

The Management of Immigration Related Cultural Diversity In European Federated Entities The Case of Switzerland

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Abstract :

Switzerland is experiencing since the late 19th century immigration as economic necessity and cultural threat. The Bilateral Agreement with the EU (2002) changed fundamentally the setting, allowing free circulation for Europeans, but restricting access to third country nationals. With regard to migrant-related political fields, cantons use their autonomy to experiment with various approaches. Particularly the issue of language has become an indicator for measuring integration at the level of cantons and municipalities, strengthening in some areas of the country regional monolingualism. The cantons are also responsible for regulating the relationship between religious communities and the state. In particular recognition of new religious communities are dependent of the historical legacy, and how cantons want to regulate religious pluralism. Cultural promotion is primarily the duty of the cantons, but the Confederation supports the activities of the cantons. Cultural public sponsoring increasingly detects challenges as demographic change and societal pluralization, supporting artistic initiatives that reflect this transformation.

Keywords : Switzerland, Immigration, Integration, diversity policy

1. Introduction

Switzerland's reputation as an ideal place for exiles dates back to the 16th century, when the Huguenots of France were welcomed as religious refugees and found their place among the cultural, political and entrepreneurial elite of what is today Switzerland. But the modern transformation of Switzerland into a country of immigration *contre coeur* took place during its accelerated industrial take-off in the second half of the 19th century¹. In contrast to its rural image, the Swiss Confederation was a European forerunner in various areas of modern mechanical and chemical industries, and has had an enormous need to invest in knowledge and infrastructures to meet the demands of these industries. While many rural inhabitants were leaving Switzerland to make their living as peasants in the New World, a significant number of German intellectuals fleeing from the failed liberal revolutions of 1848-1849 found their place at the local universities. Italian craftsmen and workers were also recruited at the end of the 19th and early 20th centuries, mainly in the construction business and the railroad sector.

In the liberal period preceding the First World War, immigration was largely the responsibility of the cantons, whose laws had to conform to bilateral agreements signed between Switzerland and other European states. Through the agreements, Switzerland remained open to immigrants in order to ensure that Swiss citizens could also easily emigrate to find work. However, after a first campaign against the presence of foreign nationals in Switzerland during the First World War, a

new article was introduced into the Constitution 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 1931². This law allowed the police discretion in the implementation of immigration policy, although at the time the stated 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 *Grad der Überfremdung*, or the "degree of over-foreignisation". Nationwide political consensus on cultural "purity" prevented the drafting of any consistent immigrant policy until very recently. In principle, foreigners without work were not allowed to settle permanently and had to leave the country.

Shortly after the Second World War, 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 an agreement with the Italian government in 1948 for the recruitment of Italian guest workers. The workers were mainly employed in the construction sector but also in textile and machine factories. An increasing flow of foreign workers immigrated to Switzerland: from 285,000 in 1950 (6.1% of the total population) to 585,000 (10.8%) in 1960 and to 1,080,000 (17.2%) in 1970. Predominantly Italian during the 1950s, the composition of immigrants diversified in the 1960s. A similar agreement was signed with Spain in 1961. By 1970, although more than 50% of immigrants were still Italian, about 20% came from Germany, France and Austria, while 10% came from Spain and 4% from Yugoslavia, Portugal and Turkey³. Initially, these immigrants with temporary seasonal permits were entitled to stay for one year, though their contracts could be prolonged, which frequently happened.

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 10 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. As the Swiss economy boomed throughout the 1960s, the guest worker system became less tightly controlled. Switzerland faced increasing pressure from Italy to introduce more generous family reunification regulations. As a result, the number of Italian workers willing to come to Switzerland decreased, while other destinations, such as Germany, became more attractive. In addition, internal economic development in Italy started a wave of internal migration, particularly to destinations in northern Italy.

Following the 1973 oil crisis, demand for many workers decreased, and many workers were forced to leave the country because they lacked adequate unemployment insurance. This allowed Switzerland to "export" its unemployment by not renewing residence permits of guest workers⁴. The percentage of the foreign population fell from 17.2% in 1970 to 14.8% 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% (945,000 persons) in 1980 to 18.1% (1,245,000 persons) in 1990, 22.4% in 2000 (nearly 1.5 million people) and 23.8% in 2013 (1.93 million persons). Because of the long economic boom and a more lenient application of the rotation model to attract needed workers, many guest workers were able to meet permanent residence requirements.

