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Jus Sanguinis, "Effective Nationality" and Exclusion: Analysing Citizenship Deprivation in the UK

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Abstract: This article will analyse the use of genealogy in the context of race, place, and justice via the concepts of nationality/citizenship and cultural/national identity, including "imagined communities". Analysis is undertaken through the legal concept of "jus sanguinis" and simultaneous differing interpretations of "citizen", including the concept of "effective nationality". The latter incorporates the Nottebohm principle "shared sentiments and interests" and is particularly relevant in "security situations. This article argues that "effective nationality" is indicative of the Anderson's famous landmark study of nationalism, "Imagined Communities". The legal concept of jus sanguinis draws upon genealogy: "A line of descent traced continuously from an ancestor". However, the imagined communities to which someone perceives they belong, through ancestral lineage, or cultural, political or religious affinity are often highly contested cultural notions, not least in times of political unrest. This article will focus on the UK and show how liberal policies and criteria initially aimed at the expansion of citizenship have, in the 21st century, similarly enabled exclusion. However, I argue that the current exclusion process is the simultaneous use of jus sanguinis and cultural interpretations of "effective nationality" when applied to those who supported proscribed groups, for example ISIS in Syria. This paper uses legislation, media comment, and the legal case studies of Nottebohm and Shamima Begu.

Keywords: nationality; citizenship; jus sanguinis; effective nationality; exclusion; Nottebohm; Shamima Begum

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1. Introduction

In this article I analyse the case of Shamima Begum as illustrative of the UK's use of citizenship and immigration law, but also "effective nationality" as per the Nottebohm principle, in cases of ex foreign fighters. Anderson claimed that the idea of the nation is so powerful that everyone assumes they belong to one., but also that the Nation "… is a socially constructed community imagined by the people who perceive themselves as part of a group." (Anderson 2016, p. 6). The nation's borders are seen as definite ("limited"), and it is seen as the only legitimate authority within those borders ("sovereign"). Such concepts are analysed in this article through two famous cases, described below. The crucial argument within this article lies in the discussion of "nationality" as a cultural construct, more than a legal term. "Effective nationality" is simultaneously and symbiotically socially constructed.

Shamima Begum held British citizenship at birth under Section 1(1) of the British Nationality Act 1981 as her parents were both settled in the UK. By virtue of Section 5 of the Bangladesh Citizenship Act (1951) and Rule 9 of the Bangladesh Citizenship Rules 1952, Begum was also "a citizen of Bangladesh by descent", having at least one parent Bangladesh by birth. In 2015, when aged 15 years, she travelled with two friends, to Raqqa, Syria, the headquarters of the Islamic State group (ISIS). Once there, she married a Dutch ISIS recruit, Yago Riedijk, who is the father of her three children. All the children died in Syria. Riedijk is currently in a detention centre in Northern Syria, having been

convicted in a Netherlands court in 2018 for joining the extremist group ISIS. He will face a six-year jail term if he ever tries to return to Europe.

Shamima Begum was found in a Syrian refugee camp, in February 2019, by a *Times* reporter. There are untried allegations that Begum was an active member of ISIS, involving suicide bombers and supporting the imposition of a strict religious dress code. Following her alleged involvement with ISIS in Syria, Begum became the first British born woman to have her British citizenship revoked by the then Home Secretary, Sajid Javid, on security grounds. Begum remains in Syria at the time of writing this article (2022).

I maintain that whilst the facts of *Nottebohm* are not exactly the same as for Begum, the principle of "effective nationality" established in the former case is increasingly being used, simultaneously with immigration law. Nottebohm was born in Hamburg Germany, and thus a German citizen. He acquired Lichtenstein citizenship in 1939, shortly after the commencement of World War II, and thus lost his German citizenship under German law. In January 1940, he returned to Guatemala, where he had been living previously, on a Liechtenstein passport, and informed the local government of his change of nationality. However, in 1941 Guatemala declared war on Germany and declared Nottebohm a German citizen. He was thus interned until 1946, and his property was confiscated. In 1951, the Liechtenstein government, acting on behalf of Nottebohm, took his case to the International Court of Justice, where it argued Guatemala had treated him unjustly and had illegally confiscated his property. However, the government of Guatemala successfully argued that Nottebohm did not gain Liechtenstein citizenship for the purposes of international law. The court agreed. The International Court upheld the principle of effective nationality, now also known as the (*Nottebohm* principle): the national must prove a meaningful connection to the state in question.

