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THE KENYAN ASIANS, BRITISH POLITICS, AND THE COMMONWEALTH IMMIGRANTS ACT, 1968*

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ABSTRACT. *The article examines the 1966–70 Labour government's decision to withdraw the right of entry from Asians with British passports who were driven out of Kenya by its 'Africanization' policies. It examines the decision within the context of three issues: first, the existence and status of a pledge, allegedly made by Macmillan's last Conservative government, that the Asians' right to enter the UK would be respected; second, a decline in both major parties' commitment to the Commonwealth; and, third, competing ideological strains within the Labour party. The article concentrates on the first of these issues, focusing on an as-yet-unresolved debate between Duncan Sandys and Iain Macleod, both Conservative Colonial Secretaries. Macleod argued that a solemn pledge had been given to the Asians, while Sandys and the Conservative party adamantly denied the claim. In the light of new archival evidence, the article argues that the Asians' exemption from immigration controls, which had been applied to the whole of the Commonwealth, did not result from an explicit commitment by the British government; it was rather the unintended result of the mechanism chosen to restrict Commonwealth immigration in 1962. It was a consequence, however, that was recognized by civil servants at the time of the passage of the Commonwealth Immigrants Act in 1962, and accepted by key figures in the British cabinet, including Duncan Sandys himself. The position taken by Sandys and the majority of the Conservative party in 1968 was, behind the safety of the Official Secrets Act, a betrayal of commitments made and pledges given only a few years earlier. The article concludes by suggesting that the Kenyan Asians' crisis represented both a shift, in the two parties, away from previous commitments to the Commonwealth and, in the Labour party, the triumph of James Callaghan's strand of Labour ideology – nationalist, anti-intellectual, indifferent to arguments about international law and obligation, and firmly in touch with the social conservatism of middle- and working-class England.*

In late February 1968, there was a sense of panic among the Asian community in Kenya. The euphemistically termed 'Africanization' policies pursued by the Kenyan government had for several years been designed to drive them out of

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key positions in the economy. Asians had found that their work permits were no longer renewable; they were restricted to certain sectors of the economy; they were sacked from the civil service. Until 1968, their ultimate security had been guaranteed by their possession of British passports, which gave them unrestricted entry into the United Kingdom. On 22 February, this guarantee collapsed; the Home Secretary, James Callaghan, announced that the British government would no longer respect the Asians' passports. Just over a week later, legislation ending the Asians' unqualified right to enter went into force, and, on 1 March, the fully booked aeroplanes that had been carrying Asians to the UK for months were turned away. Some 200,000 individuals holding only British citizenship were abandoned, effectively stateless, in Africa or India, and some of these individuals are still waiting to enter the United Kingdom today.[1]

The passage of the Commonwealth Immigrants Bill, 1968, was among the most divisive and controversial decisions taken by any British government. For some, the act was the most shameful piece of legislation ever enacted by parliament, the ultimate appeasement of racist hysteria.[2] For others it was the Labour party and, particularly, Callaghan at their finest – purposeful and decisive in the face of immense pressure, and at last in touch with the working- and lower-middle-class voters to whom the government owed its office.[3]

The Kenyan Asians' episode was a political crisis of tremendous significance, politically and intellectually. Politically, it was of immeasurable consequence for the life chances of Asians who were unable to scramble through the closing door; intellectually, it is a sort of prism through which several broader currents of post-war British political history are illuminated. Most importantly, the episode raises the question of the government's obligations to what one Conservative party researcher later called the 'detritus of Empire':[4] individuals who found themselves without local citizenship following the colonies' independence. At the time, the debate among politicians, intellectuals, activists, and the broader public focused on the existence, content, and status of a 'pledge' allegedly made by the Conservative government in 1963, at

[1] Under 1981 legislation, they and others were given British Overseas Citizenship (BOC); the new status did not affect their right to enter the UK. It is roughly estimated that there are 50,000 BOCs in the world, including Asians and others, without any other citizenship. Interview with an Immigration and Nationality Directorate Official, Home Office, January 1999.

[2] This position was taken by Iain Macleod, Sir Edward Boyle, Nigel Fisher, and Ian Gilmour, in the Conservative party and by Andrew Faulds (a Birmingham MP), Michael Foot, Anthony Lester, and Shirley Williams, in the Labour party. See Kenneth O. Morgan, *Callaghan* (Oxford, 1997), pp. 309–10.

[3] Within the Labour party, the legislation enjoyed majority support among cabinet ministers (with the exception of those specified in n. 2) though many of them likely viewed it as a regrettable necessity rather than a cause for joy. The bill had strongest support, again with the exception of Andrew Faulds, among MPs such as Richard Crossman representing constituencies (notably in the Midlands) with a high concentration of Commonwealth migrants. Interview with Peter Shore, Sept. 1995; Richard Crossman, *The diaries of a cabinet minister*, II (London, 1976), p. 679, Morgan, *Callaghan*, pp. 308–9.

[4] Conservative party archives (CPA), Bodleian Library, Oxford, CRD 3/16/4, 'Memorandum by Patrick Cosgrave for Edward Heath', 19 Mar. 1970.

Kenyan independence. Those opposed to the 1968 legislation maintained that it violated a commitment made to minority communities in Kenya at the time of its independence, when the Asians were deliberately exempted from immigration controls instituted by 1962 legislation controlling Commonwealth immigration. Those supporting the government retorted that no enforceable pledge had been made (though some non-enforceable assurance may have been foolishly given), and that the Labour government was both entitled and obliged to restrict the flow of Asians entering the UK with British passports. It was entitled because no parliament can bind its successors, and it was obligated because the overwhelming majority of the British public demanded restrictions on Asian entry. The debate about the Labour government's obligations, and the Conservative government's promises, is very much alive today.

The episode also points to the declining role of the Commonwealth in post-war British politics. In the 1950s, the Churchill, Eden, and Macmillan governments agonized over the adverse effect of immigration restrictions on the Commonwealth.[5] By 1968, Edward Heath, the technocratic reformer of what had been the party of empire, viewed Commonwealth immigration, and the related issue of 'race', as issues to be *managed*. Appeals to imperial obligation and Commonwealth ideals fell on barren ground in front of Heath,[6] and his main concern in supporting the Labour government's restrictive legislation was to reach a compromise with a divided cabinet.[7]

The evolution was equally striking in the Labour party. When the first restrictions on Commonwealth immigration were passed by the Macmillan Conservative government in 1962, Hugh Gaitskell condemned the legislation, to the applause of the party he led, as 'yielding to the crudest clamour, "Keep them out."'[8] Two years later, the Labour government renewed the legislation, and, in 1965, it more than halved the quotas on which the 1962 legislation was based. The Commonwealth Immigrants Act, 1968, was arguably the culmination of this process. The party that had a year earlier claimed that the Commonwealth was 'the greatest multi-racial association the world has ever known' was now stripping British subjects possessing only British citizenship of the fundamental right linked with this citizenship,[9] and it was doing so in response to public opposition to the entry into Britain of non-whites. If there was ever a moment confirming that the Commonwealth – the 'great and glorious heir of Empire', as Powell acidly referred to it – was no longer a political entity and ideal for which British politicians were prepared to make

[5] Randall Hansen, *Citizenship and immigration in post-war Britain: the development of the multicultural society* (forthcoming), chs. 3 and 4; R. G. Spencer, *British immigration policy since 1939* (London, 1997), chs. 2–4.

[6] On this, see John Campbell, *Edward Heath* (London, 1993), pp. 336–41.

[7] On this, see CPA, LCA LCC 65(61), para. 2; Campbell, *Edward Heath*, pp. 237–8. Although Heath's autobiography devotes little attention to it, also see Edward Heath, *The course of my life* (London, 1998), p. 291.

[8] Hansard (Commons) (649), col. 801, 16 Nov. 1961.

[9] Labour party archives (LPA), National Museum of Labour History, Manchester, *Race relations* (July 1967).

domestic sacrifices, it was 1968. The fact that the legislation was passed within a year of Callaghan's devaluation of the pound, which was a great disappointment to those countries in the sterling area,[10] and of the Labour government's unsuccessful application to join the European Economic Community (EEC), confirms the importance of 1968 as a landmark year in the attenuation of Labour's commitment to the Commonwealth.

Finally, the crisis casts light on competing strains within the 1960s' Labour party. The success of Roy Jenkins in securing parliamentary approval for progressive legislation on a range of social issues secured him the undying support of liberal intellectuals, journalists, and activists intoxicated by the heady optimism of the 'liberal hour', but it alienated Jenkins and his supporters from working-class and middle-class voters who held conservative views on homosexuality, race relations legislation, and non-white immigration. For Jenkins, the first was a matter almost purely of individual choice, while immigration and race were to be managed by an enlightened elite leading and shaping public opinion.[11] By contrast, Callaghan exhibited a profound distaste for what he viewed as the moral permissiveness manifested in premarital sex, gay and lesbian relationships, and the use of soft drugs, and he viewed immigration as, in the words of his biographer, 'an issue to be handled in a way attuned to public opinion, rather than on the basis of abstract liberal political theory'.[12] There is little doubt that public opinion and Labour's traditional supporters and much of middle-class England sided with Callaghan. The outpouring of support by working-class voters for Enoch Powell's 1968 'rivers of blood' speech,[13] which predicted internecine conflict if immigration continued, highlighted the distance between the 'Jenkinsites' and a conservative section of the electorate, including Labour's traditional working-class supporters.[14] During the passage of the Commonwealth Immigrants Bill, National Opinion Polls (NOP) found support for the bill among 69 per cent of respondents, with greatest support among the aged and working class.[15] The 1968 Immigration Act was the product of a Home Secretary who, though viewed with intellectual disdain by Jenkins, closely reflected the preferences of

[10] S. Strange, *Sterling and British policy* (London, 1971); Morgan, *Callaghan*.

