Immigration in the EU and the UK:
A Conflict of Interests and Policy

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Abstract

Though contemporary society is becoming increasingly globalized, most of the developed world is looking towards immigration policies aimed at keeping other people and cultures out. This unfortunate trend is creating a society of protective multiculturalism—where one culture or state borrows desirable and beneficial characteristics and ideas from another culture, while isolating and at times even condemning that same group (Goodin 290). Though the issue of border security remains a hotly debated topic in the United States, Europe is looking towards an era of border-free movement and renewed labor resources. However there are some major European powers, such as the United Kingdom, that believe this doctrine holds potential security and socioeconomic threats that must be curtailed. By introducing a graduated point-based system of immigration, the British parliament hopes to control immigration within the region; but at great potential cost to agreements and alliances within the EU. This paper explores those impacts, and the potential consequences of this new policy through the lens of human rights and external relations policy in the European Union.

I. Introduction: Ideology and Rebellion

Members of the EU retain the right to travel, work, and freely establish residency within the union regardless of their ethnicity or nationality. The dispute over these fundamental rights came to a head in 1999 when the European Commission finally instituted a policy at the Tampere convention in Finland that created the first comprehensive zone of European freedom, justice, and security. Followed by the Schengen agreement, the EU has since become more open, embracing the idea of a more tolerant Europe that profits socially and economically from its diversity. However, we see a recent legislative trend in some member states, particularly the recent immigration system of the United Kingdom; that counters this multicultural ideology. The question then becomes; does the UK system of immigration violate human rights and relations policies within the EU? According to Benita Ferrera-Waldner, European Commissioner of External Relations and European Neighborhood Policy:

> Human rights are the cornerstone of the European Union's foreign policy. Be it in the political dialogues the European Union holds with third countries, in the international agreements it concludes, in its development cooperation or its action in the multilateral fora such as the United Nations, the European Union seeks to uphold the universality and indivisibility of human rights – civil, political, economic, social, and cultural – as reaffirmed by the 1993 World Conference of Human Rights in Vienna. The protection of human rights, together with the promotion of pluralistic democracy and effective guarantees for the rule of law and the fight against poverty are among the European Union's essential objectives (European Commission 2006).

By addressing the civil and fundamental rights of citizens, the European Commission was finally able to examine the dynamics of internal migration and began to understand how third-country nationals and external migration affect the socioeconomic portraits of its

member states. The resulting image was one of an aging Europe with declining birth rates, struggling to retain and recruit the skilled workers and professionals necessary for industrial development – conditions that could potentially lead to the skilled labor shortage known as "Brain Drain". Ministers also saw social disintegration along of the fault lines of religion, race, and class because of immigration and failing protective multicultural policies within most member states. In response, the EU committed itself to equal opportunity employment for all people, and to non-discrimination in all matters dealing with external foreign relations, as well as a legislative agenda to combat racism and xenophobia in their member states. Simultaneously, however United Kingdom began to devise a point-based program of immigration that violates the very same values and policies of the EU itself. As the EU continues to let the autonomy of member states override their supranational agenda; the result is discrimination, inequity, and centuries of prejudice between cultures that have bleached into contemporary foreign relations and immigration policy across Europe.

II. Immigration and Human Rights within the United Kingdom and EU

In a post 9/11 society, the security and preservation of a state's culture has become paramount. Additionally, this cause is often linked to the preservation of democracy amid fear of extremism and counter-culture from developing nations, particularly those in the Middle East. Europe has tried to negotiate between economic growth through migration, and maintaining security alongside an often-liberal multicultural agenda. While the Schengen border-free zone has been expanded to include virtually all of continental Europe, the United Kingdom believes it has found an alternative solution to these long-standing ills: just don't let them in. Enter the British

Highly Skilled Migrant Programme (HSMP), modeled after similar programs in Australia and Canada.

Since its inception, the UK has remained on the periphery of EU business and communication, ever skeptical and occasionally resentful of supranational authority (Kinsella, Russett, Starr 412). Though member states have the right to devise and implement immigration policies of their own, the British points system violates several existing agreements within the EU of which the UK does allegedly support. This conflict extends not only towards the treatment of individuals of specific characteristics, but also presents and question of human rights especially in regards to refugees and asylum-seekers—how many "points" is an individual life worth to the state? Moreover, this policy provides a basis for a clash with the European Commission, as well as future grounds for Britain to challenge the increasingly unpopular influx of Eastern Europeans immigrating through the EU Charter of Fundamental Rights (Treaty 16).