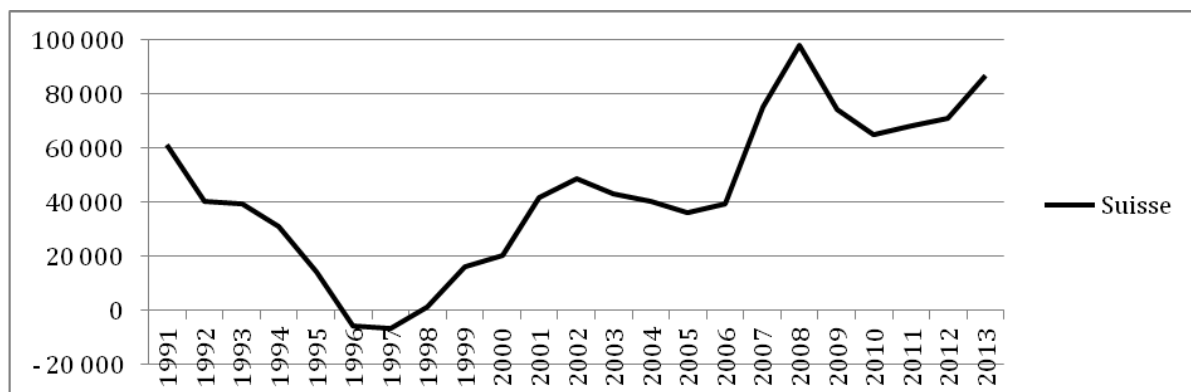
By the time the worldwide recession of the early 1990s reached Switzerland, the unskilled and aging guest workers suffered high rates of unemployment and found it very difficult to find new

jobs. This situation led to an unprecedented level of structural unemployment and poverty, one that Switzerland had not experienced previously. The larger cities, which, according to the subsidiary logic of the Swiss federal system, are responsible for welfare, urged the federal government to support extended integration programs for immigrant workers⁵. A new admission policy was needed to combine the evolving needs of a new economy with those of migration control.

2. Recent changes

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. The positive migration balance changed sharply after the 2002 enactment of the bilateral agreements. In the 2000 the balance was 24,898, including 88,000 immigrants. In 2009, one year after the world wide financial crisis, the balance tripled to 79,000 (immigration of 138,000 persons and emigration of 57,000 persons, went shortly down, but increased steadily since 2010 (see table 1).

Table 1: Migration balance in Switzerland



Source: Swiss Federal Statistic Office - PETRA, ESPOP

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 environment⁶.

In 2006 a new Aliens Law was passed despite a referendum that wanted to prevent the introduction of a two-class admission system between EU and non-EU immigrants. In quantitative terms, the new bill – like the old law – paved the path for authorities to pursue a more permissive or more restrictive admission policy as necessary. The decisive factors for determining Switzerland’s quotas of persons to be admitted 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.

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 branches⁷.

On the one hand, the new Aliens 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 was 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 are satisfied. These measures are thought to facilitate integration, simplify procedures for 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. Even if the bilateral agreements with the European Union were confirmed four times, in February 2014 a voting on an initiative against the free circulation ("against mass-immigration") was accepted by 50.3% of the voting population, putting the whole and here described established procedure at risk.

3. Federalism and migration

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 entities a high degree of organisational and political autonomy. In some cantons naturalization for young second generation migrants may be facilitated, in others not. Some cantons demand excellent written and oral linguistic skills in order to prove integration, others do not. Discrepancies of this sort show the room to manoeuvre of substate entities and are typical of Federations. Introducing a federal perspective in the debate on migration moreover is relevant, since the most important countries of immigration rely on a federal constitution. Apart from Switzerland, this is the case for the United States, Canada, Australia, Germany, Austria and Belgium. In all these democracies, the definition of William Riker proves to be true, asserting the capacity of federalism to unify at least two levels of government that are administering the same territory and are able to take decisions independently from each other, however they have to make allowance to different constituencies⁸. The autonomy of different bodies is the essence of federal states, although there are variations to which degree the states are operating decentralized or coordinated and which federal unit is in charge of particular political fields.