[11] Roy Jenkins, *A life at the centre* (London, 1991), pp. 188–9.

[12] Morgan, *Callaghan*, p. 308.

[13] According to a National Opinion Poll (NOP) taken after the speech, 61 per cent of the electorate thought Edward Heath, the Conservative leader, was wrong to sack Powell from the shadow cabinet. Agreement with Powell's views exceeded 70 per cent among the 'skilled working class' and respondents from the Midlands. NOP, *Immigration and race relations* (London, 1968), p. 9.

[14] Powell's speech was followed by a series of workers' marches on parliament in his defence, notably 500 dockers on 23 Apr. and 300 Smithfield Market meat porters on 24 Apr.; the placards of the latter proclaimed 'Keep Britain white' and 'Don't knock Enoch': *Guardian*, 'Mixed motives of "non-racialist" dock marchers', 24 Apr. 1968. Both greatly disturbed the government. On the former, see PRO, PREM 13/2315, letter to Harold Wilson, 23 Apr. 1968.

[15] NOP quoted in LPA, Study Group on Immigration, 'Public opinion and immigration, by Dr. Mark Adams', Jan. 1969.

this core constituency. After indulging a year of Roy Jenkins's social liberalism, the party had returned to its roots.

I

This article will concentrate on the first of these issues, reconsidering a public debate that took place between Iain Macleod and Duncan Sandys in 1968. In 1968, the sharpest debate about the government's obligations to British Asians in Kenya occurred, oddly, not between representatives of opposing political parties but between two members of the Conservative shadow cabinet. Iain Macleod, who accelerated the African decolonization process during his 1959–61 tenure as Colonial Secretary, argued that the Labour government was bound by a solemn pledge made by him and his party; Duncan Sandys (with Enoch Powell's support), Colonial Secretary from 1962 to 1964, argued that James Callaghan and the Labour government were free to satisfy public demands for restrictions. Neither man wavered from his uncompromising position, and both went to the grave claiming that the other was palpably mistaken.

This article attempts to resolve the debate between these two individuals and to comment on the broader issues raised by it. There are two questions underlying the Sandys/Macleod argument. First, why was it that the Kenyan Asians were able to enter the United Kingdom in the late 1960s despite the introduction of immigration control on the whole of the Commonwealth in 1962? Was their exemption the result of accident or design? Second, whether or not the Asians were first subject to controls in 1962, did the Conservative government promise them, at independence or perhaps before, that they would be allowed to enter the United Kingdom if the Kenyan government discriminated against its minorities? Answering the first question requires attending to essential moments in the evolution of British policy on nationality and Commonwealth immigration, the second to the intentions of British politicians as documented in official sources.

These questions are addressed in three sections. The first section briefly examines the origin of the Asian community in Kenya, considers the Asians' position within Britain's pre- and post-war imperial nationality frameworks and traces the events leading up to their exclusion from the United Kingdom. The second pays particular attention to the arguments made by Iain Macleod in a public intervention in the midst of the crisis. Macleod argued at the time that the government had foreseen the possibility of a Kenyan Asian migration to the United Kingdom and had specifically exempted them from immigration controls; Sandys entirely denied this claim. The section examines the evidence Macleod cited to support his argument, and it argues that this evidence does not prove that the British government made any pledge to the Asian community in Kenya. The third section argues, on the basis of new archival material, that Macleod's position is none the less tenable, though not for the

reasons he put forward in the 1960s. Contrary to what is widely believed,[16] and what Macleod seemed to suggest in 1968, Asians in Kenya and other East African nations were placed under immigration restrictions first enacted against Commonwealth immigrants in 1962. Their 'release' from these controls was not, as many have claimed, a matter of design; it was rather the unintended consequence of the mechanism chosen to restrict immigration in 1962. It was a consequence, however, that was recognized by civil servants at the time of the passage of the Commonwealth Immigrants Act, 1962, and accepted by key figures in the British cabinet, including Duncan Sandys himself. The position taken by Sandys and the majority of the Conservative party in 1968 was, behind the safety of the Official Secrets Act, a betrayal of commitments made and pledges given only a few years earlier.

II

Asians had lived in East Africa for centuries before European powers divided the continent amongst themselves, but the majority of the Asian community arrived after the expansion of British hegemony over the area from the mid-nineteenth century.[17] As in the rest of East Africa, they came to Kenya as labourers[18] and traders. After the Second World War, they were to be found in all occupations: in business, in the police force, in the bureaucracy and the professions, both in Nairobi and the townships.[19] Their commercial skills contributed to the economic development and prosperity of Kenya and the rest of East Africa,[20] and their success bred suspicion and resentment. The nineteenth-century British explorer, Sir Richard Burton, echoed widely held sentiment when he derided Indian merchants as 'local Jews',[21] one sect of

[16] It is frequently claimed that the Kenyan Asians' passports were exempted from 1962 immigration controls. See Ann Dummett and Andrew Nicol, *Subjects, citizens, aliens and others* (London, 1990), p. 199; Colin Holmes, *John Bull's island* (Houndmills, 1988), pp. 265–7; David Mason, *Race and ethnicity in modern Britain* (Oxford, 1995), p. 28; John Solomos, *Race and racism in contemporary Britain* (London, 1989), p. 54. Others note that the Kenyans were free from immigration control after independence, but they are not clear on whether the Commonwealth Immigrants Act, 1962, applied to the Asians, and they often imply that the Kenyans' exemption was intentional. See Diro Hiro, *Black British, white British* (London, 1991), p. 212; Kathleen Paul, *Whitewashing Britain* (Ithaca, 1997), p. 179.

[17] D. A. Seidenberg, *Uhuru and the Kenya Indians* (New Delhi, 1983), pp. 3–9. For a history of the Asians in East Africa, see Robert G. Gregory, *The south Asians in East Africa* (Boulder, 1993).

[18] Indian 'coolies' were instrumental to the construction of the Kenyan railway. They were brought to camps along the line, where they lived an isolated existence until the railway was completed. Then, as dictated by their contracts, they returned to India, or they took the option of local discharge from indenture. J. Murray-Brown, *Kenyatta* (London, 1972), p. 64.

[19] Ibid., p. 83.

[20] J. S. Mangat, *A history of the Asians in East Africa* (Oxford, 1969), ch. 1.

[21] The phrase 'Jews of Africa', frequently applied to the Asians, has possessed varied connotations. It was originally coined by European settlers as a term of disparagement channelling prejudices commonly held about European Jews against the Asians (Seidenberg, *Uhuru*, p. 14). Following the expulsions of Asians from East Africa, the phrase has been closer to an expression of sympathy, linking the irrational bigotry aimed at a successful European minority (and its ultimate consequence) with that experienced by the East African Asians.

which was 'unscrupulous and one-idea'd in the pursuit of gain', given to using false weights and measures and receiving stolen goods.[22]

In terms of nationality, Kenyan Asians, along with all other members of the Dominions and empire, were British subjects before the war, citizens of the United Kingdom and colonies after. Before 1945, all of the some 800,000,000 British subjects had an identical status in the eyes of the UK[23] and enjoyed identical privileges, including the right to enter and reside in the imperial metropole.[24] Throughout the empire and Dominions, British subject status was founded on the doctrine of allegiance, which held that the privileges linked with subjecthood flowed from the individual relationship that each individual subject had with the monarch. Until 1948, this common definition of British nationality tied – at least in British eyes – the whole of the empire and the Dominions together.

From the early decades of this century, the Dominions became increasingly restless about possessing a purely residual nationality, and they took a number of measures designed to increase their sovereignty over nationality and immigration.[25] These efforts culminated in Canada's 1946 decision to introduce its own citizenship. The Canadian Citizenship Act of this year defined Canadian citizenship and declared that Canadians would henceforth possess British subject status as a consequence of their status as Canadian citizens. Although seemingly uncontroversial, the legislation repudiated the doctrine of allegiance in that it broke the direct link between British subjects in Canada and the British crown. Whereas before 1946 such subjects 'received' their subjecthood directly from the crown, they now possessed this status as a secondary consequence of Canadian citizenship. Subject status was for the first time derivative of citizenship, and the common basis of imperial nationality was undermined.

The United Kingdom was determined to retain a uniform status for all British subjects. The simplest way to do this was to generalize the principles underlying the Canadian scheme to the whole of (what was now coming to be called) the Commonwealth. As British subject status flowed from citizenship in Canada, so it would throughout the Commonwealth. To this end, the Labour government passed the British Nationality Act of 1948 (BNA), which created two categories of citizenship: *citizenship of the independent commonwealth countries* (CICC) (for Canada, Australia, New Zealand, India, Pakistan, etc.) and

[22] Quoted in Mangat, *History*, p. 22.