Most legal and academic criticism of the removal of Shamima's citizenship has been based upon the fact that she was born in the UK and has no alternative citizenship, since Bangladesh refuses to take her. However, I argue that public lack of sympathy for her plight, and much government rhetoric, appears similar to the finding in *Nottebohm*, where it was argued that:

> *Naturalization was asked for not so much for the purpose of obtaining a legal recognition of Nottebohm's membership in fact in the population of Liechtenstein, as it was to enable him to substitute for his status as a national of a belligerent State that of a national of a neutral State, with the sole aim of thus coming within the protection of Liechtenstein but not of becoming wedded to its traditions, its interests, its way of life or of assuming the obligations-other than fiscal obligations-and exercising the rights pertaining to the status thus acquired. Guatemala is under no obligation to recognize a nationality granted in such circumstances.*[1]
>
> *The quote continued: Liechtenstein consequently is not entitled to extend its protection to Nottebohm vis-à-vis Guatemala and its claim must, for this reason, be held to be inadmissible.*

The article is structured in the following manner. Firstly, it introduces the concepts of nation and citizen and, secondly, jus sanguinis. It continues with the concepts of statelessness and then, fourthly, citizenship deprivation and the relevant legislation to remove citizenship. The fifth section introduces the UK's increasing and simultaneous use of both "jus sanguinis" and "effective nationality", through the case of Shamima Begum. The sixth details criticisms and support for this simultaneous use and considers why immigration law is being used in terrorism cases. I argue that "effective nationality" is the driving concept, covertly hidden behind the use of immigration law.

(i) Legally, the concepts of nation or citizen could not exist today without the perception and agreement of an internationally recognised system of sovereign states. Anderson describes these as "imagined communities", and the law is but one mechanism enabling this imaginary system. Indeed, legal concepts emphasise that these systems evolved to include both rights and obligations of their "nationals and citizens"[2].

However, as I argue, the legal use of ancestral lineage when determining nationality and citizenship is far from straightforward; it is often obscure, culturally dependent, exclusionary, and political. Legally, citizenship is a formal legal status in a political institution such as a city, country, or a state. In contemporary liberal–democratic models, citizenship appears to include both a set of rights possessed by virtue of this relationship and a set of obligations or duties that they owe to that institution and their fellow citizens in return. However, Anderson argues that no one would die for the idea of liberalism, but thousands die for the concept of "nation". Nationality denotes where an individual has been born or holds citizenship with a state. Citizenship is "bestowed" in several ways: by jus sanguinis ("right of blood", which means citizenship determined by blood relations), jus soli ("right of soil", citizenship determined by place of birth), or "naturalisation"—subject to certain criteria being met.

Of crucial importance for this article is indeed the different interpretations of nationality, and citizenship, evoked when excluding individuals. The International Court of Justice, as noted above, has defined nationality *in cultural terms* through the much-cited case of *Nottebohm* as a legal bond that has as its basis "… a social fact of attachment, a genuine connection of existence, interests and sentiments"[3]. This case defined the principle of "effective nationality" (the *Nottebohm* principle): the national must prove a meaningful connection to the state in question. Whilst the article below is referring to the situation within the UK, the term "British National" was legally defined in the declaration to accession to the EU, and was replaced in January 1983, but allegedly continued to be based solely upon *specific legal criteria*. For most legal jurisdictions, the terms "nationality" and "citizenship" are effectively interchangeable. The UK's nationality laws, however, are complex. Nationality refers to the status of a person as belonging to a state, whereas citizenship refers to the holding of a bundle of civic rights. These rights generally including the right to live and work in the territory of the state concerned. The UK currently has six nationalities: British citizen (BC); British overseas territories citizen (BOTC); British National (Overseas) (BN(O)); British protected person (BPP); British subject; and British Overseas citizen (BOC). Shamima was a British citizen by birth, Nottebohm German by birth.

