The vulnerability of in-between statuses: ID and migration controls in the cases of the 'Windrush generation' scandal and Brexit

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Abstract

In this article I argue that identity documents (ID) and migration statuses are both tools of population control and subjectivities that individuals have an interest in holding. I use documentary analyses and interviews with 31 EU27 citizens in the UK, 21 UK citizens in Belgium and the UK and with institutions linked to nationality procedures in Belgium and the UK. I suggest that states create legitimate, illegitimate and in-between statuses, and that in-between statuses can show how being exempt from certain ID and migration controls can create paradoxical vulnerabilities. Windrush generation migrants in the UK were first exempt from migration controls and then in some cases were treated as irregular migrants because of the lack of proof of status. EU citizens were free from many migration controls, but can have difficulties in naturalising or in dealing with the new requirements brought about by Brexit because the procedures can require proof of residence and rights usually produced through the migration controls they were exempt from.

Keywords: Identity documents, migration, Brexit, Windrush, EU citizens

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In this article I start from the contradiction between a large body of literature that applies the concept of surveillance to criticise identity documents as an instrument of population control and repression (e.g., Bennett and Lyon 2008, Lyon 2009, Alimia 2019), and several ethnographic works (e.g., Coutin 2000, Ribert 2006, Byrne 2014, Sredanovic 2014) which have found relief, if not satisfaction, among many of the migrants who manage to obtain the documents (whether citizenship or legal residence) of the country they live in.

I suggest that enlarging the theoretical framework applied to the study of ID and migration controls can help us understand such contradictions. My argument is that registration (the procedure through which one is inscribed in a population register and obtains an ID), IDs and legal migration statuses are both tools of surveillance *and* subjectivities that the population has an interest in acquiring (compare also Caplan and Torpey 2001; About et al. 2013). I further argue that the ambivalent nature of these social institutions is most visible in the cases of categories of people who have *not* been required to obtain documents because of their specific profile, and who can be paradoxically harmed by this exemption. I explore this paradox through the cases of the Windrush generation scandal – in which migrants who arrived in the UK from the colonies as citizens were classified as irregular migrants or deported decades later – and of the impact of Brexit on EU citizens in the UK and Britons in the EU.

Governmentality and the ID-migration controls continuum

The analysis I present is focused on what can be defined as the continuum between ID and migration controls. ID controls are obviously not limited to migrants and non-citizens (nor to the citizens who by processes of racialisation and othering are assumed to be non-citizens), and migration controls go beyond the controls of documents, including, among other aspects, the very

physical controls of land and sea borders (e.g. Cunningham 2014, Sredanovic 2019). Among ID, the passport has been recognised in particular as a form of state monopoly of legitimate international mobility (Torpey 2018). While Torpey has emphasised security (political opposers) and class (indigents) dimensions in the early passport-based restrictions to intra-European mobility, racialised restrictions quickly became important for global mobility. In particular, within the British Empire the passport was introduced to limit the access of subjects of colour to the 'white' dominions of Canada and Australia, although the race-based motives were hidden from the start behind 'cultural' and sovereignty-based justifications (Mongia 2018). Beyond the specificities of mobility within the British Empire, Mongia argues that the formation of the contemporary global mobility regime was guided since its early days by the aim of controlling the movements of colonial and racialised populations. The tendency to hide racial logics behind more or less transparent fronts has been replicated often, e.g., in the UK, through the concept of 'patriality' (Sredanovic 2017) and, globally, through the concepts of 'migratory pressure' and 'migratory risk' in visa regimes.

Beyond the passport, several other IDs have implications for migration control. I argue that ID and migration controls have a strong overlap, share common characteristics and developments, and can be considered part of the larger processes of governmentality (cf. e.g. Fassin 2011). Pinkerton (2019) has suggested that governmentality- and biopolitics-based analyses of migration policy should not be limited to the important security- and exclusion-focused practices (e.g., Fassin 2011; Nieswand 2018), but should also consider the cases in which biopolitics are used to incorporate migrants within the economy of the receiving state. In this sense, governmentality should not be only understood in terms of control and surveillance, but also in terms of productive power (Foucault 1976).

