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Establishing Multicultural Interdependence in Europe: Overcoming the Legal Challenges Facing Cosmopolitan Citizens

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ESTABLISHING MULTICULTURAL INTERDEPENDENCE IN EUROPE:

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ABSTRACT

Modern states and legal structures around the world are pressed by the forces of globalization to accommodate increasingly diverse multicultural populations. Older and more frequently followed models for cultural integration are rooted in theories of assimilation or liberal pluralism. These theories can demand unbalanced changes from either minority communities or the state. Few theories identify the dual process of interdependence necessary for the democratic inclusion of diverse minority communities in Europe. This thesis explores the historical intent and shortcomings of immigration and integration legislation as it relates to ethnic minority communities in Great Britain and the Netherlands, and makes a case for including a balanced interdependence model in the political discussion of multiculturalism. I argue that promoting multicultural interdependence through immigration and integration legislation could preserve both European democratic institutions and the benefits of difference, in much the same way that the European Union has preserved the legacy of the state.

CHAPTER 1

INTRODUCING THE PROBLEM, METHODOLOGY, AND STRUCTURE

I. STATEMENT OF PURPOSE AND CENTRAL PROBLEM

The aim of the project at hand is to evaluate legal challenges to successful democratic pluralism and multicultural citizenship in Great Britain and the Netherlands—two European Union countries which have approached the integration of minority communities in distinct ways. The dilemmas guiding this research are twofold. Firstly, the thesis will assess the effectiveness of immigration and integration legislation in supporting multi-ethnic societies and democratic integration in Great Britain and the Netherlands. Secondly, the thesis will evaluate the potential of European Union legislation as an alternative model for supporting cosmopolitan citizenship in EU member states. The central goal of the thesis will be to more clearly analyze the shortcomings of current attempts at pluralism in two EU countries, and to provide a new theoretical model for accommodating growing multicultural societies in Europe.

II. COMPELLING REASONS FOR STUDY

Three key motivations have convinced me of the importance of devoting serious time and effort to such an area of research. First, the phenomenon of globalization as it relates to legal structures and individuals is relatively under-studied in comparison to the more popular economic and technological facets of globalization. Growing numbers of communities with hybrid cultures and transnational attachments confront inflexibility in the legal sphere—a reality which should not go unstudied. Second, the unique political

structure of the European Union provides examples of both transnational governance, as well as traditional statehood. Using European Union member states as subjects for study allows for research which touches on both the field of modern globalization studies and more classical political theory. Finally, a changing international political environment places increased global responsibility and accountability on states and transnational institutions to maintain universal democracy. These new demands encourage fresh contributions to academic theory and legal structure. As scholars like Will Kymlicka argue, "finding morally defensible and politically viable answers" to the challenges of diversity and human rights is perhaps "the greatest challenge facing democracies today."[1] Grappling with this challenge from the perspective of law—perhaps one of the oldest institutions in the history of statehood—is a particularly important endeavor.

III. RESEARCH QUESTIONS

Though many questions may emerge from the breadth of the research completed in the present thesis, three have motivated my own work. The first two questions are broader, while the final deals precisely with the content of the case studies. First, I seek to explore why minorities are increasingly finding it difficult to "belong" to their immigrant host-countries. Second, the thesis is motivated by a desire to understand how the state, citizenship, and individual identity are influenced or changed by globalization. Finally, the two case studies attempt to examine how and to what extent traditional models guiding immigration and integration legislation make immigrants' efforts at democratic integration more difficult.

IV. CENTRAL CONCEPTS

I have chosen five concepts as the foundation of my literature review which explore the power of globalization and the state in the definition of identity and citizenship. These concepts include the state, citizenship, globalization, integration, and legal pluralism. Each concept adds to the discussion on citizenship and identity in an era of globalization. The sections on the state, citizenship, and globalization explore the relationship between the individual and the state, and the challenges of new social contracts and diverse communities in an era of globalization. The sections on integration and legal pluralism introduce a variety of traditional options for managing migration, and begin to illustrate some of the difficulties associated with such models in an era of globalization and hybridized identities.

The five concepts emerge together to paint a portrait of the multiple avenues where immigration and integration law combine with state and multicultural community relationships.[i] Each concept begins to articulate a conversation about the state which suggests that identity and its relationship to the state has fundamentally changed. No longer are states homogenous, nor is citizenship necessarily reflective of a particular identity. Furthermore, globalization increases the possibility and probability of a single individual embodying and cherishing 'multiple' identities, or even seamlessly hybrid identities. Modern developments in immigration and integration law make 'seamless'

[i] Though the term 'multiculturalism' is not included as a separate concept, it remains essential to the present discussions. I use the term to signify the diversity of community, ethnicity, race, culture, etc. that is increasingly dominating center stage across political agendas in Europe. Whether European communities are intentionally multicultural or not, the diversity of their societies requires active engagement with community groups that are often seen to be 'at odds' with the larger society as a whole. I am largely of the opinion that multicultural debate and negotiation (through which cultural hybrids emerge) is positive, though only when respectful and democratic forums can be maintained. Additional literature suggests that multicultural engagements may not necessarily be either realistic or beneficial for national communities. I have chosen not to review this literature as a result of both space constraints and the reality that both case studies for the purpose of this thesis actively recognize their multicultural communities in some way.

cultural hybridity somewhat more difficult, especially when identities emerge in opposition to one another. The larger portion of the thesis explores two case studies which have historically negotiated such a problematic of difference through immigration and integration law.

V. Research Techniques, Strategies, and A Note on the Case Studies

I have relied on three techniques for research throughout my thesis. The first portion of the thesis, which defines central concepts, relies on secondary sources published by scholars on each of the main themes. These academic resources place the thesis within a specific scholarly context, and lay the conceptual framework on which the thesis rests. The analysis of case studies in the second and third portions of the thesis relies on primary sources, including legal documents, cases, and interpretations which illustrate state responses to minority integration in the studied countries. Secondary academic resources and the analysis of authors in the field of anthropology and legal studies support the primary sources in the two case study sections.

A Note on the Case Studies

While a more lengthy work could address a larger array of European examples, my own analysis is limited by several practical factors. Time and thesis capacity limits are particularly acute in the case of an undergraduate thesis. An additional research obstacle is provided by the vast quantity of literature available and my proficiency in primarily English sources. These constraints impact the number of case studies analyzed, and also the theoretical literature discussed.

Working against these factors, I have selected the Netherlands and Great Britain as case studies which provide distinct historical negotiations with pluralism and ethnic minority populations. The past academic year gave me the opportunity to spend a semester in both locations, and I thus have an increased familiarity with the obstacles of 'difference' that are unique to the UK and the Netherlands. Both case study countries have a long history of migration and immigration legislation, and have made significant changes to this legislation over the past few decades. The UK and the Netherlands have also employed a similar range of assimilation and pluralistic policies in an effort to integrate minority and immigrant communities.

Thus, the case studies chosen for this study are not arbitrary, and they speak to a larger European phenomenon of legal negotiation with cultural difference. Several edited works deal more comprehensively with European immigration, and are a valuable asset to both the theoretical and historical dimensions of this thesis. Andrew Geddes has contributed a complete study of EU countries with his book *The Politics of Migration and Immigration in Europe*[2] and Randall Hansen and Patrick Weil (eds.) have similarly approached nationality law in their book *Towards a European Nationality: Citizenship, Immigration, and Nationality Law in the EU*.[3]

VI. Personal Preparation and Background

From the beginning of my journey as a student at Macalester College, the possibility of completing an honors thesis in my senior year has been an undertaking I have steadily looked and worked forward to. From the introductory course on globalization, to two independent tutorials on globalization and the European Union in

my sophomore year, and finally to two semesters abroad, the seriousness of my courses have directed me toward the rewarding efforts of writing a thesis as the capstone of my career at Macalester. Two semesters abroad in London, England and Maastricht, Netherlands, offered me a valuable opportunity to explore the place of ethnic minorities from a European legal perspective. A seminar on Ethnic Minorities in British Law while studying in London, and an independent study on a similar subject with a legal studies professor in Maastricht further honed my interest in the legal responses to the cultural hybrids that result from globalization.

VII. Faculty Mentor

Following a significant career of mentorship under the guidance of Professor Ahmed Samatar in the Department of International Studies, it seems most appropriate that he should once again direct my studies in the form of an honors thesis. Professor Samatar's expertise in globalization and global citizenship studies are an invaluable asset as I begin the writing process, and his commitment to excellence is both challenging and inspirational. His familiarity with my learning and writing styles has also proved advantageous throughout the significant task of constructing and editing the thesis.

VIII. Central Conclusions and Project Outline

Approaching the topic of multiculturalism in a multi-state polity like the European Union is a complicated task, but it is necessary in an effort to understand the multicultural challenges that the growing Union faces today. More generally, the thesis seeks to assess the impact of Dutch and British legislation on the success of attempts at

multicultural citizenship and legal pluralism. My research suggests three central conclusions. First, new immigrants confront immigration policies that highlight economic contributions and fail to reinforce the value of democratic institutions. Minorities feel detached from democratic institutions at entry, and are either intent on returning home, or resistant to change. In either case, minority groups remain incompletely integrated into European cultures. Second, new immigrants (or more 'adapted' older migrants) become forced hybrids with citizenship rights that are imperfectly explained or incompletely protected through permanent legal structures. To put it simply, globalization has magnified and increased the number of cultural hybrids, but the state and its institutions of citizenship are still navigating this new world. Third, state legislators continue to be guided by polarized theoretical models in their efforts to 'globalize' their democratic processes and institutions. Rather than seeking a more balanced model for immigration and integration, European states rely on assimilation or pluralist models which encourage cultural 'enclaves.'

In order to begin resolving these problems, immigration and integration legislation should be revised around an interdependence model which seeks to recognize both the benefits and challenges of nurturing migrant communities. I use the European Union's institutions as a model for integration which promotes collaboration between highly diverse communities, as a result of common investment in institutions and common security. Though the European Union is far from a perfect polity, it does provide a unique lens for considering the possibilities of a more diverse 'union' within states themselves that emerges from the benefits of diversity itself.

The first portion of the thesis reviews the available literature on several concepts which are essential to the larger illustration of pluralism in the two European cases studied. These concepts include the *state*, *citizenship*, *globalization*, *integration models*, and *legal pluralism*. The second and third portions of the thesis outline and analyze Great Britain and the Netherlands as two case studies whose legislation creates unique obstacles for multi-ethnic and cosmopolitan societies. Portions two and three explore the legal challenges of accommodating what Ulrich Beck calls "transnational place polygamy,"—a term which describes the processes of transnational attachment, cultural mixing, adaptation and "globalization of biography" that result from globalization.[4]

In the Dutch and the British cases, changes in immigration and integration legislation reflect growing tension between minority or hybrid communities and 'native' communities. As this thesis will suggest, however, this instability will not be made right through policies which insist on assimilation to a one-dimensional cultural or national identity. At the same time, pluralistic legislation which seeks to integrate the legal systems of countless minority cultures is equally impractical and difficult to maintain. In both case studies, legislative amendments must find a middle ground which both defines the rights and obligations of citizenship in a democratic state, and protects minority interests.

The final portion of the thesis will place the evaluations of the case study countries into the larger context of the European Union's attempts to define its own Nationality Law. The thesis also explores the possibility of an EU constitution as a practical model for defining the rights and obligations of transnational citizenship.

The organizational structure of the project will consist of several thematic chapters, outlined below.

Chapter 2: Literature Review and Main Concepts

I. State

II. Citizenship

III. Globalization

III. Integration

IV. Legal Pluralism

Chapter 3: Case Study Review: An Evaluation of Immigration and Integration Legislation in the United Kingdom

Chapter 4: Case Study Review: Challenges of Legal Pluralism in the Netherlands

Chapter 5: Searching for *E pluribus Unum:* Democracy, Citizenship, and Constitutionality in the European Union

Chapter 6: Conclusion

CHAPTER 2

LITERATURE REVIEW

I. INTRODUCTION

Several thematic areas of literature guide the present analysis of European immigration and integration legislation. Though I have narrowed this thesis to two case studies, the theoretical background available on statehood, globalization, integration, pluralism, and citizenship is more generally reflective of global phenomena outside the case countries and the European continent. This portion of the thesis does not attempt to review the entirety of the literature on each of these subjects, but rather offers reflections on several elucidating texts within each field. As a whole, the chosen literature attempts to reflect the impact that globalization has had on state processes of democratic and multicultural citizenship. The final sections present several theoretical tools for managing difference through legal channels, and suggest limitations for their practical realization in democratic communities.

The first portion of this chapter evaluates theories of statehood and state sovereignty, approaching the major questions and dilemmas that have emerged over time. The second section builds on these theories of statehood with an analysis of citizenship. The third portion analyzes the influential changes that globalization has on both statehood and citizenship, before introducing the more specific theories relevant to minority and immigrant integration in the fourth portion. The final section will analyze in more detail the concept of pluralism from a legal perspective—introducing two central texts as a framework for analysis. A few concluding statements will raise central theoretical questions that guide the thesis and the explorations of the case studies.

II. THE STATE

Debates about state sovereignty are almost inseparable from modern academic conversations about globalization and law, and thus a discussion of ethnic minorities in European law would be wholly incomplete without some reference to theories on the state. In order to understand state legislation, it is first necessary to understand the debates about the state and its responsibilities. In particular, three areas of state theory emerge as essential contributions to the present discussion.

The first essential theme in state theory labels the state as a center of power. As Joseph Camilleri notes, historical scholarship is divided on this issue.[5] He identifies absolutist theorists like Bodin and Hobbes as scholars who define the state primarily as "individuals and institutions that exercise supreme authority within a given territory or society...identified with the power to make, administer, and enforce laws and with the network of institutions necessary for this purpose."[6] In contrast, he introduces Burke, Rousseau, and Hegel as theorists who understand the state as "not just the institutions of government but the politically organized society, the body politic, or the nation...the state is a community of free people based on an implicit or explicit consensus."[7] In both cases, states are endowed with a "supreme coercive power," but this power is derived from a variety of different sources.[8]

In the first, state power can be seen best through Weber's definition of a state as a polity which "successfully claims the monopoly of legitimate use of physical force within a given territory."[9] Hall argues that Weber references not the haphazard use of force, but the "sanctioned domination" that is arrived at through a combination of legitimacy and authority deemed acceptable to society.[10] In this understanding, the center of power lies

within the state institutions themselves, rather than outside them. In the second, societal-based understanding of the state, the primary centers of state power are located, if imperfectly, within the "body politic," or a consensus-giving body of free individuals.[11] As Hall writes, state practices are legitimized through a system of law and "the forms through which the citizens are represented or agree by formal electoral procedures."[12] Despite differences in understanding the appropriateness of using force and the centers of state power, both sides of the theoretical spectrum share an interest in the relationship between state power and state subjects.

