dualism internally: the full protections of law apply to some; others are governed through administrative exception.

[63] Achille Mbembe, On the Postcolony (UCP 2001), 25–30.
[64] Gregor Noll, 'Why Human Rights Fail to Protect Undocumented Migrants' (2010) 12(3) EJML 241, 247.
[65] Ibid.

Immigration law operates through legal exceptions. Individuals subject to immigration control can be detained indefinitely without trial, denied access to appeals, and deported at the authorities' discretion.[66] These powers echo colonial emergency regimes, forms of governance employed in the colonies to manage and punish dissent without the constraints of due process. The Windrush scandal brought these structures into public view. People with lawful residence were treated as deportable aliens because they could not meet the evidentiary requirements set by a bureaucracy that had never issued them documentation.[67] Such practices do not merely exclude; they suspend ordinary legal protections and create zones of exception within the legal system.

A key counterpoint is that the stratification seen in British immigration law may be part of a broader global trend in migration governance, rather than a uniquely colonial legacy. Oelgemöller shows that since the 1970s, international institutions and states, especially in the Global North, have developed doctrines of migration control that increasingly emphasise securitisation, 'mixed migration,' and the construction of legal categories like 'illegal migrant' to justify exclusion and control.[68] These shifts have led to the normalisation of parallel legal regimes: one for rights-bearing subjects and another for mobile people deemed suspect, undesirable, or outside the protection of rights.[69] From this perspective, British immigration law mirrors global migration containment and deterrence practices that prioritise state sovereignty over migrant protection.

However, as Oelgemöller also makes clear, these governance regimes are not neutral or universal; they are built upon colonial assumptions of who deserves protection and who poses a threat.[70] The very concept of the 'illegal migrant,' which underpins much of contemporary immigration law, was formed in the post-imperial period to manage the mobility of formerly colonised populations, especially those racialised as undesirable.[71] Thus, even while Britain's legal system may align with global patterns, its specific historical genealogy is imperial. The tools it uses, delegated enforcement, discretionary exclusion, and revocable status, have precedents in colonial law. The targets it identifies, migrants from the Global South, often

[66] Immigration Act 1971, ss.3(5), 3A, 4(1), 5(1), and Sch 2 paras 16–18.
[67] Wendy Williams, *Windrush Lessons Learned Review* (Home Office, March 2020), 10–11.
[68] Christina Oelgemöller, 'Mixed Migration and the Vagaries of Doctrine Formation Since 2015' (2021) 23(2) I 250, 251-254.
[69] Ibid.
[70] Ibid, 255–258.
[71] Ibid, 260–263.

formerly colonised subjects, reveal that the colonial logic of legal stratification has been internalised, not discarded.

The Windrush scandal was not a bureaucratic mishap, but the product of a legal regime shaped by Britain's post-imperial legacy. It exposed how immigration law governs racialised and postcolonial populations through legal exceptionalism, suspending rights, expanding discretion, and reproducing colonial hierarchies under the guise of neutrality. Rather than breaking from empire, British immigration law has internalised its logics: conditional belonging, evidentiary burdens, and exclusion masked as legality. Even amid broader trends of migration securitisation, Britain's framework remains distinctly imperial in character. The final section traces how these logics persist in contemporary policy, differential treatment of refugee groups, and the enduring tension between racism and coloniality—asking not only how we arrived here, but whether a different legal future is possible.

5 Contemporary Immigration Policy, Imperial Duress, and the Limits of Legal Reform

This section turns from historical and analytical exposition to a normative inquiry: *What should be done about the legal and political structures that continue to organise immigration along colonial lines?* Building on the empirical and conceptual groundwork previously laid, it examines the present conjuncture of British immigration governance, interrogates the theoretical frameworks through which its persistence might be understood, and considers the scope and limits of legal reform.

This section analyses recent developments, including the 2025 Immigration White Paper and Ukrainian refugee governance, through the lens of racialised bordering and conditional belonging. It frames Britain's immigration regime as imperial duress (Stoler)—an ongoing administrative expression of empire—and considers what postcolonial reform might require within a still-colonial global order.

5.1 Whiteness, Proximity, and the Politics of Protection

Since the Windrush scandal, Britain's immigration regime has not undergone meaningful reform but instead has intensified its commitment to managing migration through exclusionary and racialised logics.

