



## **Swiss Federalism and its Impact on Integration Policies**

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# Swiss Federalism and its Impact on Integration Policies

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## 1. Introduction

The following case study will show to which degree federalism influences the integration policies in a country that is composed of different linguistic regions. The argument will be that it is not mainly the multicultural composition of Switzerland that takes to different policies and outcomes when it comes to integration, but institutional structures inherent to the political history of Switzerland as consociationalism and direct democracy, but also the autonomy of its municipalities and, obviously, its federal structure. After having given a short historical background section three describes the process integration and its impact on the founding Swiss beliefs during the twentieth century by way of a historical overview and demographic data. Section four highlights the importance of various stakeholders and the evolution of concrete migration policies at the different cantonal levels. Section five analyses different external factors and opportunity structures that may have affected the creation of this policy, showing how federalism, municipal autonomy and a consensus-oriented political culture impacted the formulation of admission and integration policies as much as various external challenges (foreign governments, the European Union) did. This chapter's conclusion finally discusses the different factors that may have influenced the outcome of Switzerland's particular immigration and integration policy.

## 2. Background

Switzerland is renowned for its neutrality and peaceful attitudes, its ethnic and linguistic diversity and a decentralised government that makes most laws at the canton level.<sup>1</sup> Yet there is good reason for immigrant control and integration policies to figure large. This federalist country has been challenged since its birth – in the aftermath of the successful liberal Revolution of 1848 – by centrifugal forces at the religious, regional, political, social and ideological levels. Certain foreign scholars, puzzled by Switzerland's apparent enduring stability (and overlooking a history of violent and disruptive conflicts from the civil war of 1847 until the social unrest of the 1930s), identify the source of this solidarity in the clever management of a multicultural country through its federal institutions (Schnapper 1997). Some see Switzerland as a 'paradigmatic case of political integration', the result of the state's subsidiary structure that supports both strong municipal autonomy and a comparatively high participation rate of the (male) constituency in the polity (Deutsch 1976). Others see the source of the country's stability in the successful creation of a strong national identity, which helped overcome the social distrust that arose during rapid industrialisation and was based on the country's small size and the idea that Switzerland was under permanent threat of powerful neighbouring countries, i.e. *Überfremdung* (Kohler 1994; Tanner 1998).

The fear of being demographically and culturally overrun by foreigners notwithstanding, Switzerland had one of the highest immigration rates on the continent during the twentieth century. According to the 2000 census, 22.4 per cent of the 7.4 million people comprising the total population are foreign born, and 20.5 percent, or nearly 1.5 million, are foreigners (defined here as persons with a foreign nationality). In relative terms, the number is twice as high as foreigners counted in the United States and considerably higher than those in Canada, two classic countries of immigration. In contrast to its internal pluralistic character,

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<sup>1</sup> Migration and integration policies are matters of cantonal sovereignty to a certain degree.

however, Switzerland does not consider itself as a country of immigration; it denied existence of an immigrant policy at the federal level before the 1990s and has no facilitated access to Swiss citizenship (Mahnig & Wimmer 2003). This policy of prevention influenced the country's decision not to admit any Jewish refugees after 1933, and also affected the implementation of a guest worker rotation model after the oil crisis of 1973.<sup>2</sup> Another paradox concerns the handling of admission and integration issues at the political level. Just after World War II, Switzerland was a popular destination for guest workers seeking employment in France, Germany and Italy. In the second half of the twentieth century, however, it became a home to Eastern European dissidents, Yugoslavian refugees and asylum seekers from the Middle East, Asia and Africa. In complete absence of those social hardships encountered in its neighbouring countries (high unemployment rates among migrants, ethnic and social segregation, social unrest, etc.), the immigration issue has been a contentious topic since the 1960s. These inconsistencies can be explained through a careful analysis of how admission and integration policies evolved in Switzerland.

### **3. Immigration Patterns**

Switzerland's reputation as an ideal place for exiles dates back to the sixteenth century, when the Huguenots of France were welcome as religious refugees and found their place among the cultural, political and entrepreneurial elite of Switzerland. But the modern transformation of Switzerland into a country of immigration – as it is known today – took place during its accelerated industrial take-off in the second half of the nineteenth century (Holmes 1988; Romano 1996). In contrast to its rural image, the Swiss Confederation is a European forerunner in various branches of modern mechanical and chemical industries, and has had an enormous need to invest in knowledge and infrastructures. While many rural inhabitants were leaving the country to make their living as peasants in the New World, many German intellectuals fleeing from the failed liberal revolutions of 1848-1849 found their place at the local universities. Italian craftsmen and workers also were recruited at the end of the nineteenth and early twentieth centuries, mainly in the construction business and the railroad sector.

During the late nineteenth and early twentieth centuries, the size of the foreign population in Swiss cities increased: 41 per cent of people in Geneva, 28 per cent in Basel, and 29 per cent in Zurich were born outside Switzerland. Nationwide, Germans outnumbered the Italians and the French (Efionayi-Mäder, Niederberger & Wanner 2005). Moreover, the proportion of foreigners in the total population increased from 3 per cent in 1850 to 14.7 per cent on the eve of World War I, mostly from neighbouring countries. During the two world wars, however, the foreign population decreased significantly. By 1941, Switzerland's foreign population had dropped to 5.2 per cent (Arlettaz 1985).

In the liberal period preceding World War I, immigration was largely the responsibility of the cantons, whose laws had to conform to bilateral agreements signed between Switzerland and other European states. Like other agreements from this period concerning free circulation in Europe, the Swiss agreements remained open to immigrants out of a need to ensure Swiss citizens their also being easily able to emigrate to find work. However, after a first campaign against the presence of aliens in Switzerland during World War I, a new article to the Constitution appeared in 1925. The article gave the federal government the power to address immigration issues at the national level, thus providing legal basis for the existence of the federal alien's police and the Law on Residence and Settlement of Foreigners, which came into force in 1931 (Garrido 1990). This law allowed the new police, the *Fremdenpolizei*, discretion in the implementation of the immigration policy,

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<sup>2</sup> According to the rotation scheme, migrants entered the country for a period of one to two years and were then supposed to return home to make room for other guest workers.

although at the time the aim was maintaining national identity rather than regulating migration. Essentially, the authorities had to factor into their decisions the country's moral and economic interests as well as of *Grad der Überfremdung*, or the 'degree of over-foreignisation'. Nationwide political consensus to ensure cultural "purity" in Switzerland prevented the drafting of any consistent immigrant policy until very recently. Foreigners, in principle, had to leave the country and were not allowed to settle permanently.

### **3.1. Post-war labour migration**

Shortly after World War II, the economic demands of neighbouring countries engaged in economic recovery stimulated rapid growth of the Swiss economy. In the context of the post-war economic boom, Switzerland signed a 1948 agreement with the Italian government in order to be able to recruit Italian guest workers. The workers were mainly employed in the construction sector but also in textile and machine factories. A steady flow of foreign workers immigrated to Switzerland. Their numbers increased from 285,000 in 1950 (6.1 per cent of the total population) to 585,000 (10.8 per cent) in 1960 and to 1,080,000 (17.2 per cent) in 1970. Predominantly Italian during the 1950s, the composition diversified in the 1960s. By 1970, though over 50 per cent were still Italian, about 20 per cent were natives of Germany, France and Austria, while 10 per cent were Spaniards and 4 per cent were Yugoslavs, Portuguese and Turks (Mahnig & Piguet 2003). Initially, these immigrants with temporary seasonal permits were entitled to stay for one year, though their contracts could be prolonged, which frequently happened. A similar agreement with Spain was signed in 1961.