The common interest in the "body politic" between radically different schools of political theory brings us to a second theme important to the present discussion, namely the position of the individual and civil society in relation to the state. In the Hobbesian context, Camilleri notes that the concept of "a social contract between ruler and ruled" was "substituted for...a contract in which all individuals agreed to submit to the state."[13] Under this type of social contract, the individual relationship with the state is one of submission, with few limits. In contrast, the Lockean branch of state theory takes a very different perspective on this contract, while maintaining the traditionalist views on state sovereignty. In the Lockean conception, "society and the state existed to preserve individual rights...and...such rights were a limitation on the authority of both state and society."[14] As Camilleri highlights, the Lockean understanding of the social contract places the power of the state in the consent of civil society—a consent which "could be given only in return for adequate protection of individual rights."[15]

This understanding of the relationship between society and the state informs the notion that "the whole machinery of the state was supposed to be activated and controlled

through law."[16] Poggi alludes to the power of law in mediating the relationship between state and subject when he writes "The activity of legislation itself...had aspects of utter discretionality, for it expressed the sovereign...will of the state. However...it was surrounded by constitutional constraints—both rules of procedure and sets of inviolable rights."[17] In short, the law represents a crucial medium for mediating the relationship between individuals and the unrestrained use of state force. Even when it is imperfect, law remains the textual representation of the state's investment in the maintenance of social order.

The law as a product of the sovereign state can protect or destroy the liberties associated with a Lockean social contract. When laws protecting individual liberties are enforced, the social contract is inevitably strengthened. When state disrespect for the law or restrictive legislation fails to support society as a whole, the social contract loses its potency. In the Hobbesian interpretation, maintaining sovereignty in law meant "doing away with every right of the people," while Locke argued that sovereignty could only be maintained through respect for natural and moral laws that trumped state-created legislation.[18]

Locke and Hobbes suggest two important roles for law in state theory. On one hand, law can buttress the sovereign will of the state, particularly when it is backed by state force. On the other hand, law can limit the powers of the state in favor of its citizens—protecting them and affirming their power as a part of civil society. Stuart Hall argues that the development of the modern state is characterized by "states in which power is shared; rights to participate in government are legally or constitutionally defined; representation is wide...and the boundaries of national sovereignty are clearly

defined."[19] He also highlights the supreme importance of individual liberties in the modern state. Where previous regimes had used law to overrun these liberties, the modern state was expected protect them, and "interference...could no longer be at the whim of crown or state, but had to be sanctioned *legally*. Even the state was subject to law."[20] The development of international organizations and international law has solidified this respect for the rights of the individual, though the power of the state's sovereignty is continuously an obstacle to the protection of these internationally sanctioned rights, and the debate is far from complete.

This discussion of the state is important to the present thesis for three reasons. First, debates about the role of law as a mediator between the sovereign state and individuals are essential to a discussion of modern states with diverse minority populations. In the two case studies analyzed, law is seen as a way to enforce the strict boundaries of the sovereign state, rather than as a dynamic medium for recreating the 'body politic' and protecting individual liberties. Second, classical theories may offer insight into managing the challenges of citizenship in an era of globalization. Classical state theory suggests that the Hobbesian state with its strict boundaries and few liberties is not the only option, though modern states may emulate this model more frequently. Rather, theorists like Rousseau and Locke suggest that law and state sovereignty can be invested in the protection of a diverse body politic and individual liberties. In an era of globalization, this latter understanding may prove more fruitful, particularly if it encourages diverse democratic polities which balance the legal obligations of citizenship with respect for difference. Finally, a discussion of the state is important for purely practical reasons. Despite some scholarly predictions which suggest the end of the state,

the state continues to be the most important institution in international affairs which can maintain an effective social contract with the individual in the form of citizenship.

III. CITIZENSHIP

Citizenship, in its simplest form, connotes the "social contract" between a state and the individuals that are ruled by and create state institutions.[21] As Poggi writes, citizenship is "a set of mutual claims and growing claims and reciprocal involvements binding together the state and the individuals."[22] Though definitions for citizenship have varied over time, most generally acknowledge citizenship as a relationship with "mutual rights and responsibilities."[23] Croucher, for example, identifies T.H. Marshall's definition of the civil, political, and social rights associated with ideal citizenship as an increasingly influential guide for modern citizenship.[24] Three debates about citizenship will guide this thesis.

First, the concept of citizenship recalls the debates about state sovereignty and the social contract, with a particular focus on the role of civil society and individually protected rights as limits on state power. Alfonso Alfonsi identifies two forms of citizenship.[25] The first, known as the "Aristotelian-republican model," identifies citizens as "one who either takes, or is subject to decisions," and who "can develop their own personal identity only within the framework of common traditions and recognized political institutions."[26] In the second "Lockean-liberal" model, "individuals remained external to the state, contributing to it in terms of certain rights and obligations...The state was, in its turn, to guarantee individual rights and equal treatment to its citizens."[27] In the first, the role of a citizen is incredibly limited, while in the second, the citizen is actively

involved in the creation and sustenance of the polity. The first seems to prevent an active civil society, while the second encourages it. Poggi writes:

> A potentially participant citizenry imposes powerful constraints on the autonomy of elites; and these constraints are probably all the more significant to the extent that the logic of social, economic and cultural advance calls forth...an increasingly diversified, informed, sophisticated, demanding citizenry.[28]

The rights of participatory citizenship are even more important for multi-ethnic citizens in an era of globalization. The practices of citizenship give minorities a voice in state politics, and offer a set of 'tools' for maintaining hybrid identities.

A second important facet of citizenship raises the question of 'belonging' and national identity, and the larger concept of the nation-state. Authors like Karl Deutsch and Charles Tilly have supported the association of citizenship with nationality, though T.K. Oommen's theories are most useful for the current discussion with their argument that this association is both historically and currently problematic.[29] In particular, Oommen discusses the "unstated assumption...that the population of a state ought to be homogeneous and its citizens should be nationals," in cases where the terminology of the nation-state is used.[30] In cases of historical state-sponsored movements toward nationalism, Oommen argues that "most states have not achieved their avowed objective of homogenization of their populations."[31] Nonetheless, efforts to fuse a static or homogenous identity with the geographical borders are far from exhausted, and current legal obstacles facing minority populations in Europe vividly illustrate these attempts.

In an era of globalization, Oommen suggests that "While nationality and ethnicity as identities are exclusionary and could be inequality generating, citizenship can essentially be inclusionary and equality oriented."[32] In a similar vein, Habermas notes that citizenship can be defined as a fluid "'patriotism of the constitution,'" in which "the

very concept of nation adapts itself gradually to the affirmation of citizenship."[33] In essence, the identity of the polity can be created and reaffirmed by its citizens through processes of citizenship. This is particularly the case in democratic societies, where, as James Rosenau highlights, "individuals...are deeply invested in the realization of both their own and society's needs."[34] In the case of hybrid or ethnic minority 'citizens,' legislation might support both needs at the individual level, and request commitments to the larger societal and political needs of the country.

A final and more current quandary about citizenship is introduced by the concept of transnational, or global citizenship. In addition to theories which suggest that states are losing their claim on sovereignty, scholarship on citizenship follows a similar argument in placing citizenship beyond state boundaries. In some cases, as in the European Union, non-state citizenship is no longer a theory—it exists in fact, though it remains difficult to catalogue "as postnational, or supranational or merely a sophisticated set of intergovernmental agreements that mimic federal arrangements."[35] European Union citizenship is associated with a variety of civil, political, and social rights, including the right to vote in European elections, though state citizenship has not changed, and European Union citizenship is given only to the citizens of the EU member states.[36] Though the European Union removes the concept of citizenship from its traditional state boundaries, authors like Seyla Benhabib argue that political rights are still largely linked to the nation-state, and more importantly, membership in such a political community.[37]

Benhabib and other authors like Peter Singer look to the concept of global citizenship as an effective way of building global communities endowed with both rights and global responsibilities.[38] Both Singer[39] and Benhabib[40] cite Kant's theories on

Perpetual Peace in their advocacy of global institutions of citizenship and global communities. Benhabib examines the role of the state as an institution of political membership, and argues that "New modalities of membership have emerged, with the result that the boundaries of the political community, as defined by the nation-state system, are no longer adequate to regulate membership."[41] Singer makes a similar argument, though he suggests that numerous political problems contribute to the necessity of a global government and community that can adequately confront such pressing issues as global climate change and the enforcement of international law. International institutions, global problems, and transnational cultures all contribute to a redefined concept of citizenship, particularly for individuals who constantly cross political borders. The larger concepts of transnational and global citizenship are two admirable possibilities, though a more state-based concept of citizenship is still necessary in the absence of international institutions which can uphold a 'social contract' or provide essential goods and services.

The discussion of citizenship is important to the present thesis precisely because of its growing flexibility in an age of globalization. Never before has the possibility of a social contract which goes beyond the state been in reach. Though perhaps still far off, the possibility may be increasingly attractive to individuals whose interests (like minorities) are not being met by traditional state systems.

IV. GLOBALIZATION

Many early definitions of globalization have labeled complex technologies and economic flows as the most significant features of the new global phenomenon. In

contrast, others have labeled the movement of people and cultures as a driving force. Two central impacts of globalization are essential to the present work.

First, globalization has had, and is having, profound impacts on the state as a political and social institution, and on the practice of politics itself. Peter Singer argues that this change results from the growth in international political and economic institutions, international law, and the necessity of cooperative action in an effort to resolve widespread global problems.[42] In short, globalization has opened up the political sphere to an international community. The state is no longer offering a monologue on the world stage, and in cases of terrorism or private military groups, it no longer has a monopoly on the use of force, legitimate or otherwise. State leaders negotiate with other state leaders, but they also negotiate as frequently with representatives from non-governmental organizations, with civil society groups, and with national and transnational corporations. The greatest security threats for a state in the 21st century are not limited to weapons proliferation, or even military conflict, but include the risks of environmental crisis, HIV/AIDS, global poverty, and dozens of other internationally pressing issues.

Sheila Croucher captures the impact of these realities by referencing Keohane and Nye's interdependence theories, which suggest that states have become dependent on each other, both as a result of "resource needs, such as oil," and a larger "degree of coordination and cooperation among states that is not reducible to the realist model of brute power relations."[43] More specifically, Keohane and Nye argue that international politics in an era of modernization (or globalization) can be explained by a condition of complex interdependence in which "transnational actors are increasingly important,

military force is a less useful instrument, and welfare—not security—is becoming the primary goal and concern of states."[44] Whether the realities of interdependence are successfully managed, however, is a continuously debated question, particularly in a post-September 11 world when issues of global security and international welfare erupt violently when they are left unresolved.

Despite the importance of international actors and global problems, the state has not disappeared, but must navigate the chaotic maelstroms of globalization's storm. As Joseph Camilleri writes, globalization does not herald the end of the state, but makes it increasingly difficult for states to maintain "old" democratic institutions in the process.[45] Though he wrote over ten years ago, he captures vividly the moment of great political change that continues to challenge states today. Camilleri writes:

> The contemporary period is one of considerable fluidity, when the most fundamental questions regarding the exercise of power and authority have been thrown back into the crucible of history...old habits and old ideas will persist even as new ones develop to cope with the emergence of a pluralistic polity that is at once part local, part regional, part national, and part transnational.[46]

In a sense, globalization has re-opened the classical debates about state power and sovereignty, civil rights, and the power of law. These debates are particularly critical in an analysis of globalization's impact on the individual and identity. Hybrid identities and transnational attachments complicate the traditional processes of democratic life—but they also make concrete foundations of democracy more essential.

The second important facet of globalization for the present discussion is its ability to redefine the nature of citizenship, complicate individual identity, and as a result, change the face of national identity. This process is in part a practical one. As Stephen Castles writes, "Well over 100 million people live outside their countries of birth today.

Some 20 million of them are refugees," and these migrants contribute significantly to "the formation of new ethnic groups in receiving countries."[47] With the advance in transportation and communication technologies, as well as the increase in refugee populations and migrant flows, migration has become a more prominent reality for many Western countries.[48]

In addition, globalization has had the more intangible effect of changing the identity of migrants. Ulrich Beck writes that the sovereignty of the territorial state "is grounded upon attachment to a particular place," while globalization encourages global networks, and a global society of networks—"none of them specific to any particular locality" and which "cut across the boundaries of the national state."[49] Though the nation-state has certainly not become obsolete, Beck argues that globalization introduces the possibility of a "cosmopolitan society" in which citizens worldwide are bound in "a global nexus of responsibility" to each other.[50] In addition to this possibility, globalization also facilitates what he calls "transnational place polygamy," and "globalization of biography."[51] He defines 'transnational place polygamy' as a "marriage to several places at once, belonging in different worlds...the gateway to globality in one's own life; it leads to the globalization of biography."[52] One only has to walk down a cosmopolitan city street to realize the truth of Beck's claims. Whether globalization of biography occurs in German-Ethiopian, Polish-English, or Czech-Italian families, the transnationality and diversity of attachments are too numerous to count. Equally valuable for political scientists is the increasing frequency of successful cultural hybrids. For states seeking to define a homogenous national identity, however, the globalization of biographies is inevitably one of the greatest challenges to state sovereignty because it

means that the oppositions between "separate worlds (nations, religions, cultures, skin colours, continents, etc.)...must or may lodge in a single life."[53] Resolving and learning to accept these oppositions will be critical to navigating statehood in an era of globalization.

'Globalization of biography' may mean the acquisition of dual citizenship, but it is also a more inherent transnational identity that resists boundaries. To the state seeking to maintain its sovereign and homogenous authority, this facet of globalization could prove insurmountable, particularly as globalization increases more diverse cultural pairings and amalgams through global communication, immigration, and the movement of individuals from around the world. In the endeavor to define a world community of interdependent states, however, cosmopolitan citizens with globalized biographies could be an asset in bridging the gap between the old sovereignty and the new.

V. INTEGRATION

Though the present thesis approaches topics central to state structures (in particular the law), globalization, and citizenship, it also seeks to provide a theory-based analysis of the integration and citizenship programs in each of the two case countries. Two authors are central to my theoretical analysis. The first theories of integration are advanced by Stephen Castles in his book *Ethnicity and Globalization*.[54] Additional theories are introduced by Robert Waters in his book *Ethnic Minorities and the Criminal Justice System*.[55]

Stephen Castles advances one additional redefinition of the relationship between the state and the individual in his definition of multicultural citizenship as "a system of rights and obligations which protects the integrity of the individual while recognizing that

individuality is formed in a variety of social and cultural contexts."[56] Multicultural citizenship seems to parallel James Rosenau's definition of democratic citizenship, though Castles' definition is more sensitive to the specificities of migrant and minority cultures in the modern state system.[57] Castles also approaches the difficult problems of integration, and his theories inform the interpretations of the case studies in the later chapters of the thesis. He outlines three "ideal models" for the integration of immigrant communities in Western culture: "differential exclusion, assimilation, and pluralism."[58]

The first, and perhaps most important is "differential exclusion," or "a situation in which immigrants are incorporated into certain areas of society (above all the labour market) but denied access to others (such as welfare systems, citizenship and political participation)."[59] Furthermore, he clarifies differential exclusion in the legal realm by noting that "Exclusion may be effected through legal mechanisms (refusal of naturalization and sharp distinctions between the rights of citizens and non-citizens) or through informal practices (racism and discrimination). Immigrants become ethnic minorities, which are excluded from full participation in society."[60] The distinction between legal and informal mechanisms of exclusion is vital to the present thesis, as the legal obstacles Castles mentions will be central to the discussion of the case studies.