While the language of race is largely absent, the differential treatment of migrant groups suggests a racialised hierarchy of inclusion. The reception of Ukrainian refugees in 2022 exemplifies this. In contrast to the punitive measures aimed at asylum seekers from countries such as Sudan, Syria, or Afghanistan, Ukrainian nationals were offered bespoke legal routes to entry and protection through schemes such as the Ukraine Family Scheme and the Homes for Ukraine Sponsorship Scheme, which provided expedited processing and temporary leave to remain without requiring irregular entry into the UK.[7273] The contrast is not simply administrative; it reflects an underlying distinction between those imagined as culturally proximate and those marked as other.

Popovic and Welfens highlight how Ukrainian refugees were framed as 'ethnically and culturally similar,' while non-European arrivals were construed as a crisis threatening security and integrity.[74] These framings legitimised vastly different policy responses, even though all groups were fleeing comparable conditions of war and persecution. The idea that Ukrainians were more readily 'integrable' circulated widely as justification, but such arguments function to obscure the role of racialisation in policy design.

Fanon's psychoanalytic critique of colonial power remains instructive. In colonial settings, whiteness operated as a standard of full humanity, while Blackness and racialised otherness were marked as pathological, disruptive, or inferior.[75] This logic did not disappear with the end of the empire. It endures in policies that afford legal protection, mobility, and recognition to

[72] BBC News, 'Refugees from Ukraine and Afghanistan Treated Differently, Charity Warns' (*BBC*, 1 August 2022) <https://www.bbc.co.uk/news/uk-england-wiltshire-62334985> accessed 23 June 2026.
[73] UK Visas and Immigration, *Guidance: Ukrainian UK Visa support for Ukrainian Nationals* (17 February 2022, Updated 21 April 2026) < https://www.gov.uk/guidance/support-for-family-members-of-british-nationals-in-ukraine-and-ukrainian-nationals-in-ukraine-and-the-uk > accessed 23 June 2026.
[74] Lara Sosa Popovic and Natalie Welfens, 'Same, Same but Different? A Discourse Network Analysis of the EU's Framings of Refugee Arrivals in 2015 and 2022' (2025) 51(3) JEMS 609, 609–614.
[75] Derek Hook, 'Fanon and the Psychoanalysis of Racism' in Derek Hook et al (eds), *Critical Psychology* (Juta Academic Publishing 2004), 114–119.

those who approximate the white European ideal, while subjecting others to suspicion, containment, and precarity.

Thus, although the legal architecture of Britain's immigration system no longer explicitly distinguishes based on race, its functioning reproduces a hierarchy rooted in colonial patterns of governance. Migrants are not excluded arbitrarily; they are stratified through inherited criteria, ancestry, economic utility, and cultural compatibility that continue to produce racialised outcomes such as the Windrush Scandal.

5.2 Reading Immigration Law Through Imperial Duress

To understand the contemporary operation of Britain's immigration regime, one must move beyond the language of historical legacy and towards an account of persistence. Colonial legal logics mentioned above persist as active features of Britain's post-war immigration regime, shaping access to citizenship protections from Windrush to the present.

Stoler's concept of imperial duress offers a framework for understanding this continuity. As Stoler defines it, duress is not a passive leftover of empire but a form of ongoing, legal, administrative, and affective pressure that shapes present-day institutions and subject positions.[76] It is not about remembering empire; it is about the structures that empire continues to reproduce.[77] This shift in focus, from legacy to durability, is crucial. It demands that we ask not just how colonial logics persist, but how they are maintained, adapted, and naturalised in modern legal frameworks.

Each section of this article has traced a dimension of this duress. From examining colonial governance in sites such as Malawi and Burma, showing how legal dualism created parallel regimes for coloniser and colonised, while bureaucratic regulation and rule-of-law theatre legitimised exclusion through procedural form, tracing how these techniques migrated into British immigration law, primarily through the 1948 BNA, the CIA, and the 1971 IA. These laws introduced ancestry-based belonging, delegated administrative discretion, and embedded

[76] Ann Laura Stoler, *Duress: Imperial Durabilities in Our Times* (Duke University Press 2016), 1–7.
[77] Ibid.

formal equality while sustaining racialised differentiation. The third section showcased how these techniques persist in the hostile environment, where documentation regimes and bureaucratic enforcement reproduce exclusionary outcomes for postcolonial migrants.