To ensure the workers did not settle permanently and could be sent home, the period of residence required for obtaining a permanent residence permit was increased from five to ten years and restrictive conditions on family reunion were adopted. This policy was called the 'rotation model' because it meant that new workers could be brought in as others returned home. While the economy boomed throughout the 1960s, the Swiss government's guest worker system became less tightly controlled. As Switzerland faced increasing pressure from Italy to introduce more generous family reunification laws, the number of Italian workers willing to come to Switzerland decreased, while other destinations, such as Germany, became more attractive after the signing of the Treaty of Rome; also, the internal economic boom and development started a wave of internal migration, particularly to destinations in Northern Italy.

It was also at this time that the Organisation for European Economic Co-operation (OECE) introduced standards for family reunification. Other international guiding bodies, such as the International Labour Organization (ILO), also pressured the Swiss government into adopting more 'humane' family reunification policies. In response, the government began replacing its rotation system with an integration-oriented scheme that facilitated family reunification, made foreign workers more eligible for promotions and attempted to end labour market segmentation (Niederberger 2004).

Following the 1973 oil crisis, many workers became superfluous, thus having to leave the country because they lacked adequate unemployment insurance. This allowed Switzerland to 'export' its unemployed guest workers without renewing their resident permits (Katzenstein 1987). The total percentage of the foreign population fell from 17.2 per cent in 1970 to 14.8 per cent in 1980. But as the economy recovered, new guest workers arrived not only from Italy, but also from Spain, Portugal and Turkey. Their share of the population increased from 14.8 per cent (945,000 persons) in 1980 to 18.1 per cent (1,245,000 persons) in 1990 and 22.4 per cent in 2000 (nearly 1.5 million people) (Mahnig & Piguet 2003).

By the time the worldwide recession of the early 1990s reached Switzerland, the unskilled and aging guest workers suffered high rates of unemployment and found it very difficult to find new jobs. This situation led to an unprecedented level of structural

unemployment and poverty, one that Switzerland had not experienced in prior decades. Switzerland's larger cities, which, according to the subsidiary logic of the Swiss federal system, were responsible for welfare and had to find solutions, urged the federal government to act and support extended integration patterns towards immigrant workers (D'Amato & Gerber 2005). A new admission policy was needed to combine the evolving needs of a new economy with those of migration control.

### **3.2. Asylum policy**

After World War II, the Swiss government recognised that its authorities had been responsible for denying admission to many Jewish refugees. The government stressed its willingness to uphold the country's humanitarian tradition and, in 1955, signed the 1951 Geneva Convention Relating to the Status of Refugees. . During the next two decades, the country adopted a liberal policy, offering asylum to refugees from communist countries in Eastern Europe. In 1956, 14,000 Hungarians were allowed to settle permanently after their country's uprising against Soviet troops and, in 1968, 12,000 Czechoslovakian nationals arrived in Switzerland (Efionayi-Mäder 2003). In the mid-1970s, the arrival of a few hundred Chilean dissidents who fled Pinochet's regime ignited controversial debates about their asylum eligibility. Between 1979 and 1982, Switzerland offered protection to approximately 8,000 Vietnamese and Cambodian 'boat people'<sup>3</sup>, who were accepted on the basis of yearly quotas. Their subsequent integration process was more difficult than that of any previous refugee group (Parini & Gianni 1997, 2005).

All these events prompted the creation of a federal asylum policy in 1981, which codified the country's relatively generous practices. It defined the rules of the refugee status determination procedure and gave the Confederation policymaking power in this field, while clearly giving the cantons the responsibility of implementing these policies. In domains such as welfare, education and repatriation, the power of the cantons in making refugee-related decisions were significant. As a result, there were major outcome differences between the cantons as a consequence of their different approaches.

After 1981, two trends emerged. Firstly, the number of applications, which had been steady at about 1,000 per year during the 1970s, increased exponentially. Secondly, most of the refugees – except for a large number from Poland in 1982 – came from other parts of the world: Turkey, Sri Lanka, the Middle East, Africa and Asia. Unlike the anti-communist dissidents, they were not always professional or university-educated. In addition, a weak economy made it difficult for these non-European refugees to find work. By the mid-1980s, asylum had become a sensitive subject. In public debates, refugees were called 'asylum seekers' or the derogatory term 'asylants' to indicate they did not deserve refugee status. Since the 1981 law's subsequent revisions created stricter procedures, the government gradually started accepting fewer asylum requests, even from people fleeing civil wars and violence. As a rough indicator of this trend, the proportion of applications accepted averaged 86 per cent between 1975 and 1979. This dropped to an average of 47 per cent between 1980 and 1984, and then to an average of 6 per cent between 1985 and 1990 (Efionayi-Mäder et al. 2005).

### **3.3. The Impact of the Constitutional Structure on Immigrant Policies**

As a federal state, Switzerland is confronted with the challenge of multi-level governance. Certain centralizing mechanisms, which in Germany and the US are enforced by the Supreme Court, are less successful in Switzerland. Centralizing legal approaches are counteracted by

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<sup>3</sup> Boat people refers to mass departure of Vietnamese and Cambodian refugees in the late 1970s escaping the new installed communist regimes and finding rescue in Western countries.

Parliament and the People. As Linder (1999: 22) has stated, one important weakness of the central government institutions in Switzerland is the limited possibilities for coercive implementation of federal policies. . In this sense, federal political authorities are often compelled to induce cooperation with the cantons offering financial subsidies. This federal structure may have an advantage, since knowledge of local interests leads to quicker, more appropriate decisions, ensuring greater recognition of particular interests (minorities e.g.). While the Federation has the legislative power in most areas, responsibility for implementing federal policies resides to a large extent with the cantons. For the Federation, this has the advantage of reducing its workload, for the cantons the advantage lies in controlling their own program priorities and being able to adapt federal policies to local contexts. But this often difficult implementation of overarching federal policies may provoke to neglect the context as a whole and induce adverse effects disparately through the regions of the country. The low degree of coordination between the cantonal schooling systems, the existence of various different integration and naturalization programmes for migrants may be helpful for local elites, but not for the majority of citizens.

Vatter (2004) explains the inadequate level of cooperation between the Federation and the Cantons by the less than precise delineation of tasks between the two level of the system. Consequently, new tasks as for example integration policies are passed back and forth between the cantons and the Federation. Whereas active cantons fulfil the obligations coming from Berne, others complain and call for more help. This makes it necessary to provide the Federation with further responsibilities for support and sanctions. The result is usually an increasing standardization of the implementation process, stricter criteria for federal subsidies and stronger policy integration between the Federation and the cantons. Other factors that lie at the root of the implementation problem in different political fields refer to inadequate horizontal coordination, overly complex procedures, large disparities among the cantonal administrations in financial, legal and human resources, the limited financial capacity of the Federation, and insufficient regard for the specific regional context.