Castles' second model for integration is assimilation, which he identifies in the short-term as:

> The policy of incorporating migrants into society through a one-sided process of adaptation: immigrants are expected to give up their distinctive linguistic, cultural or social characteristics and become indistinguishable from the majority population. Immigrants can become citizens only if they give up their group identity.[61]

Castles also identifies a specific long-term "integration" goal in many European countries which places an emphasis on gradual rather than immediate assimilation, though the emphasis on the shedding of cultural identities is the same.[62] Castles highlights the importance of a colonial history on the emergence of policies of assimilation in countries like Great Britain, and notes that "ideas on citizenship, civil rights and political participation" are tied to a larger image of cultural belonging and the perception of a "common culture."[63]

A third model for integration, labeled "pluralism," is often a result of government realizations that assimilation models were not effective in encouraging a sustainable diverse population.[64] Upon legal acceptance into society through immigration, Castles argues that pluralistic communities accept:

> Immigrant populations as ethnic communities which remain distinguishable from the majority population with regard to language, culture and social organization...Pluralism implies that immigrants should be granted equal rights in all spheres of society, without being expected to give up their diversity...with an expectation of conformity to certain key values.[65]

Though pluralism is understood to be a single model which maintains the diversity of immigrant communities, pluralistic polices are not always uniform, as different levels of assistance for the maintenance of cultural practices exists in various case studies.[66]

The second important author who contributes theoretical models of integration to my analysis of case studies is Robert Waters. Though he approaches the theme of immigrant communities and ethnic minorities from the more narrow perspective of the criminal justice system, he offers several conceptual models for understanding the adjustment process that occurs as immigrant communities are accepted into larger society.[67] Waters maintains the theoretical assimilation and pluralism models used by

Castles, though he includes a specific model for "integration," in which minority communities build cultural enclaves within the larger society, "at the price of having an 'exclusive' boundary placed around it...by the majority group."[68] In his model for pluralism, Waters highlights the possibility of "belonging" and "dual membership to both the majority and the minority groups" in a number of economic and social rights areas.[69]

Notably, neither Waters nor Castles introduces a separate model for reciprocal pluralism, in which both the majority and minority contribute to national identity formation. Castles' active definition of pluralism, in which "explicit multicultural policies...imply the willingness of the majority group to accept cultural difference, and to adapt national identity and institutional structures," comes close, but it says very little about the combined expectations of encouraging cultural difference while maintaining the cornerstones of the majority's political heritage.[70] Indeed, both authors seem to dismiss the importance of cultural adaptation and redefinition that happens naturally in dynamic societies, and there seems to be a lack of theoretical "middle ground" between the maintenance of cultural diversity and majority institutions.

This absence of a middle ground between assimilation and pluralism is particularly problematic where minority and hybrid communities in the case studies are concerned. Assimilation and pluralism in their ideal forms rarely, if ever, exist in democratic societies. Legislation based entirely on assimilation runs the risk of denying minorities basic human rights. At the same time, a wholly pluralistic polity risks crippling itself and its institutions through the adoption of too many legal codes. In many cases, the result of using such ideal types as models for legislation is the creation of imperfectly

supported hybrid communities who feel no real obligations of citizenship. The problem of legal pluralism continues to challenge legislators, scholars, and citizens.

VI. LEGAL PLURALISM

Without an acceptable theoretical definition of pluralism, the problem of negotiating difference within a state's legal structures becomes even more difficult. Using Castles' and Waters' definitions, Western legal systems could entirely exclude minority practices, or be consumed by them. Within the spectrum of pluralism, state legislators run the risk of handicapping their own systems of law and democracy by introducing a variety of autonomous cultural systems, or they risk alienating minority communities through their unfamiliarity with diverse practices. Benhabib captures the difficulty between valuing universally championed "rights" on one hand, and valuing an organized and effective polity that can enforce these rights on the other. She writes that "universalists and cosmopolitans judge the closed-door policies of the wealthy nations of Europe and North America to be forms of organized hypocrisy" while "decline-of-citizenship theorists point to values such as the rule of law, a vibrant civic culture, and active citizenship, which are equally important."[71] In the difficult balance between assimilation and pluralism, the law seems to offer few answers, though legal scholars continue to search for adequate integration models.

Two of the most comprehensive resources I have found on legal pluralism are Werner Menski's *Comparative Law in a Global Context* and Prakash Shah's *Legal Pluralism in Conflict*.[72] Menski notes that "globalization appears to have created hybrid results rather than uniformity, leading in political science terms to a bifurcated,

multicentric world," and that "enlightened universalism...must mean and involve intrinsic respect for plurality and diversity."[73] In light of globalization's impacts and the debates over pluralism in Western societies, Menski argues that in law, some pluralism is unavoidable, and must be approached from "a radical view of equity as a foundation for ultimate equality...finding justice from case to case over rigid adherence to precedent."[74] Menski argues for a social science approach to law, and advocates Masaji Chiba's "tripartite model of law" as a way to understand universal, Western, and other official legal systems "as interacting with unofficial laws and legal postulates. None of these elements ever exists in isolation; they continuously interact in dynamic fashion. Law, thus, is always plural."[75] This approach to legal systems suggests that "law," even if official can never be wholly separated from identity, nor can it remain static in the face of difference. Menski also introduces Chiba's concept of the "identity postulate of a legal culture, which guides a people in choosing how to reformulate the whole structure of their law...in order to maintain their accommodation to changing circumstances."[76] This concept of 'identity postulates' is a valuable theory for understanding the possibility of legal pluralism in Western societies, in part because it suggests that Western systems of governance and diverse individuals are already equipped to manage difference.

Prakash Shah brings Chiba's concept of the identity postulate into the context of state sovereignty and British law.[77] He notes that "competition between different postulates, whether in space or in theory, is unavoidable, and...these postulates must reach accommodation or integration under a more inclusive one."[78] Shah complicates Chiba's definitions of pluralism, however, by reintroducing the concept of state sovereignty and seeking an "identity postulate" in the case of a Western legal system

"which faces the inescapable fact of the transplantation of 'foreign' legal cultures on the soil over which it seeks to assert territorial jurisdiction."[79] Shah argues that in the British case, immigration law and "race relations law" are "the chief elements of the...strategy for coping with legal pluralism."[80] As this thesis will argue, the use of immigration and integration legislation to "cope with" or resist pluralism is not unique to Great Britain, and the possibility of pluralism is greatly complicated by the modern state system. A balanced model between assimilation and pluralism could nurture both plural legal frames of reference and maintain the strength of democratic state systems.

A unique contrast to Menski and Shah's arguments is provided by Peter Singer. Though Menski and Shah seem to reject a universalist view of international law, Singer offers the philosophical, rather than legal view, that it is not useful to become tangled in discussions about moral relativism and "cultural imperialism."[81] Singer suggests instead that these discussions should be framed in a way that "allows for the possibility of moral argument beyond the boundaries of one's own culture."[82] Singer argues that such universal discussions are essential to the development of global ethical principles for a that are "sound, defensible, and justifiable," while still being sensitive to and informed by a diversity of cultures and opinions.[83] Furthermore, he notes that "some aspects of ethics can fairly be claimed to be universal, or very nearly so," and these can aid in the creation of guidelines for state participation in an international community.[84] The creation of global respect for "one law," as he calls it, is only one dimension of global change necessary in an effort to "respond ethically to the idea that we live in one world."[85] While Menski and Shah's theoretical models approach the problem of difference from within state legal structures, Singer argues for the creation of a larger law that goes beyond the

capacity and reach of states. Singer's theories are valid in supporting the creation of a stronger European Union citizenship to supplement state citizenship.

VII. CONCLUSION

The growth of significant ethnic minority populations in both Great Britain and the Netherlands as a result of globalization raises several significant questions about both the integration of difference and the state system itself. The literature and theories identified here inform the analysis of the two case studies presented in the thesis. In summary, the literature on the state, citizenship, and globalization suggests a changed role for the state in maintaining its relationship with its citizens. Globalization has transformed state populations, but the state remains the primary guarantor of democratic rights associated with citizenship. The literature on integration models and legal pluralism suggest an unclear path for the state as it navigates its new responsibilities. Torn between ideal models for assimilation and pluralism, and faced with growing hybrid communities, states are left with legal structures that offer little hope for integrating highly diverse populations into common practices of citizenship.

CHAPTER 3

CASE STUDY REVIEW: AN EVALUATION OF IMMIGRATION AND INTEGRATION LEGISLATION IN THE UNITED KINGDOM

I. INTRODUCTION

Where the United Kingdom is concerned, Roger Ballard writes, "What is clear…is that the United Kingdom is by definition a multi-national society, even if it is one within which the English have long enjoyed a position of…unquestioned hegemony."[86] Despite a long history of multicultural and global exchange, heated debates about cultural pluralism and British identity are central to political and academic research in the UK today. The present historical moment demands a new approach from Great Britain—perhaps not all that different from the American project of "the great melting pot" envisioned so long ago. Unlike the United States, however, Great Britain is only now being forced to confront the changing cultural and ethnic makeup of its democratic society. Minority communities of varying generations have sought to redefine their own cultures in order to form "hybrids" with British traditions, and have succeeded to varying degrees. In some cases, members of minority groups are appreciated as an actively involved part of the British population. In other cases, particularly those that spark hostility in the national media, minority groups have difficulty meeting the expectations of British society.

Britain's minorities are not the only communities undergoing change. Great Britain has also tried to define itself as a multicultural polity. Immediately following the independence movements of many British colonies, Great Britain had relatively liberal

immigration and integration policies, though these shifted as minorities became less inclined to adopt British traditions and practices. In an effort to protect national institutions, traditions, language, and identity, the British government turned to immigration and integration legislation to limit the influx of migration. Unfortunately, the attempt to rigidly define national British identity through legal standards limits the successful cultural, ethnic, and civic integration of minorities, and the challenges continue to increase as globalization further diversifies the British population.

According to the BBC and official estimated statistics, the year 2006 brought record highs in immigration and emigration to the UK.[87] Over 591,000 individuals crossed UK borders to stay for a year or more in a wave of immigration that was offset only by an exodus of around 400,000 individuals.[88] Government statistics reveal that 343,000 (over half) of the incoming immigrants were non-British or non-European.[89] In stark contrast to such diverse immigration, the BBC notes that "just over half of those leaving were British."[90] The BBC notes several patterns, the first of which is that "Because so many people emigrated the rate of population growth has been the lowest for three years."[91] Secondly, they note that these statistics illustrate a larger "pattern of long-term massive movements of people in and out of the UK." Neither the BBC nor the British government is quite sure what to make of these statistics. While the article reveals a tendency to push legislation limiting non-European immigration, it also quotes a government official who argues that:

> No-one has a real grasp of where or for how long migrants are settling...The speed and scale of migration combined with the shortcomings of official population figures is placing pressure on funding for services...This can even lead to unnecessary tension and conflict.[92]

Regardless of their clarity, such statistics and their reflection of societal conditions have a tangible impact on the legislation and official responses to the reception of non-European immigrants in Great Britain. Without a clear idea of what common services are needed, or even what problems exist with the current minority population, it is difficult for the British government to support a multicultural community democratically. Furthermore, if minorities are unable or unaware of the resources available to them, or if they feel they cannot participate in democratic life effectively, they may quickly feel disenfranchised, and be an increasing problem for the British population and government.

The quoted statistics illustrate only the most recent example of a longer trend of globalized migration that has increased rapidly over the past few decades. Despite a long history of migration, and a collection of increasingly restrictive legislation measures, Great Britain seems no closer to managing its non-European migration than it was ten years ago. As this case study will illustrate, Great Britain's population has become globalized, but its immigration and integration laws have not followed suit. The UK is already home to a large and diverse ethnic minority population, and British legislation seeks to manage this population by closing its doors, rather than by focusing on integration through strengthening its democratic processes. As this chapter will argue, Britain has articulated a policy of assimilation through its strict immigration and integration controls. Though immigration policies apply to non-citizens and non-residents, Britain's policies have not been combined with either integration or pluralistic policies for already existing communities. The result is a growing migrant community that is partly "forced" to be hybrid, without adequate support structures that could increase respect for the British political system. Those minorities who are given

citizenship rights are rarely taught the value of democratic participation, and state legislation directed at bridging racial or ethnic divides has been limited or inconsistent. The greater portion of this chapter will focus on Great Britain's immigration policies as the clearest illustration of strict integration rhetoric, along with a brief discussion of attempts at pluralism through race relations will also be included.

This chapter will begin with an outline of the multicultural and ethnic minority presence in the United Kingdom. A second section will explore the historic foundations of state-created legal obstacles to their immigration and citizenship. The third section will review the most recent government perspectives on immigration. A final section will reflect on the absence of consistent integration policies with respect to an existing ethnic minority population, and will discuss the implications of British immigration legislation for this community.

II. HISTORY OF MULTICULTURALISM IN THE UNITED KINGDOM

The Institute for Public Policy Research estimates that 678,000 individuals born outside of the United Kingdom call London home.[93] Even with the existence of diverse cities like London, and statistics which suggest a non-White ethnic minority presence of almost 8% across the whole of the United Kingdom, the struggle to welcome difference is still very real for politicians and policymakers. The problem is shouldered both by minority citizens themselves, as well as by the British government. Minorities and British politicians are equally frustrated by the apparent disconnect that separates them. The British government feels threatened by radical and fundamentalist members of minority religious groups, and minority groups feel equally threatened by British demands that they adopt cultural and educational traditions divergent from their own. Some minority

groups have become relatively integrated into society, while others prefer to remain in isolated cultural enclaves. In either case, Great Britain as a whole continues to struggle with a changing political and societal community that is managed imperfectly by immigration and integration legislation.

As a result of Britain's colonial past, the issue of migration and citizenship has almost always been a prominent one in British legislation. As Randall Hansen notes, "at the empire's peak in the twentieth century some 600 000 000 individuals had the technical right to enter the UK and avail themselves of all the rights now associated with British citizenship."[94] Though small groups of minority communities existed before the 1940s, much of the significant immigration occurred under the 1948 British Nationality Act, which still maintained the rights of colonial subjects to enter the UK freely.[95] From 1948 until 1962, the existing British Nationality Act supported the entrance of over 500,000 non-white British subjects from the Commonwealth.