However, some scholars have challenged the emphasis on colonial continuity. Griffiths and Yeo argue that the logics of Britain's immigration system are now more accurately described as neoliberal or security-oriented rather than imperial.[78] From this view, exclusion results from austerity, digitisation, and risk-based governance rather than racial hierarchy or colonial design. Immigration control, they suggest, is less about reproducing empire and more about managing labour markets, border surveillance, and public trust in an age of geopolitical volatility.

This critique rightly highlights significant shifts: as Stoler argues, imperial formations are not static legacies but recursive structures that resurface in new forms, often under the guise of technocratic or post-racial neutrality.[79] Duress 'wraps around contemporary problems' and 'is plaited through racialised distinctions.'[80] It is visible in the discretionary nature of immigration enforcement, the burden of proof imposed on racialised migrants, and the differential visibility of who is assumed to belong. These dynamics are not merely neoliberal; they are imperially configured within neoliberal modes.

Britain's immigration regime, then, cannot be fully understood without attention to its colonial grammar. It is not simply dysfunctional or ideologically confused. It is a system in which law continues to do the work of empire. If the law continues to do the work of empire, can it break from these colonial foundations? If so, what would it take to build an immigration regime that truly departs from them?

5.3 Reforms

To imagine a different future, we must ask what kind of legal and institutional reforms could begin to interrupt this design and move toward a more equitable framework. First, the repeal

[78] Melanie Griffiths and Colin Yeo, 'The UK's Hostile Environment: Deputising Immigration Control' (2021) 41(4) CSP 521.
[79] Ann Laura Stoler, *Duress: Imperial Durabilities in Our Times* (Duke University Press 2016), 1–7.
[80] Ibid.

of citizenship deprivation powers under section 40 BNA 1981 would remove a legal mechanism rooted in colonial denationalisation.[81] According to MacDonnell, this reform could be operationalised through a targeted amendment to the BNA 1981, repealing or significantly narrowing the grounds on which deprivation may occur, particularly by removing provisions that allow deprivation without notice.[82] However, reform efforts would likely encounter political resistance, especially given the current emphasis on national security and border sovereignty in public discourse.[83]

During debates on the 1981 Act, government ministers rejected calls for stronger safeguards, insisting that deprivation powers were essential to maintaining national cohesion and state security, particularly in cases involving 'undesirable' or disloyal individuals.[84]

Notably, Lord Avebury criticised the provision: 'If this amendment undermined one of the principles of the Bill, and that was all it did, [I] would be warmly in favour of it. But the trouble is that it leaves another of the principles of the Bill unimpaired and that is the creation of two different classes of citizenship, which is what we objected to in the Green Paper of April 1977.'[85] He argued that allowing the Home Secretary to strip citizenship without sufficient oversight was an affront to the rule of law and risked reviving colonial patterns of arbitrary exclusion.[86] Nevertheless, these concerns were overruled by a political logic that framed citizenship not as a right but as a conditional privilege, especially for those perceived as less culturally or ancestrally 'British.'

Second, Britain should replace ancestry-based claims to citizenship with rights grounded in residence and contribution. This would require a significant restructuring of the legal framework established by the 1971 Immigration Act and the 1981 BNA. Operationalising this reform would involve legislating a new pathway to citizenship that prioritises long-term residence, community ties, and social participation over lineage. This could be achieved through amendments to the Nationality Act that establish a residency-based citizenship track

[81] Vanessa MacDonnell, 'Deprivation of Citizenship: A British National Scandal' (2021) 36(1) JIANL 24.
[82] Ibid.
[83] Reuven Ziegler, 'Deprivation of Citizenship, Undesirable Subjects, and the UK Supreme Court' (2022) 85(3) MLR 572, 589–591.
[84] HL Deb 30 June 1981, vol 421, cols 1135–1140.
[85] Ibid.
[86] Ibid, col 1138; Colin Yeo, *Welcome to Britain: Fixing Our Broken Immigration System* (Biteback 2020), 148–151.

with built-in protections against arbitrary refusals. However, given the entrenchment of ancestry-based citizenship in British legal tradition, any such reform would need to ensure compatibility with existing international agreements and confront the political difficulty of departing from long-established *jus sanguinis* norms, especially in a political climate concerned with migration control.