While governments generally present ID as useful, secure and allowing access to services, there is a significant literature criticising ID, mostly from a surveillance perspective. Three recent innovations that extend and generalise ID controls are currently particularly explored. These are the

introduction of biometric tools as instruments of colonisation of the body, the interconnection of different systems of identity registration, explored as a menace of global control, and the increased role of private contractors as creators and managers of identification procedures, defined as the transition from the state monopoly of legal identification to the emergence of a 'card cartel' (Lyon 2009 – see also Amoore 2008, Lyon and Bennet 2008, Jeandesboz 2016). Moreover, biometrics create a space for racialised profiling that is not immediately visible as overt racism (Browne 2010). However, more historically-oriented approaches have highlighted how the more traditional state procedures of identification, including the attribution of surnames (Scott 1998), were also motivated by aims to control the population.

Szreter and Breckenridge (2012) have on the other hand criticised the narrative that depicts registration as a global tendency of population control. They call for a distinction between enumeration, a census-like state-driven exercise with wealth-extraction as the main aim, and registration, a process of individual recognition that often originated in non-state organisations for the purpose of distributing resources.

Other historically-oriented analyses (Caplan and Torpey 2001; About et al. 2013) have suggested that identification is both a form of population control and the attribution of subjectivities that people can find advantageous and have interest in holding. In the next section I propose a theoretical frame for such vision, based on Foucault's concept of productive power (1976).

Productive power and in-between statuses

A way to conceptualise migratory status and documents can be found in Anne-Marie Fortier's analysis of naturalisation. Fortier (2013, 2017) observes how naturalisation is not only characterised by disciplinary procedures that build images of the good citizens (to which the applicants may or

may not adhere – see Byrne 2014), but is a practice that constitutes the citizenship itself as desirable. Fortier's analysis is based on Foucault via Butler (1997). The key observation is that institutions do not only exercise surveillance and disciplining, but also exercise a productive power that creates subjectivities to which the individuals can adhere, as, although limiting and disciplinary, such subjectivities are the only ones to offer some social recognition. Foucault (1976) further observes how the productive power of institutions is the basis of both legitimate (i.e. admitted) *and* illegitimate (i.e. stigmatised but recognised) subjectivities – e.g., for the case analysed here, the citizen and the 'illegal'/'irregular' migrant. One could further add that adhering to legitimate subjectivities can bring other practical advantages in addition to social recognition (see, e.g., Sredanovic 2014 for the uses of citizenship).

As mentioned, in this article I suggest that ID and migration statuses are both repressive and disciplinary *and* desirable, and that signs of such a contradiction can be found in particular in in-between statuses. Such statuses, although also deriving from the legislative power, are, in Foucault's (1976) terms, neither fully legitimate (the documented full citizen) nor illegitimate (the undocumented and/or non-citizen). As I will underline, the issue for these groups is not simply lacking something (less legal rights than full citizens, less documents than those required to obtain them), but rather being in-between and therefore exposed to specific vulnerabilities.

The stratification of legal statuses has been well-explored in literature. Along with the distinction between full citizens, permanent residents and documented and undocumented migrants, EU citizenship itself has been recognised as a factor of stratification (Morris 2003), although some rights are limited to mobile EU workers (e.g. Anderson 2015a). Cohen (2009) has underlined how the presence of groups with partial citizenship rights (such as minors and non-citizen residents) is a permanent characteristic of liberal democracies, while Anderson (2015b) has analysed how the exclusion of migrants from rights, officially justified by the defence of social rights for citizens, happens along with the hollowing of such social rights, with failed citizens (former felons, the

unemployed, and those outside dominant moral norms) disenfranchised both symbolically and legally (Anderson 2015a). The UK is further set apart by the large number of partial citizenship statuses attributed to (former) colonial subjects; while such a practice has been common in other colonial empires, the British one was the only not to converge to a citizen/non-citizen dichotomy in the post-colonial period (Sredanovic 2017). Further stratification can derive from the different images of (il)legitimate migrants promoted indirectly by policies (Waerniers and Hustinx 2019).

