Justice for one Side Alone? *R. (On the Application of Begum) (Respondent) v Secretary of State for the Home Department (Appellant)* [2021] UKSC 7

The judgment of the UK Supreme Court in *Begum*[1] has been criticised as a stark regression in the judicial protection of human rights.[2] But such views misrepresent the complexities and the mundanities of the case. The ruling contains several features of general importance to English administrative law, including reflections on how legislative architecture and dispute subject-matter shape the function of tribunals. Secondly, it sheds important light on the proper relationship between administrative law and the implementation of policy. Finally, the ruling is now the leading case on the relationship between procedural fairness and national security in deprivation of citizenship cases. This comment argues that the Supreme Court took the correct approach to the nature of SIAC's jurisdiction, and to the lawfulness of the Secretary of State's decision regarding policy. However, the conclusion on the balance between national security and the right to a fair hearing is flawed. It unduly perpetuates the imbalance in the common law between fair procedures and national security in a manner unsupported by relevant authority.

Shamina Begum fled the United Kingdom, aged fifteen, with two friends. She travelled to Turkey using her elder sister's passport and crossed the border into Syria. As of February 2021, she was detained indefinitely in camp Al-Roj in Syria near the Iraq border. On 19 February 2019, the then Home Secretary, made an order pursuant to section 40(2) of the British Nationality Act 1981 (the 1981 Act) depriving her of her British Citizenship. The order was made on the basis that Begum had aligned with the Islamic State of Iraq and Levant (ISIL) and as such presented a threat to British national security. He also concluded that the European Convention on Human Rights (ECHR) did not apply to Begum's situation because she was no longer a British citizen and was outside the ECHR's territorial jurisdiction. Begum's application for Leave to Enter (LTE) the United Kingdom to participate in the SIAC appeal was also refused.

Due to the statutory framework of the Special Immigration Appeals Commission Act 1997 (the 1997 Act) the case has a complex procedural history. It need not be rehearsed in detail, as it does not directly impact the reasoning on the substantive legal issues. It is sufficient to note that Begum appealed to SIAC[3] against the substantive deprivation decision[4] and the human rights dimension of the refusal of LTE.[5] She also sought judicial review against the refusal of LTE in the Divisional Court[6] on common law grounds as SIAC provided no general right of appeal against LTE refusals.

Lord Reed delivered a unanimous ruling (Lords Hodge, Lloyd-Jones, Sales, and Lady Black concurring) in the Supreme Court on 26 February 2021. Three substantive legal issues arose. The first was whether the Special Immigration Appeals Commission (SIAC) had been correct to apply "judicial review principles"' to Begum's appeal against deprivation, as opposed to conducting a full re-hearing of the "merits" of the deprivation decision. The second

[1] *R. (On the Application of Begum) (Respondent) v Secretary of State for the Home Department (Appellant)* [2021] UKSC 7.
[2] Y. Ahmed, 'The UK Supreme Court has Failed Shamina Begum', *Human Rights Watch* (02 March 2021); Liberty, 'Misuse of Extreme Powers Latest Threat to Rule of Law, Says Liberty Following Shamina Begum Ruling' *Liberty* (26 February 2021).
[3] *Shamina Begum v Secretary of State for the Home Department SC 163/2019* (7 February 2020).
[4] Special Immigration Appeals Commission Act 1997, s 2B (SIAC Act 1997).
[5] SIAC Act 1997, s 2.
[6] *Begum v Secretary of State for the Home Department* [2020] EWHC 74 (Admin); [2020] 2 WLUK 100.

issue was whether it was lawful for the Secretary of State to refuse to apply the Government's publicly stated "extra-territorial human rights policy" (hereinafter "the policy") to Begum. This policy stated that the Home Office would not generally deprive persons of British citizenship if they were outside of the UK's jurisdiction for ECHR purposes, and the Minister was satisfied that deprivation would expose the individual to a "real risk" of treatment contrary to Articles 2 and 3 of the ECHR. The Home Secretary concluded there was no "real risk" in relation to Begum's case. Finally, the Supreme Court had to consider what natural justice before SIAC required in Begum's case, as she was presently detained overseas and could not effectively participate in her appeal hearing.

The Court of Appeal[7] found for Begum on all three substantive issues, and the Secretary of State appealed to the Supreme Court. The Supreme Court allowed Secretary of State's appeals in relation to each of three substantive issues. It dismissed Begum's application for judicial review of the LTE decision and dismissed her application for judicial review of SIAC's preliminary decision in the deprivation appeal.