The problematic aspects of the Swiss federal state have an effect in integration policies, too, since the central actors are also in this case the cantons and the municipalities. In particular cantons have a space of manoeuvre when it comes to the promotion and implementation of integration provisions as they are recommended by federal institutions. In many cantons the Cantonal Offices for Migration are those actors who decide in which sense the law is implemented, deliberating the measures that should help migrants to integrate in systems as education, health and security. Studies that analysing the implementation of integration policies by the cantons are still in their infancy and to be developed in the near future (D'Amato and Wichmann 2010).

#### **4. Federalism and its impact on migration policies**

Since immigration and integration policies in Switzerland are intrinsically bound by the Swiss institutional structure, this section will first present the main actors of policymaking and then discuss the recent changes in admission, asylum, integration and naturalisation policies.

##### **4.1. The actors of policymaking**

Until 2005, two federal offices within the Federal Department of Justice and Police dealt with 'foreigners' living in Switzerland: the Federal Office for Refugees (FOR) and the Federal Office for Immigration, Integration and Emigration (IMES). The first office was introduced in 1991 in reaction to the influx of asylum seekers since the 1980s. The second federal office was founded in 2000, although the beginnings date back to the implementation of the 1931 Law on Residence and Settlement of Foreigners. . Its main task was to prevent the 'over-

foreignisation' of Switzerland and to enforce assimilation policies for foreigners. These two federal offices became one entity, when merged into the Federal Office for Migration (FOM) on 1 January 2005. One branch in the new FOM continues to be responsible for implementation of Swiss asylum policy. Another picks up where IMES left off, implementing the admission policy, which includes the enforcement of laws regarding residence in Switzerland (immigration and residence section) and assessing labour market needs (labour market section). (Efionayi-Mäder, Lavenex, Niederberger, Wanner & Wichmann 2003).

The State Secretariat for Economic Affairs (SECO), which is a part of the Federal Department of Economic Affairs (DEA), is the government agency responsible for questions about economics and labour. SECO has influenced Swiss labour migration policy since 1945 by determining the qualitative and quantitative needs of the market.

At the federal level, there are three important permanent commissions, namely the Federal Commission for Foreigners (FCF), the Federal Commission against Racism (FCR) and the Federal Commission for Refugees (CFR). The FCF was set up as an expert commission of the Swiss Federal Council in 1970; it reports directly to the Federal Department of Justice and Police.

The FCF's central concern was the integration of foreigners. Since 2001, funds have been available for projects promoting integration. At present, the FCF comprises 28 members, two of whom hold observer status. The members are representatives of various foreigners' organisations, municipalities, communities, cantons, employers and employees and churches, or have a professional background in implementing integration policies. The FCF assists in promoting the creation of educational and vocational opportunities for foreigners and in the recognition of professional training in cooperation with the relevant cantonal authorities; it participates in the international exchange of views and experience; it mediates between organisations that are active in the field of cooperation and the federal authorities; it publishes opinions and recommendations regarding general issues of migration; and, moreover, it is consulted on questions of migration during legislative proceedings.

In 2008, the FCF and the CFR were merged into one commission, the Federal Commission on Migration (FCM). Both the FCM and the FCR hold meetings on a quarterly basis. They organise joint events, such as the national conference on the revision of the law on naturalisation in Fall 2008 or on Citizenship in Fall 2010. The Federal Commission Against Racism is part of the Federal Department of Home Affairs (DHA). Within the DHA, there is the *Service de lutte contre le racisme*, an interlocutor that coordinates the activities of various actors participating in the fight against racism. Amongst other activities, it administers a fund for anti-racism projects. The CFR, the Federal Commission for Refugees, is an advisory body to the government and to the ministries working on refugee issues.

All these commissions form an important interest group in the consultation of new laws. In particular, in the area of migration policy, political processes and policymaking are dominated by pre-parliamentary negotiations and direct democracy, while Parliament plays a secondary role (Mahnig 1996). Significantly, the two levels of policymaking and political process are also characterised by different political styles (Neidhart 1970). While in pre-parliamentary negotiations compromise is the final objective of the consultation process, in which expert commissions can play a decisive role, the arena of direct democracy is mainly determined by confrontational attitudes and divisive outcomes.

At the federal level, Switzerland's most important political parties are the 'centrist block' composed of the Christian Democrats (CVP), the Swiss People's Party (SVP), the Liberal-Democratic Party (FDP) and the left-wing parties, namely the Social Democrats (SPS) and the Green Party (GP). With the exception of the GP, all parties are members of the government. The SVP is an important stakeholder in the debates on migration and asylum policy. Formerly the party of artisans and peasants, it changed into a radical modern populist

party once the charismatic lawyer and entrepreneur Christoph Blocher took over its Zurich branch in the late 1970s. The SVP supported a popular initiative aiming to reduce the number of residents illegally residing in Switzerland and was in charge of an initiative taken against 'asylum abuse'. In Zurich, the party launched an initiative demanding that all requests for naturalisation be subject to popular referendum, and in 2009 they fought for prohibit constitutionally the construction of minarets.

Trade unions and employer's representatives traditionally always play a role in the formulation of Swiss immigration policy. They exert their influence both in a formal manner, via the consultation procedure, and informally, by determining the quota of foreigners allowed into Switzerland. Due to the state's federal structure, the cantons are very influential actors in the formulation of governmental policies as well. The cantons' sphere of authority, when it comes to policies affecting foreigners, includes the alien's police and is focused on determining the needs of the labour market. Furthermore, the cantons are responsible for the implementation of integration measures. As the Confederation does not have a federal police, the cantons are responsible for maintaining public order and enforcing decisions involving repatriation. Thus, it is through their competence and experience in implementing measures concerning asylum seekers that the cantons contribute significantly to the formulation of Swiss policy in this area. The Conference of Cantonal Ministers of Justice and Police (CCMJP) has become increasingly vocal on its position on questions of interior security (e.g. concerning crimes committed by foreigners) and asylum.

Cooperation with the municipalities is important as the municipalities are responsible for the accommodation of asylum seekers and refugees, and must pay for costs associated with the social welfare of legal immigrants. Their point of view is that their concerns are not sufficiently taken into consideration in the formulation and implementation of asylum and immigration policies. Larger cities, notably Zurich, have recently launched initiatives on the asylum issue inciting major debate. Smaller municipalities have also been in the headlines recently: one municipality refused to accommodate the requested number of asylum seekers; others have banned access to public areas such as schools, playgrounds and soccer fields.

NGOs also play a role in implementing Swiss asylum policy. They offer social counselling and legal advice to asylum seekers. The *Schweizerische Flüchtlingshilfe* (SFH), the Swiss Refugee Council, an umbrella organisation of Swiss asylum organisations, seeks to exert influence on political decision-making by publishing position papers on various asylum-related questions. The Forum pour l'intégration des migrantes et des migrants (FIMM Suisse) was created in 2001 and is composed of 330 representatives. FIMM is the umbrella organisation of all foreigners' associations in Switzerland. It organises public debates on issues concerning foreigners in Switzerland (e.g. Schengen agreements), collaborates with the federal authorities (FOM, FCM) and participates in the consultation procedure. It is partially financed by the FCM.