Between 1993 and 1998, the number of immigrants to the UK more than doubled, and in 1999, the number of asylum-seekers experienced a sharp increase. This presented a new problem for the Labour party and its millennium agenda, and prompted intense debate over how to curb the situation. In 2003, Home Secretary Charles Clark unveiled a grand scheme to combat illegal immigration, tightening restrictions on those hoping to immigrate legally, and filter out the masses of refugees inhabiting England, Scotland, and Wales. The policy implemented a 5-year plan that established a fine of £2,000 per undocumented worker for those employers taking advantage of the illegal influx, as well as heavy civil and criminal penalties for human trafficking. Additionally, the government pledged a zero-tolerance policy for asylum-seekers staying after their visa expiration, and

end to chain migration, and most controversially the 2003 HSMP or "points system." The HSMP uses a formula to assign a numeric value to potential citizens and guest workers. Initially the program was the fast track for qualified health, technology, and business professionals to earn a visa, but in 2006 the minimum points score was raised to 75, and a handy calculator introduced via the web to let potential residents evaluate their chances of being granted citizenship. Points are determined by the applicants age, education (at least a Bachelor's/four-year degree,) earning power, UK experience, English proficiency, and region of origin. (There are 5 income categories that divide minimum earning power by region, category A being the most developed countries like the U.S. and France to Category E developing nations such as Nigeria and Afghanistan.) Preference is given to the most advantaged of applicants. In addition to earning points, candidates are completely disqualified if they have ever been bankrupt, convicted of a crime, or would be dependent for any time on government aid (Home Office of the United Kingdom 2007).

The points system does not just filter out low-skilled persons from the developing world, but is rather generous in its elimination of future laborers from across Europe as well. Applicants in their thirties only have a value of 5 points, and those who don't have an MBA from a prominent graduate school (specifically listed by the Home Office), or do not speak English as their primary language have no chance of gaining a visa. Select individuals may qualify for a temporary 12-month unskilled work visa if they are unmarried, with no dependents, under the age of 27, and never intend on applying for permanent residency within the UK. Beginning in 2008, these standards will be applied to all visas issued within the UK by introducing a graduated system that will phase in the

same standards for scientists, doctors, teachers, graduate students, undergraduate transfers, and lastly asylum-seekers attempting to establish residency. The government will annually issue a number of visas for each category, with the greatest number of visas reserved for science professionals and the least for refugees (Macleod 1). By late 2009, experts say that the flow of migration will be cut in half from its peak in 1999 (Maclaren 903). Also since the program's approval, long-term residency is no longer guaranteed for the immediate family members of UK citizens. Additionally, under the extended HSMP there is no appeals track for rejected applicants.

III. Point System Impact on Internal EU Relations

Policy Impact on the United Kingdom

Though it may seem a logical first step towards solving Britain's labor and population crisis, we see that the UK loses many qualified workers to other developed nations such as France and Germany, and attracts the largest number of low-skilled workers from Eastern Europe of any EU country. By implementing restrictions on external migration, the UK is failing to address the issue of retention in an attempt at growth, and exacerbating existing conflict by creating a public-opinion driven policy that feeds into anti-EU sentiment. If UK membership in the EU is ever to be viably supported by their citizens, then the state must stand behind supranational mandates rather than assimilating to the bare minimum of membership standards just to save face in the European community. However, the effectiveness of such diplomatic strategy remains questionable amid severe enforcement tactics, including dawn raids to physically strip illegal residents from their homes and families for immediate deportation (Gordon 1).

This begs a question of how serious the UK is about heeding EU human rights doctrine and fulfilling standards regarding social equality and handling of non-European citizens.

As mentioned earlier, dawn raids and racial profiling are already being used as tools for the recognition and deportation of asylum-seekers including Sudanese refugees that are being detained and sent back to Darfur. Scotland also seems to have encountered a large number of legal African and Caribbean immigrants overstaying their visas because they do not feel they can safely return home. As of 2006, nearly 1,000 asylum seeking families faced the possibility of being forcibly extracted from their homes under the cover of darkness for immediate deportation back to their country of origin. (Gordon 1). The majority of these include women and children who would otherwise be provided minimal provisions of safety and legal rights under the Hague Programme of 2004. These provisions are also provided under the Charter of Fundamental Rights that the UK has still failed to adopt without the EU consenting to a clause that exempts future and existing UK law from being challenged by the European Commission. Within the Hague Programme, the Receptions Conditions clause guarantees asylum-seekers adequate housing, food, and health care within member states for the duration of their application process. Britain does theoretically provide this. Detained asylum-seekers are put in a maximum-security facility, provided military rations, and given emergency medical treatment if it becomes necessary.

