# The Retreat of Equality Law

A Review of Nadya Ali, *The Violence of Britishness: Racism, Borders and the Conditions of Citizenship*, Pluto Press, 2023. 159 pp. £16.99 (PB). ISBN: 978 0 7543 4170 5

*patriciatuitt.com*

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## Introduction

In the UK today it is immigration and counter-terrorism laws, not equality law, which determines how far state and non-state actors are legally constrained from discriminating against individuals by reason of those individuals' race. I reached this conclusion after reading Nadya Ali's recently published book, *The Violence of Britishness: Racism, Borders and the Conditions of Citizenship.*

Although citizenship and immigration status exceptions to the principles of equality and non-discrimination have long been enshrined in UK legislation, Ali's examination of "Britain's counter-terrorism apparatus and its immigration regimes since 2010" (Ali 2023: 4) reveals that during the period in which the Equality Act 2010 (EA) has occupied the legal space of non-discrimination in the UK, a *de facto* expansion of the scope of the these exceptions has been allowed to develop, leading to a situation in which all "postcolonial citizens are viewed as perpetual 'immigrants' and 'minorities' in Britain" (Ali 2023: 3).

## About the Book

The first point to be made is that the "regime of everyday racial bordering making citizenship of Britain's postcolonial people conditional" (Ali 2023: 85) which Ali recounts in the book are authorised and facilitated by counter-terrorism and immigration measures that were developed in uncomfortable proximity to the enactment of the EA. In a succinct and highly readable manner, the book spans key periods in the fashioning of the UK's contemporary immigration and counter-terrorism legal landscape.

Beginning from the mainly pedagogical ambitions of "early Prevent" (Ali 2023: 64), which emerged just four years before the EA in 2006 ostensibly to address the ideological causes of terrorism, the book pays particular attention to Prevent's "more starkly disciplinary approach from 2011 onwards" (Ali 2023: 64-65) - exemplified in the so-called Prevent Duty under the Counter-Terrorism and Security Act in 2015, which " places a statutory obligation on the part of specific institutions to prevent individuals from being radicalised and on schools to teach British values" (Ali 2023: 65-66).

The author brings home to readers the pernicious nature of the "articulation of radicalisation" (Ali 2023: 30) that Prevent inculcates. For example, Ali writes that Prevent assigns to "Britain's Muslims [collective responsibility] for violence carried out by those unconnected to them" (Ali 2023: 30). However, it is Ali's observations on how Prevent works to depoliticise Muslim communities which are especially pertinent in light of the promises that the EA implicitly makes to all who carry its defined protected characteristics. As Ali observes, "[c]hildren are…the captive audience of Prevent, who are taught British values from nursery to the end of their formal education and are continually monitored for signs of radicalisation by their teachers…[t]herefore, the ways in which the citizenship of Muslims is made conditional, and their ability to act politically is forestalled, begins in childhood" Ali 2023: 81). Ali is rightly preoccupied with the manifold ways in which the UK's immigration and counter-terrorism laws discourage Muslims "from exercising their rights in the way white Britons do" (Ali 2023: 73). These laws include the Borders and Nationality Act 2022, which "allows the state to remove the citizenship of naturalised British citizens even if it carries the prospect of statelessness" (Ali 2023: 70). As a result of this legislation, Muslims are "forced into censoring their views and modifying their behaviour in order to avoid being labelled…extremist" (Ali 2023: 83).

The book then turns to the Immigration Acts of 2014 and 2016, which provide the architecture for the UK's now infamous hostile/compliant environment by enacting "legislation [that] …theoretically…have implications for every British citizen, [but] are particularly concerning for Britain's postcolonial citizens" (Ali 2023: 87). In common with other commentators, Ali sees the Acts as having engineered a "fundamentally altered…relationship between the state and its citizens, requiring the latter to assume the responsibility of providing proof of entitlement to access public goods such as education or healthcare" (Ali 2023: 87).

The plight of the descendants of the many individuals who migrated to the UK on the ship *Empire Windrush* in 1948 has become an essential point of reference for scholars working at the intersections of equality law and migration law, and Ali is no exception. Detailing how "legislation aimed at keeping our non-citizens led to thousands of Black and brown Britons losing their jobs, homes, benefits, access to healthcare and in some cases being deported" (Ali 2023: 85). Ali says of the immigration and counter-terrorism measures that have thrived at the same time that the UK was boasting of the EA's new and progressive approach to equality rights: "[t]he hostile environment, like the Prevent Strategy before it, has effectively instituted a more formalised regime of everyday racial bordering making the citizenship of Britain's postcolonial people conditional" (Ali 2023: 85).

Overall, Ali's analysis reveals that the provisions of these legislative acts, *in practice,* are not circumscribed by distinctions between postcolonial citizens and postcolonial non-citizens, and are therefore deeply implicated in the "increase in spaces where postcolonial citizens experience racism as part of their everyday lives" (Ali 2023: 89).

## When Exception Becomes Rule

Although not the principal objective of Ali's compelling and frequently distressing narratives of the ways in which "even where Muslims have formal citizenship in Britain, their belonging to the nation is still regularly called into question" (Ali 2023: 73), the work signals a compelling need for a re-evaluation of the role of the EA in relation to individuals who experience discrimination due to their race. Such, in turn, entails a critical examination of the way in which scholars have traditionally articulated the relation between equality laws and immigration and counter-terrorism laws. Most often, this relationship is perceived as one in which racialised individuals fall *exceptionally* outside the scope of equality laws due to their non-citizenship status or unsettled immigration status. Today, however, the immigration and nationality exceptions have in effect become the rule for postcolonial citizens. To put the point another way, to maintain the position that nationality and immigration status rules are exceptions to the protective reach of equality laws is to suggest also that there is continued salience in the distinction between the racialised citizen and the racialised non-citizen. The uncompromising message of *The Violence of Britishness* is that this distinction - distasteful in itself - has been rapidly eroded at the same time that the EA framework has been consolidating

Increasingly evident during the post 2010 immigration and counter-terrorism landscape that Ali examines is the fact that "citizens with the same notional rights and entitlements as other citizens …are… [made] subject to additional borders which call into question their belonging on a daily basis" (Ali 2023: 69). The implications of this for equality law are stark. Rather than being a tool for proactively upholding the right not to be discriminated against on grounds of race, equality law in the UK is is emerging as an instrument that might only exceptionally interrupt or suspend the now routine requirement for "postcolonial citizens to demonstrate their Britishness…in order to determine whether [they] have the right to access public goods and services…NHS, welfare support, educational provisions, housing, banking services and employment" (Ali 2023: 20). How narrow and limited that exception is can be seen from the Court of Appeal decision in *Secretary of State for the Home Department v Joint Council for the Welfare of Immigrants* [2020] EWCA Civ 542 - the so-called 'right to rent' case - in which those citizens without the 'ethnically-British attribute" of whiteness could not deploy equality law in their defence even against discrimination in the provision of such basic necessities as housing.