[23] In practice, the matter was complicated by the efforts of the dependencies and Dominions to introduce local citizenship, both as an end in itself and as a mechanism for controlling the movement of other British subjects through their territories. For a discussion of this, see Dummett and Nicol, *Subjects*, ch. 7.

[24] On British imperial/constitutional history, see Clive Parry, *Nationality and citizenship laws of the Commonwealth and of the republic of Ireland* (London, 1957).

[25] I discuss these in Randall Hansen, 'The politics of citizenship in 1940s Britain: the British nationality act', *Twentieth Century British History*, 10 (1999), pp. 67–95.

citizenship of the United Kingdom and colonies (CUKC). The latter status included all British subjects in Kenya, including, of course, the Asians. At the time, citizenship was designed to be instrumental to the goal of retaining a common status for British subjects throughout the empire. British subjects – now CICCs and CUKCs – continued to enjoy full rights in the UK.

III

From 1948 until 1962, all CUKCs enjoyed rights, following from a common citizenship, identical to those of Britons. Following a growing non-white immigration to the UK, the Conservative government of Macmillan introduced the Commonwealth Immigrants Act, 1962, which ended unrestricted immigration from the Commonwealth. The mechanism used by this act to control immigration had important consequences, and it will be returned to, but for the moment it is only necessary to know that a centuries-old tradition of free entry to the UK ended in 1962.

Kenya became independent the following year, and it altered its nationality law accordingly. Individuals of African descent, and others whose families had long lived in Kenya, acquired citizenship automatically. All others, including the majority of the Asians, were given two years to apply for Kenyan citizenship. Its acquisition required the renunciation of all other citizenships, including British citizenship (CUKC).[26] The UK put little if any pressure on the Asian and European communities to apply for local citizenship. Both were slow to do so, and the majority opted to retain their CUKC status. Out of approximately 185,000 Asians and 42,000 Europeans, fewer than 20,000 had submitted applications by the deadline.[27] Those who remained in Kenya after December 1965 continued to work, but their place within post-independence Kenya was precarious, and it was resented – at times bitterly – by Africans. Large numbers of the African community believed that Asians had not participated in the struggle for independence,[28] and that they used their economic position to exploit the Africans.[29] Whichever citizenship the Asians

[26] Kenyan constitution, section 2 (5). From 1948 until 1981, British citizenship was formally entitled 'citizenship of the United Kingdom and colonies'. The nationality status (though not the same rights after 1962) was shared by Britons and 'colonial' subjects. In this text, I use the terms 'CUKC', British citizenship, and British passport interchangeably.

[27] 10,000 of these were in the last month (Donald Rothchild, *Racial bargaining in independent Kenya* (London, 1973), p. 188). Statistics on the Asian presence in Kenya were inadequately kept, so these figures should be viewed as conservative estimates.

[28] In fact, at least part of the Asian elite in Kenya supported the independence movement. The African nationalist elite, however, was unwilling to accept Asians as equal partners in the independence movement. See Mangat, *History*, ch. 6, and, on the Freedom Party, Seidenberg, *Uhuru*, ch. 7.

[29] This suspicion reflected in part the division of labour in Kenya. As the colony developed, Asians assumed the role of 'middlemen' purchasing African farmers' goods and selling them in large urban markets. As the African farmers never met the consumers who bought their product, they easily believed that the Asians were reaping huge profits at their expense. These feelings seemed to be confirmed by the Europeans' and Asians' economic progress relative to the African

opted for served as a confirmation of these views. Those who failed to apply for citizenship confirmed in African minds Asian disloyalty to the Kenyan *Gemeinschaft*, while those who did apply were believed to have done so for purely strategic reasons.[30] Many of those who applied for citizenship met obstacles and delays,[31] and a large number of applications for citizenship were simply never processed. Although the exact reasons for this administrative failure are uncertain, it is almost certain that Kenyan hostility towards Asian naturalization led civil servants to ignore deliberately many Asian applications.

Although Asians with Kenyan citizenship enjoyed some statutory protection (though little social acceptance),[32] those without soon felt the tightening vice. Their work permits were gradually withdrawn, and they found themselves squeezed out of the Kenyan economy. The Kenyan Immigration Act, 1967, required all those without Kenyan citizenship to acquire work permits;[33] a Trade Licensing Act passed in the same year limited the areas of the country in which non-Kenyans could engage in trade;[34] and Asians in the civil service were sacked in favour of Africans.[35] Without a future in Africa, and with no right (or, in many cases, strong inclination) to migrate to India or Pakistan,[36] they began to travel to England. In early 1967, Kenyan Asians were arriving at the rate of approximately 1,000 per month.[37]

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farmers, and the last saw the Asians as the cause of their poverty. Seidenberg, *Uhuru*, pp. 12–13. On the role of the British in creating this stratification, see Okwudiba Nnoli, *Ethnic politics in Nigeria* (Enugu, Nigeria, 1978), ch. 1.

[30] Donald Rothchild, 'Citizenship and national integration: the non-African crisis in Kenya', in *Studies in race and nations* (Center on International Race Relations, University of Denver working papers), 1/3 (1969–70), p. 1.

[31] Robert G. Gregory, *Quest for equality* (New Delhi, 1993), p. 99.

[32] Under the Kenyan constitution (discussed below), Asians (and all others) born in Kenya to at least one parent born there become automatic Kenyan citizens (Rothchild, *Racial*, p. 40). Citizenship did not provide a full guarantee against discrimination, as many Asians suspected it would not. In addition, non-Africans with citizenship were at times denied permits, and a number of Asians were stripped of their citizenship and deported stateless for having 'shown themselves by act and speech to be disloyal and disaffected towards Kenya [section 8 (1) (*a*) of the Kenyan constitution]'. See Rothchild, 'Citizenship', p. 20.

[33] Gregory, *Quest*, p. 99.

[34] Dummett and Nicol, *Subjects*, p. 199. For a discussion of the Asians' ability to carry on in Kenya despite Africanization, see Robert L. Tignor, *Capitalism and nationalism at the end of empire* (Princeton, 1998), chs. 10 and 11.

[35] David Himbara, *Kenyan capitalists, the state, and development* (Boulder, 1994), pp. 116–17.

[36] India was in fact suspicious of their permanent entry, particularly in large numbers. PRO, PREM 13/2157, notes of meeting between Colonial Office and T. N. Kaul, Indian Foreign Secretary, 20 Feb. 1968.

[37] Home Office statistics cited in the *Times*, 'Citizens from Kenya', 16 Feb. 1968.

IV

The first signs of the Kenyan Asians' crisis appeared while Roy Jenkins was still Home Secretary. In 1967, when some 13,600 Asians arrived in Britain,[38] Jenkins, indecisively, brought the issue to an October Home Affairs committee meeting.[39] It decided that the Home Secretary was to 'work out appropriate policies and consider the practicality of legislation'.[40] *Fortuna*, in the form of a 1967 devaluation crisis, spared Jenkins a gruelling decision.[41] In the early hours of 14 November 1967, Wilson, Callaghan, and their advisers agreed to devalue sterling from US$2.80 to $2.40. Callaghan had been the last to accept the argument in favour of devaluation. He had promised on several occasions that sterling's value against the American dollar would be maintained, and the decision was a tremendous personal blow.[42] He insisted on resigning from the Treasury, and Wilson, to avoid a massive cabinet shuffle (and the promotion of Anthony Crosland, still a serious challenger on the right of the party), gave Callaghan the Home Office and brought Jenkins to the Treasury.[43]

When Callaghan entered the Home Office, he was under intense emotional strain. The devaluation debacle had thrown him into the blackest gloom,[44] and he was determined to avoid a situation in which he would again be a slave to events. It was in this context that the government passed the Commonwealth Immigrants Act.

When Callaghan arrived at the Home Office, officials believed that approximately 2,000 Asians per month were leaving for Britain.[45] Stories of their arrival dominated the news, and the 'flood' that had been predicted in anti-immigrant propaganda and speeches seemed to manifest itself. British viewers saw nightly pictures of Asians scrambling for tickets in Kenya, forming long queues at airports and pouring off planes in the UK.[46] The public demanded that they be stopped.[47]

Callaghan responded swiftly and rushed a restrictive bill through parliament. Normally the matter would have gone to a Home Affairs committee, but a special cabinet committee on immigration was set up, on 13 February, with Callaghan in the chair. He dominated the proceedings and was

[38] Ibid.
[39] Richard Crossman, *The diaries of a cabinet minister*, II (London, 1976), p. 526.
[40] Ibid. [41] John Campbell, *Roy Jenkins* (London, 1983), p. 93.
[42] James Callaghan, *Time and chance* (London, 1987), pp. 214–25. [43] Ibid., p. 222.
[44] Morgan, *Callaghan*, p. 274. [45] Callaghan, *Time*, p. 264.
[46] Dummett and Nicol, *Subjects*, p. 200.
[47] See the public opinion poll, Gallup, *Coloured people in Britain* (London, 1982), question 56, and NOP (quoted in LPA, Study Group on Immigration, 'Public opinion and immigration, by Dr. Mark Adams', Jan. 1969) indicating 72 and 69 per cent support, respectively. Also see, Callaghan, *Time*, p. 267. To be sure, the public is constituted in part by politicians whose privileged position may allow them to shape it. Another politician more beholden to abstract principles might have attempted to move public opinion in the direction of a more migrant-friendly stance. None the less, there can be little doubt that Callaghan's actions enjoyed the support, as measured by public opinion data, of a majority of Britons in the late 1960s.