The Windrush generation scandal and the impact of Brexit have been compared as two cases in which under-documentation creates problems for a group losing rights. Given the larger number of people involved in the case of Brexit, the latter has been described as 'Windrush on steroids', initially by the MP Yvette Cooper in 2019. On the one hand the comparison between the Windrush generations and EU citizens under Brexit does not account for the fact that most EU citizens have not undergone the same level of racialisation and xenophobia that touched the 'Windrush generation' (e.g., Small and Solomos 2006, Wardle and Obermuller 2019), nor for the fact that EU citizens, or at least Western Europeans, have found space in larger numbers in more desirable sectors of employment (Johnston et al. 2015). On the other, it should not be forgotten that neither all EU citizens in the UK (Antonucci and Varriale 2020) nor all Britons in the EU (Benson and Lewis 2019) are white, nor should one underplay the specific processes of racialisation of Roma (e.g. Guma 2019) and Central and East Europeans (e.g. Rzepnikowska 2019) in the UK. In the analysis I present here, the issue is not so much a direct comparison of the positions occupied by the 'Windrush generation' and EU citizens, but rather underlining that both were made vulnerable not only by the fact of not being recognised as full citizens, but specifically by having been assigned a status that was neither fully legitimate nor fully illegitimate.

Method

While most of this article is based on documentary sources, in the analysis of the situation of EU citizens I also use the results of a research study on the institutions processing citizenship applications in Belgium and the UK, and of research on the impact of Brexit on the citizenship of different categories. The first study included in-depth interviews with 23 civil registers, seven magistrates and six associations providing assistance with citizenship applications in Belgium, as well as with seven Nationality Checking Services (local authority services that helped introduce a citizenship application) and the citizenship team of the Home Office in the UK, and is the basis of the data I present on citizenship procedures in the two countries. From the second study, I present in particular some of the in-depth interviews I have conducted in the UK with 31 citizens of other EU member states ('EU27') and with 21 UK citizens, either resident in Belgium, or resident in the UK, but who have explored applying for another citizenship as a result of Brexit. The interviews explored the impact that Brexit has had and that the interviewees fear might have on their lives, and on their experiences and plans regarding applying for citizenship and other legal statuses. The group of interviewees with whom I have spoken is slightly skewed toward the middle-class and, among the EU27 interviewees, towards Western European countries; all interviewees except one were white, although, especially among the British, many had other ancestries in addition to the British one. The interviews reveal significant fears linked to Brexit, naturalisation requirements and, in the UK, to the settled status procedure and the permanent residence requirements.

The 'Windrush generation' scandal

A scandal resulted in the resignation of Amber Rudd from the position of Home Secretary in 2018. It was revealed that a number of people who had reached the UK legally as citizens of the

colonies before 1973, but lacked the documentation to prove their history, were deprived of legal status and in some cases were subject to detention and deportation in the late 2010s (Bawdon 2019, Gentleman 2019, Wardle and Obermuller 2019). The event is commonly known as the Windrush generation scandal, following the definition coined by campaigner Patrick Vernon (Gentleman 2019: 199). While useful to link the scandal to the history of migration to the UK, this could be considered a misnomer, not only because it refers to the specific ship that brought a group of migrants from the Caribbean colonies to the UK in 1948, but also because it implicitly focuses exclusively on those born in the Caribbean, while people born in other colonies were also affected. The first case to be reported was that of Paulette Wilson, who had arrived in the UK from Jamaica and spent 50 years there before being declared an illegal migrant, deprived of access to benefits and the right to rent, and temporarily detained with plans for her deportation to Jamaica (Gentleman 2019: 17-23). While Ms. Wilson had some family network to assist her, and avoided deportation, others, deprived of the right to work, access to benefits, or the right to rent, were left destitute and sleeping in the streets, or deported. Sylvester Marshall was evicted from public housing and had to sleep rough before finding a charity for the homeless, and was asked 54,000 pounds for cancer treatments he had the right to receive freely through the NHS. Jocelyn John was forced to accept 'voluntary' return to Grenada after 53 years in the UK as the lack of recognition of her right to stay deprived her of her job and home. (Gentleman 2019: 75-93; 170-175). All the victims of the misrecognition of status were entitled to legal status by the 1971 Immigration Act, but months passed before such rights were recognised, and compensation began only in 2019.