2. The Importance of Context

Most historians, and indeed Anderson, argue that the concepts of nation and nationalism, as currently understood, are essentially modern constructions, post 1780. (Hobsbawm 1990; Davies 2004; Gellner 2008; Hastings 1997; Anderson 2016). Medieval historians place the concept in the 13th century. This article argues that whilst the UK currently uses technical legal definitions, it also draws upon medieval perceptions of nationality and citizenship, and the later cultural definitions of the International Court of Justice and also the (UK Counter Extremism Strategy 2015). Whilst definitions of citizenship have varied over time, some basic tenets are noticeable: Citizenship extends beyond basic kinship ties to include people of different genetic backgrounds. Citizenship generally describes the relation between a person and an overall political entity such as a nation and signifies membership in that body. The UK Counter Extremism Policy has as its definition of extremism "…the vocal or active opposition to our fundamental values including democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs…" (UK Counter Extremism Strategy 2015). To enable a critique of law, it is necessary to understand that definitions are relative to their contexts of jurisdiction but also to evolving political, economic, and social contexts. Nottebohm, for example, was argued to be German by birth, despite acquiring an alternative identity, because *his motives for acquisition* were successfully questioned by Guatemala. Begum *had her citizenship withdrawn on security grounds* and for acts in opposition to the UK Counter Extremism Strategy. Moreover, her attempts to retain British citizenship were, as with Nottebohm, argued to be for strategic purposes, evincing no adherence to British beliefs or norms.

(ii) Jus sanguinis

Jus sanguinis will be discussed below for its exclusionary ability, but it is important to note that it is not necessarily the concept itself that is problematic, more its current use. Indeed, throughout history, the claim to lineage has enabled citizenship and migration/immigration. As Collins (2014, p. 2157) notes, "Despite the references to 'blood', *ius sanguinis* citizenship has never rested on purely biological conceptions of citizenship". He highlights how parent–child immigration and derivative naturalisation have enabled immigration. Collins noted that, from 1934, the jus sanguinis statute allowed American mothers to transmit citizenship to their foreign-born children. However, the British Nationality Act 1948 marked the first time that married British women gained independent nationality, regardless of the citizenship of their spouses, although it made no provision for the transmission of citizenship via the female line to children.

Indeed, lineage has been used to limit immigration, not least in overt ethno-nationalist conceptions of citizenship, for example within Nazi Germany (Howard 2010). In 1934, under the Nazi Third Reich, the German nationality law was amended to abolish separate state citizenships, replacing these with a uniform Reich citizenship. The central Reich authorities had the power to grant or withdraw German nationality. In 1935 the Reich Citizenship Law (*Reichsbürgergesetz*), the second of the Nuremberg Laws, created a new category called "state subjects" (*Staatsangehörige*) to which Jews were assigned, thereby withdrawing citizenship from Jews who had been citizens; only those classed as being of "German or related blood" retained Reich citizenship. Conversely, in Europe in the last decade, it has been argued that:

> 'The resurgence of citizenship deprivation powers has been interpreted as the downside of liberal citizenship policies enacted by European states in the twentieth and twenty-first centuries to incorporate large numbers of migrants present on their territories.' (Mantu 2018; p. 28).

Indeed, Begum's British citizenship could be withdrawn because it was argued that she had Bangladesh nationality through her parents, and thus she would not be stateless. Clearly, such a policy cannot be undertaken for those with only one nationality. Under international law, the UK is obliged to let a Briton return to the UK if they have no claim to another nationality, but it is under no obligation to actively enable this, via repatriation. Actively removing citizenship can effectively "abandon" an individual in a state of limbo and even, it is claimed, reduce their status to one of "homo sacer", (bare human), as Masters and Regilme argue when considering the fate of Shamima Begum. (Masters et al. 2020) We can see the labelling occurring historically with the removal of Jewish citizenship in the 1930s, and perhaps it is easier to view the past than to see the current situation with the same lens. Perhaps it is also easier to consider the impact when we are not considering someone who has allegedly committed atrocities, as in the case of Begum.

However, whatever the alleged actions of an individual, human rights are portrayed as inviolable, although some can be restricted. Indeed, there are human rights claiming to safeguard individual rights and limiting the ability of states to withdraw citizenship. The human rights obligations in the Articles of the Universal Declaration of Human Rights include the prohibition of arbitrary deprivation of a nationality (Article 15), respect for private life (Article 8), access to a fair trial (Article 6), the right to life under Article 2, and freedom from inhuman or degrading treatment or punishment under Article 3.