contemptuous of his critics; according to Crossman, the Home Secretary dismissed anyone opposing him as a 'sentimental jackass'.[48] The committee meeting was an extraordinary moment. The party that had championed the Commonwealth ideal of racial equality and inter-racial co-operation, the party that had bitterly attacked the Commonwealth Immigrants Act, 1962, and the party that had justified opposition to Rhodesia's Unilateral Declaration of Independence (UDI) on the grounds of opposition to racism was on the verge of passing legislation denying the entry to British citizens because of the colour of their skin. As Crossman put it, '[a] few years ago everyone there would have regarded the denial of entry to British nationals with British passports as the most appalling violation of our deepest principles. Now they were quite happily reading aloud their departmental briefs in favour of doing just that.'[49]

In a cabinet memorandum, Callaghan defended the legislation as necessary, because

> Our best hope of developing in these Islands a multi-racial society free of strife lies in striking the right balance between the number of Commonwealth citizens we can allow in and our ability to ensure them, once here, a fair deal not only in tangible matters like jobs, housing and other social services but, more intangibly, against racial prejudice. If we have to restrict immigration now for good reasons, as I think we must, the imminent Race Relations Bill will be a timely factor in helping us to show that we are aiming at a fair balance all round. Conversely, I believe that the reception of the Race Relations Bill will be prejudiced in many minds, and support for it weakened, if people think that the numbers entering are unlimited or unreasonably high.[50]

In an attached annex, Callaghan made two other arguments in favour of legislation. The first, which testifies to Callaghan's indifference towards international law and the rights of citizenship, was that the Asians had 'no greater claim on merits to settle in the United Kingdom than have Commonwealth citizens living in independent Commonwealth countries or citizens of the United Kingdom and Colonies living in colonies'.[51] The second was that, as the Asians contributed to the total number of 'immigrants' arriving each year, they added to strains in the schools, youth employment, and local housing.

At the 15 February cabinet meeting, uncompromising opposition to Callaghan came from the Commonwealth Secretary, George Thomson, who officially recorded his dissent.[52] Michael Stewart, the foreign secretary, argued that a final appeal should be made to Kenyatta, the Kenyan leader. The argument was still overwhelming in favour, however, until Jenkins, to the surprise of the other ministers, agreed with Stewart, and argued for delay. The prime minister sided with Callaghan,[53] but the cabinet agreed to send Malcolm

[48] See Crossman, *Diaries*, p. 679.
[49] Ibid.
[50] PRO, CAB 129/135, Home Secretary's memorandum C(68) 34, 12 Feb. 1968.
[51] Ibid., annex to Callaghan's memorandum, 12 Feb. 1968.
[52] Ibid., Commonwealth Secretary's memorandum C(68)35, 12 Feb. 1968.
[53] Crossman, *Diaries*, p. 685.

Macdonald, the UK's special representative in East Africa (and former colonial governor), to Nairobi with the aim of securing Kenyatta's co-operation in stemming the outflow.[54]

When the cabinet met again, on 22 February, Macdonald reported that Kenyatta had categorically refused to compromise.[55] Callaghan demanded immediate legislation,[56] and his position was resisted only by George Thomson, who argued again against the bill.[57] Jenkins made a final appeal for a yearly figure of 2,000 immigrants (the level before the rush began) but Wilson silenced the debate.[58] The quota would remain at 1,500. Barbara Castle, once a passionate defender of Commonwealth immigration and of the Commonwealth, was absent from the previous meeting and fell asleep at this one.[59] All ministers, whatever their doubts, fell in behind the decision.[60] Kenyan Asians who knew no other citizenship than British would no longer have access to the UK.

From that moment, the pace quickened. The Conservative shadow cabinet had agreed on 21 February to support a phased entry of Kenyan immigrants if talks with Kenyatta failed.[61] When Callaghan announced the government's intention to introduce a bill after the 22 February cabinet meeting, Quintin Hogg responded sympathetically.[62] The panic in Kenya intensified; British Asians in Nairobi tendered their resignation, gathered what few belongings they could, and left the country within twenty-four hours. By noon on the day following the announcement of the immigration bill, all direct flights from Nairobi to London were fully booked until early March, and connecting flights were filling quickly.[63] On 27 February, the Conservative shadow cabinet agreed to support the government's bill.[64] Macleod made clear his intention to vote against any restrictive measure.[65] Edward Boyle had expressed unease about the discriminatory nature of the bill,[66] and he and Robert Carr made their support conditional on no Conservative vote against the government's promised Race Relations Bill, which strengthened a similar act adopted in 1965. The Conservatives supported the second reading of the bill, but no whip was used. Fifteen Conservatives, including Macleod, Nigel Fisher, Norman St John-Stevas, and Michael Heseltine, voted against it. The second reading of

[54] Barbara Castle, *The Castle diaries, 1964–1970* (London, 1984), p. 377; *Times*, 'Rapid rise in influx from Africa', 16 Feb. 1968.

[55] Castle, *Diaries*, p. 377; PRO, PREM 13/2157, telegram from Macdonald, 19 Feb. 1968.

[56] PRO, CAB 129/136, Home Secretary's memorandum on East African Asians C(68) 39, 21 Feb. 1968. [57] Castle, *Diaries*, p. 377. [58] Ibid., p. 378. [59] Ibid., pp. 377–8.

[60] Interview with Peter Shore, Sept. 1995.

[61] CPA, LCC 68/218, 'Leader's consultative committee', 21 Feb. 1968. Macleod made it clear that he would vote against the bill.

[62] Hansard (Commons) (759), col. 661, 22 Feb. 1968.

[63] *Times*, '4,000 expected on extra flights', 24 Feb. 1968.

[64] Margaret Thatcher, *The path to power* (London, 1995), p. 145; CPA, LCC 68/219, 'Leader's consultative committee', 27 Feb. 1968. [65] Thatcher, *The path*, p. 145.

[66] Edward Boyle papers, the Brotherton Library, University of Leeds, MS 660/28031, letter from Edward Boyle to A. J. Doherty, 27 Feb. 1968.

the Commonwealth Immigrants Bill was moved on 27 February, and it was passed by parliament on 1 March 1968.[67]

The act restricted the rights of Asians to enter the United Kingdom by adding an additional prerequisite for entry. In addition to holding a passport issued under the authority of London or by Dublin, those exempted from control must have a 'qualifying connection' to the United Kingdom: only individuals, or their children or grandchildren, born, naturalized or adopted in the United Kingdom could enter the country. As the vast majority of Kenyan Asians enjoyed no such connection, their right to enter the United Kingdom was effectively withdrawn. In addition to the quotas under the 1962 legislation, the 1968 act allowed 1,500 – a figure slightly higher than Callaghan's preferred 1,000 – Kenyan Asian heads of households and dependants (i.e., approximately 6,000 to 7,000 in total) to enter the UK each year.[68]

Like immigration restrictions in 1962 and 1965, the legislation was loathed by liberal opinion and loved by the public.[69] Students, immigrants, civil libertarian, and immigrant organizations staged mass protests.[70] Anthony Lester successfully challenged the act before the European Commission on Human Rights. The National Committee on Commonwealth Immigrants (NCCI), which advised on Commonwealth immigration and made recommendations on local community development,[71] accused the government of irreparably damaging race relations and hinted at collective resignation.[72] Callaghan was undaunted. The public demanded action, he was under pressure from Labour MPs and others from the Midlands and he believed – though the argument may appear highly self-serving – that a failure to act could encourage racism in Britain.[73] The home secretary took the decision in

[67] Hansard (Commons) (759), cols. 1241–368, 27 Feb. 1968 and col. 1917, 1 Mar. 1968.

[68] Those Asians who left Kenya after 1 Mar. 1968 without an entry certificate were refused entry to the UK and had no right to return to Kenya. As a result, individuals were jetted back and forth between the two countries until the Home Office secured Kenyan agreement to accept the return of Asians without certificates. Interview with a Home Office official, Aug. 1995.

[69] Gallup, which tracked public attitudes from 1958 to 1982 (*Coloured people in Britain* (London, 1982)), found consistent majority support for immigration restrictions. Support for the Commonwealth Immigrants Act, 1962, ranged from 62 per cent to 76 per cent (question 35); support for 'a strict limitation on the number of immigrants' from the Commonwealth was 87 per cent in 1965 (question 50); support for the Commonwealth Immigrants Act, 1968, was 72 per cent (question 56); and support for the Immigration Act, 1971, was 59 per cent, with 25 per cent not knowing (question 85). In 1968, *The Times* and the *Spectator* accused the government of shirking an obligation willingly accepted by the British government in 1962. See *The Times*, 'Hasty law makes bad cases', 23 Feb. 1968, and the *Spectator*, 'A shameful and unnecessary act', 1 Mar. 1968.

[70] *Times*, 'Demonstrator tears up her British passport', 26 Feb. 1968.

[71] E. J. B. Rose et al., *Colour and citizenship* (London, 1969), p. 522.