SIAC's Role in Deprivation of Citizenship Appeals

In essence, the Supreme Court's approach represents a predictable application of pre-existing norms in administrative law. In the Court of Appeal Flaux LJ (with whom Singh LJ and King LJ agreed) held that section 2B of the SIAC Act 1997 required a full re-hearing of the decision to deprive her of citizenship on the merits. Section 2B creates a distinct route of appeal against deprivations of citizenship made on national security grounds.

Lord Reed disagreed with the Court of Appeal regarding SIAC's proper function under section 2B for two reasons. First, SIAC's tasks under section 2 and 2B of the 1997 Act were discreet. Section 2B had an "entirely different history" to section 2.[8] Unlike section 2, section 2B was not concerned with immigration decisions.[9] Instead, it was a provision specifically pertaining to deprivation of citizenship. The Court of Appeal had therefore embraced the "fallacy…that SIAC's jurisdiction is uniform."[10] In reality, authorities concerning the scope of jurisdiction of tribunals hearing statutory appeals "adopted varying approaches".[11] Such approaches were guided by both the nature of the decision appealed against, and the relevant statutory schemes under which the powers were conferred.[12] He also separated the task of SIAC when hearing a common law claim from hearing a claim under section 6 of the Human Rights Act 1998. According to Lord Reed, when considering human rights claims SIAC should "decide for itself" whether the decision impugned was lawful.[13] This holding was entirely consistent with the ruling of the House of Lords in *Huang*[14]

Moreover, the label of "review" or "appeal" in the sub-heading of the statutory provision was not necessarily determinative of the character of the tribunal's task. Lord Reed explained that the task allocated to any tribunal by statute could take the form of "review", "appeal", or "supervision". The distinctions between these categories are as follows: "appeal" empowers a tribunal to "exercise afresh any judgement or discretion" undertaken by the initial

[7] *Shamina Begum v Secretary of State for the Home Department* [2020] EWCA Civ 918.
[8] SIAC Act 1997, s 2B.
[9] *R. (*Begum) [2021] UKSC 7 [38].
[10] *R. (*Begum) [2021] UKSC 7 [75].
[11] *R. (*Begum) [2021] UKSC 7 [46].
[12] *R. (*Begum) [2021] UKSC 7 [46].
[13] *R. (*Begum) [2021] UKSC 7 [37].
[14] *Huang v Secretary of State for the Home Department* [2007] 2 AC 167, quoted in *R. (*Begum) [2021] UKSC 7 [37].

decision-maker. This amounts to a re-hearing of the relevant issues. "Review", on the other hand, means that a tribunal could consider whether a decision maker had made an error of law, or mis-used his or her discretion by acting unreasonably.[15] Sections 2C to 2E headed "review" were limited to applying the principles applied in judicial review proceedings and the remedies available in such proceedings.[16] Finally, "supervision" was the nomenclature Lord Reed attached to SIAC's task under section 2B. Unlike the other provisions, it has no sub-heading. Supervision involved something more than review but short of appeal. It permitted SIAC to proceed on principles "largely the same as those applicable in administrative law."[17] Two factors set SIAC's role under section 2B apart from mere review, however. First, Parliament had clearly intended that scrutiny of "questions of fact as well as points of law" would take place under section 2B.[18] This involved an inquiry into whether the Secretary of State had made findings of fact "unsupported by evidence"[19] or "based upon a view of the evidence which could not reasonably be held."[20] The second distinguishing feature of the task under section 2B was that it required SIAC to consider, where applicable, issues arising under section 6 of the Human Rights Act 1998. If an issue arose under section 6 of the Human Rights Act, then, SIAC would need to proceed according to the principles of appeal, as opposed to supervision.

