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British citizenship: a debate of paradoxes

In an attempt to overcome the historical-legal complexity of the concept citizenship in the context of the UK, the present Labour government has got caught between a long-standing yet newly rediscovered understanding of its social bonding function and a policy approach based on and pervaded by the outdated view of citizenship as a reward for assimilation. It needs to separate out two completely different discourses in order to be able to formulate coherent policies – both regarding long-standing citizens and newcomers.

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Introduction

The current citizenship debate in the UK is a complex one that brings together a variety of legal, social, and political arguments. Based on complicated historical, legal idiosyncrasies of the concept and the country's continuous efforts to come to terms with its past and present social and cultural reality (including the contentious debate around immigration), the present government continues to find it difficult to formulate a coherent approach to nationality and citizenship both on a theoretical and a practical level despite the fact that much work has been done on it. Despite efforts to increase popular civic and democratic engagement in Labour's over ten years in office, this inability seems to result in ever greater public confusion of this topic with

issues of immigration management and, alongside it, a general turn to simplistic arguments about belonging that are – shockingly – mirrored in government's policy suggestions despite the fact that alternative, more accurate and more sensible conceptualisations are available.

The present paper first sketches the thoroughly confusing historical development of British nationality and citizenship. It is important to note here that this brief overview hardly does justice to the wealth of particularities the legal concept contains, but mainly serves the purpose of illustrating its complexity and confusing terminology. Secondly, the paper refers to work commissioned by the current government in an attempt to come to terms with the concept, namely Lord Goldsmith's Citizenship Re-

view completed in late March 2008.ⁱ Thirdly, it identifies the key political problems this debate and the current Labour government are caught up in at present by reference to the Green Paper “The Path to Citizenship” of February 2008.ⁱⁱ

Historical-legal overview

British citizenship traditionally includes the right of abode, the right of protection, several civic, and social and economic rights as well as the duty of allegiance and some civic, and social and economic duties. While some of these may vary in some matters of detail from those of other countries, the essential rights, etc. are part of the package here as they are elsewhere; freedom of movement and settlement, the entitlement to diplomatic protection, consular assistance, domestic protection, access to education and other kinds of benefits, the right of active and passive democratic participation as well as the duties to obey the law and pay taxes. Apart from some practical components and functions that citizenship has, e.g. the potentially contentious duty of allegiance to the Crown, and the fact that a comprehensive statement of all rights and duties is yet to be written and widely disseminated, the concept of British citizenship is not problematic and it is, indeed, not this that has caused the greatest part of the controversy, but the notion of who is or may become a British citizen.

Although at the time still widely perceived as an ideal of commonality of all

born within the British empire, the sheer size of the latter and its consequent variedness in terms of different dominions’ practices and policies made it impossible to reach a single and unifying concept of British citizenship even before the world wars, let alone when the colonies started breaking away afterwards. As a result, the concept of Commonwealth Citizenship was established in the British Nationality Act of 1948 in an attempt to define a unifying category under which all British Subjects, i.e. both the citizens of the increasing number of breakaway colonies and the remaining empireⁱⁱⁱ could be subsumed. However, the unifying effect was undermined as the newly independent countries continued to pursue their own population policies. Additionally, however, there were also already other types of British nationality in existence, such as the category of British Protected Person, that were complicating the concept.

However, not only the number of different categories was confusing, but also the different sets of rights they conferred. For instance, until 1962, all the above had had an unqualified right to enter and live in the UK, but then the right of abode was separated from British Subject status for those who weren’t what was later to be called “patrials”: Commonwealth citizens who have a defined connection with the UK (e.g. through birth, adoption, registration or at least 5 year residence).

Commonwealth Citizenship, British Subjects, CUKCs, British Protected Per-

sons, “patrials” – with all these different, partly converging, and definitely confusing categories in simultaneous existence, it is no wonder that it was attempted in the British Nationality Act 1981 to simplify the situation. However, the introduction of British Citizenship, British Dependent Territories Citizenship and British Overseas Citizenship did not particularly improve the situation, especially as other categories continued to exist and yet another category was added in the context of the transfer of sovereignty of Hong Kong in 1997, namely that of British National (Overseas).

In another attempt at simplification, in the British Overseas Territories Act and the Nationality, Immigration and Asylum Act, both of 2002, the right of abode was returned to a number of groups of British nationality, such as British Dependent Territories Citizens (simultaneously renamed British Overseas Territories Citizens, adding yet another confusingly similar term to the already complex concept), British Overseas Citizens, British Subjects and British Protected Persons.

While this seems to suggest increasing convergence regarding rights and duties of the different forms of British nationality and citizenship and while the historical background of the complexity of these concepts is understandable, it is certainly still impractical and confusing in its current state. It is hardly surprising, therefore, that the government is spending a lot of energy on a fresh attempt at working out a more straight-forward and practical un-

derstanding of as well as policy approach towards the concept.