[72] *Times*, 'Race relations work put back 10 years!', 2 Mar. 1968. Only two resignations in fact occurred. Richard Titmuss claims to have played a role in this, cynically admitting to the government that he made a 'melodramatic' statement to the press in order to retain the confidence of black members of NCCI. PRO, PREM 13/2157, letter from the lord president of the council to Harold Wilson, 8 Mar. 1968.

[73] PRO, CAB 129/135, 'Memorandum by the secretary of state for the Home Department', C(68) 34, 12 Feb. 1968. Callaghan, *Time*, pp. 264–5.

favour of restrictions without consulting the NCCI, and when he met them on 27 February, he found it difficult to contain his impatience. The decision of the European Commission on Human Rights, whose negative judgement had been anticipated by the government,[74] was simply ignored.[75]

Callaghan's resolve and the reaction of the government's critics highlight a number of important strains within the Labour party. In the same way that the Conservative front bench found itself divided over the Kenyan issue, the episode drove a wedge into one of the central cleavages of the post-war Labour party. Both the government's sharpest critics – churches, students, intellectuals, and immigrant organizations – and its strongest supporters – working-class voters and union-sponsored MPs – were natural allies of the Labour party. After a series of progressive legislative measures on capital punishment and homosexuality, which had little appeal for traditional working-class voters,[76] Callaghan saw through parliament an act that corresponded directly to the preferences of this core Labour constituency.[77] The legislation was very much a triumph of Callaghan's strand of Labour ideology – nationalist, anti-intellectual, indifferent to arguments about international law and obligation, and firmly in touch with the social conservatism of middle- and working-class England.[78] It was a triumph that remained, for all

[74] The attorney general noted in a memorandum to the cabinet that the European Commission on Human Rights (which first hears individual petitions) or the European Court of Human Rights might deem the legislation a violation of article three of the fourth protocol (right of a national to enter his/her territory) or article eight (right to respect for family life). He noted, however, that the UK had not ratified the protocol, and that, though it would be a 'serious step', the government could simply refuse to obey the committee of ministers (which receives the Commission's report) or the Court. PRO, CAB 129/135, attorney general's memorandum on the immigration legislation, C(68) 36, 14 Feb. 1968.

[75] The case did not reach the European Court of Human Rights because the UK did not challenge the decision. In February 1975, Roy Jenkins, again Home Secretary, raised the quota to approximately 5,000 individuals per year with the goal of speeding the Asians' entry to the UK. For the European Commission's decision, see 'East African Asians v. United Kingdom', *European Human Rights Reports*, 3 (1981), pp. 76–103. I owe my thanks to Lord Lester of Herne Hill QC for clarifying this issue.

[76] Following John Goldthorpe, I define the 'working class' as rank and file manual employees in industry and agriculture. From the early 1980s, Social and Community Planning Research has undertaken an annual survey of British social attitudes. In a 1988 study of 'working-class authoritarianism', the researchers found disproportionately illiberal attitudes among working-class respondents on homosexuality and the death penalty (though not on sex discrimination legislation). See Roger Jowell et al., eds. *British social attitudes: the 5th report* (Aldershot, 1988), pp. 56–7. A 1984 study of attitudes towards sexual morality found intolerance of homosexuality and homosexuals greatest among older respondents and those in manual occupations (though they were hardly strikingly liberal among other groups). See Roger Jowell and Colin Airey, eds., *British social attitudes: the 1984 report* (Aldershot, 1984), pp. 136–9.

[77] In early March 1968, Gallup asked 'Do you approve or disapprove of the measures the Government are taking in controlling immigration from Commonwealth countries?' 72 per cent approved; 21 per cent disapproved; and 7 per cent did not know. Gallup, *Coloured people in Britain* (London, 1982). NOP asked 'Do you think the Government was right or wrong to introduce the new immigration bill?' 79 per cent thought it was right; 15 per cent thought it was wrong; and 6 per cent did not know. The belief was strongest among the working class and those over fifty-five. NOP, 'Public opinion'.

[78] On this, see Morgan, *Callaghan*.

the controversy the legislation provoked, part of the legal framework regulating immigration from the Commonwealth.

V

With this political history in the background, it is now time to return to the two questions raised at the outset of the article – the reasons for the Asians' ability to circumvent the 1962 immigration controls and the question of pledges made by Macmillan's last Conservative government. Behind the controversy surrounding the 1968 legislation lay disagreement and confusion about the source of the Asians' right to enter the United Kingdom. Public debate developed in a curious manner. The front bench of the Labour party, despite its professed commitment to the Commonwealth, was publicly – and it seems privately – largely united in support of the legislation.[79] It was joined, in keeping with the bipartisan consensus that characterized the parties' approach to immigration in the late 1960s, by the leader of the Conservative party and the majority of the front bench. As a result, the fundamental questions concerning the United Kingdom's obligation to the Commonwealth, the status of a pledge that might have been given by the Conservative government, and the implications of international law on statelessness were addressed by two members of the Conservative party: Iain Macleod and Duncan Sandys.

Sandys, who had served as Commonwealth and Colonial Secretary in the Conservative government, argued that he and his government had 'certainly never intended to provide a privileged backdoor entry into the U.K.'.[80] A few days later, Enoch Powell, who would later deliver the 'rivers of blood' speech, publicly endorsed Sandys's position.[81]

Iain Macleod, previously a close friend of Powell, fellow founding member of the 1950s' 'One Nation' Group, and Colonial Secretary in that decade, came as close as he politely could to calling Sandys a liar. He argued that the Conservatives had willingly accepted an obligation to all CUKCs in Kenya that they were now bound to fulfil. Under the pretext of responding to Duncan Sandys's attempt to initiate a private member's bill, Macleod sent an open letter for publication in the *Spectator*.[82] He wrote to Sandys that

> [t]he true question must be whether such a [restrictive] Bill as you propose would break an undertaking given freely by this country and her Conservative Government. More specifically did you give your word? Did I?... If I understand your position correctly

[79] Interview with Peter Shore, Sept. 1995.

[80] *Daily Telegraph*, 4 Feb. 1968.

[81] E. Powell, speech made at Walsall, 9 Feb. 1968. Reproduced in full in B. Smithies and P. Fiddick, *Enoch Powell on immigration* (London, 1969), pp. 19–22.

[82] Cleverly, Macleod sent the letter *before* the next shadow cabinet meeting (21 Feb. 1968), but – because of printing time – it did not appear until after the meeting (23 Feb. 1968). Macleod was able to criticize the shadow cabinet's call for 'phasing the entry of these immigrants' without being accused of either (a) attempting to influence the shadow cabinet decision by speaking in advance of it or (b) violating collective solidarity by breaking with the decision afterwards. R. Shepherd, *Iain Macleod* (London, 1995), p. 495.

it is … that 'it was certainly never intended to provide a privileged backdoor entry to the U.K.' Leaving aside the emotive words that is exactly what was proposed: special entry in certain circumstances which have now arisen. We did it. We meant to do it. And in any event we had no other choice … We cannot ignore the past nor the pledges we gave. In what we did for the minorities communities we were supported by all political parties and by the press … It is, of course, true that no one said in terms to the Asian community 'we are providing for you a privileged backdoor entry, etc.'. But your Kenyan constitution is devastatingly clear. So is Hansard. So are all the statutes. And so is, therefore, my position. I gave my word. I meant to give it. I wish to keep it.[83]

Duncan Sandys denied the charge: 'I', he argued, 'can assure the House that no such pledge was given, either in public or in private';[84] James Callaghan argues that it was a 'loophole' in the 1963 Kenyan Independence Act that gave all inhabitants of the territories the right to a British passport on request,[85] and Enoch Powell claimed until his death to be entirely mystified by Macleod's intervention.[86]

The debate over the 1968 act has remained largely where Macleod and Sandys left it in 1968. Scholars have generally endorsed Macleod's position, but they have not furnished the evidence that would carry his argument against Sandys's.[87] It is still, as it were, Macleod's word against his. In the last section of the article, I furnish primary evidence that partially resolves the argument in favour of Macleod, although his 1968 argument would have to be modified. The exemption of Kenyan Asians from the 1962 Commonwealth Immigrants Act resulted *unintentionally* from the mechanism on which the act based immigration control. As this outcome was an accident, Macleod's argument that the British government 'meant to do it' seems exaggerated. None the less, primary evidence establishes that the British government – and Duncan Sandys himself – both recognized and agreed to respect the Asians' exemption from the 1962 controls. In denying this decision, Sandys appears to have, as Macleod all but claimed he had, lied, or at the very least very selectively remembered his party's very recent history.

Before turning to these documents, it is worth noting that the legal texts cited by Macleod himself in his letter to the *Spectator* do not, in fact, support his argument. The texts he cites – the Kenyan constitution, the statutes, and Hansard – are anything but 'devastatingly clear'. The Kenyan constitution gives no guarantees to citizens of the United Kingdom and colonies. It grants

[83] *Spectator*, 23 Feb. 1968, pp. 225–6.

[84] Parliamentary Debates (Commons), (759), col. 1274, 27 Feb. 1968.

[85] Callaghan, *Time and chance*, p. 264. The term 'loophole' was used frequently at the time. David Steel, who claimed that '[n]ever has such a mischievous and misguided piece of legislation been introduced into Parliament and then steamrollered through in record time as the Commonwealth Immigrants Act, 1968,' agrees with Callaghan's interpretation. See David Steel, *No entry* (London, 1969), p. 63 (quotation from the preface).