Finally, Lord Reed concluded that the Court of Appeal's ruling did not reflect longstanding authority on the substantive approach of courts to questions of national security. This may be partly explained by the fact that *Rehman*[21], the leading case in this area, was not cited before the Court of Appeal.[22] According to Lord Hoffmann's speech in *Rehman*, SIAC must take account of "certain inherent limitations, first, in the powers of the judicial branch of government and secondly, within the judicial function, in the appellate process."[23] This was particularly true of a decision to deprive citizenship because such questions involved "evaluation and judgement"[24] about "the extent of future risk".[25] Lord Hoffmann's speech was the most relevant, as it most accurately mapped on to the amended provisions of the 1997 Act.[26]

Although there are mere shades of grey between review and supervision, the Supreme Court's decision respects that a tribunal's approach must reflect both legislative context and sensitivity to subject-matter. Under pre-existing well understood norms of public law, both these factors must guide the approach of a statutory tribunal in its approach to review of a discretionary decision. These are the same considerations which guide the courts in their own application of the principles of judicial review.[27] Moreover, the Supreme Court's decision appropriately reflects the institutional sensitivities of decisions concerning national security. The judgment simply replicates the understanding in well-worn authorities such as *Carlile* that

[15] *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1947] EWCA Civ 1, [1948] 1 KB 223.
[16] *R. (*Begum) [2021] UKSC 7 [65].
[17] *R. (*Begum) [2021] UKSC 7 [69].
[18] *R. (*Begum) [2021] UKSC 7 [65].
[19] *R. (*Begum) [2021] UKSC 7 [71], citing *Edwards (Inspector of Taxes) v Bairstow* [1956] AC 14.
[20] *R. (*Begum) [2021] UKSC 7 [71]
[21] *Secretary of State for the Home Department v Rehman* [2001] UKHL 47; [2003] 1 AC 153.
[22] *R. (*Begum) [2021] UKSC 7 [72].
[23] *Rehman* [2001] UKHL 47; [2003] 1 AC 153, Lord Hoffmann [49] in *R. (*Begum) [2021] UKSC 7 [55].
[24] *Rehman* [2001] UKHL 47; [2003] 1 AC 153, Lord Hoffmann [56] in *R. (*Begum) [2021] UKSC 7 [58].
[25] *R. (*Begum) [2021] UKSC 7 [58].
[26] *R. (*Begum) [2021] UKSC 7 [59].
[27] *R. v Hillingdon LBC, ex parte Puhlhofer* [1986] AC 484 (HL); *R. (A) v Croydon LBC* [2009] UKSC 8, [2009] 1 WLR 2557. See also J. Bell, 'Rethinking the Story of *Cart v Upper Tribunal* and its Implications for Administrative Law' (2019) 39(1) *OJLS* 74, 85.

judicial competence to review the executive's assessment of future risk in this context is limited to an evaluation of their rationality regardless of the procedure by which a court is seized.[28]

The Proper Approach to Policy

The Court of Appeal held that SIAC should have conducted a "full merits review" of the Home Secretary's decision not to apply the policy to Begum. The Supreme Court reversed this holding on appeal. SIAC's decision to approach the Home Secretary's refusal to apply the policy as a question of rationality review was correct. Lord Reed's approach is correct.

The divergence in approach between the Supreme Court and the Court of Appeal in relation to SIAC's approach is explained by their different approaches to the purpose and effect of the policy. The Court of Appeal considered that the intention of the policy was that "Articles 2 and 3 [ECHR] would be given extra-territorial effect".[29] In sum, the Court of Appeal deemed the Convention rights to be effectively applicable and concluded that a "full merits appeal" would be required before SIAC.

Conversely, the Supreme Court framed the issue before SIAC as "whether the Secretary of State, when exercising his discretion under section 40 of the 1981 Act, had acted in compliance with his policy."[30] According to Lord Reed, the Court of Appeal had conflated separate situations. The policy only applied to situations beyond the jurisdiction of the Human Rights Act 1998.[31] As such, the issue of whether the non-application of the policy was lawful was purely a question of domestic administrative law. This was because there were "important differences" between "the legal principles applicable to a statutory duty and those which apply to an administrative policy."[32] The policy, unlike section 6 of the Human Rights Act, did not confer a legal right on anyone not to be subject to a violation of Convention rights.[33] The adopting of a general practice or policy by the executive to guide its discretion did not ossify that discretion into a "rule of law".[34]

A challenge directed at whether the policy applied to the facts of a given case, therefore, can only be "subject to the *Wednesbury* requirement of reasonableness".[35] This question of prior application is one which the Court of Appeal's reasoning elides. The presence or absence of said "real risk" was the trigger for application of the policy. SIAC correctly approached the matter as one of reasonableness review. Although one may feel morally uneasy about the non-application of the extra-territorial human rights policy to Begum's situation, whether she faced a "real risk" of mistreatment is a prior question of fact for the executive to decide. The Court of Appeal's conclusion that the policy was designed to mirror the effect of the Human Rights Act 1998 rendered nugatory this important step in the exercise of the Home Secretary's discretion. Exercising this discretion involved paying close attention to the assessments of the Security Service regarding the conditions in the Al-Roj camp. In broader terms, conflating