In this regard, the Swiss political system is marked by three particular elements: one of them with regard to the implementation of state measures is the proximity between the place of decision and the place of execution. Furthermore, the cantons have a strong position in the autonomous formulation and implementation of policies. In certain fields, cantons dispose of strong decision making powers that allow them to initiate to design laws according to their interests (bottom-up). Moreover, the implementation is characterized by executive federalism as central pillar of the Swiss political system. Legislative competence is located at the federal level, its application is meanwhile

conferred to the cantons. In order to be able to accomplish this role, they are given a certain leeway in applying federal laws. The implementation of federal laws may be adapted to local realities, strengthening the legitimation of decisions. More problematic are cases, in which the application of laws falls back to material or conceptual resources that are locally not available.

A further characteristic indicator of the Swiss political system is given by its direct democracy and its consociational system. Both favour strong organizations that are able to put forward a referendum and veto the decision making process of the Parliament. These characteristics have consequences for the arrangement of migration policies in Switzerland⁹. There is a real risk that federal law making may end at the level of the cantons in a heterogeneous puzzle of measures, which at their turn are confronted with the permanent instrumentalization by populist organizations. *De facto*, we are observing a political system whose heterogeneity makes it difficult to see Switzerland as an uniform model.

Surprisingly, the impact of federalism on migration policy has not found a strong interest in past research. Only recently, comparative approaches within federal states have gained importance in order to identify variations at the substate level. While some researchers interpret federalism as an opportunity for migrants to enhance their life chances, others understand these differences as factors that promote a discriminatory treatment of migrants. The positive view highlights the potential in federal states to use the opportunity to adapt national requirements to local realities. Moreover, a federal system can also be seen as a laboratory in which the different subnational units find different answers to similar or the same problems and challenges. Through the close interweaving of territorial units and the ongoing competition between them, the challenge to find solutions may lead to a productive learning process that enables the realization of social innovations. All in all, the supporters of this idea come to the conclusion that federal states may favour more than centralized ones the adoption of innovative policies¹⁰.

In order to let the cantons exercise their constitutive role in executing laws, they need a certain room to manoeuvre. 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. This 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. Thus, critics of decentralized law making refer to the fact that cantons will use this space for manoeuvre differently. Accordingly, they ask for a limitation of unequal treatment and demand a convergence of cantonal practices¹¹. The desire of the persons concerned to dispose of unitary criteria contrasts the right of the cantons to act autonomously and sovereignly. Coordination among the cantons seems to be essential to oppose an uneven impact of migration law practice on migrants as a systematic analysis of federalism in Switzerland has shown¹².

4. Zurich and Neuchâtel

In this comparative setting we have chosen two cantons that are “most different” with respect to many characteristics, including their migratory situation. There are differences with regard to the economic and political set up as much as the demographic composition; there are also differences with regard to major policy approaches about the handling of diversity. At the same time, with a focus on policy outcomes, many similarities between the cantons become apparent.

Of the differences between the canton of Neuchâtel and Zurich, we note that the canton of Neuchâtel

is French-speaking, located in the West of Switzerland and known for its watch-making industries and its micro- and biotechnology enterprises. It is governed by a left-wing majority government: in particular the major watch-making cities La Chaux-de-Fonds and Le Locle have strong socialist legacy. The canton of Zurich is governed by a center-right majority (with the exception of the City of Zurich, which has a green-left majority government). It is located in the heart of the larger Zurich Metropolitan Area which spans more than 8 cantons and 1.2 million inhabitants. This Metropolitan Area is anchored in all economic sectors, in particular in finance and insurances, as much as research and development, with a strong tie to industrial small and medium-sized enterprises.

Neuchâtel has the second highest unemployment rate in the country, even though the watch-making industries have experienced a recovery in recent years. This is due to a mismatch between the needed qualifications and the existing ones in the population. The immigrant population has its origins predominantly in Southern Europe (Portugal, Italy, Spain), reflecting the immigration waves of the 1950s and 1960s. Most of the immigrants are well settled and have long-term residence permits. The majority have a lower secondary education, a profile more marked in Neuchâtel than in the rest of the country. By contrast, the profile of immigrants in Zurich is more adapted to new economic sectors. Highly qualified immigrants from Northern Europe are strongly present; the share of "old" immigrants from Southern Europe has declined: some have returned to their country of origin; many have been naturalized and are now Swiss citizens. Zurich has the third highest naturalization rate in Switzerland, ranked just behind Neuchâtel. The largest immigrant communities in the canton of Zurich are the Germans, Italians, followed by immigrants from Serbia, Kosovo, Montenegro and Portugal. Whereas most immigrants from the South are long-term residents, the new immigrants from Northern Europe tend to be more recent and their numbers have been increasing. This reflects structural change of the economy.