[86] Interview with Enoch Powell, Aug. 1995.

[87] Those writing on the Kenyan Asians' episode generally accept Macleod's argument that promises were made to the Asian community, but provide no evidence to support this claim. See, for example, Spencer, *British*, p. 142.

citizenship automatically to those born in Kenya with at least one parent born there,[88] makes the acquisition of Kenyan citizenship conditional on the renunciation of all other citizenships,[89] and provides CUKCs, Irish citizens, and residents the opportunity to apply for citizenship.[90] The constitution grants to all Kenyans the status of 'Commonwealth citizen', and it recognizes all British subjects as Commonwealth citizens,[91] but it provides no guarantees to anyone not acquiring Kenyan citizenship. It is, of course, silent on the rights of Commonwealth citizens in the United Kingdom, as authority over the matter rested in Westminster alone.

The British statutes also contain no promises. Macleod cited three: the British Nationality Acts, 1958 and 1964, and the Kenyan Independence Act, 1963. The first allowed CUKCs in Ghana, which gained independence in 1957, to retain this citizenship if their family had been in the country for less than three generations, and allowed individuals with an 'ethnic' connection to the UK to acquire CUKC. It was passed, however, in 1958, when all British subjects still enjoyed unrestricted entry to the United Kingdom. All CUKCs outside the United Kingdom came under control through the Commonwealth Immigrants Act of 1962. As this latter act took precedence over previous nationality legislation, the provisions of the 1958 Act granted no right of entry to the Kenyan Asians.

Section three of the Kenya Independence Act, 1963, ensured that anyone not acquiring Kenyan citizenship would retain CUKC.[92] This is the broad provision to which Callaghan refers.[93] The British Nationality Act of 1964 extends the right to reacquire CUKC to two categories: (i) those who could not have become or remained a citizen of an independent Commonwealth country without making such a renunciation and (ii) those individuals, and their spouses, whose father or grandfather was born in the United Kingdom and colonies or in a protectorate state, was registered or naturalized as a CUKC, or acquired British subjecthood through the annexation of a territory.[94] The latter legislation enabled all (usually white) British settlers in any colony, protectorate or protected state to reclaim British[95] citizenship. It also, through provisions for those who had no choice but to renounce CUKC to acquire local citizenship,

[88] The Kenyan constitution, section 1. This citizenship scheme was in fact more inclusive than that which Kenya originally wanted. Kenya, like Uganda before it, first proposed a citizenship scheme granting citizenship only to Africans. The British government, notably the Commonwealth Relations and the Colonial Office, insisted on its modification. See PRO, HO 344/177, letter from J. M. Ross to Governor's Office, Nairobi, 26 Aug. 1963.

[89] The Kenyan constitution, section 12.

[90] Ibid., section 2 (4).

[91] Ibid., section 9 (1) and (2).

[92] Section 2(1) of the Kenya Independence Act, 1963, added Kenya to the list of section 1(3) countries of the British Nationality Act, 1948 (for the independent Commonwealth countries). From 1963, Kenyans were considered as CICCs by the British Nationality Act of 1948. In addition, Kenya did not tolerate dual nationality, and it would have been impossible to be both a CUKC and a Kenyan citizen.

[93] Callaghan, *Time*, p. 264.

[94] The British Nationality Act, 1964, section 1 (1) (*a*) and (*b*).

[95] For papers concerning the settlers in Kenya, see PRO, HO 213/1685.

allowed those few Kenyan Asians (under 20,000) who had successfully applied for Kenyan citizenship to renounce it and resume their British citizenship.

Despite their expansive approach to citizenship, the acts did not attribute the right of entry to Kenyan Asians. The acts granted to the Asians and others the right to acquire a British passport, but this passport did not, by itself, guarantee entry to the United Kingdom. One of the peculiarities of British nationality law and immigration policy was that, between 1962 and 1983, colonial British subjects still retained British citizenship (CUKC), but did not have the right freely to enter the UK. Nothing in either the British Nationality Acts or the Kenyan Independence Act gave, as Macleod claimed, Kenyan Asians unrestricted access to the UK.

It is unclear why Macleod cites these acts, when they do not, from a legal point of view, support the argument he wished to make. Macleod's argument really rests not on the content of these documents, but on the question of intent. His central claim is that the Conservative government knew of the Asians' situation and accepted their right to come to the UK should the situation in Kenya turn sour: 'I gave my word. I meant to give it. I wish to keep it.' This is the flaw in his argument. None of Macleod's evidence demonstrates that the British government intended either to exempt Asians from immigration controls in 1962 (it did not) or to offer them free entry to the United Kingdom in the event of African hostility and discrimination.[96] It could be that constitutional conventions against revealing the substance of cabinet discussions, which were stronger in the years before Crossman's diaries, led him to provide this not entirely sound evidence. In any case, their availability now, in conjunction with other official documents, provides a degree of retrospective credence to Macleod.

VI

To develop this point, it is necessary to return to the Commonwealth Immigrants Act, 1962, and to consider the question of why the Asians found themselves exempt from immigration control in the 1960s. The legislation was passed under an assumption that had guided British policy on imperial nationality since the war. The British Nationality Act, 1948, was based on the assumption that all CUKCs outside the UK would move from the status of dependent colonial subjects to citizens of an independent Commonwealth country.[97] The eventual independence of the colonies was envisaged by British

[96] Given the strength of the 'settler lobby' within the Conservative party in the 1960s, intuition suggests that the eyes of the Conservative government in 1963 and 1964 were on the fate of Europeans, their 'kith and kin', within Kenya, and not on that of the Asians. During the second reading of the Kenya Independence Bill, very little was said about the Asians. See Parliamentary Debates (Commons), (684), cols. 1329–400, 22 Nov. 1963. Sandys discussed the opportunity (enshrined in the British Nationality Act of 1964) for Britons to reclaim CUKC status after its renunciation (cols. 1393–4); no mention was made of the Asians as such.

[97] Interview with Lord Merlyn Rees, Dec. 1995, PRO, HO 213/1704, 'Draft note as a basis for a submission to Ministers', 18 Aug. 1952, 'British Nationality Act, 1948', undated.

policy-makers (although they expected the process to take much longer than it did), and all persons within a given colony, including Kenyans, of course, were to graduate from citizenship of the United Kingdom and colonies to citizenship of an independent Commonwealth country. As this process repeated itself throughout the empire, United Kingdom citizenship – possessed exclusively by those born within the UK or direct descendants of those born therein – would emerge gradually, as the residual remaining after all colonies had become independent nations.

This assumption proved to be false for reasons that were central to the Kenyan Asians' crisis. At independence, as we have seen, non-African CUKCs generally chose not to opt for Kenyan citizenship, retaining instead their CUKC status, and others who applied for Kenyan citizenship were denied it. The Home Office attempted to ensure inclusive citizenship laws after independence, but, keen to secure a rapid settlement, did not make agreement conditional upon them,[98] and the Africans themselves were adamantly opposed to inclusive citizenship. Ghana, Nigeria, Sierra Leone, Uganda, and Tanganyika also refused to grant automatic citizenship to Asians born in these countries.[99] When the Home Office addressed Kenyan nationality, it felt that Uganda and Tanganyika created a force of precedent it was unable to resist.[100] For its part, the Commonwealth Relations Office felt that the citizenship provisions in Kenya, which were at least not entirely based on race, were the best it could do.[101] Finally, the British government did not pressure non-African CUKCs to apply for local citizenship. The result across East Africa and elsewhere in the empire was large numbers of individuals who had only citizenship of the UK and colonies after independence.[102]

Such a situation would have had few consequences for immigration (from 1962, the possession of a British passport did not guarantee entry to the UK) were it not for the mechanism chosen to restrict immigration. When the Commonwealth Immigrants Act, 1962, was passed, the opposition of the colonies and the complications associated with replacing citizenship of the United Kingdom and colonies with an alternate citizenship led policy-makers to retain the status and to base the 1962 act not on the distinction between aliens and citizens but on a passport's 'issuing authority'.[103] British passports

[98] Interview with Sir Geoffrey Otton (retired Home Office official), Aug. 1995.

[99] PRO, HO 213/2292, 'Background note for the minister of state. Position under the Commonwealth Immigrants Act of citizens of the United Kingdom and colonies who do not acquire citizenship of Uganda on Independence Day', undated.

[100] PRO, HO 344/177, letter from G. Otton to Sandars, 26 Feb. 1968.

[101] Ibid., letter from W. F. G. Le Bailly to H. S. H. Stanley, 1 Nov. 1963.

[102] Although estimates were unreliable, it was thought that some 20,000 Asians in South Africa, 25,000 in Tanganyika (Tanzania after 1961), and 200,000 in Kenya were in this situation. PRO, CO 1032/322, extract of a letter from Cleary to Ross, Home Office, 28 Nov. 1961.

[103] PRO, CO 1032/303, working party on Commonwealth immigration: 'Citizenship in relation to the Commonwealth Immigrants Bill', undated, and PRO, CO 1032/303, working party on Commonwealth immigration: 'Memorandum by the Home Office', 24 Mar. 1961.

issued under the authority of the government of Britain were free from control, while British passports issued under a colony's authority were subject to control.