#### **4.2. Recent changes in admission policies**

The following paragraphs describe how the different interest groups consult with the federal administration during the policymaking process in Parliament and, not least of all, through the means provided by direct democracy.

There have been two major changes in the last few years regarding regular immigration. First, June 2002 saw entry into force of the Bilateral Agreement on the Free Movement of Persons between Switzerland and the EU member states. Second came an admission policy applicable to third-country nationals that would prove more restrictive than the policy Switzerland had pursued thus far, resulting in admitting 'only urgently required qualified workers' from outside the EU/EFTA area. At present, work permits are only issued to executives, specialists and other highly qualified workers from outside the EU/EFTA area



if no Swiss or EU national meets the requirements. When issuing residence permits, the authorities further consider candidates' professional qualifications, their ability to adapt to professional requirements, language skills and age. If a person meets the criteria established in these areas, he or she should in theory be able to achieve sustainable integration into the Swiss labour market and the social environment (Efionayi-Mäder et al. 2003).

At the end of 2006 a new Alien's Law was passed despite a referendum that wanted to prevent the introduction of a two-class admission system between EU and non-EU immigrants. At the time, the reform was only supported by the CVP and the FDP, while the SVP did not want to introduce any improvement for third-country nationals, denying them the opportunity of family reunification. The political left – notably, the SPS, the GP and the unions – criticised the discriminatory partitioning of foreigners into two categories, which vividly evoked old initiatives that had been rejected by the population..

The Alien's Law was ratified by the National Council with support from the CVP and the FDP. The SPS also approved this bill, mostly not to hinder further negotiations and to prevent a more restrictive interpretation from emerging. The GP and the SVP refused to support the law for opposite reasons: the former out of human rights concerns; the latter because the bill was not strict enough to fight abuses. In December 2003, the new Federal Council thus elected a council member to be responsible for migration issues, Minister of Justice Christoph Blocher (SVP) who would present a more restrictive version of the bill in the Swiss Council of States.

In quantitative terms, the new bill – like the old law – paves a path for authorities to pursue a more permissive or more restrictive admission policy as necessary. The decisive factors for determining Switzerland's quotas of admittees from outside the EU/EFTA are the current economic situation and the need for labour in certain segments of the market. The authorities will continue to be able to adopt a quota for third-country nationals (*Kontingentierung*).

The policy's basic principle is that admission must serve the interest of the entire economy, not particular interests. As such, professional qualifications and the ability to integrate should play decisive roles. Moreover, admission must take Switzerland's social and demographic needs into account. In contrast to previous regulations, a limited opening of the market to self-employed people is foreseen in the law if the activity is likely to stimulate competition. Increased competition should promote the efficiency of the economy and, in the long run, guarantee the international competitiveness of Swiss companies. When labour market needs were reassessed in the 1990s, post-war migration policy was identified as one of the main reasons for reduced investments and a decline of Swiss competitiveness in various new industrial branches (Blattner & Sheldon 1989; Sheldon 1998).

On the one hand, the new Alien's Law constitutes a higher barrier for nationals of non-EU/EFTA states to enter Switzerland. On the other hand, the situation for foreigners who lawfully and permanently reside in Switzerland will be improved through better opportunities to change occupations, jobs or cantons. The subsequent immigration of families of short-term residents and students is also to be permitted, provided that residential and financial requirements be satisfied. These measures facilitate integration, simplify procedures for the employers and authorities and ensure uniform application of the law. In the aforementioned areas, the law aims to harmonise the rules applicable to third-country nationals with those applicable to EU/EFTA nationals (Efionayi-Mäder et al. 2003).

#### **4.3. Recent changes in asylum policies**

As elsewhere in Western Europe, asylum migration increasingly gained importance during the 1980s. Labour migration seeped into the public discourse since its issues had manifold moral, political and judicial implications. Although asylum recognition rates decreased in the 1990s,

many asylum seekers were able to remain in Switzerland under subsidiary protection or for humanitarian reasons. While their rights were restricted during a period of time that was regulated by the canton – their access to the labour market and welfare were limited and family reunification was forbidden – most of those granted protection were later able to settle permanently. In the 1990s, war in the former Yugoslavia prompted a massive influx of asylum seekers from Bosnia and Kosovo, many of whom had family ties in Switzerland from labour migration that began in the 1960s. Between 1990 and 2002, Switzerland received 146,587 asylum applications from the war-torn Balkans. According to the Swiss Federal Office for Migration, some 10,000 persons were granted asylum, and 62,000 received temporary or subsidiary protection over the course of several years (Kaya 2005).

The Swiss public became concerned about the increasing number of asylum applications, largely because the economy was in recession and unemployment was on the rise. Thus, the federal government adopted administrative and legal measures to speed up the processing of applications and the implementation of decisions. And after numerous partial revisions, a completely revised Asylum Law came into force in 1999. Among the many changes making it more restrictive, this law introduced new grounds for non-admission to the regular asylum procedure. This meant that applicants who stayed in the country illegally prior to their request or who did not submit travel or identity documents would generally be refused asylum. On the other hand – and as a concession to humanitarian arguments – the law now allowed temporary collective protection of war refugees, giving Kosovars and Bosnians temporary admission.

Despite the steady decrease in asylum requests – in 2003 the number of requests fell nearly 20 per cent from the prior year, or 20,806 in absolute numbers – the SVP continued to battle asylum inflows. Since their initiative against asylum abuses did not pass the ballot in 2002 (they lost with the narrowest result in Swiss history: 49,9 per cent), the party tried to detect new fields of operation. As a moral winner, the SVP demanded a new asylum initiative in June 2003, seeing as it did not expect any revolutionary improvements from the parliamentary revision. This initiative by SVP chairman Blocher, also still MP at the time, provoked the other parties. They condemned SVP procedures as being a form of ‘blackmailing’, not to mention pure election campaign strategy. The other parties responded with a revision of the Asylum Law, expressing the will to transfer competences for asylum matters completely to the federal level. Another idea was to exclude uncooperative and liable asylum seekers at the beginning of the asylum procedure as well as those who stayed in the country illegally. They were to be punished with a prison sentence or expulsion (*NZZ 11 June 2003, NZZ 15 September 2003*)<sup>4</sup>.

In reaction to the unexpected success of the SVP’s initiative against abuses, even if it failed to meet the threshold the Political Institutions Committee of the National Council decided to take both revisions to the vote simultaneously. Meanwhile, the SVP had plans to bring forward a revision of the Asylum Law, though with no success (*NZZ 10 January 2003*).

The government realistically interpreted the population’s sceptical attitude towards their asylum policy, yet the decreasing number of asylum requests no longer supported this interpretation de facto. Support from the people was to be regained by means of a new asylum law. Therefore, asylum seekers whose request could not be accommodated in the future would be treated as illegal foreigners without any rights to claim social welfare benefits. They were transferred to the less attractive though constitutionally protected emergency aid, which is submitted to continuous administrative controls. From this procedure, the government anticipated additional annual savings of approximately 77 million CHF, as well as an increase in the number of repatriations and Switzerland’s loss of attraction as a destination country.

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<sup>4</sup> Neue Zürcher Zeitung (NZZ), a Zurich based high quality newspaper.