As ethnic minority communities grew, they were recognized as the foundations of a multicultural society. Throughout the 1950s, however, the liberal British perspective on the freedoms of Commonwealth subjects began to change.[96] Legislation in 1962 increased immigration controls and discouraged non-white migrants seeking entry to the UK.[97] Though a variety of legal developments now discourage multicultural migration, Great Britain has not been able to neglect its significant multicultural community. European migration has also played a role in the development of an ethnic minority presence, while migration from New Commonwealth countries in the West Indies, the Indian subcontinent, and East Africa solidify Britain's status as a multicultural polity.[98] As Hansen notes, the predominantly non-white immigration from 'new' Commonwealth

countries peaked in the 1960s. Legislation responding to the growth of the minority presence also became more obvious at this point in Britain's history.[99]

Despite legislative changes that continue today, Britain's multicultural community continues to grow both in size and diversity. According to the 2001 Census, half of the UK's non-white ethnic minority population is of Indian, Pakistani, or Bangladeshi origin.[100] This amounts to over 3 percent of the UK's total population. Additionally, just under two percent of the total population, or around 25 percent of the ethnic minority population, represents black Caribbean and black African communities.[101] Individuals with mixed ethnic identity represent 1.2 percent of Great Britain's total population, and account for approximately 15 percent of the ethnic minority presence in the UK.[102] As current events and security concerns prompt worries over a diversifying population, Britain's policy makers and academics continue to struggle with the subject of ethnicity in law. The current failure to accommodate difference and define a dynamic British identity suggests that the UK, like other European nations, is finding it difficult to navigate a road towards pluralism.

III. LEGAL OBSTACLES

In order to better evaluate the history of immigration and the ethnic minority presence in the UK, several pieces of British legislation beginning with the 1962 Commonwealth Immigrants Act will be discussed here. While the entirety of British immigration legislation cannot be included, I have attempted to select and review legal examples which have had a wide-reaching impact on the nature of British responses to multi-ethnic citizenship. Each piece of legislation was passed in response to a perceived

need on the part of the British populace to protect its borders or define its community, sometimes with legitimate cause. As decades have passed however, globalization has influenced the growth of a thriving hybrid cultural population which has not been adequately nurtured by British legislators.

1962 Commonwealth Immigrants Act

The 1962 Commonwealth Immigrants Act marked the first time that immigration and nationality legislation defined British nationality in terms of United Kingdom residency and 'belonging,' rather than by official citizenship and passport possession.[103] The Act was the beginning of Britain's efforts to define its identity in the post-colonial era. For the British, redefining their nationality and immigration legislation was one way to separate their democratic institutions and national personality from the newly independent colonies. It also had the practical advantage, from the British perspective, of securing British territorial boundaries against a potential influx of colonial migrants. Within the historical context, then, the legislative changes can be seen has territorially and practically sensible. In many ways, Great Britain's legislation at this time mirrors the post-colonial independence movements—though the British themselves are seeking to define their own identity and independence in the absence of their colonies.

While the practical implications of the Act for the British were no doubt positive overall, the impact of the Act viewed retrospectively and through the close lens of globalization offers a different picture. While labor was widely solicited during the colonial period, the 1962 Act changed the face of British immigration by introducing a system of labor vouchers which policed the entry of unskilled workers.[104] Furthermore, as

Randall Hansen writes, the most important impact of the 1962 legislation was to deny "millions of largely non-white 'colonial' British subjects across the globe" the rights and opportunities normally associated with British nationality.[105] The 1962 Act was the first of many changes which would radically redefine British immigration and integration law. It is also the first Act which began to devalue British citizenship and identity for a significant portion of Great Britain's colonial citizens.

1971 Immigration Act

The second significant change in British legislation was the 1971 Immigration Act. The 1971 Immigration Act officially codified the earlier Acts in the 1960s, and introduced a system of Immigration "Rules" that, though not legislation, could be used as legal guidance for the arbitrary administration of the Act.[106] Though the substance of the legislation had not changed significantly from 1962 until 1971, the national perception of minorities had, and this is reflected in the official language of the Act. Both the British population and their leaders in government began to realize that a sizable population of minorities was intent on making Great Britain their permanent home. Though the migratory numbers were smaller than they are today, the 1970s represent a mindset shift from simply managing migration to almost entirely closing the doors, particularly where minorities from previous colonies were concerned.

The 1971 Act had the most serious consequences for Commonwealth subjects seeking entry into the UK. While the 1962 Act established the recognition of differences between passports issued under UK central authorities and those issued by colonial offices, the 1971 Act reinforced these differences through a new concept known as

'patriality.'[107] Beginning with the 1971 Act, Commonwealth subjects seeking entry clearance to the UK needed to prove that either they or their parents or grandparents were born on UK soil.[108] In short, the 1971 Act had the permanent effect of placing "Commonwealth citizens on the same legal footing as aliens for the purposes of immigration."[109] The 1971 Act further stripped away the "rights" associated with citizenship in the eyes of growing minority communities from the colonies.

For many Commonwealth subjects from former British colonies in Africa, the impact of the 1971 Act was particularly acute. Indeed, the 1971 Act was initially conceived as a way to quell the official and public resistance to the possibility of mass immigration of Kenyan Asians with British nationality to the United Kingdom following Africanization policies in Kenya.[110] Nuruddin Farah also notes that opposition to African migration was later repeated when the British Nationality Act of 1981 was passed in response to the immigration of Ugandan Asians following their expulsion from Uganda under Idi Amin's rule.[111] Though the 1971 Act was not a direct result of the Ugandan crisis which occurred in 1972, Ugandan Asians, many of whom also held British passports, were either accepted into the UK as refugees or were turned away if they could not prove patriality under the stringent provisions of the 1971 Act.[112] Nonetheless, the 1971 Act had obvious implications for Commonwealth citizens seeking protection from their governments, particularly in cases where independence movements brought civil unrest and governmental instability.

From the perspective of the Commonwealth, the 1971 legislation meant an oppressive immigration regime which closed the doors of British legal rights to anyone who could not prove patrial family lineage, UK birth, or a five year residence permitted

by labor vouchers.[113] In contrast, Great Britain may also have viewed the 1971 Act as a way to prepare itself for the arrival of European migrants upon its entry into the European Union in 1973. As Sanjiv Sachdeva notes, the 1971 Act reflected a move toward European Economic Community provisions which gave European citizens primacy over that of the colonial states.[114] Britain's efforts to meet the demands of European Union membership are not enough, however, to excuse the global implications of the 1971 Act. As Nuruddin Farah writes, the 1971 Act had a clearly "racist logic" underneath it—a logic that meant "one was treated differently if one came from what was referred to as the Old Commonwealth...Ready to join...the European Community, Britain has lately negotiated away its imperial responsibility."[115] Whether the 1971 Immigration Act is a matter of Britain's successful European integration or one of post-colonial irresponsibility, the atmosphere of exclusion it has created for Commonwealth and minority immigrants continues to exist today.

The Primary Purpose Rule: A Bridge Between Decades

One of the most controversial, yet relatively unstudied, legal developments in British immigration legislation is the Primary Purpose Rule.[116] As Andrew Geddes writes, this rule was created by conservative political leaders in 1980 as a way to give "immigration authorities the power to prove the 'real' status and reasons for an application to enter the UK for purposes of marriage."[117] This rule is important to the present study because it illustrates the shift between viewing colonial migrants as a territorial challenge to that of a cultural or ethnic one, even if this challenge was more one of perception than reality. Following the end of legitimate labor migration, the

British government saw a massive increase in the number of secondary migrants seeking visas as spouses or family members of UK residents, and legislation during this time period sought to control this influx.[118] Earlier British legislation that sought to limit immigration was "based on the assumption that men were the breadwinners and women were dependants who would follow their husbands."[119] The primary purpose legislation grew out of legal challenges by the European Court of Human Rights, which ruled that British legislation was discriminating based on sex.[120]

Through the Primary Purpose Rule, the British government sought to limit the entry of individuals, regardless of gender, whose marriages were based on labor or economic incentives.[121] The Rule was removed from British legislation in 1997, following a change of government, though its effects were certainly felt during the two decades of its existence.[122] Minority families were hit particularly hard, with little protection from British law. As Geddes argues, "There was no constitutional protection of the rights of the family" in the United Kingdom "because there is not a formal, written UK constitution. Family migration was provided for by statute."[123] Sanjiv Sachdeva argues that the Rule was indicative of a larger trend in British immigration legislation that targeted minority communities, writing:

> British Immigration control, in the cleft stick between upholding basic human rights and protecting the legitimate concerns of a national interest, has quite apparently yet to learn that public interest in Britain now includes the concerns of the various non-white and non-English minorities.[124]

Indeed, the Primary Purpose Rule was a small glimpse into the increasingly restrictive immigration legislation that would permanently redefine British citizenship for post-colonial minorities in the 1980s.

1981 Nationality Act

Perhaps the most important recent legal development after the 1962 Commonwealth Immigrants Act is the British Nationality Act of 1981. The 1981 Act radically redefined the legislation surrounding nationality and citizenship in the UK and the Commonwealth. Its most important effect was to replace the more liberal 1948 British Nationality Act with three new types of citizenship that made permanent distinctions between full British (or patrial) citizenship, British Dependent Territories Citizenship, and British Overseas Citizenship.[125] As Andrew Geddes writes, the creation of official British Overseas Citizenship (or BOC) stripped Commonwealth citizens in East Africa of any rights associated with their ties to the British.[126] For the countless individuals who had once been considered British nationals under colonial rule, the 1981 legislation meant that their British 'citizenship' no longer had any rights associated with it.[127] In the end, even the strictest legislation embodied by the 1981 Act could not completely close Britain's doors to the flow of family members and asylum seekers who would cross its borders in the decades to follow the new Nationality Act.

Legislation from 1993 to Today

While the challenges regarding the immigration of British Overseas Citizens have not disappeared altogether, more modern attempts to control immigration have centered on the control of asylum applications. The 1993 Asylum and Immigration Appeals Act, the 1996 Asylum and Immigration Act, and four additional Acts on immigration and asylum between 1999 and 2006 are the most recent attempts to manage immigration in the UK. While the impact of the earlier Acts can be evaluated, the scholarly research on

the most recent Acts is limited. The 1993 Asylum and Immigration Appeals Act was the first to respond to massive increases in immigration during the period from 1989-1993. The first impact of this Act was to introduce a body of legislation that dealt specifically with "the backlog of asylum cases" that confronted UK officials in the early 1990s.[128] The legislation limited not only the number of asylum-seekers who were given official refugee status, but also withdrew the government provisions of housing for asylum-seekers.[129] The 1993 Act did not officially have an impact on the number of applications for asylum overall—indeed the applications continued to rise dramatically after 1993.[130] Contrary to its intent, the 1993 Act had the impact of increased refusals and a decrease in the numbers of asylum-seekers given Exceptional Leave to Remain, or ELR. As a Home Office report notes, "In 1993, 48 per cent of initial decisions were to grant ELR and 46 per cent were refused asylum. In 1995, 16 percent were granted ELR while 79 per cent were refused."[131]

The Asylum and Immigration Act of 1996 also sought to limit asylum applications by denying many asylum seekers welfare and housing benefits, and the absence of government efforts to remedy the social and economic deprivation that plagued the majority of asylum communities placed crushing responsibility on local organizations which developed temporary, improvised, and un-coordinated solutions to widespread problems.[132] Additionally, the 1996 Act removed the right of appeal within the UK for asylum-seekers who first traveled through another country considered "safe" by immigration officials before arriving in the UK.[133] Overall, as Andrew Geddes observes, each new asylum Act passed between 1993 and today has "sought to correct the errors of the previous legislation."[134] The result, in the end, is a collection of asylum

legislation which seeks both to close off external borders and build more complicated internal measures for discouraging asylum applications.[135] Despite a legacy of tough legislation, however, the newest legislation passed in 2002 may hold some promise for a successfully multicultural Britain. The 2002 legislation in particular began to seek out alternative routes to "positive immigration" in the form of the Highly Skilled Migrants Program, and increased attention to anti-discrimination legislation may also encourage new approaches to pluralism in the UK.[136] Despite moderate improvements, the most recent programs for 'managing migration' may be a step in the wrong direction.

IV. A FIVE YEAR PLAN FOR MANAGING MIGRATION

In 2005, the British government articulated the newest of its policies for managing immigration in a report entitled "Controlling our borders: Making migration work for Britain."[137] The report outlined a five-year plan for the standardization of the British immigration program through a "points-based scheme...to ensure all those settling permanently in the UK bring a long term benefit."[138] The proposal has not been affirmed by legislation, but it seeks to replace a system of Immigration Rules which has been pieced together through over 50 legislative changes since 1994.[139] The proposed reforms would simplify the mass of Immigration Rules, like the Primary Purpose Rule discussed earlier. According to the government, the reforms seek to address three central problems with the old legislation: 1) the inconsistency of Immigration Rule application in cases of beneficial migrants, 2) "complex, subjective and bureaucratic processes," and 3) abuse of migration policies.[140] The new legislation combines a desire on the part of the British

government to streamline the immigration process, as well as reduce the number of individuals who take advantage of the currently disorganized system.

In order to meet these goals, the government's plans outline a new five-tier system for managing migration and settlement in the United Kingdom. These tiers are supported by a "points" system in which applicants are gauged based on predictions about "a migrant's success in the labour market...and control factors (which relate to whether someone is likely to comply with the conditions of their leave)."[141] The system for evaluation is primarily economic, and seeks to identify fairly those migrants "who will increase the skills and knowledge-base of the UK...invest capital or in their education," or otherwise contribute to the British economy.[142] Very little reference is made to cultural capital, though the report notes that the new system will work to invite individuals "who will enrich UK society by their presence and act as ambassadors for the UK on their return home."[143] In many ways, Britain's legislation adequately supports the highly-skilled participation of economic citizens, but does little to support their cultural and political needs.

The five-tier system is broken down into categories of permanent and temporary migration. The first two categories deal with permanent migration, and include "highly skilled individuals" who can "contribute to growth and productivity in the UK" (Tier 1) or "skilled workers with a job offer to fill gaps in the UK labour force" (Tier 2).[144] The remaining three tiers, in which applicants are assumed to "return home at the end of their stay" include "low skilled workers needed to fill specific temporary labour shortages," students, and other temporary workers (Tiers 3, 4, and 5). A system of points, awarded

differently from tier to tier, includes criteria ranging from predicted contributions to the UK economy to general qualifications and English language ability.[145]

Where permanent migration and settlement is concerned, the initial report of 2005 outlines three categories of acceptable migrants: "certain skilled workers...genuine refugees," and the immediate families of British citizens.[146] The report also notes that "Permanent migrants must be as economically active as possible; put as little burden on the state as possible; and be as socially integrated as possible."[147] Overall, the collection of literature on the most modern migration and immigration legislation seeks to put in place a system of regulations that limits migration to economically advantageous individuals who can integrate into mainstream British society quickly and easily. The definition of "British society" is made unclear by the country's limited support of its large multicultural population.

V. A HAPHAZARD APPROACH TO A MULTICULTURAL SOCIETY

The efforts to standardize Britain's immigration legislation are a positive development, as they represent an official response to the inconsistencies and prejudices supported by the historical Immigration Rules system. As the wider statistics and history of immigration illustrate, however, the United Kingdom has become an increasingly multicultural polity. Andrew Geddes notes that increasingly restrictive immigration legislation from the 1960s to 1980s was balanced by domestic "anti-discrimination legislation" in the form of "three 'race relations' acts of 1965, 1968, and 1976" designed to prevent racial and ethnic discrimination.[148] Over the past two decades, however, Britain has done little to integrate its multicultural community through legal channels.