The primary cause of this unjust curtailment of rights is the Hostile Environment policy introduced (and reinforced) during Theresa May's tenure (2010-2016) as Home Secretary. The Hostile Environment aims to harden the conditions for undocumented migrants and force them to leave the country by multiplying the obligations to check documents both in public institutions and among private citizens, including employers and landlords. It was this policy that brought the

victims of the scandal to be found ‘lacking’ documentation and excluded from employment, renting and benefits. There is substantial literature showing how the Hostile Environment strongly penalises undocumented migrants, but also hurts those who have a legal status but are foreign-born or racialised and can therefore be treated as undocumented or at least suspect (Bloch et al. 2015, Yuval-Davis et al. 2018). The Hostile Environment can accordingly be considered part of the expansion of the ID control system criticised by Lyon and others (see in particular Bennet and Lyon 2008, Lyon 2009), and takes further the form of digital bordering, as the sharing of data between the Home Office, the NHS, schools etc. multiplies the ways in which the Hostile Environment can deny rights or categorise individuals as ‘irregular’ (see e.g. Bradley 2018).

There are, however, two relevant details in the context in which regular migrants from the colonies became victims of the Hostile Environment. Firstly, there is the role of the already mentioned complex stratification of legal statuses that the UK introduced during the decolonisation period. The UK has had as many as ten separate legal statuses (starting with the 1971 Immigration Act) to distinguish between ‘full’ British citizens and current and former colonial subjects with different rights (Sredanovic 2017). This complex transition, which withdrew the right to enter the UK from several categories holding UK passports and ‘lesser’ UK legal statuses, certainly contributed to creating a population who had arrived in the UK within their full rights as colonial subjects, but were in a more blurred position in the following years. One of the first reports (Bawdon 2014) on the situations that would be later characterised as the ‘Windrush scandal’ shows how in many cases the key event was the loss of the original passport with the Indefinite Leave to Remain stamp. Early migrants from the colonies who arrived before 1973 (as well as their spouses and children) were actually legally entitled to stay on the basis of any proof of pre-1973 residence, even without a passport with such a stamp, but as the burden of proof was on the migrants, who often lacked other documentation, many were classified as illegal.

Secondly, there is a long-standing resistance against identity cards in the UK, contrary to what has happened in much of Continental Europe. With the exception of the years around World War II, when the identity card doubled as a ration card (Higgs 2011) and of a voluntary scheme started in 2008 under a Labour government and readily cancelled in 2010 by the Conservative-Liberal Democrat coalition, the UK has never used identity cards. Biometric residence permits for non-citizens have been introduced in 2008, but most early migrants from the colonies (and migrants from the European Economic Area) were never required to hold one. Given the paucity of documentation available to prove one's rights in the UK, the Windrush scandal reopened calls for the introduction of ID cards, including from former Labour Home Secretaries Charles Clarke and Alan Johnson, and from the right-wing-leaning think tank Policy Exchange (Goodhart and Norrie 2018) in 2018, and then again by the Labour Shadow Immigration Minister Stephen Kinnock in 2022. Such calls have been criticised, claiming that requests to show ID cards would be added to the Hostile Environment and would target racialised groups disproportionately, and invoking more established arguments including the overuse of data by governments and the risk of data breaches (e.g. Landin 2018). It should be noted that one form of proof of the moment of arrival – and therefore of the rights – of those affected by the Windrush scandal were the landing cards of the ships on which the migrants arrived, cards that former personnel have confirmed were used in the Home Office. The landing cards were destroyed in 2010, apparently to save on archival costs, although the official reason given was compliance with the UK data protection regulations (Gentleman 2019: 147-155). This development shows how privacy norms can bring paradoxical results, as the destruction of information normally used for population control can make the same population more vulnerable. However, there are further critiques that could be advanced regarding the specific proposals for the reintroduction of ID cards. Firstly, a voluntary scheme such as the one started in 2008 would hardly avoid leaving the most vulnerable sectors of the population without ID and would therefore be open to future situations similar to the Windrush generation scandal.