Policy Impact on Prospective Immigrants

Right now, the point system takes the greatest toll on those individuals attempting to emigrate from Africa, particularly countries protected by the European Neighborhood policy that reaches out to countries bordering member states in hopes of enhancing

regional security and cooperation. The United Kingdom has the highest flow of emigration from countries in North Africa in the European Union, but after 2008, we can expect that status to fall behind other countries that attract residents of the Maghreb, including France and Germany. When we examine the current cultural violence in Paris, and Germany's increasing armament against Islamic extremism, it is safe to conclude that the welcome mat will not be extended gracefully to these rejected asylum-seekers—and Britain will not make a significant gain in popularity with its fellow member states. Approximately 300,000 foreign-born individuals will attempt to enter the UK each year, of that number only 20,000 are EU citizens. The majority of those wishing to establish residency for longer than a year are from former colonies, and only 30% of those individuals list employment as their primary reason for immigration. Study opportunities, political asylum, and family connections make up the remaining majority of non-European applicants (Thierry, Rogers 25).

Policy Impact on the European Union

The EU has also established a commitment to students, and providing equal opportunity for study regardless of nationality. In Council Directive 2004/11 /CE, the EU mandates the qualifications and handling procedures for third-country nationals seeking higher education opportunities in excess of one year. This law was due to be transposed by member states in November 2007, and has been by ratified by the United Kingdom. However, the points system once again aids the UK in dodging supranational mandates by allotting quotas for the varying categories of immigration. Students are only ahead of refugees in terms of available visas, meaning that once the state's quota has been filled they will not have the opportunity to study in the academic year of their choosing. This is

especially damaging to US students seeking enrichment opportunities abroad in their late undergraduate years, or graduate students who operate on a strict academic time schedule. It is also harmful to domestic institutions in the UK who rely heavily on the patronage of international students to finance and enrich their departments.

Through the ENP instituted in 2004, the Union committed itself to extending a privileged relationship to those countries immediately bordering member states, including Libya, Algeria, and Morocco, three of the major contributors to the UK's migrant inflow. This plan was a strategic diplomatic effort to strengthen relations between member states and these countries in terms of both economic and political cooperation. By implementing a plan that devalues citizens from these regions (that linger in the lowest earning power categories of the point system); it provides a basis for greater social clash, and contradicts the diplomatic efforts of the EU to expand influence and development in these areas. Close to 90% of those wishing to emigrate from these countries to the UK fall into the student and asylum-seeker categories, and are of lowest priority under the Labour Party's graduated points system; but they account for the greatest number of those seeking entry to state. In the most recent report issued by the European Commission on the progress of the ENP, they stated that certain elements were vital to the success and advancement of the project—specifically greater cooperation between members, neighbors, and the creation of a transparent civil society of member states.

> Civil society contacts are gaining in intensity and variety through the actions by individuals, organisations, businesses and local and regional authorities. **The role of the Commission and the Member States in the civil society dimension is primarily as facilitators**, because public bodies cannot set the agenda for civil society. What the Commission and the Member States can do is to **work to strengthen the scope for civil society** to work, *inter alia* through the regular policy dialogue with the ENP partners. There are also areas, which require public funding, such as

student mobility and, in particular, **building civil society capacity** in the partner countries. Member States and the Commission already support an extremely wide range of activities, reflecting the varying historical, geographic, and cultural background to their relations with the ENP partners. This support is being strengthened, but we also **need to work together and to share information more fully** (European Commission 2006).

According to this report, we see that cooperation from the UK in terms of public policy (in this case immigration) is not only necessary for the success of ENP, but it is also mandated by the EC itself. Through execution of the new immigration legislation, the UK continues to distance itself from the rest of Europe, and risks damaging vital communication efforts that would lead to regional social, security, and economic development.

Additionally, the points system jeopardizes over-arching regional strategies designed to strengthen the global community in terms of both social equality and security. The official EU Strategy for Africa created a comprehensive effort that utilizes supranational resources and member state cooperation to help Africa as a whole achieve the UN's millennium development goals. Though a great deal of the plan calls for massive humanitarian and development aid, it also demands, "Particular attention should be paid to employment policies, the promotion of cultural diversity and turning migration into a positive force in the development process." In this proposal, the EU acknowledges the need for residents of some African countries to seek asylum, and in some cases long-term residency in European nations. The points system plan provides that for an unspecified number of refugees, there will be an opportunity to stay for a period of 5 years, after which if the situation in their home country has not shown signs of improving then they may be granted citizenship. However, "improvement" standards of the Home

Office are minimal at best, and only call for the short-term stability of a government regime in the refugee's country of origin.

Migration scholars and migrants alike should be eager to see the full implementation of this policy, and its effect on the UK at home and abroad. The blatant violations of this proposal are seemingly being ignored by the EU itself, and other human rights organizations that might benefit from bringing this fact to the attention of the European Commission. It does not profit the European Council to remain silent on this issue for several reasons.