However, only a few years before had the cantons and cities refused to support a similar measure, fearing the impact it would have on their housing costs (cantons and municipalities are responsible for emergency aid) (NZZ 13 February 2003, NZZ 14 February 2003, NZZ 5 April 2003). But with the SVP's electoral success, the mood in Parliament shifted, producing a more restrictive policy.

Blocher, at that time elected by Parliament as a new Federal Councillor, was dissatisfied with approved changes of the National Council and introduced modification requests concerning consultation of the Council of States. The cantons welcomed these coercive measures. Notably, they less agreed with the financial consequences of a system change, particularly regarding humanitarian assistance. While welfare organisations, the UNHCR, churches, the SPS, the GP and five cantons voiced fundamental doubts about this revision, the FDP and the CVP by and large supported the change, even if they had reservations about some paragraphs.

The Council of States did not disappoint the Federal Council or the cantons when their turn came, speaking out for a sharper asylum law in the spring 2005 debate (NZZ 18 March 2005). Finally, the political institution committee's decision corresponded to the cantons' desire for stricter interpretation of the Asylum Law, asking for a coercive detention, which could be expanded up to two years. Switzerland was the only state in Europe to reject the new status of humanitarian admission because of the automatic family reunification programme originally included in its proposal. For hardship cases, the Council of the States wanted to apply provisional admission. Thus, the cantons could grant labour market access to persons whose return was inadmissible, unreasonable or impossible and, moreover, who were socially integrated (NZZ 18 March 2005).

Federal Councillor Blocher's argumentation passed the Council of States and the second reading in the National Council with a large majority. Daily newspaper *Neue Zürcher Zeitung* noted with astonishment how unanimously all centre-right parties stood behind Bundesrat Blocher and expressed surprise over the fact that no further suggestions were introduced in the formulation of a future migration policy. This seemed to prove

“how much the mood had changed after Christoph Blocher had taken over the justice department. Today bills are passed with large majorities whereas a few years ago they would have caused even doubt and refusal in the political centre-right camp. The left, the charitable organizations and the churches have not reacted to these changes and, furthermore, practically oppose all changes in the whole country instead of focusing on some really problematic reinforcement of the law.” (NZZ 28 September 2005, translated by the author)

Together with the Alien's Law, the Asylum Law was submitted to a popular referendum and passed the ballot with a 3-to-1 vote in September 2006, subsequently coming into operation 2008.

#### **4.4. Recent changes in integration policies**

When the Swiss government dropped its rotation policy in the early-1960s, it recognized that the alternative could only be a policy of integration. The belief — both then and now — however, is that in the course of time integration occurs naturally through participation in the labor market and in schools, as well as in associations, labor unions, clubs, churches, neighborhoods, and through other informal networks (Niederberger 2004). But they are expected to dissociate themselves from their former community:

"After several years of residence, [they] should ... no longer be reliant on the community of their fellow countrymen, but start to live as Swiss. " (Swiss Department of Economy and Work, 1964)<sup>5</sup>

Since the 1970s, the Confederation's main integration policy has been aiming to improve the legal status of immigrants, reuniting families more quickly, and granting immigrants a more secure status. In order to facilitate the integration of foreigners and to respond to the public's concerns about foreigners, the government established the Federal Commission for Foreigners (FCF) in 1970 in order to "study the social problems of foreign workforces, ... and to address in particular questions regarding social care, the adaptation to our working and living conditions, assimilation and naturalization." (Swiss Federal Council, Protocols of November 18, 1970, quoted in Niederberger 2004: 81).

After the migratory confusion of the eighties – the sudden increase of asylum seekers, a first asylum law, the substitution of the Italian guestworkers with workers from Yugoslavia and Portugal – the concept of integration won acceptance in the 1990s. The metaphor of assimilation did not seem to be adequate anymore, but multiculturalism could not gain ground. The concept of integration took shape in particular in the context of the political discussions of the nineties on the revaluation of urban areas. Cities tried to position themselves in an international competition over geographic locations and were confronted meanwhile with social difficulties that were identified as strictly related to migration. The debate on integration was connected since the second half of the nineties with urbanism and urban development; it took to the formulation of official integration guide lines in cities such as Berne, Zurich, and Basle. Integration was the new buzz word, a fresh and powerful idea ready to shape the Swiss policies on immigrants. Exempt from the fug of ordinary social policies, but also from the debts towards "old-fashioned" humanitarian beliefs, integration became an unexpected creative element for designing future migration policies.

At the beginning of the 1990s a government report stated that in the future "to a larger extent than before, measures should be taken to encourage integration at all levels of the polity" (Schweiz. Schweizerischer Bundesrat 1991). The promotion of integration was included in the legislative planning 1995-1999 as a new target, and in 1996, the FCF submitted a report delineating the outlines of an integration policy (Riedo 1996).

"It must be prevented, that certain groups of people, such as Muslims, Turks and nationals from the former Yugoslavia are pushed into the role of problematic foreigners, thereby being even more discriminated against and isolated. (quoted in Niederberger 2004: 148)<sup>6</sup>

Therefore, after the strong lobbying of the cities during the economic crisis of the 1990s, the Swiss alien policy adapted to the new reality, considering the integration of foreigners as a prerequisite for achieving a politically and socially sustainable immigration policy. There was no clear and binding definition on the term: integration was open to a liberal and conservative interpretation of future policies. Liberals understood integration as a means to encourage participation into mainstream society. Migrants were supposed to be willing to integrate, but

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<sup>5</sup> "Nach mehrjährigem Aufenthalt sollten [sie] ... nicht mehr auf die Gemeinschaft von Landsleuten angewiesen sein, sondern unter Schweizern und wie Schweizer zu leben beginnen." (Schweiz. Bundesamt für Wirtschaft und Arbeit 1964)

<sup>6</sup> "Es muss verhindert werden, dass gewisse Gruppen von Menschen, wie etwa die Muslime, die Türken und die Angehörigen aus dem ehemaligen Jugoslawien in die Rolle von Problemausländern gedrängt, dabei noch mehr diskriminiert und isoliert werden."

some of them needed particular help or promotion (Fördern). This open interpretation of integration was contrasted by a conservative reading which emphasized the need of mandatory and coercive measures in order to fight abuses of the right of hospitality accorded by Swiss administration. This closed interpretation is demanding a specific set of behavior to which immigrants have to comply (Fordern).

Seen first as a liberal achievement included in the guideline of the City of Basle (Ehret 1999), the “new policy” of “Fördern and Fordern” (promote and demand) was meant to prevent populist challengers from charging local governments of being too soft on migrants, but wanted also to rely on the potentials of new arrived migrants. On the basis of the declaration of Human Rights and the Swiss Constitution, migrants should not be regarded as members of groups, but as individuals able to take their responsibility. Approaches of this new policy were “future-oriented”, meritocratic, emancipatory, taking individual responsibilities seriously, based on same rights and duties (Kessler 2005 : 110).