The Citizenship Review: citizenship as a social bond

One project, in which this was attempted, is the commissioning of a Citizenship Review. Providing an overview of historical conceptions and current implications of British citizenships, the author, Lord Goldsmith, comes to focus on its function as a social bond in the concluding part; he perceives it as a tool for engagement and integration. It is interesting to note here that even though they were identified early on, for instance by the eminent political philosopher John Stuart Mill,^{iv} the positive effects of civic and democratic participation in creating a bond between the citizen and the state did not figure largely in the British discourse on citizenship.

In view of social developments that many societies nowadays see themselves faced with, Goldsmiths argues that the importance of the bonding function of citizenship of people vis-à-vis each other is outweighing that of forms of allegiance vis-à-vis the state. Here he contrasts a sense of commonality and shared stakes in society with a desire to belong foremost motivated by self-interest in security and defined against outsiders that had informed classical understandings of the concept of citizenship.

Such societal developments are the following: foremost individualisation, by which he means the fact that the focus of

attention in our society as well as individual thinking is increasingly the individual while less and less shared experiences are available to people. Further, changes in where and how we live are of importance as they lead to less contact between people of different socio-economic backgrounds or different generations, but increasing familiarity with different cultures and more frequent changes and more fleeting experiences of locality, both within the country and internationally.

As a result, feelings of national attachment and pride seem to be losing in importance, even though they are still high in the UK compared to other countries of the EU. There are a couple of particularities about these feelings in the context of the UK: firstly that national identification in the UK is generally multiple due to its nature as a union of the different nationalities of the British Isles as well as its imperial past. This means that the majority of people identifies, for instance, as British and Welsh or British and Indian, etc. Secondly, the intensity of feelings of attachment and pride seems to be essentially the same among groups of different ethnicity or descent. In contrast, socio-economic cleavages seem to have a strong impact, with disadvantaged groups having a much weaker sense of belonging. Thirdly, as the Review suggests, such identification tends to carry feelings of social trust and civic duty, much more than xenophobic sentiments or other kinds of exclusive thinking.

As the context of recent and non-citizens makes explicit many aspects of citizenship that are otherwise taken for granted, it is the section discussing these groups that gives the most interesting insights into the character of citizenship as a social bond. It identifies the fact that several factors are key in generating a sense of belonging to a certain society: residence, participation (e.g. democratic, economic, etc.) and contribution (e.g. in the form of taxes, volunteering, etc.). It suggests that rights and responsibilities are perceived as part of the same package and that both are viewed positively. It also reconfirms the multiplicity of identities and makes very clear the value and positive and inspiring character of the experience of being granted citizenship, with the latter viewed as an acknowledgment by the state of the applicant's national identification with the country expressed in their desire for citizenship. In this way, the granting of citizenship is perceived as expressing the mutuality of the commitment between individual and receiving society or state, which seems to be lacking in earlier states of engagement. This is expressed in the latent fear inherent in many recent citizens' statement that citizenship meant that no one could take "it" away. One can only presume that "it" refers to their aspiration, and then right, to be in and part of a country that they identify with. It is very telling and regrettable that this mutuality is not expressed in the integration process preceding or outside the context of institutionalised citizenship.

Based on this analysis, the Citizenship Review goes on to make many practical suggestions on how to use citizenship and, preceding and outside this institutionalised form of belonging, other forms of active engagement as a tool to enhance the social bond amongst the population as well as between citizens and the state. It emphasises the need for a more proactive, positive, comprehensive yet accessible rhetoric and practice around citizenship, as the current complexity and obscurity of the debate holds the danger of leading to disaffection and alienation of both citizens and those who aspire to become such. Always keeping in mind that the unifying character of citizenship is in no way contrary to diversity but very well able to accommodate it, the Review addresses the role for education, work environments, faith communities, government action and local communities, and rituals such as citizenship ceremonies (preferably for both new and existing citizens including young people coming of age) and the bringing into being of a national day. While some of them are definitely contentious and the British press in its simplistic nature has focused exclusively on these, the general tone and approach of the Review are comparatively sensible and constructive.

The government Green Paper: citizenship as a reward

Another project, in which the government is grappling with citizenship, is its recent Green Paper “The Path to Citizen-

ship: Next Steps in Reforming the Immigration System”. While its full title makes clear that its main concern is not citizenship but immigration, it nevertheless gives some insights into the government’s thinking on and understanding of citizenship. The paper was tellingly published before the Citizenship Review and, thus, unfortunately, seems not to have internalised its findings. It favours the rather assimilationist understanding of citizenship as a reward, which is to be awarded only on fulfilment by the applicant of a number of requirements.⁵ These form a double paradox; firstly, in order to be allowed into the country in the first place, immigration applicants must prove themselves worthy by having a clean record in their country of origin as well as their economic utility to the UK through high achievement in a points system similar to that in use in Australia. Secondly, and here the paradox begins, it is proposed that they should have to prove themselves worthy of British citizenship yet again by assimilation in a number of ways: with regard to their economic situation (self-sufficiency) and to their social conduct (not only lawful behaviour but additional prove of their commitment to the society, e.g. in the form of volunteering.) Again paradoxically this is expected while the most basic means to do so, i.e. rights of democratic participation, are denied to them until they are citizens.