Firstly, if the EU executive continues to tolerate the United Kingdom's consistent apathy and flagrant violation of supranational authority they risk losing credibility and authority over other member states struggling with similar problems. Currently France is also experiencing conflict regarding immigration, social inequality, and the preservation of indigenous political culture. If Britain can successfully control and reduce diversity in their country at the expense of human rights, then the current conservative French administration would not hesitate to institute a similar policy of their own. President Nicolas Sarkozy has not even attempted to make a secret of his personal distaste for the immigrant "scum" plaguing French suburbs. Judging from the most recent round of youth riots, and escalating violence towards police it is safe to assume that the French parliament would be open to such protective public policy measures simply to restore calm and stability to these areas. Additionally, if matters such as age and country of origin are already measures for evaluating an individual's utility to the state, then this could be an opportunity for countries like the UK, France, Germany, and Spain to further exclude Islam from European society. Recall the earning power and income variable

previously mentioned in the point system; several of those developing countries listed in the lowest levels of preference and economic consideration are also primarily Muslim. European (and primarily Christian) states could use the income requirements for immigration as an excuse to filter out those individuals who allegedly pose the greatest threat to their sociopolitical culture and security.

Secondly, acquiescing to a policy that removes much-needed agricultural workers from Scotland may bolster Scottish desire to separate from the UK and create yet another membership candidate for the EU with little resources to contribute and heavy needs for supranational subsidies and assistance. In January of 2007, the EC alerted the Scottish National Party that would encounter more difficulty than they advertised when trying to seek membership. Not only have the effects on Scotland's agriculture industry been condemned, but also the public has been galvanized against the points system by the inhumane treatment of illegal immigrants in the region. Beginning with the highly publicized 2005 case of an Albanian family who were apprehended in one of the infamous dawn raids, Scots have been sensitive to their own immigrant heritage and the ethical treatment of policy violators. It would be an uphill battle for the state, which would no longer have a voice in the UN, NATO, and other organizations by riding on the fortunes of Britain. The infant-state would have to compete with Eastern European nations for resources and attention, as well as gain the approval of the French electorate who recently passed a measure prohibiting EU expansion until approved by a French referendum.

Thirdly, both the European Union and the United Kingdom would be invalidating their own claims as champions of humanitarianism and liberal ideology in the

international community. For the UK, they would be directly damaging the lives of individuals and families seeking protection within their borders. Sylvia Vucaj, a thirteen year-old girl deported from Glasgow back to Kosovo described her circumstances to the media as "terrifying", alerting them to a wave of kidnappings in her Albanian neighborhood to obtain girls her age for the sex trade, and describing the desperate depression and illness her mother and brothers faced after being extracted from their UK home of five years. Countless asylum-seekers from across the globe still in the UK live in daily fear of being torn away from their lives in a free and developed country and being delivered back into the physical danger and political upheaval they had barely escaped. Students and even well seasoned professionals from developed and developing nations face being denied the opportunity to pursue disciplinary and economic advancement for the most wealthy and highly qualified individuals from the first world. The European Union would be passively supporting a policy that is in direct contradiction to its doctrine of human rights; not only through the specific mandates previously mentioned, but through their general commitment to non-discrimination in the labor market. Furthermore, they would be supporting a policy that demonstrated prejudice against specific countries, ages, and nationalities, with the potential to grow and expand across member states.

IV. Conclusion

Finally, we see that an expanded points system is simply "bad business" on the part of the UK. Not only does the policy directly contradict key policies within the EU, this further attempt to set themselves apart from an alleged "Union" will succeed in doing just that. As previously stated, there are many other states facing similar problems who

have maintained their "civil society" approach to resolving conflict and meeting the needs of their respective labor markets, and they will not be pleased if a fellow member is permitted to do what they clearly are not. The diplomatic, social, human, and supranational costs of the point policy will undoubtedly alter the landscape of European politics and migration theory if it continues to its full implementation. Citizenship is not a recognized human right, but it IS only right that a state view immigrants not as potential resources for the state, but as humans—as people with lives, values, and non-monetary contributions for a civil society. How the EU chooses to deal with this conflict may result in any one of several possible outcomes. If they continue to turn a blind eye on the situation in the name of member autonomy, then other states will begin to pursue the same immigration system in the name of nationalism or economic strife. In this case, such dissension will lead to one of two ends: the EU holistically reconsidering their approach to external migration and human rights policy, or a final showdown between the EU and the UK the outcome of which will demonstrate which legislative power reigns supreme. In lieu of a compromise, where perhaps the UK decides to distribute the number of visas evenly among HSMP categories and loosens income restrictions on prospective residents, there are only two possible ways for this ideological crisis to be resolved. Either the European Council withdraws the ability of a state to opt-out of certain supranational agreements such as the Charter of Fundamental Rights, or the United Kingdom loses the economic benefit of remaining in the EU itself. The most satisfactory and democratic end is undoubtedly the compromise.

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