Hence, “integration” stands for the participation of foreigners in the economic, social and cultural life. The Integration Article in the old Alien Law, passed in 1999, paved the way for a more proactive federal integration policy; it also strengthened the FCF's role. Since 2001, the government has spent between 10 and 12 million Swiss francs (€6 million to €7 million) per year to support integration projects, including language and integration courses and training for integration leaders. Cantons and larger municipalities also have their own integration and intercultural cooperation committees and offices, which offer language and integration courses. In many communities, foreigners participate in school boards and, in some cases, the municipal government. With the support of consulates and the local education department, larger communities offer courses in immigrant children's native languages and cultures. While churches proved to be among the major institutions to promote the coexistence of the Swiss and the foreign population, other non-governmental organizations have become interested in the process as well. According to this new spirit, Switzerland for the first time recognized to be a country of immigration that should provide help to integrate immigrants.

Whereas at the end of the 1990s and the beginning of the new decade emphasis was put on “Fördern”, on the positive encouragement to integrate, a prudent reading of official papers would have indicated that a coercive reading was always present. Indeed, “Fördern und Fordern” got a magic connotation that allowed each side to read integration as they wished.

“It is not the host society that is responsible for the integration of the migrants, but this is largely their own responsibility. Only someone who is ready to do so can count on the appropriate opportunities and expect help in improving one's personal situation. The promotion of integration remains always help to self-help.” (Schweiz. Bundesamt für Migration 2006)<sup>7</sup>

As a final point, the new immigration law, a legislative project finalized by Christoph Blocher, which passed a popular ballot with a large majority of 68 % in 2006 (and came into operation in 2008), foresees that immigrants have to fulfill certain criteria that should facilitate their integration. Permanent residents and their families are required to integrate on both the professional and social levels as soon as. Those who fail to be financially autonomous can be deported home. But these considerations are only related to low-qualified

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<sup>7</sup> “Nicht die Aufnahmegesellschaft ist es letztlich, die den Migranten und die Migrantin integriert, sondern dies liegt weitgehend in deren eigener Verantwortung. Nur wer dazu bereit ist, soll auch mit entsprechender Chancengleichheit und Verbesserung der persönlichen Lebenssituation rechnen dürfen. Integrationsförderung bleibt somit stets Hilfe zur Selbsthilfe.”

third country nationals. This restrictive component corresponds in its content to the criterion of “qualitatively high standard immigration”. The level of education and the professional qualifications are interpreted to improve the integration of foreigners and guarantee their vocational reintegration in the case of unemployment. Restrictions aim at avoiding the errors that were committed in the past, i.e. the granting of temporary work permits to low-qualified seasonal workers. Furthermore, it explicitly foresees that it is the immigrant’s duty to make every effort necessary to facilitate his or her integration.

The new integration paradigm as it is enforced by this very recent *Ausländergesetz* is configured by two components: On the one hand integration is linked to the restriction of immigration, on the other hand it is relying on the understanding that EU/EFTA citizens are fully integratable whereas third country nationals are supposed to have ‘deficits’ if they are not highly qualified personnel. These assumed deficits are located either in the culture, religion or language of those migrants or in the alleged missing acceptance of their duties towards Swiss society, in particular the omitted respect of laws and constitutional rights.

The new approach, originally meant to discipline immigrants, can also be deduced by the dissolution of the FCF and its integration into the Federal Department of Police and Justice. The general tendency to dissociate public integration institutions from Departments of Social Affairs to the Police Department can also be observed in different cantons and may underline the assumption that integration has undergone a political ideologization and securitization, as it was the case before with the assimilation paradigm. Integration has won with its orientation to individual achievements a coercive character, and in most instances, any alternative understanding of the term has lost significance. Namely, it was not considered that integration could also be linked to the dismantling of obstacles, such as the discrimination in the labor and housing market, the non-recognition of foreign diploma, the codification of residence rights, and the barriers to real participation. These forms of promotion are by far not as cost-intensive as “integration programs”, but they would correspond better to the concept of a liberal society that relies on incentives (Wicker 2009). The fact the new “*Ausländergesetz*” is putting third country nationals under general suspicion is not only wrong, but it relies on an ahistorical reading of its own immigration history if compared to the successful integration of former migrant groups. And it may be counterproductive if the message of distrust reaches the second and third generation youth. What still remains impressive, is the semantic shift of integration as a concept that included emancipation, to a term that now comprises coercion and repression.

#### **4.5. Recent changes in naturalisation policies**

Persons who have resided in Switzerland for twelve years – those spent between the completed tenth and twentieth years are counted double for this purpose – may apply for naturalisation. The Federal Office for Migration examines whether applicants are integrated into ‘the Swiss way of life’, are familiar with Swiss customs and traditions, comply with Swiss laws and do not endanger Switzerland’s internal or external security. This examination is based on cantonal and communal reports. If the requirements provided by the federal law are satisfied, applicants are entitled to obtain a federal naturalisation permit from the Federal Office for Migration (Wanner & D’Amato 2003).

Naturalisation proceeds in three stages. The federal naturalisation permit is the Confederation’s green light for acquisition of Swiss nationality. The cantons and communities have their own, additional residence requirements that applicants must satisfy once federal preconditions are satisfied. Once the federal naturalisation permit is obtained, only those applicants naturalised by their communities and cantons acquire Swiss citizenship. As a general rule, there is no legally protected right to being naturalised by a community and a canton. The cantons’ criteria, as well as the way in which they decide who gets citizenship,

vary greatly. For example, in Nidwalden, applicants must have spent the entire twelve-year period in the canton. In Geneva, two years of residence are sufficient and candidates having moved from other cantons fulfil the federal preconditions. The requirements at the communal level can vary greatly as well.

In three referenda passed over the last twenty years (1983, 1994, 2004), Swiss voters and the majority of the cantons rejected laws that would have made it easier for the children of immigrants to become naturalised. The law submitted to a referendum in 2004 would have allowed the Swiss-born grandchild of a foreign resident to gain Swiss citizenship automatically at birth. The main reason for this new provision was that automatic naturalisation would have eliminated the community's decision-making role, which many Swiss considered an important step in the political process. Over the last 50 years, naturalisation rates have stayed lower than federal authorities have desired probably because many immigrants decided to return to their home countries after working in Switzerland. In 1992, dual citizenship became permitted. Between 1991 and 2001, the number of naturalisations increased from 8,757 to 37,070. Nationals from the former Yugoslavia, mostly from Kosovo and Bosnia, were the quickest to naturalise, having little interest in returning to the unstable political situation in their home country. Also, having Swiss citizenship would mean they could never be forced to return. Yet, citizenship is not always necessary for voting in local elections. In several French-speaking cantons, foreigners who have lived in the canton for many years have the right to vote at the municipal level and, in a few cantons, even on cantonal matters. The 2004 introduction of this legal innovation led to hotly debated controversy on the significance of citizenship.

As already mentioned, in 2002, Swiss Parliament debated the revision of the citizenship law for a third time. In the detailed consultation process, there were violent criticisms of suggestions presented by the Federal Council and the CVP to shorten the minimum residence requirements. When it came to regulations to facilitate naturalisation of the second generation, the SVP demanded severer legislation. The party was of the opinion that only those born in the country should profit from easier access to citizenship, as opposed to young people who had only spent over half their school life in Switzerland. The National Council rejected this proposal.

When the discussion shifted to whether or not citizenship should automatically be given to children of the third generation (introducing the principle of *jus soli*), the debate became strongly polarised. Against the acrimonious resistance of the SVP, the National Council approved the right to appeal to a court for those whose request was rejected in municipalities without reason. At the end of the consultations, the SVP announced their wish to initiate a referendum against this revision (*NZZ* 17 September 2002).