Neuchâtel is a forerunner with regard to integration policies. For political-historical reasons, it was the very first canton where foreigners were allowed to vote in cantonal and local elections: the right to vote existed since the 19th century (1866). Neuchâtel was also the first canton with a delegate on integration who is responsible to coordinate all policies in this domain ("service de la cohésion multiculturelle"). As a pioneer canton, it developed the first programs to foster integration. It established a liberal "charter of citizenship" that welcomes all immigrants and explains the values of the canton those of a liberal, democratic, social and secular state. Indeed, like the canton of Geneva, the canton of Neuchâtel does not have a particular relationship to one of the Christian churches, even though it is in historical protestant lands. This relationship between the state and organized religion is completely different in Zurich, which recognizes state churches, the so-called "Landeskirchen". Although Protestant by origin, different migration waves have changed the religious composition of the canton. From a predominantly Protestant community, the canton has seen a rising Catholic and recently Muslim community. The focus of integration programmes in different municipalities is on promoting integration. The implementation of these policies is at times difficult in the canton of Zurich because in some municipalities the executive is dominated by the UDC/SVP (a populist radical right party), which makes it more difficult to spend tax money on non-citizens.

5. Linguistic diversity and integration

As already asserted, federalism plays in Switzerland an important role in many domains. They include, among others, the field of language. Switzerland's constitution sets German, French, Italian

and Retorumantsch as the four official languages of the country (see Art. 4, Swiss Constitution). Language policy in a plurilinguistic country has highest political priority, since a shift in the composition and use of languages may have unintended consequences. Switzerland comprehends itself as voluntary nation composed of different linguistic areas. Its main policy is to strengthen the mutual understanding of its different linguistic areas and the increase of language competence among the population. The differences within the country are always referring to language areas, never to “ethnic” composition, which is a taboo expression in the Swiss context. But what is the meaning of language diversity for the social cohesion of the country?

Language as an instrument of official communication is organized by the cantons. But also the educational system is organised by the cantons, which may require immigrants for instance to adapt to the dominant cantonal language. The main goal of the Confederation is to follow “language peace” along of the “traditional language composition” of communities, following a territorial principle cantons are free to regulate language matters on their own, but the reference to “traditional” already indicates that new immigrant minorities should not be included in this definition¹³. Plurilingual cantons as Fribourg, Berne, Valais and Graubünden may receive particular support by the Confederation in order to serve all autochthonous communities and protect its traditional language minorities.

But immigration has lead to new linguistic minorities from Spain, Turkey, Serbia or Sri Lanka that are numerically stronger than the weakest of the four official language communities. This poses the question how to proceed with new linguistic diversity and how to manage its presence when the respect of fundamental rights is addressed. The new constitution installed some major changes that may have an impact on immigrants living in Switzerland. Art. 18 stipulates the liberty to use the own language as a fundamental right. It recognizes the right to express oneself in one’s own language as an elementary condition to evolve as a person. This right may be protected unconditionally in communication among private persons. In relationship to the state, it refers only to protected minority languages. This may also imply the protection of the use of mother tongue language in the communication with administrations. An explicit right to translation is conferred by Art. 31 of the Swiss Constitution for cases of penal punishment in order to maintain all possibilities to defend oneself in front of a court. Anyone can claim to be informed in a language in order to understand why he or she has been imprisoned¹⁴.

Integration as public policy, the importance of language knowledge and its link to granting permits with regard to the Aliens Act is a rather new phenomenon and not only limited to Switzerland. In the old law, before 2008, language incompetence was no obstacle to work and live in Switzerland. All the old bilateral agreements with emigration countries have never mentioned the issue of language. Only sporadically the issue was linked to the “Überfremdungsgefahr”, the imagined danger to be overrun demographically and culturally by the presence of the immigrants.

Indeed, 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”.

After the migratory confusion of the 1980s – the sudden increase of asylum seekers, a first asylum law, the substitution of the Italian guest workers 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 1990s on the reevaluation of urban areas. Integration was the new buzzword, 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. And language, that as an issue was completely absent as requirement in the former alien’s law, got a major role in the process acquiring permanent residence in Switzerland.

Therefore, after the strong lobbying of the cities during the economic crisis of the 1990s, 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 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 behaviour to which immigrants have to comply (*Fordern*).

Seen first as a liberal achievement, the “new policy” of “*Fördern and Fordern*” (promote and demand, intended as “carrot and stick”) 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 described as “future-oriented”, meritocratic, emancipatory, taking individual responsibilities seriously, based on same rights and duties.