Bhikhu Parekh, the chair of the Commission on the Future of Multi-Ethnic Britain, argues that "The very language used to describe and define race relations in Britain is a source of considerable conceptual and political muddle."[149] The Race Relations Act of 1976 has been added to only through a series of amendments in 2000, though the independent Commission led by Parekh argues that "In the longer term...amendments are not enough. A new Equality Act is required, together with a new Equality Commission."[150] In addition, Parekh's report calls for a greater commitment to Britain's obligations to human rights, and for the UK to "formally declare itself...a multicultural state."[151] In the absence of such organized commitments to its multicultural population, however, a variety of legal conflicts arise—one of which will be discussed here as a brief example.

In the United Kingdom, conflicts of cultural norms in law are resolved through an unsure reliance on British legal norms. A recent High Court case in 2000, labeled "the case of the missing pound," is one such conflict in which British law finds a way to work around the pluralities of Muslim law.[152] In the example of this case, *Ali v. Ali*, the High Court judge was asked to enforce conditions of a contract entered into under Muslim law between a couple seeking a divorce under English law.[153] Under Muslim law, the wife would receive £30,001, while under English law she would have received very little financial support.[154] Rather than apply Muslim law, the High Court judge gave the woman £30,000— £1 less—invoking the English law of equity.[155] This case is particularly interesting as a result of two outcomes. First, the divorced woman is treated fairly, while English law remains insulated "from the unrelenting pressure to accept personal laws, such as that of the Muslims, as part of the new British legal

framework."[156] The details of the case are less important than the precedent it sets with regard to multicultural relations in the United Kingdom.

This brief relation of *Ali v. Ali* is rather simplified, but the case as a whole represents one of many cases in which resistance against non-English norms seeks to avoid the "collective disposition" or "transient pluralities" of cultural difference. A homogenous population is theoretically more manageable, particularly where law is concerned, as the *Ali v. Ali* case illustrates. Great Britain fails to realize, however, that much of its law could protect minorities and their cultures without destroying itself. Great Britain's primary difficulty may be a lack of standardization, particularly where respect for multicultural citizens are concerned. As a result, British legal decisions are inconsistent—occasionally they protect cultural rights, but often they do not. In the midst of diverse decisions, no strong legal precedent or legislation exists which sets the standard for minority and hybrid citizenship in Great Britain.

VI. CONCLUSION

There is little question that minority communities must shoulder the burden of citizenship when they choose to emigrate—this has historically been the case, and there is little chance of the norm drastically changing in the future. Nonetheless, the pressures that have influenced such dramatic changes in Great Britain's legislation illustrate the challenges of managing a growing multicultural population. In the same moment, a review of Great Britain's immigration and integration methods shows imperfect protections for hybrid communities seeking to understand the value and dynamic potential of citizenship over a longer history. If Great Britain is committed to truly

democratic processes and the protection of its citizens' interests, cosmopolitan citizens cannot be excluded. Great Britain continues to have several ways forward in its efforts to negotiate its own "melting pot" and globalized society.

I argue that the British 'phenomenon' of a multi-ethnic society could potentially be evaluated through three lenses. First, it can be interpreted through the narrow lens of Hobbesian state sovereignty, in which a series of strict immigration policies illustrate an expectation of assimilation on the part of multicultural communities. This perspective often creates animosity among globalized citizens who are making significant efforts to integrate into a new community. Second, it can be analyzed from the equally strict perspective of pluralism. From this perspective, Great Britain's attempts at controlling migration and its failure to adopt a diversity of legal and cultural structures limit successful integration and pluralism. Furthermore, pluralism is a difficult philosophy to live out in reality—particularly when cultural differences emerge so clearly at the ends of fundamentalist spectrums. Neither the assimilationist nor the pluralist perspective seems successful in balancing a multi-ethnic democracy in which the burden of citizenship and statehood is shared across cultural boundaries.

A third perspective is perhaps best defined through the lens of globalization—which keeps both state sovereignty and global interdependence in view. Through this third perspective, it is possible to see British immigration legislation in a period of transition as it navigates the new challenges of democracy in an age of globalization.

Keeping the reality of the British example in mind, it seems that the last lens is the most useful. Much of the theoretical literature on models for pluralism has focused on a world beyond sovereignty in which borders should not or do not exist, while little has

been written as a way to bridge the gap between the old world of states and the new unknown. A lens of globalization allows for analysis which recognizes the strength of state borders, but also the increasing potency of multicultural communities. Under the criteria of the last lens, the British immigration legislation still falls far short of ideal under conditions of globalization. It seeks to maintain its territorial sovereignty, but defines an unmanageable integration rhetoric in the process. Under the interdependence conditions of globalization, states must include multicultural societies within the legislative umbrellas of their sovereign social contract.

Building strong economic citizens is not enough to maintain the democratic process, as the new Five Year Plan attempts to do. Multi-ethnic citizens must understand the value of the democratic process, and have consistent access to the protections it provides. Without significant legislative changes to support cultural diversity within its borders, Britain can never hope to democratically navigate a world of globalization which thrives on interdependence and diversity. At the same time, minority citizens must continue to do the difficult work of searching for their own identity in a globalized world. They can bring a wealth of new cultural practices to the British population, but they also must work to preserve a political and social environment where such diversity can be respected in the long-term.

CHAPTER 4

CASE STUDY REVIEW: CHALLENGES OF LEGAL PLURALISM IN THE NETHERLANDS

I. INTRODUCTION

The Netherlands has historically been recognized as highly accommodating and supportive of its minority communities. Dutch immigration policies were relatively liberal, until recent changes transformed the nation from a European model to a more characteristic 'muddle.' The earliest stages of Dutch pluralism show a unique legal respect for pluralism and multiculturalism, and Dutch tolerance of immigrant cultures made it an ideal host country for asylum seekers and economic migrants. Dutch policies today are widely divergent from their counterparts two decades ago. The Dutch approach has changed significantly as a result of economic instability, worries about national security, and a diversifying national community. Despite these changes, Dutch immigration and integration legislation is an essential guide for minorities as they navigate the legal processes of citizenship and 'belonging' in a democratic state. Dutch policies also represent a first introduction to democratic life, particularly for asylum seekers and immigrants who arrive from failed or undemocratic states.

This chapter presents three central topics in an analysis of Dutch immigration and integration legislation. The first section outlines the history of migration and multiculturalism in the Netherlands. Migration is not a new phenomenon for the country, nor is the growth of minority communities, and a historical backdrop provides perspectives for the remainder of the chapter. The second section reviews the broad changes in legislation that currently impact ethnic minorities in the Netherlands. A third

section will discuss the most recent developments in legislation and integration and the challenges that they present for supporting strong democratic citizens among ethnic minority communities.

II. History of Multiculturalism in the Netherlands

According to authors Jan Lucassen and Rinus Penninx, waves of immigration and emigration in the Netherlands have existed for over four centuries.[157] Though the discourse and political rhetoric about these 'newcomers' has changed over time, the challenges remain the same. Despite the long history of immigration in the Netherlands, this chapter is concerned specifically with the more modern realities of newcomers in the period following the Second World War.

Following the end of World War II, three categories of migration can be identified in the history of the Netherlands—those migrating for political reasons, as a result of economic factors, or as asylum seekers.[158] First, the Netherlands saw an increase in political migration that began as a result of independence movements in its colonial territories. The first important group of migrants was from the Dutch colony in Indonesia. Lucassen and Penninx estimate that from 1945 to 1965, around 300,000 migrants traveled from Indonesia to settle in the Netherlands.[159] Following Japan's occupation of Indonesia between 1942 and 1945, around 120,000 Dutch nationals escaped political persecution and instability in order to return *en masse* to the Netherlands.[160]

In addition, these hundreds of thousands of native Dutch were joined by around 180,000 mixed Dutch-Indonesians—who were born to at least one Dutch parent, and who chose Dutch nationality over Indonesian nationality.[161] Finally, the migration of a third

group of Moluccans resulted from political instability in Indonesia in the late 1940s. Originally, the Moluccans served in the Netherlands Indies Army and opposed the Indonesian government's rule in an effort to gain Moluccan independence.[162] The Indonesian government refused to negotiate with the Moluccans, and the Netherlands government eventually agreed to allow the temporary migration of 12,500 Moluccans to the Netherlands.[163] Initially, the Moluccans were housed in camps in the Netherlands, forbidden to work, and were completely isolated from the larger Dutch society.[164] Beginning in the 1950s, the Moluccan community numbered around 32,000, and they were increasingly granted work opportunities and relocated to Dutch towns.[165] Despite these attempts at integration, a Moluccan terrorist group comprised of second generation Moluccan immigrants carried out a series of attacks on Dutch soil between 1975 and 1978.[166] In 1977, attacks on a Dutch train and terrorist occupation of a school led to a forceful reaction on the part of the Dutch government to free hostages.[167] Following these attacks in 1977, Moluccan terrorism ceased, and a more successfully integrated community of Moluccans and their descendants numbers around 40,000.[168]

Moluccans were joined by large numbers of Surinamese between 1973 and 1975, when the approaching independence of Surinam threatened to bring an end to the substantial benefits of Dutch citizenship for the Surinamese.[169] Though the Charter for the Kingdom of the Netherlands of 1954 allowed the free movement of Surinamese citizens, the expiration of this provision meant that thousands of Surinamese sought to take advantage of their 'last chance' at the full rights associated with official Dutch citizenship. In 1975 alone, the Netherlands saw almost 40,000 Surinamese cross the Dutch border, bringing the population of Surinamese in the Netherlands to just over

100,000.[170] In the end, almost a third of the Surinamese population immigrated to the Netherlands.[171] Today, provisional data for the year 2007 estimates that over 300,000 individuals of Surinamese origin or second generation descent currently reside in the Netherlands.[172]

Migration through colonial channels was extremely valuable for individuals holding Dutch passports. The second major reason for immigration to the Netherlands was economic. For colonial and non-colonial subjects, economic incentives encouraged many migrants to leave their homes in search of better opportunities. Migrants were given opportunities through government guest worker programs in the 1960s, and later by more modern permanent economic migration.[173] The first workers were recruited from Spain and Italy, though a larger percentage arrived from Turkey, Morocco, and Tunisia during the mid-1960s. Like many other countries in Western Europe, the Dutch government believed that these 'guest' workers would be resident in the Netherlands for the short term only, and the migrants initially acted under similar sentiments.

Like other European countries at the time, the Netherlands ended its guest worker programs in 1974, following the 1973 oil crisis, massive economic restructuring, and a decrease in the need for foreign labor.[174] Economic migration continues today, though it is limited and accepted applicants are generally highly skilled. The complex economic changes during the 1970s significantly transformed the demographic composition of the minority presence in the Netherlands.[175] Many of the European migrant workers recruited during the 1960s returned to their own homes as Dutch labor opportunities declined and their own countries improved. In contrast, large numbers of Turks and Moroccans stayed and invited their families to the Netherlands.[176] New family arrangements also became

common in the 1990s, as it became more difficult to gain entry clearance for other reasons. Lucassen and Penninx write that by 1992 "the Turks and Moroccans constituted the largest groups of immigrants in the Netherlands (250,000 and 195,000 respectively) after the Surinamese."[177] Today, the Turkish community in the Netherlands exceeds 360,000 if second generation Turkish are included.[178]

Migration had existed for decades, but the Netherlands began to realize quickly in the 1970s that the 'guest' worker population was determined to stay. Great Britain and the Netherlands are similar in this respect. Many of the "guests" became permanent citizens, but few legislative efforts capitalized on their permanent contributions to democratic society. Workers also invited their families to the Netherlands, rather than risk losing their residence status by returning to their homes abroad. The ethnic minority communities were imperfectly embraced in a democratic system that had never truly 'welcomed' diversity. When guest worker programs ended, ethnic minority communities grew without a clear sense of their legal or cultural responsibilities to the democratic polities they had entered. Legislators, too, were unsure of how to respond to their new constituents.

In addition to political and economic migrants, large scale asylum applications to the Netherlands began in 1974 following the end of official guest worker programs. Rising trends in asylum applications began in the 1980s, with a record number of over 52,000 in 1994 alone.[179] Applications have decreased dramatically since 1994, though they increased between 2004 and 2005, when 12,350 applications for asylum were received.[180] Large populations of asylum migrants can impact ethnic minority and host country populations in several ways. First, asylum seekers largely arrive from failed

states or undemocratic states, or as a result of some other threat to human rights. This reality could potentially encourage their appreciation of democratic systems, though it complicates their understanding of such processes. Second, asylum seekers also pose a complicated dilemma where economic value to society is concerned. Asylum seekers who are later given citizenship or long-term residency rarely have the means to contribute significantly to national economies. Their value to society must be recalculated using international standards of human rights, rather than the more economically based criteria used for immigration as a whole. Finally, asylum seekers (or new migrants more generally) retain cultural specificities that can clash with local cultures, whether Dutch or hybrid. Some asylum seekers may feel alienated and ostracized by the Dutch population, and turn instead to enclaves of their national origin. The historical backgrounds of minority communities have changed over time, however, and more 'hybrid' cultures mean that even their national culture feels different.

In conclusion, the modern history of migration in the Netherlands is both dynamic and multi-faceted. One modern report suggests that communities of non-Western immigrants in the Netherlands are as large as 1.6 million, or ten percent of the country's population.[181] According to the Centraal Bureau voor de Statistiek, first and second generation individuals with at least one parent born abroad make up 19.4% of the population in the Netherlands.[182] Each generation of migrants cites a unique memoir of immigration experiences and the legislation surrounding these experiences. The climate of immigration in the Netherlands may be changing yet again—influenced by the social tension that has increased following the murder of filmmaker Theo van Gogh in November 2004.[183] Restrictive immigration and asylum policies, and continuing debates

over family reunion and the social integration of minority groups suggest that the history of migration in the Netherlands is far from complete. Like the United Kingdom, the Netherlands seeks to preserve its institutions and societal values—immigration and integration legislation are a central method for doing so.

III. LEGAL OBSTACLES

The challenges of migration and the growth of multicultural communities in the Netherlands parallel a changing legal regime of immigration, integration, and asylum policies. Despite innovative commitments to more inclusive and respectful "minorities policy" during the 1970s, modern immigration and integration policies have moved away from a focus on multiculturalism toward a focus on civic integration, or *inburgering*.[184] From the 1970s until today, two competing approaches have pursued divergent legal and political solutions to the challenges of a multicultural Dutch society. Several important legal developments will be discussed in this section.

The first approach of "minorities policy," prevalent between the 1970s and early 1980s, was the product of pillarization, or *verzuiling*, which defined a political system of "institutionalised separateness" for Dutch religious and cultural communities.[185] The recognition of separate pillars largely disappeared in the 1960s, but policies directly affecting minority groups were influenced by the "identity-affirming" qualities of pillarization even after the official decline of the policy.[186] The Dutch pillarization policy was recognized across Europe as a highly liberal and innovative one, and while its effectiveness was limited, it did seek equality and freedom for many of the varied ethnic groups in the Netherlands. The transformation from pillarization to civic integration was

based on the recognition that many minority communities were becoming *too* separate from the mainstream Dutch community, and the legislation today reflects significant changes in mindset and expectation.