Shortly after this debate, discussion about granting easier access to citizenship was influenced by a Federal Tribunal decision in Lausanne. The judges deemed the concession of citizenship for reasons of origin or religion unconstitutional because it violated the principal of non-discrimination and thereby ordered municipalities to adopt a procedure that did not contradict the Constitution. In their written justification, the judges declared that no immigrant had an automatic right to be naturalised, but that in certain municipalities voting on applicants was an administrative function since the status of inhabitants was being decided upon. This type of function would require authorities and the population, both, to respect the prohibition of discrimination (*NZZ* 10 July 2003, 25 July 2003).

Both chambers of Parliament passed the bill with practically no alterations. In the final round, only the SVP voted unanimously against the new regulations, disapproving of easier access for the second generation, *jus soli* for the third generation and the right to judicial complain for rejectees. The latter point was also supported by a large minority of the FDP.

On 26 September 2004, the referendum took place. Advocates of the change, the CVP, the SPS and the liberal FDP offered only little propaganda, underestimating its importance in support of the SVP campaign. Demoscopic analysis let them presume that they would win the referendum. And yet, the winds changed just days before voting day. Support from employers' associations and unions was not powerful enough. The then newly elected Federal Councillor Blocher should have supported the bill since it came from his ministry, but he sabotaged it during his campaign and imparted only technical information about the new provisions to a restricted audience.

With a rather high referendum attendance (54 per cent voting rate), the majority of the people and the cantons rejected the reform on the citizenship law. The introduction of a facilitated naturalisation was refused by a majority of 57 per cent, as was automatic naturalisation of the third generation at birth by 51.6 per cent. Interestingly, the rollback closely compared to the referendum of 1994: with the exception of Basel-City, all other Swiss-German cantons that had approved a more liberal application of the naturalisation law ten years earlier had now switched camps (NZZ 27 September 2004). There are two explanations for this rollback: the parties that had favoured this issue in Parliament (SPS, CVP, FDP) did not commit themselves to defending facilitated access to citizenship during the voting campaign. Spellbound by promising polls, they were surprised by how easily and successfully the SVP, in the last few weeks before voting, were able to mobilise fear with the question of granting valued citizenship to non-deserving young immigrants. They defined an automatic acquisition of nationality as a devaluation of Swiss citizenship and objected to the weakening of local popular sovereignty that it implied (Kaya 2005). And this time, the reformed law was not backed by the responsible department and its staff, which formerly had envisioned this change.

## **5. Analysis of the policymaking process**

In order to understand the Swiss policymaking process, three distinct features of the national polity must be taken into consideration: the federal structure of the state; the financial and political autonomy of municipalities; and a tool of intervention secured by the consociational negotiations of interest groups and the participation of the people through direct democracy.

### **5.1. Federalism**

It is primarily through the institutions of federalism that Switzerland succeeded in accommodating its cultural and religious diversity. The country is a confederation of 23 cantons, which have a large measure of autonomy as regards education policy, police and taxes. According to this principle, the Swiss Parliament functions on two levels: the National Council and the Council of States. New laws must be passed by both chambers, but can be overturned in a referendum (which can be triggered by 50,000 signatures).

The mechanisms of decision-making in Switzerland are complex. The Swiss population does not directly elect the members of the government, i.e. the Federal Council, as it does at the cantonal level; at the federal level the election of the government is the prerogative of the Parliament. The seven members of the Federal Council are elected for four years. In the Swiss political system, Parliament cannot give and withdraw a vote of confidence to the Federal Council. This gives the government a certain amount of autonomy with regard to the Parliament. However, the autonomy of the government is restricted by the two instruments of Swiss direct democracy: the referendum and the popular initiative. The popular initiative gives citizens the right to seek a decision on an amendment they want integrated into the Constitution. For such an initiative to be organised, the signatures of 100,000 voters must be collected within eighteen months. Federal laws are subject to an optional referendum: in this case, a popular ballot is cast if 50,000 citizens



request such an action. The signatures must be collected within 100 days of a decree's publication. The referendum is similar to a veto. For such a plebiscite to pass, the majority of the population's votes and those of nine cantons is required. At the cantonal and municipal levels, voters can also launch initiatives. Cantonal laws are subject to the optional referendum.

When it comes to the admission and integration of migrants, federalism plays an important role in many domains. They include, among others, the field of education, which is presented here as a paradigmatic case (religious matters or the quest for political rights would also have served this purpose). Switzerland's educational system is organised through the cantons, which desire immigrants to adopt the dominant cantonal language and culture. During the 1970s, cantonal education systems had difficulty accommodating the differing social and cultural situations and thus could not guarantee equal educational opportunities (Schuh 1987). A lot of discrepancy in quality of curricula from school to school continue to persist at the level of curricula, even if the federal education authorities, known as the Schweizerische Konferenz der kantonalen Erziehungsdirektoren (EDK), regularly publish recommendations for the better integration of immigrant children (Schweizerische Konferenz der kantonalen Erziehungsdirektoren 1972, 1976, 1982, 1985, 1991, 1993, 1995a, 1995b, 2003). Some cantons, more than others, support immigrant children and promote their integration at school by investing more resources in local schools and introducing institution-wide changes such as team-teaching and intercultural programmes that favour the insertion of children with a migrant background (Truniger 2002b). Not all cantons implement these recommendations and, in fact, several tend toward discriminatory practices. Contrasting cantonal responses roughly correspond to linguistic as well as political cleavages. In German-speaking cantons one can generally observe a tendency to set up institutions specifically for immigrant children, with the exception of those urban cantons possessing necessary tools to support their school bodies without enforcing segregation (Truniger 2002a), whereas in French- and Italian-speaking areas, the response has been to integrate all children into mainstream institutions.

In this analysis, the cantonal level merits special attention, as Switzerland's highly federalised institutional system is characterised by vertical segmentation and horizontal fragmentation that allows both institutions and cantonal parties a high degree of organisational and political autonomy. As witnessed with voting, cantons can use their autonomy to experiment with various approaches in migrant-related political fields and to try to influence decision-making at the federal level. The Council of States makes it necessary for federal authorities to secure the loyalty of the cantons and to make sure that strong cantonal political entrepreneurs do not withdraw from the consensus. If the perception the cantons hold internally changes, the federal level must thus adapt. But only until recently, when the general mood became anti-immigrant, the example of the autonomous educational system had made it clear that cantons have enough space to manoeuvre and need not share a common approach to all fields related to migrants.

## **5.2. Municipal autonomy**

Strong trade and political fragmentation explain why Switzerland has a relatively robust urban network. Moreover, municipal autonomy is a key factor when it comes to questions of citizenship and, paradoxically, of nationhood. As already mentioned, there are three stages in the naturalisation process: citizenship within the municipality, then the canton and finally at the Swiss federal state.

There is great variety in naturalisation practices at the local level, particularly between the German- and French-speaking cantons. While the French have more formalised procedures, many German cantons endorse the romantic principle of adherence and political participation. The question of who is allowed to acquire citizenship can easily be turned into a

question of preferential treatment and prejudice. Newspaper stories have reported that in several small German-speaking towns, applicants recognised as having Eastern European and Asian origins were prevented from naturalising (Ehrenzeller & Good 2003; Leuthold & Aeberhard 2002). So even if the country was founded on the idea of political contract, naturalisation is to a large extent based on local ethnicity.