It was this decision that led, in conjunction with Kenyan independence, to the 'release' of Kenyan Asians from immigration control. When the Commonwealth Immigrants Act, 1962, was adopted, Asian CUKCs in Kenya, despite frequent claims to the contrary,[104] *were* subject to the 1962 immigration controls. According to the legislation, individuals were free to enter the UK if they were born in the country or if they held a passport 'issued in the United Kingdom or the Republic of Ireland [Section 1(2)]'. 'Passport', however, was strictly defined by the legislation: 'In this section "passport" means a current passport; and "United Kingdom passport" means a passport issued to the holder by the Government of the United Kingdom, *not being a passport so issued on behalf of the Government of any part of the Commonwealth outside the United Kingdom*' (emphasis added).[105] These provisions restricted entry of CUKCs by distinguishing among their passports, but not their citizenship. If CUKCs' passports were issued under the authority of the colonial governments, they were subject to control; if CUKCs received them under London's authority (all CUKCs – British-born or not), then they were not. Because the government had not created a distinctive United Kingdom citizenship in 1962, the mechanism for distinguishing among the entry rights of CUKCs depended *on the authority under which the passports were issued*.[106] As Kenya was a colony in 1962, all British subjects in Kenya who were not issued a passport by London had no right to enter the UK. Had the Kenyan Asians applied for a passport in 1962, the vast majority would have been issued one by the colonial government in Kenya, and they would, therefore, have been subject to immigration control.

[104] Dummett and Nicol, *Subjects*, p. 199; Holmes, *John*, pp. 265–7; Mason, *Race*, p. 28; Solomos, *Race*, p. 54.

[105] A Home Office leaflet restates the position: any individual who (a) is born in the United Kingdom, the Channel Islands, or the Isle of Man and is a citizen of the UK and colonies, the Irish Republic or a Commonwealth country *or* (b) is a CUKC holding a passport issued by (i) British passport offices in the United Kingdom, the Channel Islands, or the Isle of Man, (ii) a UK diplomatic or consular officer in a foreign country, (iii) a British High Commissioner or Deputy High Commissioner in a Commonwealth country, (iv) the UK Commissioner in Singapore, or (v) the representative of the United Kingdom government in any protected state, in Zanzibar, the New Hebrides, or Canton Island will not be subject to immigration control '*except where such a passport is endorsed to the effect that it has been issued on behalf of the government of a Commonwealth country or the government of a colony or protectorate*' (emphasis added). The leaflet added a note stating that 'A passport issued by the government of a colony or protectorate will *not* give the holder a right of entry into the United Kingdom.' See *Admission of Commonwealth citizens to the United Kingdom*, leaflet IMI, Apr. 1962.

[106] In practice, this often related to location of issue – most passports issued under the authority of the United Kingdom would be issued in London, while most dependent subjects' passports would be issued in the colonies. There were exceptions, however, such as a London-born Briton renewing a passport in Hong Kong while travelling overseas, or a Hong Kong student renewing a passport in London while a student in the UK. In the latter case, the passport would be stamped to the effect of 'issued on behalf of the overseas territory of Hong Kong'. As such, it would be subject to immigration control.

Approximately one year later, the situation changed. When Kenya achieved independence in 1963, the colonial governor naturally gave up his post and became the high commissioner, the UK's direct representative in independent Kenya. Had all Kenyan CUKCs received local citizenship, this process would have been of no consequence. As they had not, the implications were profound: passports previously issued under the authority of the colonial governor (and subject to control as such) were from 1963 issued directly by and *under the authority* of the British government. They were thus no longer subject to immigration controls. Immediately following Kenyan independence, all CUKCs in Kenya, including the Asians, were freed from the immigration controls set in place by the 1962 act.

There were thus two causal steps leading to the Kenyan Asians' crisis: first, the complications associated with replacing the 1948 citizenship scheme led policy-makers to opt for a bizarre control mechanism based on the issue of passports in 1962; and, second, in the absence of inclusive citizenship provisions (on the eventual existence of which BNA itself was premised), this mechanism released CUKCs from immigration controls at independence. Since this outcome was a secondary consequence of the control mechanism, it is difficult to argue that the Conservatives intended to grant rights to Kenyan Asians in the robust sense suggested by Macleod. To this degree, Sandys's claim that Macleod misrepresented the Macmillan government's intentions in 1962, at least when judged against the available primary evidence, is sound.

What is not sound, however, is the claim that the Kenyan's exemption was unforeseen, and that the British government made no pledges to the Asian community in Kenya. At least three archival documents demonstrate both that the Asians' position was recognized and accepted, before and after the passage of the 1962 act, and that at least one promise was made to members of the Kenyan Asian community.

The possibility of a post-independence exemption for CUKCs was noted by the Home Office during the passage of the Commonwealth Immigrants Bill, 1962, through parliament. As one Home Office official noted:

> Another point that worries me is the fact that about 20,000 people of Indian origin in South Africa, about 25,000 in Tanganyika and an even greater number in Kenya, after that country becomes independent, will be eligible as things stand for United Kingdom passports. I believe that there is also a great number of British subjects without citizenship in Northern Rhodesia, who can also get United Kingdom passports. It seems to me to be undesirable that they should have freer access to this country than Canadians, Australians or New Zealanders, seeing that it is only in a technical sense that they can be said to belong to this country.[107]

The bill was not amended to prevent this development, and, when passed, the mechanism through which Asians would enjoy entry rights after independence was entrenched in statute.

[107] PRO, CO 1032/322, extract of a letter from Cleary to Ross, Home Office, 28 Nov. 1961.

The position of Asians in Kenya was thus not a secret;[108] indeed, it was so well known in Whitehall that one Commonwealth Relations Office official discussed the Asians and the source of their right to enter the UK with the Indian commissioner at a dinner party.[109] What, though, of the pledges made? Shortly after the passage of the Commonwealth Immigrants Act, the Senior Civil Servants' Association of Kenya asked the Colonial Secretary about their access to the United Kingdom. In his response (transmitted through the colonial governor), the Colonial Secretary noted that the position (seven months after the passage of the Commonwealth Immigrants Act) then meant that all those in Kenya who did not 'belong' to the UK would have to apply for an entry certificate. Following independence, however, the matter would change. The Colonial Secretary's response is worth quoting:

> So far as the position after independence is concerned, it is not of course possible at this stage to forecast what form the citizenship laws which will be enacted at independence will take, but in any event those who do not acquire citizenship of Kenya will retain their citizenship of the U.K. and Colonies; and *I can confirm that those who retain their citizenship of the U.K. and colonies will after independence become entitled to U.K. passports from the British High Commission, and that such passports will confer exemption from U.K. immigration control* [emphasis added].[110]

The Colonial Secretary in 1962 was none other than Duncan Sandys. Since all those born in the United Kingdom (i.e., most of the European Kenyans) were exempted from the 1962 controls, Sandys most likely had the Asians in mind during the drafting of this passage. However, as the document is not clear on the matter, it is technically possible that Sandys was thinking only of white civil servants. This is highly unlikely for two reasons. First, although the highest positions within the civil service were dominated by Britons, Asians made up the bulk of the middle and lower ranks;[111] these individuals would have been represented by the Association. Second, even if this were not the case, Sandys demonstrates in the passage an understanding of the mechanism that lead to the Kenyan exemption. As it was widely known at independence that the Asians would be likely not to apply for local citizenship, their position was known to Sandys.[112] In 1968, while Sandys was speaking of loopholes, the Commonwealth Secretary reminded him of this fact in a private letter:

> The present situation [that is, the Asians' free entry] has followed necessarily and

[108] The analogous situation of Asians in Uganda, Tanganyika, Nigeria, Sierra Leone, and Ghana was also recognized. PRO, HO 213/2292, 'Background note for the minister of state. Position under the Commonwealth Immigrants Act of citizens of the United Kingdom and colonies who do not acquire citizenship of Uganda on Independence Day', undated.

[109] PRO, HO 344/177, letter from H. S. H. Stanley to H. K. Hickman, 8 Oct. 1968.

[110] PRO, CO 1032/322, Savingram from the Secretary of State for the Colonies to the officer administering the government of Kenya, 26 Nov. 1962. Sandys became Secretary of State for Commonwealth Relations and Secretary of State for the Colonies following the 'night of long knives', 12–13 July 1962, when Macmillan sacked seven full members of the cabinet as well as four junior members.

[111] Himbara, *Kenyan capitalists*, p. 116.

[112] See the note from the Kenyan High Commissioner to Sandys discussing it. PRO, HO 344/177, telegram from Malcolm Macdonald to the Colonial Secretary, 26 Oct. 1963.

directly from the Kenya independence settlement which was negotiated by you in the knowledge of the Commonwealth Immigrants Act passed in the previous year; and it is misleading to dismiss the rights to which a substantial number of U.K. citizens then became entitled as a 'loophole in the law'... I venture to suggest that your share of responsibility for [the current problem] is greater than one would judge from your public utterances.[113]

Should any doubt have remained in 1962 about who enjoyed which rights, the issue was clarified a year later. The Home Secretary, Henry Brooke, raised the question of Asians in Kenya before the Commonwealth immigration committee during the passage of the Kenya Independence Bill. He noted that while East African Asians had no tradition of emigration to the United Kingdom, a number had begun to consider the possibility of doing so. The Home Secretary's judgement, in the full view of Duncan Sandys (Commonwealth and Colonial Secretary), Joseph Godber (Minister of Labour), Sir John Hobson, QC (attorney general), Maurice Macmillan (Economic Secretary, Treasury), and Margaret Thatcher (Joint Parliamentary Secretary, Ministry of Pensions and National Insurance), was unequivocal: 'It would be out of the question to withdraw their United Kingdom citizenship, so making them stateless; nor could the normal facilities for obtaining a passport be withheld from them as this would plainly be discrimination based on racial origin.'[114] The position taken by the Conservative party, and above all by Sandys, in 1968 was a wilful denial of this commitment; it was a betrayal of pledges.