Hence, “integration” stands for the participation of foreigners in economic, social and cultural life. The Integration Article paved the way for a more proactive federal integration policy. Since 2001, the government has spent between 10 and 12 million Swiss francs (6 and 7 million €) per year to support integration projects, in particular 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 communes, foreigners participate in school boards and, in some cases, the municipal government. According to this new spirit, the Swiss government for the first time recognized to be a country of immigration that should provide help to integrate immigrants and focuses this help on language. With the new alien’s law of 2008 integration and language competence become a central pillar to measure integration.

Whereas at the beginning of 2000 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 near-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. “15

Far from being an active public policy, the intention was more incite and sustain linguistic integration efforts in the cantons and municipalities. Meanwhile, the absence of a clear federal concept on languages impedes a clear orientation for what linguistic integration means effectively.

As a final point, the new immigration law, which passed a popular ballot with a large majority of 68% in 2006 (and came into effect in 2008), stipulates that immigrants have to fulfil 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 possible. Those who fail to be financially autonomous can be deported. But these considerations are only related to low-qualified third country nationals. 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.

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. Language has become an indicator for measuring integration. Integration means integration according to the territorial subunit of the canton and its municipalities, the pillars of Swiss identity. But there are huge differences in how the issue of linguistic knowledge is handled in these units, cantons and municipalities. In a minority of cantons there are no clear defined linguistic requirement at all and the administrations have no linguistic indicator to measure integration. In seven cantons, among them Neuchâtel, the knowledge in the local language has to correspond to A2 according to the European Language Portfolio. But in the majority of the cantons the requirements are higher: they correspond to B1, as this is the case in Zurich¹⁶.

Namely, it was not considered that integration could also be linked to the dismantling of obstacles, such as the discrimination in the labour 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. What still remains impressive is the semantic shift of integration as a concept that included emancipation, to a term that now may comprise coercion. And this way, an official plurilingual country has strengthened at the cantonal level regional monolingualism, as this is the case in strong monocultural nation-states. Contrary to the official constitutional doctrine, the linguistic regions do not enact its lived plurality since the local imagery is not inspired by unity in diversity. This is particularly true when it comes to naturalization, even if both of the cantons under scrutiny have a very low threshold in this respect.

6. Religious Diversity

Because of its complex federal polity, Switzerland can be regarded as an example of how different solutions can co-exist under a common roof. Cantons like Geneva and Neuchâtel, in which religion has been clearly separated from the state (*Trennungskantone*), collaborate with cantons that have chosen one of the Christian religions as their state religion (*Landeskirche*), as this is the case

in Zurich. This cohabitation is a consequence of the civil war of 1847-1848 (*Sonderbundskrieg*), which constructed the very foundation of modern Switzerland and its successful formula allowing coexistence between Catholic cantons and liberal, mainly Protestant ones. This model accommodated the former cultural and religious cleavages of the nineteenth century and was the foundation of Switzerland's political and economic success. It was the further pluralization of religious beliefs in the 20th century that revealed the inability of this model to incorporate new, recently arrived religious minorities. The secular debate on new religions and their relationship to the state has since then found a strong resonance, focusing its attention in particular on the effects of Muslim diasporas in Switzerland.

Relations between religious groups and the state can be many, especially when issues of recognition are at stake. In Switzerland, several models and strategies of accommodation coexist. In practice the most minimalist approach relies on a *modus vivendi* grounded in accepting freedom of association without any formal recognition as a religion, but framing the opportunity for all residents to associate freely according to their ideologies, interests and religious beliefs. More far-reaching is the recognition of organizations and their statutes as a religious community. No particular privileges may be conceded in this case either, but this form has strong symbolic implications. These organizations are recognized as religiously relevant and are treated differently from other forms of association and groups. Still more relevant is recognition in public law, a constitutional order that is able to confer on religious groups a privileged status, access to rights through public funding and the right to their own places of worship. A further level of recognition culminates in declaring a religion to be a state church, though this does not rule out more than one religion being recognized in this public function. Finally, the state could also reject any form of recognition and prohibit religious groups from organizing at law, as is already the case in certain countries in relation to sects.

This differentiated policy of recognition, which gives the state the opportunity to address dissimilar forms of relatedness to different religions, may be regarded as discriminating by those who have no access to standard resources of recognition. This is particularly evident when religions are discriminated against in crucial questions, for example, with regard to the construction of cemeteries. Switzerland in particular is symptomatic in this regard, since different forms of recognition coexist, giving minority religious groups real experience in how multilayered policies may prove inequitable.