The right to a nationality has also been described as a human right in other international agreements, for example: the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, and many more. To make someone stateless by stripping them of their citizenship, is also contrary to the UN 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness, and

Article 15 of the Universal Declaration of Human Rights. "Arbitrary deprivation of nationality", which means deliberately moving to make a citizen stateless, is prohibited under these instruments. Article 15 of the Universal Declaration of Human Rights is particularly explicit on this point.

Hence, the issues of human rights, international agreements and national security appear to offer some safeguards regarding deprivation. However, as will be discussed below, despite safeguards to prevent statelessness, this can become a de facto state of affairs for some individuals. To remove British citizenship requires only a "reasonable belief" that by doing so the individual will not be left stateless.

(iii) Place, "No Place": Statelessness and Citizenship Deprivation

Under international law, a stateless person is someone who is "not considered as a national by any state under the operation of its law". This definition derives from Article 1 of the 1954 Convention relating to the Status of Stateless Persons. However, it is possible to remove British citizenship if it would be "… conducive to the public good to deprive the person of their British citizenship status and to do so would not render them stateless"— for example if the person holds dual nationality, including through a parent (jus sanguinis). "Conducive to the public good" is not specifically defined. Moreover, the jurisdiction of the individual at the time of deprivation is important—to be outside of UK jurisdiction means that Article 8 of the European Convention on Human Rights (ECHR) will not necessarily be engaged by such deprivation. Each case is theoretically decided on its own merits. However, many argue that the actual place of residence is less important than the possession of citizenship and thus should not enable deprivation on the former grounds, without human rights protection.

Reasons for removing citizenship and not repatriating include that the person holds dual citizenship, as noted, and, relevant to Begum, crucially that they pose a national security threat. In many cases, deprivation, not repatriation, has proven more politically popular, albeit the political interest at the time of writing this article has been somewhat overtaken by the coronavirus situation. Countries, for example Canada, that are expected to receive ex fighters express disappointment with UK policy, not in the least because it sets a bad example and could potentially undermine anti-extremism work. (World News 2019)

(iv) A Case Study of Citizenship Deprivation: The Relevant Laws

British Citizenship Deprivation occurs when an individual with British citizenship status, whether through birth, naturalisation, or being a citizen of a British overseas territory, has that citizenship removed by an order made by, most often, the Home Secretary. The person has no legal right to re-enter the UK or to seek diplomatic protection from the British government. The ability to remove citizenship began with the British Nationality Act 1981. There have been several laws since then, for example the Nationality, Immigration and Asylum Act 2002, the Immigration, Asylum and Nationality Act 2006, and the Immigration Act 2014. The acts have significant differences and have made deprivation easier over time, moving from "naturalised citizens" to those born in Britain. The British Nationality Act 1981, for example, outlined the boundaries of British Citizenship, with Section 40 of the Act including conditions under which the Secretary of State could deprive citizenship to non-birth citizens, those who had British citizenship due to naturalisation or registration.

However, subsequent laws allowed deprivation for those born in Britain, especially the Immigration Act 2014. This act enabled deprivation if there were: "reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such a country or territory".[4] However, this enables the deprivation of persons who have no physical contact with another country, merely an imagined link through ancestry. The Special Immigration Appeals Commission (SIAC)[5] has held that Shamima Begum is a citizen of Bangladesh and so would not be made stateless by being stripped of her British citizenship. Bangladesh nationality law is,

in effect, complicated. The Home Office expert, Dr. Hoque, pointed to the (Bangladesh Citizenship Act 1951). This says that "a person born after the commencement of this Act shall be a citizen of Bangladesh by descent if his father or mother is a citizen of Bangladesh at the time of her birth". However, dual nationality is not permitted once a person reaches the age of 21, when someone with another citizenship "ceases to be a citizen of Bangladesh".