Furthermore, since the decision by the Federal Tribunal<sup>8</sup> on 9 July 2003 (reference 1P.228-2000), which declared public votes on naturalisation in certain municipalities unconstitutional, a new debate has emerged on the role of judicial authority. It is largely a debate between those who favour the rule of law and those who interpret access to citizenship as a political and sovereign act of the citizenry. The Political Institution Committee of the Council of States has supported the Federal Tribunal in their reaction to the right of municipalities to submit the requests of candidates for naturalisation to the people in order to respect the autonomy of cantons and municipalities, as recognised in the Federal Constitution. This judgement was quite exceptional and can be read as an indicator for a tension between Federal Tribunal and Parliament, between the opportunities and limits of the rule of law as much as those of people's rights within a direct democracy.

### **5.3. Consociationalism and direct democracy**

Consociationalism and direct democracy are more important for understanding Switzerland's integration politics than integration policies. But, as Mahnig and Wimmer (2003) stated in their lucid article, these two characteristics of the Swiss political system are responsible for the country's intense politicisation of migration issues and the exclusion of migrants from political participation. Consociationalism refers to the proportional representation of different minorities (e.g. linguistic, political, religious) in the federal institutions and reaching compromise between political forces that goes beyond the search for simple majorities (Linder 1998). All members of the government as well as the higher administration are proportionately chosen according to their party affiliation (based on a 'magic formula') and their linguistic and regional origins. Swiss politics is characterised by a permanent process of compromise-building between these groups. Another important means to influence the political decision-making process is the consultation procedure, the phase in legislative preparation when draft acts by the Confederation are evaluated by the cantons, parties, associations and sometimes also by other interested circles throughout Switzerland, in order to ascertain the likelihood of their acceptance and implementation. Persons not invited to take part in the consultation procedure can also state their views on a proposal. All views and possible objections are evaluated with a view to the vetoing power of those who reject a reform. The Federal Council then passes the main points of its proposal on to Parliament, and debates the draft act in light of the outcomes of this consultation.

Direct democracy gives social groups some opportunities to participate directly in the political process through the aforementioned popular initiative and referendum. These are operative at the federal as well as local levels. According to some observers, the instruments of direct democracy were what allowed the consociational system to emerge, because all laws voted in Parliament can be submitted to a referendum and therefore need the support of large alliances within the political elite (Neidhart 1970). These two main characteristics of the political system provoke major politicisation of the migrant issue and the exclusion of immigrants from the political participation (Mahnig & Wimmer 2003). Because of the long negotiating and decision-making process in a consociational democracy, this system involved extended periods of indecision with regard to immigration issues. Since the interests in the political field of migration are too divergent, it is difficult for the parties to come to an

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<sup>8</sup> The most supreme Federal Court in Switzerland.

agreement easily. Second, the instruments of direct democracy have forced the political elite to negotiate the concept of 'over-foreignisation' with populist challengers. Immigration policies that had permitted the various actors to agree to accommodate the economic needs of the country became one of the most contested and controversial issues since the 1960s, when radical right-wing populist parties started to gain public support claiming that Switzerland was becoming 'over-foreignised' by ever-increasing immigrants. Using the tools of direct democracy, these xenophobic movements succeeded in vetoing liberal government reforms and put their parties under pressure through the launching of eight popular initiatives and several referenda to curb the presence of foreigners. Although none of these initiatives passed, they have consistently influenced the migration policy agenda and public opinion on immigration issues urging the Swiss government to adopt more restrictive admission policies (Niederberger 2004).

The opportunities direct democracy offers for intervention within the political system make it quite likely that the SVP will enforce its oppositional role in the future by exploiting migration policy as a major issue, seeing as controversial questions can never be contained to Parliament alone. Other European countries may be able to adopt policies 'behind closed doors' to extend political and social rights to migrants, but this is nearly impossible in Switzerland (Guiraudon 2000). However, such a right-wing strategy, no matter how determined its proponents, may not always find popular support. An important point of reference is the SVP's defeat in the 1 June 2008 vote. This vote on 'democratic naturalisations' focused the SVP's intention to, through popular initiative, abolish the rule of law in acquiring Swiss citizenship, thus reinforcing the power of the municipalities to take even arbitrary decisions. Ultimate failure here proved that even a strong, resolute party cannot always gain support, especially if their arguments threaten the sense of fair and equal access to rights.

## **6. Conclusion**

For a long time, from World War II until the late 1990s, the labour market's economic demands influenced Switzerland's admission policy without taking the quest for integration into account. Admission policies were focused on a rotation model that fuelled the economy with labour without necessarily introducing any integration provisions for migrants who came to stay; after all, immigrants were not conceived as a potential part of the population. This utilitarian policy seemed to fit best with proclaimed needs that the country be free of foreign cultural influences, as was recorded, for example, in the Alien's Law of 1931 – a law that reflected the xenophobia of the 1920s. Since the 1970s, migrants' length of stay in Switzerland and their own changing attitudes and expectations, along with the evolving needs of the economy and the school system, have made shifting towards a more inclusive migration policy inevitable. But the alliance between the government and the regional economic and supranational human rights interests who laboured to include a foreign workforce through legislative reforms were continuously forced to deal with a xenophobic radical movement. While politically isolated, this movement could use opportunity structures to leverage government decision-making through a referendum. This policy was generally favoured by a minimal welfare state, particularly one addressing immigrants who, up until the 1970s, had been excluded from solidarity networks and were thus exposed to social risks upon return 'home'.

The paradigm shift occurred in the 1980s after the oil crisis, where it became clear that the migrants who did not return to their country of origin would stay in Switzerland. The introduction of unemployment insurance and the inauguration of a larger welfare system also protected labour migrants and introduced them to social citizenship. But the 1980s were also when asylum emerged as a metaphor for unwanted migration. The government reacted to the

new challenge with a two-tiered approach. First came new severity on the asylum issue and enforcement of a policy that deterred illegitimate immigration. Following that was the introduction of legislative-level reforms that favoured integration for desired labour migration. This debate seems to have ended with the new Alien's and Asylum Law that passed 2006 popular approval and come into force 2008.

Swiss institutional structures as federalism, municipal autonomy, consociationalism and direct democracy offer a framework in which many actors and stakeholders attempt to influence the decision-making process. This form of multi-level governance has long prevented Switzerland from matching its policy to inclusive European standards of social rights (and to the new economic needs Switzerland had to compete with). Still, in recent years it nevertheless permitted its guiding principles to converge with those of its important European partners. Since the signing of the Bilateral Agreement, obvious points of convergence between Switzerland and the EU on issues concerning immigration and migration policies will no doubt multiply in the future. But the spectre of 'over-foreignisation' will probably prevent Switzerland – at least at the federal level – to join a liberal citizenship policy shared by its European partners. Switzerland's cultural inhibitions are too strong to open its institutions of – at least symbolically – highly valued citizenship to allegedly undeserving immigrants. But who is to say that, in the evolution of political processes, late runners won't one day become European forerunners, especially in a field as volatile as migration and citizenship issues?

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