Third, Williams suggested a serious reparative approach to Windrush-style harms.[87] This requires not just compensation, but structural accountability. This could be operationalised by creating a statutory right of review for immigration-related administrative decisions, alongside establishing a permanent, independent Migration Ombudsman empowered to investigate and resolve complaints. Legislation would also be required to establish enforceable redress mechanisms for administrative injustice. While this is legally feasible within the existing framework of public administrative law, institutional inertia, limited political will, and the Home Office's broad discretionary powers pose significant barriers to implementation.

These changes alone are not sufficient. As Achiume argues, if colonialism created enduring structures of interdependence between colonisers and colonised, then former imperial powers have obligations not just to admit but to include postcolonial migrants as co-sovereigns, not outsiders.[88] Migration, in this view, is not simply a movement to be regulated but a form of political participation grounded in historical entanglement.

5.4 Recolonising the Future

Just before this article was completed, the 2025 Immigration White Paper was released. It resists the ethical logic advanced by scholars such as Achiume, who argue that migration from former colonies constitutes a claim to inclusion grounded in historical entanglement and co-sovereignty. The 2025 Immigration White Paper proclaims 'fairness' and 'control,' yet it re-colonises the present by converting imperial responsibility into a calculus of economic risk.[89]

[87] Wendy Williams, *Windrush Lessons Learned Review* (Home Office, March 2020), 15.
[88] E Tendayi Achiume, 'Migration as Decolonization' (2019) 71 SLR 1509, 1551–56.
[89] HM Government, *Restoring Control Over the Immigration System* (White Paper, CP 1326, May 2025), 3–5.

Its ‘earned-citizenship’ formula—£38,000 salary, English-language B2, a ten-year probation—revives the ancestral filter in neoliberal form.[90] Productivity replaces lineage, but the effect is the same: racialised outsiders must prove perpetual worthiness, while the state reserves the right to revoke belonging at will.

In detaching policy from Britain’s colonial past, the White Paper erases the very histories that produced today’s ‘migrant burden’. It reframes the empire’s debts as migrants’ deficits, demanding assimilation as payment. If this is reform, it is reform *toward* a sharper border, not away from it. Empire’s grammar survives; the paragraphs are re-punctuated.

By detaching immigration governance from Britain’s colonial past, the White Paper reflects a deeper refusal to acknowledge that the inequalities it seeks to manage were produced through empire. In this way, it recasts colonial responsibility as administrative risk and postcolonial migrants as burdens to be regulated, rather than rights-bearing participants in a shared political community.

While it is essential to acknowledge that British immigration law has, in certain respects, moved away from the explicit racial hierarchies of its colonial past, and that efforts have been made to rebrand exclusion through ostensibly neutral legal language and procedural refinement, these developments do not amount to structural transformation. Nor do they obscure the more profound continuities that persist beneath the surface of reformist discourse. Though reform may be possible within the current framework and some departures from earlier logics are evident, the system’s underlying foundations remain largely intact.

For this reason, I assume the problem is not simply one of policy mismanagement or political reluctance; it is structural. Decolonisation, in its fullest sense, is not achievable within the present global order because the constitutive frameworks of sovereignty, law, and economy continue to be shaped by colonial logics. Formal independence may have dismantled the juridical apparatus of empire, but it did not dislodge the hierarchies embedded in international legal regimes, global markets, and state institutions. As Mignolo argues, ‘Conceptual (and theoretical) de-linking is, in the argument I am advancing, the necessary direction of liberation and decolonisation, while transformation within the colonial matrix of power is the splendour

[90] Ibid.

and limitations of any project of emancipation(s).'[91] This underscores that decolonisation is not a finite task and must be understood as an unfinished, and perhaps unfinishable, project.

The analysis in this section has traced the continuing operation of colonial legal logics in contemporary British immigration policy, highlighting both their structural durability and adaptability to new political contexts. While targeted reforms, such as repealing citizenship deprivation powers and dismantling ancestry-based nationality rules, are necessary and achievable, they do not suffice. The deeper challenge lies in confronting the fact that immigration law remains embedded in an imperial grammar: one that continues to stratify belonging, distribute vulnerability, and obscure its foundations.