Until the age of 21, therefore, a Bangladeshi citizen continues to remain a citizen alongside being a foreign citizen (Addley and Ahmed 2019). Whilst Shamima was under the age of 21 when deprived of British citizenship, and the argument was made that she had Bangladesh citizenship and was therefore not de jure stateless, she may have been de facto stateless due to Bangladesh's stated refusal to recognise her as a citizen. Bangladeshi officials have stated that she is not and never was a citizen (The Guardian 2019). However, the UK law rests upon de jure statelessness, as the case of Pham illustrates.[6]

Moreover, any claim to dual nationality via her parent's heritage is no longer legitimate, as Shamima has reached the age of 21 years. Hence, whilst Bangladesh does utilise a "blood line" law, Bangladeshi nationality and citizenship lapse when a person reaches the age of 21 unless they make efforts to activate and retain it. Moreover, as noted above, an individual over 21 years of age cannot hold two nationalities simultaneously in Bangladesh law.

The SIAC have in the past acceded that individuals who were UK citizens from birth could not be deprived of this in favour of a Bangladesh citizenship when they were over 21 years of age.[7] In this case, the SIAC examined the Instruction in light of the Citizenship Act. Based on the Citizenship Act, the SIAC determined that they were not Bangladeshi citizens since they had reached age 21 and retained their British citizenship (E3 and N3: para. 26.) Whether Shamima's continued attempts to retain British citizenship would invalidate any legal claim to Bangladesh citizenship is a moot point since, as noted above, Bangladesh refuses to accept her, and she has evinced no desire to attempt to obtain the latter citizenship. The main SIAC judgment is *Shamima Begum (Preliminary Issue: Substansive)* [2020] UKSIAC SC_163_2019.

For Shamima Begum, a crucial threshold for triggering citizenship deprivation is that "the Secretary of State is satisfied that deprivation is conducive to the public good". Section 40(4A) of the British Nationality Act 1981 defines this as that a person "has conducted him or herself in a manner which is seriously prejudicial to the vital interests of the United Kingdom, any of the Islands, or any British overseas territory". No actual criminal conviction is necessary, nor proven terror offence nor overt supply of evidence to support an accusation. Indeed, evidence is often not made widely available, although it is claimed, as Sajid Javid when Home Secretary, stated re. Shamima Begum: "If you did know what I knew, because you are sensible, responsible people, you would have made exactly the same decision—of that I have no doubt". He further stated: "I won't go into details of the case, but what I will say is that you certainly haven't seen what I saw". (Giordano 2021)

Such assertions can be interpreted as indicative of Gramsci's "common sense" concept, or "cultural hegemony": effectively. "closing down" critique (Gramsci 1971). However, conversely, it may be that "evidence" exists to suggest substantial threat: if so, this has never been publicly revealed.

Arnell argues that "UK deprivation practice may violate its treaty obligations to extradite or prosecute individuals in certain cases" (Arnell 2020; p. 396). This article argues that potentially the policy is used when specific evidence required for prosecution may not be available, when extradition may prove difficult, or, crucially, when public opinion suggests both options would prove unpopular. Interpretations of "citizen" and "effective nationality" have enabled exclusion, simultaneous with any security issues raised. The recent and continuing case of Shamima Begum is particularly high-profile, not least because of media involvement. Indeed, as noted above, she was found by The *Times* reporter in a Syrian camp. Media involvement is not consistently supportive of Begum, as will be shown below, with the tabloid press being particularly antagonistic.

The use of immigration law in terrorism cases is an increasing phenomenon, so much so that several writers have asked: "Has there been a permanent change in perceptions of immigration and Britishness?" (Arnell 2020). Below investigates perceptions of "Britishness" but also the use of immigration law as a political device linked to "security issues". In 2021, Dearden in *The Independent* stated: "The government has refused to reveal how many people have been deprived of their British citizenship in the past two years after dramatically increasing its use of controversial powers to prevent the return of Isis members". (Dearden 2021)

3. Potential Racism

One issue that raises claims of potential racism is that deprivation targets those who have ancestors or parents that are from a different ethnicity. Racism herein defined as prejudice, discrimination, or antagonism by an individual, community, or institution against a person or people on the basis of their membership of a particular racial or ethnic group, typically one that is a minority or marginalised. Someone who is British from birth cannot be deprived of their citizenship without links to an alternative identity, as they would be left stateless: Section 40(4) of the British Nationality Act 1981. In effect, that means that citizenship deprivation can only be deployed against the children of immigrant parents, for example Begum.