[28] *R. (Lord Carlile of Berriew QC and Others) v Secretary of State for the Home Department* [2014] UKSC 60, [2015] AC 945, *Bank Mellat v Her Majesty's Treasury* (No. 2) [2013] UKSC 39; [2014] AC 700.
[29] *R. (*Begum) [2021] UKSC 7 [126].
[30] *R. (*Begum) [2021] UKSC 7 [129].
[31] *R. (*Begum) [2021] UKSC 7 [117].
[32] *R. (*Begum) [2021] UKSC 7 [120].
[33] *R. (*Begum) [2021] UKSC 7 [120].
[34] *R. (*Begum) [2021] UKSC 7 [123].
[35] *R. (*Begum) [2021] UKSC 7 [124].

policy and law in the manner adopted by the Court of Appeal risks undermining the general presumption in favour of discretion which is central to English Administrative Law.[36]

Reconciling National Security and Procedural Fairness

Unlike both previous issues, the Supreme Court's conclusion on the relationship between the demands of a fair procedure and national security was entirely novel and unsupported by relevant authority. The Court of Appeal and the Supreme Court extracted diametrically opposed conclusions from Eleanor Roosevelt's maxim that "justice cannot be not for one side alone".[37] Neither court accepted the proposition advanced by Begum's counsel that the absence of a fair and effective hearing before SIAC meant her appeal against deprivation of citizenship should automatically succeed. There was no authority for the proposition that if an appeal cannot be fair and effective, it must be allowed.[38] The Court of Appeal resolved that "the only way in which she can have a fair and effective appeal is to be permitted to come into the United Kingdom to pursue her appeal."[39]

The Court of Appeal also concluded that an indefinite stay of the SIAC proceedings would "render her appeal…meaningless for an unlimited period of time."[40] Therefore, the "only way" in which Begum could have a "fair and effective appeal" was to be permitted LTE the United Kingdom. As such "fairness and justice must, on the facts of this case, outweigh the national security concerns"[41] raised by Begum's return. The Court of Appeal explained that the assessment of risk regarding Begum by the Security Service was at a lower level than others granted LTE, and as such her presence could be managed by either arrest and criminal charge or the imposition of a Terrorism Prevention and Investigation Measure (TPIM).[42] In doing so it also rejected the Secretary of State's proposition that Begum's inability to effectively participate from overseas should automatically result in her claim failing.[43]

In contrast, the Supreme Court dismissed the conclusion that the power of deprivation of citizenship could only be exercised lawfully if there was compliance with natural justice principles in the appeal process as "fallacious".[44] The fallacy in this claim, according to Lord Reed, was that it conflated the fairness of the initial decision itself with the fairness of any

[36] *British Oxygen v Minister of Technology* [1971] AC 610. In two more recent decisions the UK Supreme Court further advanced this narrower approach to review of policy demonstrated in the present case. In R (A) v Secretary of State for the Home Department [2021] UKSC 37; and R (BF (Eritrea)) v Secretary of State for the Home Department [2021] UKSC 38 the Court confirmed that the test for judicial review of policies should be confined to asking whether the policy authorised or approved unlawful conduct. This departed from the ostensibly broader test laid down by the Court of Appeal in *R (Hasan Tabak) v Secretary of State for Justice* [2014] EWCA Civ 827 which held that a policy could be liable to review on the basis that 'the system established by the policy is inherently unfair' [45]. See also: A.L. Young, 'Judicial Review of Policies – Clarification or Judicial Retreat?' U.K. Const. L. Blog (5th August 2021).

[37] *R. (*Begum) [2021] UKSC 7 [90].

[38] *Shamina Begum* [2020] EWCA Civ 918, [101] citing *W2 v Secretary of State for the Home Department* [2017] EWCA Civ 2146.

[39] *Shamina Begum* [2020] EWCA Civ 918 [121].

[40] *Shamina Begum* [2020] EWCA Civ 918[117].

[41] *Shamina Begum* [2020] EWCA Civ 918[121].