Achiume's theory of migration as decolonisation offers a compelling reframing, but even this must be situated within a broader recognition that the global continuities of coloniality constrain decolonisation itself. As this section has argued, law has not merely mirrored social hierarchies; it has helped produce and legitimise them. To envision a different future for immigration governance, we must confront the policies and conceptual and institutional frameworks that render exclusion seem reasonable, even necessary.

6 Conclusion

This article has argued that contemporary British immigration law remains structurally entangled with colonial legal logics. Far from representing a clean break from empire, the post-1948 immigration framework has repurposed techniques first developed to govern colonial subjects—legal dualism, bureaucratic regulation, and rule-of-law theatre—for use within the metropole. These mechanisms, once used to manage racialised populations abroad, now regulate postcolonial migrants at home, producing a regime of conditional belonging, stratified rights, and legal exceptionalism.

By tracing this history from colonial rule in Malawi, Southern Rhodesia, and Burma, through the legislative shifts of the mid-20th century, and into the present-day realities of a hostile environment, this study has shown how British law has not simply administered borders but

[91] Walter D Mignolo**,** *The Darker Side of Western Modernity: Global Futures, Decolonial Options* (Duke University Press 2011).

also reproduced imperial hierarchies. The analysis of the British Nationality Acts, the Commonwealth Immigrants Acts, and the Immigration Act 1971 reveals how legal form has recast imperial difference as national exclusion, embedding race and ancestry in the structure of citizenship itself.

The Windrush scandal, far from being an anomaly, exemplifies the persistence of these logics. It demonstrated how colonial-era distinctions between subject and citizen were internalised into a bureaucratic state apparatus that governs not merely through the denial of entry, but through the erosion of rights and the administration of uncertainty. The legal exclusion of Commonwealth citizens in the name of neutrality and control was not a break with Britain's colonial past; it was its domestication.

Addressing the core question, to what extent have colonial-era practices of imperial governance been repurposed in Britain's post-1948 immigration framework, and how does recognising their specifically colonial character help clarify the persistence of exclusions, this article has argued that such recognition is essential for understanding not only who is excluded from full membership, but also how the law legitimates that exclusion. Distinguishing between colonialism and racism, as this study has emphasised, is not to downplay racial injustice, but to sharpen the analytic tools available to critique it.

The final section's engagement with contemporary policy, including the 2025 Immigration White Paper and the differential treatment of refugee groups, further demonstrates that imperial formations are not static residues of the past. Drawing on Ann Stoler's concept of imperial duress, the section argued that these legal structures have been adapted, naturalised, and re-legitimated under new ideological banners: fairness, control, and productivity. Even as the state disavows its colonial history, the forms of governance that emerged from it persist and evolve, shaping how belonging is legally defined and distributed.

By prioritising statutes, case law, and archival paperwork, this article brackets the political-economy forces that currently co-produce Britain's border regime. It does not track how post-imperial debt negotiations, preferential trade agreements, or evolving security partnerships (ranging from counter-terrorism compacts to biometric data-sharing deals) influence who moves and under what conditions. Nor does it analyse the leverage exerted by international financial institutions or defence alliances over domestic immigration agendas. Incorporating

those economic and geopolitical factors would likely reveal that the colonial logics mapped here are continuously reinforced, and at times recalibrated, by global circuits of capital and security; a line of inquiry that future research should pursue.

While targeted legal reforms, such as abolishing citizenship deprivation powers or replacing ancestry-based nationality rules with residence-based entitlements, are both possible and necessary, they are not sufficient. Without a more profound reckoning with the colonial foundations of Britain's immigration system, even the most progressive reforms risk reinforcing the very hierarchies they seek to dismantle. Moreover, as this article has argued, decolonisation in the legal sphere is constrained by the broader endurance of coloniality within the global order, in which law, economy, and sovereignty continue to reproduce imperial modes of differentiation.

The challenge, then, is not merely to repair the harms of Windrush or to soften the edges of a hostile bureaucracy. It is to recognise how immigration law itself continues to serve as an instrument of post-imperial governance, one that stratifies membership, naturalises exclusion, and obscures its origins. To move beyond empire, we must be willing to see how empire endures: not as a matter of memory, but as a method still at work in the legal architecture of the modern state.