Those who have inherited another nationality from their parents thus have less protection against deprivation. As noted above, it was claimed that Shamima Begum legally held both British and Bangladesh citizenship. The ability to deprive is also easier than attempting to prosecute and plays to populist sentiments that may encourage racist tendencies. It may also promote the suspicion of different ethnicities, based upon no overt supply of evidence and merely a perception of "what a terrorist looks like". According to Moazzam Begg, the outreach director of CAGE, a London-based advocacy organisation empowering communities impacted by the War on Terror, "There were around 36 cases of nationality revocation in 2014, all of which hailed from a Muslim country, with the exception of one, a Russian, …It [the policy] clearly appears to be a two-tier and racist system"(Ibrahim 2019). In the current climate, the 'war on terror' tends to offer support for such accusations.

(v) Conclusion: The simultaneous use of jus sanguinis and "effective nationality" in Counter Extremism Policy

However, crucially, I argue that, when discussing nationality revocation, the UK draws not only upon the legal notion of "jus sanguinis" when determining the right to be a citizen, but, particularly when addressing public opinion, the more emotional concepts of the International Court of Justice, within the language of the Counter Extremism Strategy—namely that of "effective nationality" (the Nottebohm principle). It can be argued that the *Nottebohm* principle is being applied by the UK to exclude foreign fighters with "dual nationality" by citing a lack of meaningful connection to the UK and an alleged allegiance to an alternative and incompatible "imagined community" or state. The combination of these two interpretations is particularly noticeable when the government seeks to exile foreign fighters. Indeed, the government is able to garner support for exclusion by claiming that these individuals evoked no "…genuine connection of existence, interests, and sentiments" with Britain.

It is often claimed that by their actions they have demonstrated no attachment to the norms or values of the UK. Hence, Begum's voluntarily joining the extremist movement ISIS in Syria and the Nottebohm case (not a terrorist case, but one dealing with nationality and links to a combatant state) are indicative of the concepts in action. The UK Counter Extremism strategy defines extremism as: "…the vocal or active opposition to our fundamental values including democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs…" (UK Counter Extremism Strategy 2015). I argue that the concepts and language within the Counter Extremism Strategy align

with that of "effective nationality" as per the *Nottebohm* case, effectively garnering support for exclusion. Whilst the legality of exclusion is overtly based upon "national security" and the existence of dual nationality, the simultaneous use of "effective nationality" is more widely understood and accepted by large members of the public.

Begum appealed against the citizenship removal, with the Court of Appeal ruling in July 2020 that she should be allowed to return to the UK to fight her case.[8] However, the Home Office cited "significant national security risks" if she were allowed to return. The Supreme Court then ruled in February 2021 that the government was entitled to prevent Shamima Begum from returning to the UK to fight her case. However, the legal case over her citizenship has been paused until she can take an active part in it. The Supreme Court did not, therefore, rule on the legality of citizenship removal.

The concept of effective nationality has been both supported and criticised. Much public opinion on the Begum case can be summarised in the following media quotes. In 2015, Boris Johnson, then the Mayor of London, and now UK Prime Minister, wrote a piece for *The Telegraph*, in which he described the British men joining ISIS as "sick jihadists" who had been "nursed at the breast of the British state" (Johnson 2015, p. 18). He described them as "vipers" turning their backs on a country that had offered them so much. Also in the same edition of *The Telegraph*, Allison Pearson argued that "Shamima, Amira and Kadiza (her two friends and compatriots fleeing to Syria), were lucky enough to be born in such a country, they benefited from its education system when tens of millions of Muslim girls in other parts of the world are barred from school" (Pearson 2015, p. 23). The men and the female teenagers are depicted as national traitors, ungrateful and undeserving recipients of the state provisions that Britain benevolently bestowed upon them (Pearson 2015, p. 23; Farnham 2019).

4. Perception of Genuine Connection with Place

Whilst many academic arguments for nationality in the 21st century, and especially that of ex ISIS supporters, have focused upon the issue of whether dual nationality actually exists, none have focussed upon the Nottebohm principle. However, in public and government rhetoric, the perception of a lack of genuine connection with a nation state is evident. A 2019 Sky data poll revealed that 78% of the public, reducing to two thirds (65%) when the issue of statelessness was raised, thought the citizenship of Shamima Begum should be removed, even though this would break international law—25% said it should not be removed in those circumstances, and 10% say they don't (sic) know. (Sky News 2019)