[42] *Shamina Begum* [2020] EWCA Civ 918[120], Terrorism Prevention and Investigation Measures Act 2011 (TPIMA 2011).

[43] *Shamina Begum* [2020] EWCA Civ 918 [94]-[95].

[44] *R. (*Begum) [2021] UKSC 7 [88].

subsequent appeal process.[45] Whilst Parliament had stipulated that there should be an appeal against deprivation, there was no legislative stipulation regarding "what the appellate tribunal should do if the person's circumstances are such that she cannot effectively exercise that right."[46] Whilst this may be a logical fallacy, labelling it as such overlooks the reality of national security decision-making. Unlike the paradigm case of *Ridge v Baldwin*[47] the subject of the decision cannot expect notice or participation in the initial decision for obvious reasons. For all intents and purposes, the SIAC appeal is the first opportunity for the subject of the decision to be heard. This makes it essential that the norms of procedural fairness are protected to the maximum extent possible at appellate level.

In stark contrast, Lord Reed explained that there were "many situations" in which a court would proceed with a case where a litigant faced a disadvantage that proved insurmountable,[48] including evidence being unavailable or the "death, illness, or incapacity" of a witness.[49] The central authority Lord Reed cited in support of his conclusion that the Begum's substantive appeal must fail was *Carnduff v Rock*.[50] In *Carnduff* the Court of Appeal held that a claim should be struck out because the public interest in preventing disclosure of sensitive information outweighed the interest in having the claim by a police informant for unpaid fees litigated.

Lord Reed also criticised the Court of Appeal's obiter dicta on the national security implications of Begum's proposed re-entry to the UK. First, he said there was no basis for allowing the LTE because the power to do so stemmed from s.6 of the Human Rights Act 1998. Begum had only argued her case before SIAC using common law principles.[51] However, section 6 arguments were raised in Begum's appeal against refusal of LTE by the Administrative Court.[52] He also criticised Flaux LJ's conclusion that the national security risk posed by Begum could be managed if LTE was granted.[53] Such comparisons were "misguided"[54] because "the Court of Appeal was in no position either factually or jurisdictionally to undertake such a comparison".[55] As the substantive national security case against Begum had not been litigated, it is impossible to assess either the merit of the Supreme Court's criticism, or the Court of Appeal's attempted comparison. The correct approach can only be assessed in the abstract insofar as the principle behind the Supreme Court's decision creates implications for future deprivation of citizenship proceedings.

With respect, then, *Carnduff* is not a case directly in point. It concerns the impossibility of conducting civil litigation where all relevant evidence is would attract public interest immunity. The *Carnduff* issue has been ameliorated the Justice and Security Act 2013 which permits closed material proceedings in civil national security cases. *Carnduff* is not, however, authority for the proposition that an appeal must fail where the appellant is unable to effectively participate on national security grounds. Begum's situation is unsupported by any established authority. She is neither dead, nor ill, nor incapacitated. Nor was her inability to participate voluntary.[56] She is detained indefinitely overseas. The Court of Appeal was right to frame the

[45] *R. (*Begum) [2021] UKSC 7 [88].
[46] *R. (*Begum) [2021] UKSC 7 [89].
[47] *Ridge* v *Baldwin* [1964] AC 40.
[48] *R. (*Begum) [2021] UKSC 7 [90].
[49] *R. (*Begum) [2021] UKSC 7 [90].
[50] *Carnduff v Rock* [2001] EWCA Civ 680.
[51] *R. (*Begum) [2021] UKSC 7 [107].
[52] *R. (*Begum) [2021] UKSC 7 [107].
[53] *R. (*Begum) [2021] UKSC 7 [106], TPIMA 2011.
[54] *R. (*Begum) [2021] UKSC 7 [108].
[55] *R. (*Begum) [2021] UKSC 7 [108].
[56] *Shamina Begum* [2020] EWCA Civ 918[113]

critical issue as identifying "what steps can be taken to alleviate the unfairness and lack of effectiveness" in her appeal.[57] The grant of LTE, as a mid-point between automatic success or failure of her substantive appeal, would not necessarily have resulted in Begum being returned to the United Kingdom (given her detention in Syria).[58] Nor would it guarantee success in the substantive claim. In short, the issue truly is a novel matter of principle.