The Labour party, by contrast, was not involved in the independence negotiations; the government was uncertain about the content of promises made by the Conservatives;[115] and it could claim, however feebly, that no parliament can bind its successor.[116] Callaghan defended the bill as necessary to avoid deterioration in race relations,[117] and he argues today that the decline in political controversy surrounding immigration after 1968 is a reflection of its

[113] PRO, PREM 13/2157, letter from George Thomson to Duncan Sandys, 20 Feb. 1968.

[114] PRO, CAB 134/1468, Commonwealth immigration committee meeting, 7 Nov. 1963. Also see ibid., cabinet memorandum by the Home Secretary on the Asians' position, 30 Oct. 1963. Quoting the Home Secretary: 'It is... out of the question not to accord normal passport facilities to United Kingdom citizens of Asian origin in independent African States, with the object of rendering them subject to our immigration control. Such action would be, and would be seen to be, a discrimination based on racial origin, and would be tantamount to a denial to these persons of one of the basic rights of a citizen, namely to enter the country of which he is a citizen.' Also see PRO, HO 344/177, letter to L. E. T. Storar, undated, and ibid., letter to the Secretary of State, undated. The latter outlines the Asians' position exactly as above, and notes that 'the United Kingdom has always acted on the principle in granting independence that we could not abandon such people and make them stateless by withdrawing their citizenship to the United Kingdom and Colonies'.

[115] See PRO, PREM 13/2157, 'Asian immigration from Kenya', letter from Burke Trend to Wilson, 21 Feb. 1968.

[116] Callaghan defended the bill on these grounds. See the *Spectator*, 'A shameful and unnecessary act', 1 Mar. 1968.

[117] PRO, CAB 129/135, 'Memorandum by the Secretary of State for the Home Department', C(68), 34, 12 Feb. 1968.

success.[118] The implicit premise is that the indigenous community will only accept strangers in its presence when it feels that it is no longer under the threat of continued mass immigration; good race relations, as countless policy documents state, require strict immigration. The argument, although difficult to verify or falsify, is not entirely implausible. New Commonwealth immigration was less of a political issue in the 1970s and 1980s, and the statutory framework constructed by the Labour and Conservative governments since the 1960s (the latter offering only restrictive legislation) may well have contributed to its decline. The stabilization in overall levels of immigration (alien and Commonwealth) at some 50,000–60,000 immigrants per year (through a combination of restrictive legislation and a finite source of dependants), along with the provision of statutory mechanisms through which ethnic minorities can secure a degree of protection against racism, has probably contributed to the contemporary state of race relations.[119] Racially motivated attacks continue, but the anti-immigrant hysteria of the 1960s and 1970s has faded, and the extreme-right National Front[120] never recovered from its 1979 collapse in national support. The 1968 Commonwealth Immigrants Act reduced the number of East African Asians eligible to enter yearly to 6,000–7,000, and so contributed to this process.[121]

The argument, however, cannot end here. The Kenyan Asians were not immigrants like any other for the simple but crucial reason that they lacked any other citizenship.[122] The manner in which the Kenyans attained British citizenship involved a series of historical contingencies, and it was not foreseen by the drafters of the British Nationality Act of 1948, but it was none the less known by 1963 (if not earlier) and accepted by the government of the day. Had the government in 1963 told all non-European CUKCs in Kenya that the British government would not honour their passports if they refused local

[118] Callaghan, *Time*, p. 267.

[119] This is a controversial statement; the relationship between immigration control, on the one hand, and racism and race relations, on the other, has been a matter of debate for decades. For those taking the contrary position, see E. J. B. Rose et al., *Colour and citizenship: a report on British race relations* (London, 1969), p. 228, and S. Saggar, *Race and politics in Britain* (London, 1992), p. 175. Also see Robert Miles, *Racism and migrant labour* (London, 1982); Solomos, *Race*; John Solomos and Les Back, *Racism and Society* (Houndmills, 1996), ch. 1. See also Sarah Spencer, 'The implications of immigration policy for race relations', in Sarah Spencer, ed., *Strangers and citizens: a positive approach to migrants and refugees* (London, 1994). The issue is not of central importance to this article, but it is worth noting that, for all the arguments about migration controls' role in legitimating racism, attitudes to ethnic minorities in Britain have improved considerably since restrictions were first applied to Commonwealth immigration in the 1960s. See Lindsay Brook and Ed Cape, 'Libertarianism in retreat?', in Roger Jowell et al., eds., *British social attitudes: the 12th report* (Aldershot, 1995), pp. 201–4.

[120] Now the British National Party.

[121] It should be noted, however, that the nadir in race relations – following Powell's 1968 speech – came after the act, not before. In his memoirs, Callaghan fudges with the chronology, and suggests that the government was responding to the extremism encouraged by Powell's intervention. Callaghan, *Time and chance*, p. 267.

[122] Callaghan conceded this point when he admitted later that if Kenyatta did not allow the Asians physically to remain in Kenya, Britain could not refuse them entry. Shepherd, *Iain Macleod*, p. 498.

citizenship, the decision would have been harsh but justifiable. They did not; instead, they relied on the naive hope that the Asians would not exercise their rights to enter Britain, a lesson they should have learned during the first large-scale arrival of Commonwealth immigrants in the 1950s. To have pretended, when these rights were exercised, that the Kenyan Asians were an unpredictable side-effect of empire that no government could have reasonably been expected to accept was hypocrisy.

VII

As suggested earlier in the article, the scholarly interest of the Kenyan Asians' crisis lies in both its consequences for British Asians excluded from the UK and its role in highlighting broader currents of British political history. One of the preoccupations of historians is in specifying 'turning-points', historical moments at which a shift in a constellation of social, political, and/or economic factors alters discernibly the course of historical development. In the still-emerging historiography of Commonwealth immigration to the United Kingdom, a number of such points are cited – the 'race' riots in London and Nottingham in 1958, the first restrictions in 1962, the introduction of 'patriality' in 1971 or the creation of British citizenship exclusive of colonial citizenship in 1981. To these moments, 1968 should be added. A parliamentary Labour party that had claimed a profound commitment to the Commonwealth ideal of multi-racialism in a world afflicted by internecine conflict effectively stripped British citizens, whose entry was controversial only because of their skin colour, of one of citizenship's basic rights. A Labour party that had passed a series of liberal measures – largely but not entirely under Roy Jenkins's guidance – on hanging, divorce and abortion, and homosexuality passed legislation that even its supporters admitted to be illiberal and 'racialist'. The Conservative party leadership, which had agonized over controlling immigration a decade earlier and had resisted the temptation to introduce controls only on the New Commonwealth in 1962, saw the issue almost entirely through the lens of issue management. The Commonwealth Immigrants Act, 1968, marked the end of any credible claim on Labour's part to be the party of Commonwealth. It marked a vindication of a strain of social conservatism and populism expressed in James Callaghan; the liberal and cosmopolitan counter to this strain, personified in Jenkins, found itself marginalized in the party a decade later and eventually found its natural home in the Liberal party (and its variously named coalition partners). Finally, the tepid reaction of all but fifteen Conservatives confirmed a movement of the *ancien* party of empire towards a party, led by both Heath and Thatcher, indifferent to Commonwealth and focused on the need to modernize the ailing British economy.

These issues have served as the context of the article's primary goal: examining the two issues debated by Duncan Sandys and Iain Macleod – the source of the Asians' controversial right to enter the UK in the 1960s and the

guarantees granted to them by the Conservative government at the beginning of the 1960s. As I have argued, the Asians' access to this country resulted neither from a 'loophole' in British legislation on independence or nationality, nor from an explicit British decision to exempt Asians from immigration control. The Asians' exemption resulted from the combined effect of, first, the 1962 decision to base immigration control on a passport's issuing authority (rather than on the possession of a passport as such), and, second, the granting of independence to Kenya in the absence of inclusive local citizenship. This highly contingent outcome cannot in any sense be said to be the result of a manifest aim on the part of those negotiating Kenyan independence and defining the content of British nationality law. Equally, though, archival evidence makes it clear that the British cabinet, and above all Duncan Sandys himself, understood the rights that would be granted to Asians in post-independence Kenya and, on several occasions, affirmed them. As we have seen, at least one pledge was made by Sandys to members of the Kenyan Asian community. In denying these commitments, he and those members of the Conservative shadow cabinet supporting him misrepresented their actions to the British public and abandoned the Kenyan Asians to political expediency. In condemning this policy, Iain Macleod stood by his and his government's promises in the face of public pressure and his own party's censure. For these actions, the historical record owes him credit.