Secondly, the Policy Exchange report (Goodhart and Norrie 2018) promotes the idea of generalising the settled status currently used for EU citizens as an approach for registering the whole UK population. However, I argue below that settled status might be the worst of both worlds, as it extends the population control dimension and leaves those registered without a physical document to autonomously prove their status. After the start of the Windrush generation scandal, the UK government introduced in 2018 a Windrush Scheme that gives access to physical IDs to the children of those who arrived from the Commonwealth before 1973, as well as to anyone who arrived in the UK before 1989 and has settled in the country.

The Windrush scandal is mainly one of the products of policies hostile to immigration. However, the fact that these migrants in particular were affected is linked to the fact that most of the migrants who arrived later were subject to stricter controls, which also, however, created proofs of rights that those who arrived earlier lacked. Such proofs gave some protection to the post-1973 migrants and left the pre-1973 migrants 'lacking' documents they were never required to hold.

Within the theoretical framework presented here, one can observe that the multiplication of legal statuses for the citizens of the UK colonies has created several subjectivities between the legitimate one (the UK-born or UK-descendant white full citizen) and the illegitimate one (the individual without claim to any of the statuses). Pre-1973 migrants from the colonies were initially subject to what was arguably some of the worst racialised discrimination in the history of migration to the UK, but avoided some of the migration controls to which the post-1973 migrants were subject (cf., e.g., Small and Solomos 2006, Wardle and Obermuller 2019). Paradoxically those who arrived in earlier periods and were free from controls and limitations on the freedom to live in the UK, were hurt by the Hostile Environment more than many others who arrived later and had to continuously prove their right to live in the UK.

Brexit and the access to citizenship in the UK and Belgium

The citizens of EU member states enjoy extensive freedom from immigration controls when moving to another member state. Such freedom of movement has changed significantly over the years, with the European Court of Justice first strengthening it in the 1990s and 2000s and then limiting it since the beginning of the economic crisis started in the late 2000s (cf. Barbulescu 2017). While the entitlements to welfare of EU citizens have fluctuated over the years, EU citizens are still free from most immigration controls. ID policies, even in countries in which IDs are widespread (including most of Continental Europe), can vary for EU citizens. For example, Belgium requires all residents, including EU citizens, to register for a national ID. In France, where the ID card is reserved for citizens, EU citizens can, but are not required to, obtain the residence card that is mandatory for non-EU migrants.

The extensive protection to which EU citizens are entitled can bring paradoxical situations when they apply for citizenship, as member states have much more discretion in the definition of their citizenship policies when compared to migration controls on EU citizens. The Brexit process, which entails a loss of rights both for EU27 citizens in the UK and Britons in the rest of the EU, has made these paradoxes particularly visible.

Even in a context such as that in Belgium, in which, as mentioned, EU migrants are required to register and apply for an ID card, some groups have discovered difficulties in meeting the requirements for naturalisation. The significant number of posted workers and EU personnel in Brussels and elsewhere represents a case of this kind. Most EU personnel in Belgium have a right, as an alternative to the ordinary ID cards for EU citizens, to special documents reserved for workers of international organisations, which offer further protection from immigration controls. However, such documents are not included in the categories of documents that allow the accumulation of the residence requirements for applying for Belgian nationality (although such provision has been the

object of court challenges resulting in a first judgement in favour of the applicants in January 2021 – see Sredanovic 2020 for a more in-depth discussion of nationality acquisition in Belgium). Helen (all the names used in this and in the following paragraph are pseudonyms), one British-born interviewee who lived in Belgium since the age of three and whose father worked for the EU Commission found that being on such documents barred her from becoming Belgian (and therefore remaining an EU citizen after Brexit).

> Basically they told us that what we have to do is to change our special ID for the E-plus card, the residence card. […] They explained it to us as being the first step towards getting a nationality. But even then, with an E-plus card you start from the beginning, and it has to be at least five years from then on.

In addition to the difficulties in fulfilling the residence requirement, both posted workers and EU personnel have experienced difficulties in having recognised their 'economic integration', a further requirement for Belgian nationality. Both groups are outside the Belgian national taxation system (paying taxes respectively in the country of origin and in the separate EU taxation system) and, while the Belgian Nationality Code only requires candidates to have worked in the country, some municipalities interpret the requirement to include paying taxes in Belgium.