There is, of course, no simple or easy answer for any court seized of such questions. Delineating the balance between fair procedures and national security represents a spectrum of invidious choices, as opposed to a dichotomy between right and wrong. Much judicial ink has been spilled assuring litigants that "the protection of human rights is not a distinct area of the law" and that human rights are a body of norms which "permeates our legal system".[59] Nevertheless, the Supreme Court's conclusion reinforces a divergence between the common law and the ECHR with respect to procedural fairness in national security claims. For example, where Art 6(1) ECHR is engaged in a civil proceeding involving liberty or property a "core, irreducible minimum" of procedural protection is required.[60] By contrast, in SIAC deportation and deprivation proceedings which do not engage Article 6(1) ECHR, the Court of Appeal has confirmed that the common law need not supply equivalent protection.[61] In reversing the Court of Appeal's decision granting Begum LTE the Supreme Court chose not to shore up the legitimacy of deprivation appeals by affording adequate procedural protection. Fair procedures play an essential role in legitimising the state's gravest sanctions. After all, one apex court described the power to revoke citizenship as "a form of punishment more primitive than torture".[62] In *Osborn v Parole Board* Lord Reed himself explained that "justice is intuitively understood to require a procedure which pays due respect to persons whose rights are significantly affected by decisions taken in the exercise of administrative or judicial functions."[63] The present case represents a missed opportunity to reverse the essentially two-tier system of fairness dictated by the presence or absence of ECHR rights.

Conclusion

Shamina Begum's situation has been the subject of wide media interest and polarizing viewpoints.[64] However, when abstracted from the heated public debate surrounding the fate of the individual, the case itself is a substantially routine application of the principles of administrative law. Nevertheless, the Supreme Court erred in holding that the gravity of the consequences of deprivation of citizenship did not positively impact upon Begum's rights to a fair and effective appeal. The common law has long calibrated procedural protection in relation to the gravity of what is at stake for both claimant and defendant. For example, it is understandable that claims involving "liberty" interests attract more intensive procedural protection that, say, claims in tort.[65] However, the deprivation of citizenship surely ranks alongside interference with liberty in terms of its severe impact upon the individual.

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[57] *Shamina Begum* [2020] EWCA Civ 918[111].
[58] Court of Appeal [54], citing Laing J in the Divisional Court [8].
[59] *Osborn v Parole Board* [2013] UKSC 61, Lord Reed [55].
[60] *Secretary of State for the Home Department v AF (No 3)* [2009] UKHL 28 [81] Lord Hope.
[61] *W (Algeria) v Home Secretary* [2010] EWCA Civ 898
[62] *Trop v Dulles* (1958) 356 U.S., at 101-102, 78 S.Ct., at 598.
[63] *Osborn* [2013] UKSC 61, Lord Reed [68].
[64] M. Foa, 'Shamima Begum is a victim of trafficking – and the UK should treat her as such' *The Guardian* (26 February 2021); G. Wright, 'Shamima Begum 'wore ISIS badge on school blazer to recruit classmates into joining terror group' *The Sun* (19 June 2021.
[65] *HTF, ZMS v. Ministry of Defence* [2018] EWHC 1623 (QB).

But it is not only the failure to respect the gravity of the substantive right at stake that is of concern. The *Begum* ruling exemplifies a worrying and under-scrutinized trend in the common law whereby substantive rights attract judicial greater protection according to their source, as opposed to their gravity. Although the right to citizenship is effectively a "platform" right (much like access to justice) which can be used to give effect to other rights important to democracy (such as rights of residence and the right to vote) it is not recognised by the common law as "fundamental". [66] Instead, it belongs to a lower caste of "statutory" rights, which can be overridden or interfered with more readily.[67] By contrast, access to justice, the other paradigm "platform" right, is accorded fundamental status by the common law, resulting in stringent scrutiny of any legislative or practical obstacle placed in its path.[68] Of course, at the margins one man's fundamental right is merely another's political claim. However, the case law on immigration generally, and national security immigration in particular, illustrates the absurdity of a legal system which affords differing standards of procedural protection based upon the arbitrary metric of the source from which a right is derived.

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[66] *R (Bancoult) v Foreign Secretary* [2008] UKHL 61 [41].
[67] *R. (Project for Registration of Children as British Citizens) v Secretary of State for the Home Department* [2021] EWCA Civ 193 [120] Singh LJ.
[68] *R. (UNISON) v Lord Chancellor* [2017] UKSC 51; [2020] AC 869.
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