However, the criticisms that were made of the Nottebohm Judgment are equally applicable today. Such criticism focuses upon the fact that a person could be left without an effective nationality. Theoretically having dual nationality should prevent this, and it is unclear whether Nottebohm was believed to hold this, being German by birth, a citizen of Guatemala by long term residence, and, at the time of his internment, he claimed he was a citizen of Liechtenstein. In 2002 the International Law Commission criticised the Nottebohm principle, noting that:

> …if the genuine link requirement proposed by Nottebohm was strictly applied it would exclude millions of persons… who have drifted away from their state of nationality and made their lives in states whose nationality they never acquire or have acquired from birth and descent from states with which they have a tenuous connection. (International Law Commission 2002)

For Begum, the claim of national security, dual nationality, and effective citizenship have effectively left her in a stateless limbo. All three concepts are claimed to be legal and have case law precedent.

(vi) Why is immigration law being used in terrorism cases?

In 2016 Zedner made the argument that:

> 'Immigration law as a means of controlling serious crime and terrorism is attractive to governments because, in setting weaker procedural protections and lower standards of proof, it is regarded as more reliable and effective than the slow, expensive and uncertain passage of the criminal process.... In the UK, the use of secret evidence in closed material proceedings (CMP) by the Special Immigration Appeals Commission (SIAC)protects security sensitive intelligence but denies subjects the basic right to know the full details of the case against them.' (Zedner 2016, 2010; cf Bosworth and Guild 2008)

There has been much criticism of citizenship deprivation (Gibney 2014;Collins 2018), but as Zedner argued, courts tend to defer to the executive when the issue of national security is raised, thus limiting judicial review. Citizenship deprivation can occur with little "proof" or wrongdoing. Indeed, since court proceedings are closed, and the evidence is not disclosed, it is difficult, if not impossible, for any assessment of guilt or of any threat the individual may pose. Normally, individuals are protected by Article 6(1) ECHR, which guarantees the general right to a public hearing. However, this right is subject to the express restrictions set out in the second sentence of Article 6(1):

> Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.... (Guide on Article 6 of European Convention on Human Rights 2022)

There are certain situations where proceedings can be heard in private ("in camera"), when the public are excluded and the doors of the court-room closed. These situations are governed by Part 6 of The Criminal Procedure Rules (2020). The reasons for the case being heard "in camera" are usually that the evidence on which the Crown seeks to rely could not be presented in open court or that utilising open court may subject individuals to significant risk. The risk to individuals, for example, that their trial, or lack of, may be unfair is a crucial issue, but one that is "trumped" by claims to security risks. However, abandoning people abroad, for example in the case of Shamima Begum, has previously been questioned, raising human rights issues beyond that of access to a fair trial: it may, for example, involve the right to life under Article 2, to freedom from inhuman or degrading treatment, or punishment under Article 3 (see also Macklin 2014). Both of the latter have been raised with regard to potentially making Bangladesh Shamima's place of residence or leaving her in the refugee camp. Such camps tend to be minimal in what they are able to provide and may subject someone to significant danger from others.

5. Conclusions

There are many reasons given for using immigration law to exclude, and relevant legislation can be cited. However, I argue that, whilst policy and public opinion support exclusion, the legislation is often cloaking the covert use of the "effective nationality" concept.

Indeed, public opinion, in the UK, potentially influenced by the media, supports the removal of Begum's citizenship, often by reference to the concept of "effective nationality" and the definition of her behaviour as per the Counter Extremism Strategy, which in itself appears similarly indicative of the concept, "…the vocal or active opposition to our fundamental values including democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs…" (UK Counter Extremism Strategy 2015).

Ultimately, whilst "bloodline"/race and also "place" are used as legal concepts, "effective nationality" is a cultural concept linked to Anderson's "imagined communities":

it is the more overriding facet influencing citizenship, not least for the public but also for criminal justice decisions.

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1. *Nottebohm Case (Liechtenstein v. Guatemala); Second Phase*, International Court of Justice (ICJ), 6 April 1955. Available online: https://www.refworld.org/cases,ICJ,3ae6b7248.html (accessed on 6 June 2022).
2. Nottebohm principle- *Liechtenstein v. Guatemala* 1955, p.23.
3. ibid
4. British Nationality Act 1981 s40: 4A (b), as amended by the Immigration Act 2014
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