In the UK, the paucity of registration procedures already discussed in the 'Windrush' scandal paragraph has created more substantial paradoxes. EU27 citizens who have tried to apply for British citizenship or for the settled status scheme, which was introduced for EU27 citizens to confirm their rights after Brexit, have encountered three kinds of problems. Firstly, UK nationality has a physical presence requirement, as the legal, registration-based residence used in other countries is not considered by British legislation. For non-EU migrants, the requirement is straightforward to prove: being subject to immigration controls at border crossings, the stamps on their passports are sufficient proof of their physical presence. For EU citizens, who were not subject to border controls,

all the time spent outside the UK has to be reconstructed and declared, and the time spent in the UK has to be documented. Secondly, EU norms require mobile EU citizens to fulfil the requirements for the exercise of treaty rights, which for those not in employment (mainly relatives and students) includes holding 'comprehensive sickness insurance'. While the British NHS is free at the point of use for resident EU citizens, reducing the usefulness of an additional health insurance, the Home Office in the last few years has refused to consider access to the NHS as a health insurance for EU norm purposes. EU27 citizens, who do not have to pay the hefty NHS costs sustained by non-EU migrants, usually discover that they were theoretically supposed to have had a separate health insurance only when applying for a legal status. Thirdly, the 'exercise of treaty rights' in general was usually not verified in the UK until the EU citizen applied for a legal status and many found that either they were not exercising treaty rights, or that it was uncertain if their situation qualified as such and if so, how it can be proven. Again, non-EU migrants, who are subject to more stringent, visa-based requirements, are more unlikely to find themselves encountering periods in which the legitimacy of their presence in the UK was uncertain. In addition to issues pertaining the obtention of a status, Guma (2020) has highlighted issues with access to rights, in particular with the practice of confiscating IDs of Czech and Slovak welfare applicants on a worrying scale.

Brexit and the settled status in the UK

The settled status scheme present similar issues. The settled status application involves uploading one's photo and data and scanning one's own passport through a smartphone app. Applicants' data are checked against government databases, and a significant proportion of the applicants reported not having their requirements recognised, showing that governmental databases might suffer from lacunae rather than from excessive interconnection. If the database check does not work, the

applicant has to upload documentary proof of their residence in the UK. If successful, the settled status application results in no physical document but only in a digital status.

EU citizens have been described as discriminated by the3million (2020) as they are the only to have a digital-only status, differently from other migrants in the UK, who *need* to have ID, and UK citizens, who *can* have an UK passport. Such argument however not only ignores the situation of pre-1973 Commonwealth migrants, but also how the uptake of UK passports is far from universal, both issues that have contributed to the 'Windrush generation' scandal.

The settled status procedure was criticised in the House of Commons (House of Commons Home Affairs Select Committee 2019) comparing the situation explicitly to the 'Windrush generation' scandal and recommending physical IDs for EU citizens. The government response (UK Government 2019) defended the digital status as allowing to avoid fraud and tampering, and to avoid documents being withheld by others in contexts of abuse or reduction in slavery. The response further recognised that EU citizens might be used to physical IDs, but portrayed it as foreign to the UK and argued that immigration controls are rare events – both claims in contradiction with the expansion of digital identity as well as with the multiplication of mandatory controls linked to the Hostile Environment. Previous research on the settled status has shown both risks of exclusion for vulnerable populations (both in terms of access to the app and limited presence in government databases) and resistance towards a further bureaucratic procedure that delegitimises previous presence and status (see e.g. Botterrill et al. 2020).

The settled status brought anxieties linked specifically to IDs. Before the Brexit process, the UK did not normally require EU27 citizens to hold any sort of ID. The Home Office asked non-EU relatives of EU27 citizens, as well as the nationals of the EU member states with a later accession date, who saw their EU rights limited for a number of years (Croatian nationals were the last to have to register, until June 2016), to apply for a biometric proof of residence called a registration certificate. EU27 citizens in general could, but were not asked to, apply for the same documents.