1983 Minorities Policy

Perhaps the most influential legal development reflecting the affirming approach of this early period was the 1983 Minorities Policy. According to Andrew Geddes, this policy "saw the Netherlands as a multi-ethnic society with the expression of ethnic differences by immigrants an important part of their social identity, which should be protected."[187] The policy contained three central goals which advocated the promotion of minority equality before law, the promotion of "multiculturalism and the emancipation of ethnic communities," and improvements in the social and economic realities of minorities.[188]

Combining legal equality with equal opportunities, the 1983 Minorities Policy embraced a method for integration that did not require a renunciation of unique cultural identities.[189] More importantly, Dutch policies offered cultural "pillars" a clear avenue for political participation. Dutch policies granting voting rights to residents of third country national status after five years of legal residence make the Netherlands, to this day, one of the few states to grant limited political participation rights to non-nationals.[190] Despite concerted attempts to encourage a pluralistic minorities policy, political changes and historical evolutions slowly began to erode the ambitious steps toward multicultural integration taken during the 1970s and 1980s.

Post-1983 Legislation

It is difficult to pinpoint a single year or event between the 1980s and today which marks the official decline of the plural minorities policy, though several trends greatly influenced the rising popularity of less multicultural integration policies. First, political and academic statistics in the late 1980s began to reflect a growing gap of inequality and marginalization between native Dutch and minority communities.[191] As a result, political sentiments shifted, and multiculturalism was challenged by individuals seeking to encourage a universal commitment to "the Dutch way of life."[192] This new commitment is illustrated most recently by the introduction of the 2006 Integration Abroad Act, and the 2007 New Integration Act. While the 1983 Minorities Policy "explicitly safe-guarded" the cultural autonomy of minorities and rejected forced assimilation, modern policies focus on civic integration through *inburgering*, or integration through adaptation and assimilation.[193]

Among other conditions, the New Integration Act and the Integration Abroad Act places an obligation on individuals applying for residence status in the Netherlands to achieve integration through an "integration programme…consisting of courses in Dutch and social and vocational orientation, career planning, social guidance."[194] The New Integration Act and the Integration Abroad Act follow legislation made with the 1998 Law on the Civic Integration of Newcomers, which requires "500 hours of language training and 100 hours of civic education" in order to meet integration requirements.[195] The requirements might potentially be useful in educating better citizens in a dynamic democracy, but they are used instead to define the parameters of Dutch identity. Minorities who participate in local and national politics have become disenchanted not

because laws to protect them do not exist, but because they are not enforced. Jytte Klausen writes that "Dutch Muslim leaders were particularly skeptical that more laws would resolve anything. 'We already have so many laws,' several people said, 'and none of them are enforced.'"[196] Two types of skepticism seem to exist where minority legislation is concerned. First, many minorities do not understand the value of the democratic process and blindly dismiss it. Second, those minorities who are deeply invested in the democratic process have become frustrated with the difficulty of supporting diverse communities and enforcing legislation.

The increasing size, diversity, and economic status of ethnic minority and immigrant communities also challenged Dutch policy makers at the turn of the century.[197] Several legislative changes beginning in 1984 attempted to calm the growing public excitement over the evolving identity of Dutch minority communities. First, the Nationality Act of 1984 presented significant challenges to newcomers seeking naturalization. The 1984 Act followed an attempt by right-wing politicians to reduce minority naturalization through the adoption of a bill which would have excluded Surinamese immigrants from a "rapid naturalisation procedure…for persons who had lost their Dutch nationality."[198] While the 1984 Act was not so openly xenophobic, two modifications "were clearly related to the desire to restrict immigration."[199] The Act abolished the option for non-Dutch women to choose Dutch nationality after marriage to a Dutch citizen.[200] As Groenendijk and Heijs note, this change had the effect of reducing the number of marriages whose primary purpose was to acquire Dutch nationality—much like the British Primary Purpose Rule.

A second provision granting stateless children born in the Netherlands Dutch nationality was also removed—introducing a three-year residence requirement which would have the effect of preventing children born to stateless parents from acquiring Dutch citizenship.[201] This same rule was used to prevent stateless children's parents from acquiring residence status and eventual citizenship. Overall, the shift in approaches to migration has been significant, and political and legal debates are far from over.

IV. RECENT DEVELOPMENTS IN FOCUS: ASYLUM AND INTEGRATION

Two significant areas of modern legislative change currently impact minority communities in the Netherlands. First, new asylum legislation has redefined the Dutch perspective on immigration between 2000 and today. Second, a new integration model has changed naturalization requirements and perceptions of Dutch identity and democracy. Both the asylum and integration legislation help define normal or 'acceptable' Dutch standards for entry clearance. A more critical look at this legislation suggests that it serves more than a "gate keeping" function. Though this is certainly part of the equation, asylum and integration legislation serves as the 'instruction manual' for Dutch democracy in migrant communities.

Modern Asylum Developments

Within this decade, the Dutch government overhauled its asylum and aliens policies with the Aliens Act 2000. Vera Marinelli writes "The introduction of a tougher asylum law in April 2001 led to a dramatic drop in applications. In 2004, less than 10,000 people applied for asylum in the Netherlands, a 30 per cent drop from 2003.

This signified the lowest number of asylum applications since 1988."[202] The Act was initially a highly effective legislative tool for closing the Netherlands' doors. As the government soon realized, however, the legislation would not stand without complications. Under the old legislation, thousands of asylum seekers had waited over five years in the Netherlands for their asylum decisions or appeals.[203] The Netherlands became a safe haven and home for many asylum seekers, though the new legislation threatened to disrupt their legal remedies. Around 26,000 of these asylum seekers faced deportation before their appeals were completed.[204] The harsh impact of the legislation did not go unnoticed among the Dutch public or the international community.

Two significant civil society responses to the Dutch legislation appeared following the decision to deport the 26,000 asylum seekers. First, Dutch filmmakers and NGOs rallied together in a project called *26,000 gezichten*, or '26,000 faces.' Marinelli suggests that the widely aired and publicized media project was "designed to give a face to the 26,000 asylum seekers" who were denied rights under new Dutch legislation.[205] The project's website argues that 8,000 is a more accurate and reasonable number of asylum seekers facing deportation, and adds that the children of these migrants have integrated successfully—speaking Dutch and maintaining a hybrid of their home cultures.[206] The website is not available entirely in English, though many of the videos are subtitled from the original Dutch language. The videos available are an excellent visual display of minority attempts to integrate into society. Additionally, the collection of small clips seeks to illustrate the human and legal injustice of the threatened deportations. The profiles are a reminder of the myriad assets that asylum seekers and minorities bring to a country like the Netherlands.

A second civil society response to Dutch legislation—this time international—arrived in 2003 when Human Rights Watch published an extensive report claiming that Dutch law violated "fundamental asylum and refugee rights" under international law. When the bill to deport thousands of asylum seekers was approved by a large portion of Dutch legislators, the United Nations High Commissioner for Refugees also "expressed concern" with the Dutch law.[207] Following changes in government over several years and pressure from the United Nations and European Union, the Netherlands amended its legislation. The asylum Act still remains strict, though revisions have softened the initial blow. The most recent provision resolved the issue of deportation for the "26,000" asylum seekers caught between two Acts. In June 2007, a general amnesty was approved for all asylum seekers whose applications were submitted before April 2001, and who maintained residence and good legal standing.[208]

The most recent legal developments in asylum legislation in the Netherlands are promising—particularly if asylum seekers take advantage opportunities for continued residence. Nonetheless, the naturalization and immigration process remains difficult to navigate. The Dutch legal handbook of citizenship offers asylum seekers and new immigrants few guidelines for making the Netherlands "home."

The New Integration Policies

In 2006, the Dutch government introduced requirements for a civic integration examination to be completed by all individuals seeking long-term settlement or family reunion.[209] Asylum seekers and residents in the Netherlands are required to take a similar integration exam if they wish to acquire citizenship. The newest legislation requires that

certain newcomers complete this examination before they arrive in the Netherlands. In their informational brochure, the government also notes that "Religious leaders coming to the Netherlands for employment, such as imams or preachers, will also have to take the civic integration examination abroad." [210]

European Union citizens, American citizens, Japanese citizens, and a handful of other non-European states are exempt from the exam, though they are still required to apply for residence permits. The exam requires that migrants display "basic knowledge of both the Dutch language and Dutch society before they come to the Netherlands."[211] Migrants who are required to complete the exam must do so at a Dutch embassy after preparing adequately. The exam costs 350euros (approximately $500US), and preparation materials can be acquired for another 70euros (approximately $100US).[212] According to the government brochure, the exam (given only in Dutch) consists of two parts: a language section, and a society portion, which each last 15 minutes.[213] Topics and questions vary widely, despite the short nature of the exam.

The society portion of the exam is the most diverse. The brochure reveals that questions can be asked about: "The Netherlands: living here, geography, and transport...history...constitution, democracy, and legislation...the Dutch language and the importance of learning it...parenting and education...health care...work and income."[214] For migrants taking the exam at an embassy abroad, the subject list is no doubt daunting. Any of these subjects can take a lifetime to learn in their entirety, yet successful completion of the exam is required for a residence lasting more than three months. The Netherlands has the opportunity to build a generation of active and well-informed multicultural citizens through its legislation. The increasing restrictions and heightened

requirements seem to suggest that citizenship denotes acceptance into an unchanging national community. Migrants are required to familiarize themselves with Dutch identity, but the Dutch population remains largely uninformed about the large minority populations who also identify themselves as "Dutch." Furthermore, migrant communities are expected to conform to Dutch standards of culture and society, rather than to more universal standards of democratic life, human rights, and state law.

V. CONCLUSION

Several conclusions can be drawn from a review of the Dutch immigration and integration legislation. First, much like the example in Great Britain, the Netherlands must find a balance between maintaining its sovereignty, its democracy, and its search for 'homogenous' identity. Globalization (and history) has made a truly uniform national identity close to impossible. The creation of social integration exams, however, suggests that the Dutch government is not yet ready to abandon its project of uniformity, and has tied a relatively uniform identity with the rights of citizenship and residence.

Second, modern legislation grows a generation of minority immigrants who are both uninformed about democratic processes and disenchanted with the Dutch majority government. Minorities who could be an asset to the Dutch population instead become a burden, even if only in the imaginations of majority populations or legislators.

Third, the Netherlands has a long history of supporting diversity. Reaching to the core of its democratic traditions and core values may aid in a more protective environment for minorities. In an era of globalization, it is not enough to teach generations of future "Dutchmen" and "Dutchwomen." The Netherlands has a larger

responsibility to protect its democratic values and build generations of multicultural citizens who are invested in the maintenance of democratic institutions.

CHAPTER 5

SEARCHING FOR *E PLURIBUS UNUM*: DEMOCRACY, CITIZENSHIP, AND CONSTITUTIONALITY IN THE EUROPEAN UNION

I. INTRODUCTION

Aristotle writes in *Politics* that "If we hold...that liberty is chiefly to be found in democracy and that the same goes for equality, this condition is most fully realized when all share, as far as possible, on the same terms in the constitution."[215] He goes on to say that this constitutional order "is bound to be a democracy; for the people are the majority, and the decision of the majority is sovereign."[216] Though the composition of the "people" representing constitutional democracies worldwide varies greatly over the centuries, the notion of democracy itself remains only subtly changed. Even so, the most recent developments in European governance herald delicate transformations that challenge and envision a new form of democratic life, particularly where minorities are concerned. The majority still remains sovereign, but the European Union has yet to envision an official constitution—relying instead on state institutions to provide for the constitutional rights of European citizens. Case studies from Great Britain and the Netherlands illustrate two vital tasks for the modern democratic state: 1) refining democratic immigration and integration legislation, and 2) defining such legislation in a way that maintains democratic institutions and encourages the contributions of multicultural citizens.

The struggle to define a diverse European democracy is not limited to member states alone. A general regime of liberty, democracy, and equality exists within each of the European Union member states, though the larger European polity is inherently

limited by the failure of all states to share the burden and responsibility of upholding a common constitution. Aristotle's prescriptions still hold true. Liberty and democracy at the EU level are only partially realized without the backbone of a constitutional polity. The rejection of a European Union constitution is a particularly instructive example of both the possibilities and challenges that are embodied by the Union's redefinition of global and regional democratic life. A democratic Constitution and a strong judicial pillar in the EU could redefine the struggle for belonging among British and Dutch citizens, as well as in other member states. For minorities, direct involvement in the creation of a multicultural democratic polity would offer a sense of identity and democratic investment as well.

This chapter explores three dimensions of the European Union as an emerging democratic polity with astounding diversity. First, I will explore the historical growth of the Union, in order to understand its patterns of interdependent development. Second, I will discuss in more detail the growth of European Union citizenship alongside the failure of constitutional referendums. I will conclude the chapter by arguing that the success of the European "democratic project" will rely on the creation of a judicial pillar of interdependence. The lack of a well defined pillar for EU judicial participation is similar to the more local problems minorities face at the state level. While state legislation and other obstacles make it difficult for minorities to become invested in democratic institutions, the Union's "democratic deficit" is an obstacle for all citizens. This deficit must be resolved in order for true citizenship to be possible for all Europeans. Additionally, models for resolving this deficit offer insight into resolving the problem of difference within the member-states themselves.

II. HISTORICAL DEVELOPMENT OF EUROPEAN UNION INTERDEPENDENCE

Economic Roots

Following World War II, it is doubtful that the French or German governments had any knowledge that their European Coal and Steel Community would grow to become one of the most unique global superpowers. Perhaps they did not guess even a few years later, when the European Economic Community (EC) solidified economic relations between a diverse group of member states. Fifty years after its creation, the EC is not unrecognizable within its current manifestation as the European Union (EU), but it has continued to grow in breadth and depth as the decades have passed. At present, the growth of the European Union is arguably one of the most important developments in global affairs as a result of both its successes and shortcomings.

In order to understand the European Union as it exists today, it is helpful to understand the historical changes that have built the political and institutional foundations of the EU. As was mentioned above, European cooperation began with the European Coal and Steel Community in 1952. Though initial French concern about increasing German economic competition after WWII was the first impetus to this union, Belgium, The Netherlands, Luxembourg, France, Germany, and Italy were the first collaborative members of the Community.[217] The creation of a more official European Economic Community in 1957 encouraged the elimination of tariffs between member nations and began to institutionalize the already prevalent intra-European trading and integration networks available within the borders of its member states.[218] The Maastricht Treaty in 1992 was a watershed moment for the EU as it is known today. While the plans outlined in Maastricht retained the strong economic integration seen in previous agreements, they

also allowed for the creation of a common foreign and security policy, as well as increased cooperation in justice and home affairs.[219] The Union continues to grow as it brings new and more diverse member states into the legal and economic community.