On top of this, the Green Paper outlines the introduction of the halfway house of “probationary citizenship”, to last between one and five years, between the dif-

ferent forms of leave to remain and residence that are required before an application can be made on the one hand and full citizenship on the other. Even in the best case, this would prolong the period a person has to wait before they can gain full citizenship (all the while remaining disempowered and, symbolically and in reality, to a certain degree apart from the rest of society) by one year in comparison to current practice^{vi}. In the worst case – bar denial of citizenship and expulsion from the country – the waiting time would double from the present five years to ten.

What is interesting here, is that citizenship is mainly seen as a reward for perseverance, law-abiding behaviour and economic self-sufficiency, even though other parts of the text very explicitly recognise that citizenship performs an important social function by bringing empowerment and, thus, fostering a sense of belonging, which in turn strengthens social cohesion. Clearly, prolonged waiting times such as mentioned above cannot be conducive to the fostering of a sense of belonging and other forms of positive identification with the country. Furthermore, the terminology of “probation” is misleading, as it associates immigrants that have already had to prove their lawful behaviour, etc. over a prolonged period of time with legal jargon that carries connotations of wrongdoing and punishment.

However, this is symptomatic of a text that, despite dismissing these at its beginning, largely invokes familiar stereotypes and moral panics about immigration,

namely by means of the conflation of socio-economic problems and criminality with ethnic categories. This means it portrays migrants as the source of such problems rather than a group disproportionately affected by them due to structural inequalities. Such assumptions and stereotypes have pervaded this discourse in Britain as elsewhere for a very long time and can be identified even when it is attempted to obscure them by a would-be beneficial tone.

Doing so, the government neglects both the need to question the accuracy of such assumptions and stereotypes and its responsibility not to perpetuate them and the exclusionary views and practices that spring from them. While it is understandable that the government is aiming to manage immigration, in light of the fact that some parts of the text explicitly acknowledge that feelings of belonging, and with them social cohesion, spring from participation and empowerment, it seems illogical that the government should adopt the reward model of citizenship rather than aiming to equip prospective citizens with all the integration tools possibly available. For it is less than helpful if its attempts to manage immigration simultaneously undermine the positive social potential of citizenship. It is necessary to decouple the endeavours of immigration management from the citizenship debate, because claims about the uses and function of citizenship as a reward are very different from those of citizenship as a tool for the forging and maintenance of social bonds and they cannot be mixed or

combined to one's convenience. Therefore, attempts to do so will not lead to coherent or constructive policy suggestions, as illustrated by the government Green Paper.

Conclusion

The fact that the government adopts an approach and rhetoric reflecting both tool and reward approach anyway must then be attributed to a confusion about the function and meaning of the concept. Of course, one and the same term can have different meanings, especially in different contexts, but in this case the two conceptualisations are so diametrically opposed that the use of both alongside each other would be nonsensical. What is becoming clear from this analysis of the Green Paper, especially before the background of the Review, is that, even though the distinction is blurred by use of the same term, the understanding of citizenship takes very different forms in the different contexts of existing citizens on the one hand and potential prospective citizens such as immigrants on the other. It is this blurring or confusion that the government has got tangled in and that should be avoided. It cannot be denied that, as has become apparent above, that citizenship functions as a tool for social bonding and integration in the context of new citizens (usually migrants) as well as long-standing ones – a consideration that would add greatly to the German approach to these issues as well.

Yet, even though the British government recognises this important social

function to some extent, the proposals regarding the revision of the rules pertaining to immigration and citizenship are mainly of an implicitly preventative nature and far from signalling a new approach along the lines of the findings of the Review. The government must separate out the two discourses it is currently engaging in and find a starting point other than citizenship for its endeavours regarding reform of the immigration system. For by resorting to the reward model in the context of anti-immigration or immigration management rhetoric and policy, it devalues the social function understood in the tool model of citizenship. Without a coherent understanding of this function, however, it will be unable to tackle either the improvement of engagement of existing or the integration of new citizens, which have been so particularly important to it since the terrorist attacks of 7th July 2005.

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A German-language version of this article is available on www.feslondon.org.uk/public.htm.

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- i Lord Goldsmiths QC, Citizenship: Our Common Bond, www.justice.gov.uk/docs/citizenship-report-full.pdf
 - ii Home Office – Border and Immigration Agency, The Path to Citizenship: Next Steps in Reforming the Immigration System, <http://www.bia.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/pathtocitizenship/pathtocitizenship?view=Binary>
 - iii so-called Citizens of the United Kingdom and Colonies, CUKCs
 - iv cf. John Stuart Mill, 'Considerations on Representative Government', in *On Liberty and Other Essays*, edited by John Gray (Oxford: Oxford University Press, 1991)
 - v for a good outline of the differences and uses of the tool and reward models of citizenship, cf. Elena Jurado, Citizenship: Tool or Reward?, http://www.policy-network.net/uploadedFiles/Publications/Publications/Citizenship_tool_or_reward.pdf
 - vi apart from family reunions (two years) the current waiting time is five years