While there has been an increase in registration certificate applications after the Brexit referendum, the registration certificate remains rather unknown among the EU27 citizens who have not been required to hold one. After five years of residence, EU27 citizens were entitled to apply for permanent residence and could apply for a biometric card proving their status (although again there was no requirement to have one to prove status). The introduction of a settled status complicated the situation, as even EU27 citizens with permanent residence were required to apply for settled status and the existing EU documents were invalidated, as the pre-Brexit statuses linked to EU migration ceased to apply in favour of the settled status in 2021. Some of the EU27 citizens I interviewed in the UK felt anxiety linked, among other things, to the immateriality of the settled status.

Verónica and Sebastian were particularly worried about the collection of data linked to the settled status:

> S: UK is gonna leave Europe, and the data protection policy that we are using is a European thing. Well, because UK is gonna leave it, we don't really know what they are going to do with all that information for five years, we are speaking of five years of financial information.
> V: […] And you need to take a photo of your passport. I don't feel safe at all, to be completely honest. Because it's something that is hackable, and they can take all our important data.

While this kind of worries chimes well with the established critiques of ID, the interviewees were also disappointed that the UK has no national ID cards (which, as mentioned, are widespread and not particularly controversial in Continental Europe) and that the settled status does not come with a material proof, as they felt that a physical documentary proof of their status was a kind of protection.

Stipe, being a Croatian citizen, had to apply for the registration certificate (namely the 'yellow card' for students who wanted to be able to work), but, as the requirement was being phased out, he rarely found any occasion to use this kind of ID. Having applied to the pilot phase of the settled

status, he was both disappointed by the procedure and found that he 'appreciated' the extra migration controls he had been subject to before:

> … I received an email saying that the [pre-settled] status has been accepted, but this is not the official confirmation, for the official confirmation you have to go on the webpage. […] But when I write all that in, it was written 'we cannot confirm your status'. And then I was like 'I paid, I completed the procedure, and I have nothing'. […] I tried again later and it worked, but I found it really funny that in principle if the program went offline five years from now when I apply for permanent residence, what if the program is offline? I have no proof that I did that [the pre-settled status procedure] and nothing, they have nothing. Especially in the context of the Windrush generation whose data were all lost, in the same way it can happen to any of us that the Home Office loses the data, and you have no… you have the unofficial email of the Home Office, and that's that. But, I mean, you get an unofficial email of the Home Office no matter what application you do, which means that then I was glad I had that yellow card, just so that I can say 'I came here at that time and I came legally'.

Stipe's interview shows both the anxieties linked to a digital-only status and how ID of otherwise limited usefulness can be appreciated for the fact of being physical documents. The reference to the Windrush scandal is not exceptional within the interviews I have collected – once the case reached the media, many EU27 citizens, distrusting the UK government, came to fear that they could find themselves in analogous situations in the future. Further, even a few UK citizens I interviewed in Belgium explicitly compared the potential fallout of the settled status procedures to the Windrush scandal when discussing what they saw as wrong in the Brexit process.

Fernando, another Spanish citizen, also felt that changing from the biometric permanent residence to the settled status made him felt less secure, also because of the general fallibility of identity controls:

Q: From a material point of view, do you feel safe enough with the letter [proving the settled status], in case you had to prove your settled status?

A: No fucking way. I mean, you know, at least with a permanent residence card you have a piece, something that… I have it with me, at all times, you know? […] Of course I can think of situations where something happens, where they say 'how your name does not appear on list' and then what do you do, you know? Because you are in a very precarious situation in a context like that, you are trying to enter into the country. […] Or in the context of the Hostile Environment where for everything you have to document that, you know, you have the settled status. […] How is gonna a landlord check that you have settled status? You do not have a piece of paper saying that you have settled status.

As the cases of these four (and others not discussed here) interviewees shows, the situation of the EU citizens shows how significant privileges, when compared to non-EU migrants, in terms of being exempt from migration controls, can create paradoxical problems when applying for citizenship. Further, while the digital nature of the settled status can be linked with previous critiques of increased digital controls of the population (Lyon and Bennett 2008, Lyon 2009, Browne 2010, Jeandesboz 2016), the main issue for EU citizens seems not to be the digital controls, but that these come without a physical document that could act as backup.