Interdependence and Political Cooperation

The European Union is most important not only for its vast economic cooperation, but also for the way this cooperation has occurred. The European Union as a polity represents the first tangible example of such complex interdependence and cooperation, though the project is incomplete. Political scientists Keohane and Nye and others have offered detailed academic theories of complex interdependence, and these theories are particularly applicable in an era of globalization.[220] Mark Leonard uses similar theories to analyze political developments in the European Union.

Mark Leonard's text *Why Europe Will Run the 21st Century* is a daring text that contains a vital lesson for any country aspiring to a role of global leadership. He describes an integrated Europe that has the potential to challenge the world's current superpowers with a new form of governance and democracy that brings the whole of Europe closer to a cooperative peace. He sees progress toward a European constitution as a process which enshrines "the principles of 'Network Europe,' which is now free to carry on its unique experiment of reinventing democracy for an age of globalization."[221]

Leonard's most important contribution to the literature on the European Union is his realization that the EU is beginning to redefine democratic governance in the current century. Two EU developments are particularly instructive. First, Leonard notes that successful international cooperation is contingent not on the use of force, but on a

relationship of co-optation which allows countries "to uphold the rules themselves, rather than coercing them into submission."[222] This creates a system of cooperation and collaboration between nations rather than relying on a single superpower to enforce submission at a global level. The second redefinition of governance embodied by the institutions of the EU is recognizes the value of "perpetual peace."[223] A concept first delineated by Immanuel Kant, perpetual peace is representative of a "brotherhood of republics" which has peaceful relations as a result of focused and intentional cooperation.[224] As Leonard writes, European nations have consciously worked toward this perpetual peace following the catastrophes of two World Wars.[225] Through cooperation, negotiation, and a network of collaborative peace, European nations have been able to secure a unique interdependent polity.

Overall, Leonard identifies European integration as a potential model for global regionalism that promotes "global development, regional security, and open markets."[226] Leonard argues that a "domino effect" of regional integration modeled after the EU will "change our ideas of politics, economics and redefine what power means for the twenty-first century."[227] On a larger scale, Leonard goes so far as to suggest that the EU model of integration could be a possible step in the direction of a world order characterized by "perpetual peace."[228] He explores the potential benefits of a world where global affairs are dominated by integration and a "constructive international order of peace"[229] rather than unipolarity and warfare.

In order to support his thesis, Leonard first explores the changing nature of power and global affairs. He writes that "by coming together and pooling their sovereignty to achieve common goals, the countries of the European Union have created a new power

out of nothing."[230] This power, identified as "transformative power" by Leonard, is not defined by military capabilities, nor is it concerned with the short-term goals of warfare.[231] Rather, Leonard suggests that Europe's transformative power gives precedence to the long-term goal of "reshaping the world."[232] The rise of this non-military power is a direct result of the realization that one-sided displays of hard power are no longer an effective way of ensuring that the interests of states are met in the modern world. As Leonard notes, "The lonely superpower can bribe, bully, or impose its will almost anywhere in the world, but when its back is turned, its potency wanes."[233] A similar thesis might prove supportable in cases where cultural interdependence is desirable in diverse member-states.

In response to this changing global reality, Leonard identifies that European integration has spurred a new trend of transformative power and a new "European way of war."[234] This transformative power means that co-optation rather than coercion is used as the most important method for gaining consent from other states.[235] Though the use of force as an end in itself has been the traditional norm of the Westphalian state system, the use of direct force in the current era is increasingly met with resistance and resentment.[236] In contrast to the use of force in a state-centric system, the strength of transformative power in the regional system of the European Union is primarily a result of the EU's "ability to reward reformers and withhold benefits from laggards."[237] Rather than resorting to open hostilities with each other, EU member-states agree on a common set of goals and values that are internalized and buttressed by the member-states themselves.[238] Because European institutions operate with an "invisible hand" that allows legislation to grow out of national interests, individual member states have a vested interest in

supporting regional integration.[239] In contrast to the relatively peaceful relations between European states, Leonard also suggests that the "European way of war" includes the use of force in order to build peace and "defend Europe's value" through the form of humanitarian intervention.[240]

Despite Leonard's faith in European progress, the democratic process is far from complete. A closer look at processes of citizenship and constitutionalism in the European Union reveals unsolved problems—the integration of minorities is only one of many related to citizenship and democratic life. European Union economic and security interdependence, despite its potential, lacks a complete democratic interdependence. The next section will suggest that European citizenship without a Constitution or legal pillar may prevent such interdependence.

III. THE UNFINISHED PROJECT OF CITIZENSHIP AND CONSTITUTIONALISM IN THE EU

Citizenship and Democracy

European Union citizenship was officially established with the entry into force of the Treaty of Maastricht and the Treaty of Amsterdam.[241] Though legal European Union citizenship exists through commonly accepted treaties, this citizenship is complicated by member-state nationality requirements and immigration statutes. European Union citizenship is the product of member states, rather than an autonomous creation. Thus, European Union citizenship can only be conferred through the member-states, and is not entirely standardized from member-state to member-state. The lack of standardization and enforcement power in the area of judicial cooperation leaves many citizens turning to their member-states for participation in democratic life.

EU citizens have many privileges, but are relatively removed from the governmental processes at the heart of EU governance. In addition to individual citizens' worries about representation, smaller member-states find it difficult to surrender their sovereignty to a governmental body that does not fully recognize their opinions. Philippe Schmitter writes that the EU, while not plagued by a democratic crisis, is challenged by general symptoms of democratic morbidity and disenchantment within the EU citizenry, as well as by an increasing awareness of undemocratic representation.[242] The rejection of the EU Constitution is the most vivid example of this discontent. While the European Union continues to redefine democracy even now, the EU specialties in "trade liberalization, monetary policy, the removal of non-tariff barriers, technical regulation...foreign aid, and general foreign policy co-ordination" are of little interest to the average European citizen.[243] As Leonard writes, "none of the policies in the five most important issues for voters in Europe – health care provision, education, law and order, pension and social security policy, and taxation – are set by the European Union."[244] Asking citizens to approve a dense constitution like that of the EU, then, was perhaps a premature effort.

The Rejection of a Constitution

In 2002, under the guidance of the former French President Valéry Giscard d'Estaing, a group of 105 EU representatives gathered at a European Convention in order to revise previous Union treaties.[245] After over a year of debate and discussion, the convention unanimously approved a draft Constitution for the EU which was subsequently reviewed and approved in June of 2004 by an Intergovernmental

Conference of the member states' heads of government.[246] Finally, a few months later, on October 29, 2004, the European constitution was officially signed by member state governments at a conference in Rome.[247] The signatures marked a crucial moment in the history of European Union development, but the permanent success of the European constitution also relied upon its affirmative ratification through democratic process in the individual member states. Whether the moment of ratification is reached through parliamentary approval or popular referendum, the constitution can only be brought into force when it is approved and ratified by all of the EU member states.[248] In a recent wave of popular disapproval, however, both Dutch and French citizens rejected the proposed European constitution, thereby halting government ratification of the document.[249]

Popular responses to European integration have been relatively unpredictable over the past decade, but the "impressive display...of popular dissatisfaction" embodied by the Dutch and French rejections have led to claims that "the EU is increasingly paying the price...for integrating at the administrative level without offering the public a clear vision of integration and its benefits."[250] The span of only a few days between France's rejection of the constitution on May 29, 2005, and the Netherlands' rejection on June 1st was a surprise to many European Union and state political leaders.[251] The historical role of both France and the Netherlands at the heart of European Union expansion makes the two rejections all the more shocking. BBC World Affairs correspondent Paul Reynolds writes in an editorial following the French rejection that "This is not like Britain saying "No". That would be a problem. This is a crisis. It means that something is rotten in the state of Europe."[252]

The Dutch rejection only days after the French's rejection simply added salt to an open wound. As Dutch scholar Ben Crum notes, "The Netherlands is traditionally counted among the EU member states most dedicated to the integration project."[253] To have the Dutch populace dismiss the carefully articulated European constitution by a staggering 60 percent "left the European elite reeling and facing the prospect of a protracted period of recrimination, conflict and crisis."[254] The two rejections raise larger questions about the future of European integration, and British foreign secretary Jack Straw suggested following the referendums that the negative reactions raise "profound questions for all of us about the future direction of Europe."[255] French President Jacques Chirac and German chancellor Gerhard Schröder echoed these sentiments.[256] A right-wing Dutch politician suggested following the failed referendum that problems in the Netherlands are to blame, though others blame larger European problems.[257] Although the possibility of an EU constitution was not destroyed by the recent referendums, the deeper issues prompting their rejection must be dealt with before long-term unity can be achieved. The variety of unconquered European obstacles contributing to the negatively received referendums will be discussed in the next section of the paper.

A variety of unresolved problems lie beneath the surface of European integration. The failed referendums in France and the Netherlands are indicative of the growing importance of these issues, though the referendums fortunately do not bring about a true reversal of integration. Regardless, the negative reactions prompt a strong need for European self-evaluation and reformation at the level of the political elite. In a general sense, the referendums illustrate a growing discontent with the gap between individual European citizens and their representatives at the European level. As Paul Reynolds

writes, "The institutions of the EU have got ahead of the peoples of the EU."[258] Overall, citizens are wary of relinquishing their hold on the security provided by states. The problem is only exacerbated by the fact that citizens increasingly feel alienated by both their state governments and EU institutions alike.

The *Guardian Unlimited* reports that "Growing anti-Muslim sentiment, opposition to EU membership for Turkey, and fears over losing control of immigration policy" were all large factors contributing to the rejected referendums.[259] The BBC notes that "many voters feel that Brussels has too much power and that their national politicians are not protecting them enough."[260] Dutch voters were also concerned that liberal state policies on drugs and gay marriage would be changed at the EU level, and were disillusioned by rapid EU enlargement and the single Euro currency.[261] For the Dutch voters, as well as the French, the growth of the bureaucracy in Brussels represents a threat to "liberal values," national identity, and an increase in faceless economic integration.[262] In short, questions of sovereignty, rapid European integration, cultural preservation and opposition to minorities, and a democratic deficit are all being put forward by a European public that has been pushed to the margins in the past.

IV. THE INTERDEPENDENCE MODEL: A DEMOCRATIC WAY FORWARD

Despite drawbacks, democratic interdependence seems the most effective way forward for the European Union, as well as for Great Britain and the Netherlands as individual member-states. Several significant authors have influenced my understanding of this concept, though one in particular guides my general arguments. Herbert J. Spiro introduces a "third way" for interdependence between the relinquishment of national

sovereignty and the growth of supranational government.[263] Spiro argues that the historical example of American democracy has been misinterpreted as purely supranational.[264] While the United States has supranational qualities, Spiro suggests that its legacy of *E pluribus Unum* "did not proceed from a centre, was not pushed from above, and was not obtained by force."[265]

Spiro instead attributes the growth of the American polity to a process of interdependence, through which "regions of the country and both horizontal and vertical groupings of the people have become increasingly aware of their complex, mutual dependence upon one another."[266] The European Union seeks its own democratic legacy in the current century. Partly out of necessity, perhaps out of idealism, the EU brings together nations that were at war less than a century ago. The method is different, but the purpose the same—to create an interdependent one out of many.

The failure of constitutional referendums, worries about immigration and multiculturalism, and member state challenges with minority communities all bring new definition to the European democratic project. In the current century, pressed by globalization and international forces, the European Union seeks its own democratic legacy. These new realities suggest the need for an increase in democratic interdependence. Democracies in the current age—particularly the growth of new democracies—require an unprecedented level of interdependence. As multicultural communities grow, and as the European Union expands to include more diverse communities, democratic institutions will rely on the interdependent cooperation of all individuals, member states, and Union representatives. As Spiro notes, this interdependence may be both conscious and unconscious—directed and mediated or

simply "transmitted through the various overlapping networks of the polity, of which once perceives oneself as a *more or less* integral component part."[267] In either case, successful multicultural and diverse democracies rely on some form of interdependent investment in the fibers of democratic being. At the level of the European Union, several scholars have discussed the resolution of the polity's democratic deficit and offered potential solutions to a variety of challenges associated with democratic interdependence. Several of these scholars and the significant problems they address will be discussed here.

Elizabeth Bomberg and Alexander Stubb: Governance and Legitimacy

Before the Constitutional referendums, Bomberg and Stubb identified several problems of governance and legitimacy that continue to plague EU officials. Where governance is concerned, the EU institutions lend themselves to a system of isolated bureaucracy, rather than the democratic representation that is so essential and familiar to European citizens.[268] While democratic participation at the EU level is arguably more important than local participation in state politics, the European Parliament does not effectively live up to its responsibility of representing the European public.[269] As decisions made at the EU level begin to impact citizens more overtly, a strong system of democratic representation becomes all the more essential. Though Bomberg and Stubb do not provide a solution to the problem of representative governance, understanding the complicated history of governance in the EU is important for deciphering the more obvious discontent today.

Institutional and democratic legitimacy is an equally important dilemma facing the EU today. Legitimacy, identified in terms of democracy, performance, and identity, is a constant challenge to the EU.[270] Democratic legitimacy and governance, as discussed above, is limited by a weak Parliament, decreasing citizen participation, and the confidential nature of important decision making.[271] Where performance is concerned, the removal of economic barriers and the creation of a common market have substantially integrated European economies, but many individual citizens are negatively impacted by this integration.[272] Without concerted efforts on the part of European institutions to reverse the negative effects of integration on European populations, public opposition is not a surprising development.

The final dilemma of integration identified throughout Bomberg and Stubb's work is the absence of a common European identity. Over the past decade, the EU's geographic membership has expanded drastically, though a common European identity has not spread with the borderlines. Member states are integrated by political and economic institutions, but the myriad cultures that are subsumed under the umbrella of "European" have not reached a similar level of amalgamation. Resistance to Turkish accession into the EU and a general wariness of Muslim minorities are two examples of the conflicts between cultures. Furthermore, national and state identities are more potent than the often ambiguous "European" identity, as was seen during the referendums in France and the Netherlands when national identities and interests were used to legitimize the rejection of the EU constitution. Until a common thread is found that will link the peoples of Europe together, the process of EU integration will always be finite.

Sadly, Bomberg and Stubb offer few solutions to the variety of problems they identify. Their text is primarily a historical one, though its undercurrents show a favoritism for a more integrated European Union. While the rejected referendums do not themselves halt progress in the EU, the larger issues identified in part by the authors must be resolved if the EU is to avoid major roadblocks in the future. Thus, it is helpful to examine other texts and the prescriptions of other authors in order to more critically evaluate the challenges and possibilities of European integration.

Prescriptions for Democracy

Philippe Schmitter's book *How to Democratize the European Union...And Why Bother?* offers great discernment into the process of European Union development. He extends a historical account of democracy and integration in the European Union by examining the need for democratic processes in the areas of citizenship, representation, and decision making. Schmitter did not predict the popular rejection of a European constitution directly, though he did recognize the dangers of an undemocratic regional system of governance. Rather than confining the European Union to pre-existing models, Schmitter explores the possibility that the European Union's emphasis on collaborative decision making and negotiation will result in a form of democratic governance that is completely new.[273] In order to embrace democratic life, however, Schmitter suggests that several changes are necessary.