EU citizens have historically held an intermediate status between citizens and non-citizens, holding extensive rights across the EU. However, the in-between condition of EU citizens and the possibility of them becoming not entirely legitimate emerges in some cases. Enjoying significant rights and protections deriving from their EU citizenship, mobile EU citizens have historically had modest naturalisation rates, which has probably caused naturalisation procedures to be tailored to non-EU migrants in a number of EU member states.

With the rights and protections linked to EU citizenship endangered by the Brexit process, both EU27 and UK citizens have discovered that having been free from some controls could mean lacking the requirements to obtain a new status.

Discussion and conclusions

The two cases presented show the paradoxes of ID and migration controls. The Windrush generation has not undergone many of the migration controls applied to later migrants to the UK. However, with the development of the Hostile Environment, such a condition left some members of the generation even more vulnerable than those who arrived in the UK later. While EU citizens are protected by extensive rights, such protections might in some cases become counterproductive when applying for citizenship, or should they lose access to the EU rights, as happened in the UK with Brexit.

The two cases further show the productive power (Foucault 1976) of the state. Both these groups are creations of legislative power, but both are also in the middle between full citizenship/legitimacy and the subjectivities, holding a legal status or not, on which most migration and ID controls have been tailored. Being in the middle allowed a better situation than that of the groups most targeted by migration controls, but exposed the victims of the 'Windrush generation' scandal and EU citizens to specific vulnerabilities.

It is worth reiterating that most of the problems presented derive from the general policies of migration and ID controls, which also apply to other migrants, and to many of the full citizens. However, some paradoxes specific to these groups need further explanation, which, following also previous analyses (Caplan and Torpey 2001; About et al. 2013), I argue should include the recognition of IDs and legal statuses as both instruments of control and resources for those holding them. If IDs and legal statuses were only instruments of control and repression, the two groups presented here would never have had a worse outcome than migrants subject to more stringent controls. If IDs and legal statuses were only resources, one could not explain why two groups who

usually lack some of the IDs were usually better off than most migrants. This is further not simply an issue of underdocumentedness: before Brexit and the Hostile Environment policies, both mobile EU citizens and pre-1973 migrants from (former) colonies held less documents, but were better off, than the migrants who were subject to stricter migration controls and had to obtain more documents from the country of immigration.

The process of registration, from this point of view, could be divided into a number of phases. The state 1) collects data on the individual, 2) creates a legal identity, 3) usually produces a material proof of such identity and 4) controls that the individual has registered and/or holds material proof of the registration. The first and fourth passage pertain clearly to surveillance and the creation of a legal identity can be a resource, but also a form of stigma or limitation. The material proof can also be a significant resource for the holder, and the fact that, as in the case of UK settled status, the procedure is completed without producing a physical ID, can actually shift power relations significantly in disfavour of the individual, who lacks proof to initiate a demand for recognition or rights (cf. Higgins and Leps 1999 for a critique of government ownership of passports and a call for a universal right to a passport). Distinguishing the four passages also helps understanding why the issue of digital ID is not only biometric control, but more specifically that individuals lose a resource to prove their identity independently. The aforementioned Windrush Scheme, when compared with the EU settled status, offers the advantage of obtaining a physical ID. I met a Dutch interviewee in the UK since the 1970s who, dissatisfied with the digital-only settled status, greatly appreciated the scheme as a way to obtain a physical document without needing to naturalise. One could also underline how the problems linked to the Windrush generation scandal and the fears linked to the settled status show the vulnerability of legal statuses and the importance of documentation trails and reliable databases. At the same time, as long as there is a mostly functioning rule of law, the large majority of identity controls are straightforward; this shows that

the issue is not only the functioning of the material/digital controls, but also the specific legal status one has been assigned.

As mentioned in the introduction, the two groups seem to hold neither the fully legitimate subjectivity of the full, documented, citizen, nor the illegitimate subjectivity reserved to most migrants and non-citizens. Such an intermediate position can result in cases in which these groups are unable to comply with the requirements of the state and are therefore damaged in paradoxical ways. More concretely, not being part of the groups of non-citizens to which most migration and ID controls are tailored, and from which most of the applications for citizenship and other statuses are made, can create specific vulnerabilities.

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