The most important of Schmitter's reforms include increased citizen participation through European representative elections and more frequent referendums.[274] This would allow individual citizens across the EU the opportunity to have a more regular impact on

the operations of European supranational institutions. In combination with reforms that would protect non-nationals under European auspices as citizens, grant general EU citizenship, and introduce social welfare programs, opportunities for participation could resolve the sentiments of alienation felt by many European citizens.[275] Eventually, individuals granted citizenship within the European Union would also be responsible for contributing monetarily to the maintenance of democratic institutions, thus maintaining the financial stability of the integrated system. Within European Union institutions, decision making processes could be made more accountable through the implementation of a variety of representation mechanisms that would ensure both proportional and functionally specific voting weights within the European Council and Parliament.[276]

For Schmitter, the most effective form of democracy is one which recognizes the importance of rule by numeric majority, but also the weight of intense minority values.[277] He writes that decisions made by numeric majorities can collide intensely with the interests of minority populations, and that it is the role of democratic institutions to "displace, if not replace, the majority principle with some other decision rule that recognizes disproportionately or protects explicitly the preferences of minority…within the same political process."[278] Within the context of territorial expansion, balancing majority and minority interests is especially important. In order to avoid fragmentation and widespread discontent with EU institutions, the EU will ultimately need to strike an even balance between small coalitions and larger minorities. Additionally, the frameworks for citizenship and representation will need to be strengthened before democracy in the EU can be successful.

EU institutional weaknesses in the area of political integration only impede the possibilities of European citizenship and belonging that are so far from becoming realities. Indeed, Europe has no universal regional culture, and European "citizens" are pulled in seemingly opposite directions in the face of layered "local, regional, national, and supranational" identities.[279] More importantly, these identities and the welfare of individuals have become less important at the European level than the state, economic, and business interests that frequently occupy politicians.[280] Even at the time of publishing in 2000, Schmitter identified increasing "symptoms of morbidity" among the European populace, accompanied by unaccountable decision making behind the closed doors of EU institutions.[281] In order to resolve these problems, reforms that include both the interests of the numeric majority and the passions of minority groups will need to be undertaken in the long-term by European governments.[282] Following the failure of politicians to effectively bring European nations under a common constitution, these reforms are all the more necessary.

The Option of Federalism: A United States of Europe

Even among supporters of European integration, many scholars argue against a "United States of Europe." Schmitter, for example, argues that currently available models for governance will not suit the European Union. In contrast, Glyn Morgan argues in *The Idea of a European Superstate* that a federal European state is one of the only ways to successfully integrate Europe. Though his arguments are more controversial than other authors, he approaches European integration from a perspective that is perhaps more accessible to the average European citizen. Essentially, Morgan's work returns to the

very project, process, and product of integration itself and seeks to justify every dimension in terms of public interests.[283] Furthermore, Morgan's arguments differ from others in favor of integration as a result of his refusal to use economic, welfare, or sovereignty as justifications for European integration (or disintegration). Though his work has flaws on its own, it does introduce a perspective on public opinion in the EU which does not see European integration as an inevitable end. Morgan's work emerges as a valuable addition to the more specific discourse on popular discontent and public opinion in the context of an unfinished European integration project.

In seeking to affirm European integration by using a democratic standard, Morgan suggests that European integration could be justified to both skeptics and adherents in terms of individual security.[284] He continues this idea by arguing that a federal European state is the only model of governance that can successfully ensure individual security, whether this is defined primarily as military, economic, food, environmental, or cultural security.[285] Though his thesis seems to simply co-opt the available model of federalism envisioned in existing models like the United States, it does raise the larger issue of individual protection that is so vitally important to citizens. In an era where states are often unable to protect their constituencies from outside attacks on security and hard power cannot function alone, some form of regional governance that begins to balance individual interests with government demands is needed. The failure of constitutional referendums in France and the Netherlands speaks to the confusion that voters face when attempting to navigate the decreasing effectiveness of individual state sovereignty and the gaps that are still present in an expanding system of regional governance.

Morgan writes that "People in early modern Europe came, over a period of generations, to shift the horizon of their loyalties and attachments from the local to the national. There is no reason why, *under the right combination of circumstances*, this could not happen again."[286] For Morgan, these circumstances include justifying the project of integration in terms of security, and transferring the powers of foreign, security, and defense policy to the European level.[287] It is important to note, however, that the European institutions need to demonstrate a significant level of effectiveness to the European public before full integration can become a reality.[288] Furthermore, citizens will need to assume and recognize their responsibility for and their impact on the institutions that govern them. If they continue to feel completely removed from the practices at the European level, no amount of justification will make a constitutional or federal European polity succeed.

Multiculturalism and Democracy

As European news sources stated following the French and Dutch referendums, growing anti-Muslim sentiments and the desire to preserve genuine "European" cultures were cited frequently as factors which influenced the negative response to the EU constitution. Unfortunately, these factors not only influence popular referendums, but the everyday lives of minorities who attempt to integrate into European societies. In her book *The Islamic Challenge*, Jytte Klausen outlines the realities of ethnic intolerance in European nations and the political difficulties which face growing European Muslim communities. On one hand, the anti-Muslim reactions from Europeans reflect the reluctance to admit Turkey into the European Union and the general desire to preserve

European morals and values. On the other hand, the "Islamic Challenge" reflects a deeper religious and cultural intolerance within European societies. The process of successfully integrating difference confronts secular and religiously affiliated states alike, and it is testing the very quality of European democracy.

Rather than posing an insolvable difficulty, the challenge of cultural and ethnic minorities in the European Union is an issue that can be overcome with openness and cooperation on the part of both Europeans and minorities. Indeed, Klausen suggests that the introduction of Islam into European societies is not deeply divisive or reflective of a "clash of civilizations," but a matter of domestic policy reform.[289] The present unrest over Muslim populations in Europe arises out of both a realization that Muslims intend to remain in European nations, and that European state legislators have failed to create policies that will support and protect this growing minority.[290] Successful integration will require the cooperation and commitment of both European citizens and Muslims, though unfair policies at the level of state governments must be dealt with first before Muslims can accept an equal role as European citizens. Confronting difference in a democratic and cooperative way will be a valuable lesson for state governments as well as European institutions.

The rejected constitutional referendums represent at one level a failure of state governments to justify publicly the integration of minorities into European society as well as a failure to legislate policies which allow the protection of Muslim cultural specificities. At another level, the inclusion of anti-Muslim sentiments in the reasoning behind the negative votes suggests that the effects of the "Islamic challenge" will soon reach the level of European Union institutions. If politicians at the state level begin to

make policy changes that will integrate Muslim minorities more fairly, pluralistic citizenship becomes a real possibility. Otherwise, European institutions will increasingly find that opposition to minorities is a recurrent problem. Facing the "Islamic challenge" will undoubtedly prove useful as the EU's borders continue to expand and include more diverse identities.

V. The European Union as a Global Model

Placing European developments within a context of globalization allows for the EU's broader significance to emerge. Three examples of the EU's global instructiveness are particularly strong.

First, the European Union should be closely scrutinized for its reinterpretation of democratic life. The process of balancing both institutional and cultural idiosyncrasies while remaining open to the possibility of democratic participation is a daunting task that will be globally instructive even if it does not succeed in this century. Second, the EU represents a unique regional mechanism that has the potential to enforce collective political, economic, and environmental accountability. Environmental degradation, world poverty, human rights, economic development, and long-term political stability among other issues must be addressed by a larger community of nations. The European Union is, so far, the most successful example of this community of nations, though admittedly on a small scale. If ethical leaders and scholars press for the continuation of the integration project, however, the EU may emerge as an exceptional model for global cooperation. Finally, in returning to the concept of perpetual peace, the European Union represents the single largest peaceful polity in the world. Beyond a simple absence of war, the Union is

in collaboration and cooperation toward larger ideals. If a similar respect for difference, disagreement and compromise can be reproduced around the globe, investment in the ambition of globally interdependent nations will not be impossible.

The discourse on the European Union is far from finished. At various levels, the European Union is combating the same challenges that other nations around the globe are facing in differing ways. The EU becomes particularly significant, however, when it is placed in a global context. In the coming decades, the literature and scholarly work on the EU will benefit greatly from an increased focus on the EU's potential as a global model for cooperative politics and diplomacy. Democracy, citizenship, identity, and the links between the political and the individual are all central to the discussion of the European Union, as well as to the discussion of life in an era of globalization. The European Union as a model for the ways in which democracy and citizenship are changing is an important field of study as a result of its dynamism and its potential for redefining democracy. With careful attention and progress, Europe's example could very well lead the globe in a new age of political morality, global cooperation, and perpetual peace.

CHAPTER 6

CONCLUSION: DEMOCRATIC INTERDEPENDENCE AS A MODEL FOR MULTICULTURALISM

The current thesis has dealt broadly with the difficulty of integrating globalized individuals into the traditional state polity through immigration and integration legislation. More specifically, I have argued that the increasingly restrictive immigration and integration programs of Great Britain and the Netherlands have limited the democratic participation and integration of ethnic minority communities in both states. The first chapter introduced several significant concepts in understanding the globalization of identity and its impact on the state and its legal systems—including the notion of statehood, citizenship, globalization, integration, and legal pluralism. Through a detailed historical analysis of legislation in Great Britain and the Netherlands, the thesis illustrates the increasing resistance to the movement of minority communities, the tone of this legislation, and its impact on minority integration. In the final chapter, the thesis introduced several models for integrating diverse state bodies and institutions in the European Union as a way to explore potential models for creating globalized and integrated multicultural states in Europe.

No single legislative change will transform the successes or failures of multiculturalism in Great Britain, the Netherlands, or across the European Union. Each polity must define and invest in unique policies and programs for statehood and citizenship in an era of globalized individuals, markets, and even security threats. Great Britain confronts a different ethnic minority community than the Netherlands does, and

the European Union needs unique models to encourage interdependence at a transnational level. In practical terms at the state level, this means that both state institutions and multicultural citizens have a responsibility to commit themselves to such projects. Both individuals and state legislators should be held equally accountable for encouraging a tolerant and democratic state with globalized and multicultural threads. A variety of models exist for promoting multicultural and pluralistic states, though I am particularly influenced by the innovative interdependence model that emerges from the growth of the European Union itself. This model is particularly attractive for three reasons.

First, it is grounded in the European experience of managing difference. Despite the often divisive cultural, economic, and political differences that existed in Europe following the Second World War, interdependence emerged as a way to form a greater economic stability. Second, the theories of interdependence can be molded to fit transnational, state, or local necessity. Finally, and most importantly, it holds a community and a polity equally responsible for the development of a peaceful and fairly managed multicultural democracy. The next brief section will explore the three essential elements in a unique model of democratic interdependence.

Building Democratic Interdependence: A Three-Part Model for Multiculturalism

Grounded in European concepts of economic interdependence, and equally influenced by the literature that has emerged on pluralism and assimilation, I suggest a new theoretical model is needed as a guide for both immigration and integration legislation, and for the growth of informed hybrid citizens. For multiculturalism to succeed as a political project in Great Britain, the Netherlands, and perhaps other

countries, I suggest that three key components must exist. In each of the three concept areas, equal participation is needed from both minority citizens and the state. Interdependence, by any definition, is reliant on such participation, and it is of intense necessity in the case of a growing multicultural state.

The first component of a successfully hybridized and multicultural state is a common infrastructure of democratic institutions that are accessible to transitioning minority and ethnic groups. New citizens (and even non-citizens) must become familiar with their rights, obligations, and opportunities to participate in the democratic life of countries like the United Kingdom and the Netherlands. In the beginning of its days as a democratic melting pot, the United States was idealized and dreamed of by immigrants all over the world. Not only economic opportunity, but democratic opportunity, fueled these dreams. Minority citizens and new arrivals must take part in the initiative to learn about the potential of the democratic institutions that could serve them, and make a consistent effort to become involved in democratic processes for change. Equally, state governments must encourage legislation that educates and informs its newest and most diverse citizens. The concept of "democracy" and its institutions may be envisioned differently by the state and current minority groups, but a conversation of compromise and accommodation on both sides will be an unavoidable part of building an interdependent and intercultural state. Throughout any process of negotiation, there must also be a sense of investment in common democratic institutions that will be functional and accessible to the entirety of the polity.

Building on the component of democratic institutions, the second component of a multicultural state is a lasting environment of legitimacy and accountability, particularly

where democratic exchanges are concerned. Minority citizens who become actively engaged in democratic processes must be able to count on the effectiveness of the institutions that they place their faith in. They need more than bland assurances that minority voices are being heard. Similarly, government officials and policy makers must receive substantial evidence that minority populations can be held accountable. If promises are made for change on either side of the spectrum, these promises must be kept legitimate and then followed by accompanying enforcement actions. Both minority citizens and the state should be held responsible for maintaining the democratic institutions that protect the polity as a whole. When suitable broad agreements are reached between minority groups and the state, these agreements should be recognized by law.

The third and final component that is essential to a multicultural state is legislative and judicial authenticity. Put simply, this component gives enforcement power to the state's intercultural negotiations. In the United States, this supreme authenticity is granted to minorities, the majority, and the state by the Constitution and the Courts that preside over it. For states that have little or no protection for minority rights, this third component weighs more heavily on their own initial efforts to ensure that legislation is fair, impartial, and enforceable. Nonetheless, it is the responsibility of minority citizens to follow the laws prescribed by the state and to respect a judiciary with the power to maintain a fair democracy. If legislative changes are necessary, both the state and minority groups must recognize the lengthy democratic process that must occur before legislation can be made reality.

Suggestions for Further Research

The three components I have identified are only the beginning of a theoretical model for encouraging a successful multicultural state. As a result, they are dangerously broad, and would significantly benefit from the inclusion of more practical and programmatic elements. I have attempted to include some suggestions in each of the case studies for legislative change, but resolving uncertainty around immigration legislation alone will not provide the impetus needed for a stable and interdependent multiethnic state. Two improvements on my own research and pathways for future research exist.

First, keeping the theoretical challenge of interdependence in mind, a more practical research project might propose wider legislative changes or policy proposals that go beyond the sphere of immigration and integration. The concept of interdependence could be applied to a variety of "state-building" programs in European nations to encourage multicultural identities and legislation, but only with additional and focused quantitative research. Additional research on conflict resolution theories or integration theories might also prove fruitful in negotiating multicultural European states.

Secondly, a narrower focus on the specific ethnic groups and their successes and difficulties with integration would have provided an entirely different lens for the project. Though my background is not anthropological, a qualitative study of a particular ethnic group in one case study country would be a beneficial way to test the theories of interdependence that I have developed. More importantly, a qualitative analysis might introduce new theories that are common among minority communities themselves. Growing interdependence and multicultural theories from the roots of ethnic communities

would no doubt produce different results than my own “top-down” approach of looking at European Union institutions.

Notes

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