The status of churches as corporations under public law can be explained traditionally through a movement that initially pursued the goal of separating the churches from the state. Until the 19th century, Switzerland had a public church state system (*Staatskirchensystem*) characterized by the fact that the state and the legitimate churches formed a unique corporate body. Churches were in practice state agencies. The separation was realized in order to guarantee greater autonomy, releasing the churches from their organic relationship to the state and converting them into corporations under public law. Recognition under this new statute was conceived as a compromise between the institution of former state churches and the possibly complete separation of churches and the state. The "new" religious groups, among them in particular Islam, and their aspiration to achieve recognition under public law can be read as an effort to reach equality of treatment with Swiss traditional churches and beliefs (Protestant, Catholic, Jewish and Christian-Catholic communities). This aim is addressed to the state in order to transform religious communities under private law into entities under public law that could be interpreted, if successfully realized, as a

recognition of group rights.

Importantly, though, in Switzerland there is no homogenous concept involved in recognizing religious communities under public law. According to Art. 72 al. 1 of the Swiss constitution, the cantons are responsible for regulating the relationship between religious communities and the state. The cantons are completely free in this regard, and indeed the 26 cantons have defined this relationship in their respective constitutions and laws autonomously and in accordance with their historical legacy. Within the realms of the Swiss federal constitution, the federal level is very reluctant to give rulings on religious matters. Exceptions are the ban on unstunned (kosher and halal) slaughter and on minarets, both of which can be traced back to popular initiatives that enforced this restriction of religious liberties in the constitution.

In spite of the differences between cantons and the reluctance of the federal government to intervene, a common core can be detected on which cantons are converging. This regards particularly the question of recognition. Two elements are important: first, appraisal as a religious community, and secondly the act that is necessary to prepare recognition under public law by helping to constitute a religious group as a legal entity¹⁷. The two elements are not necessary linked to each other¹⁸.

Extension of recognition under public law in the direction of “new” religious communities is often pursued in order to resolve the discrepancy in relation to the privileges of the recognized churches. An instrument to advance in this direction is provided by the Federal Law that formulates the framework conditions under which all groups can act. Religious freedom and equality before the law are important principles in this regard. According to Art. 15 of the Swiss constitution, everyone has the right to choose freely and practice his or her own religion. Art. 8 of the constitution states that cantons must be neutral in confessional matters and may not intervene in favor of one or other religion, but they are allowed to concede a special status to certain religions if there is a reason to do so. In the revisions to cantonal constitutions, the relationship between the state and religious communities is in the process of being examined. The issue of the status that established non-Christian communities should have in the future is vividly debated¹⁹.

A strong factor in this discussion is the new constitution of 1999, which links the fundamental rights set out in Art. 7-34 with signed international agreements on human rights, namely freedom of opinion and information (Art. 16 of the Federal Constitution, Art. 10 of the ECHR), the protection of private life and of the family (Art. 13 and Art. 14 of the FC, Art. 8 ECHR) and the protection of children and young people (Art. 11 of the Federal Constitution, Convention on the Rights of the Child).

Human rights are of particular importance for religious minority groups: the principle of non-discrimination guaranteed by the constitution and by international law operates as a protection against exclusion and unequal treatment with regard to one’s own religious beliefs. This principle also includes indirect discrimination through apparently neutral assignments and operations that may nevertheless be discriminatory towards certain categories of persons.

Another guaranteed right is the freedom of faith, conscience and creed within the framework of the rule of law. In 1993 the Federal Tribunal defined this right (BGE 119 Ia 178) as the “religious testimony of an individual in a self-responsible domain that cannot be touched by the state. This freedom concerns not only Christian beliefs and religious groups, but all religions, independently of their numerical distribution” (translated by the author). Islam is explicitly included in this

interpretation of fundamental rights, under the condition that religious behavior is a matter of expressions of religious beliefs.

Apart from these fundamental rights and the signed agreements in international law, penal, private and administrative law also protect from discrimination. The criminal provisions against racism (Art. 261 of the Penal Law) and the prohibition on disturbing freedom of faith and belief penalize discrimination against and the defamation of religions. But the protection of personal rights in private law also guarantees all individuals the right to be protected from discrimination, defamation or racism, regardless of religious affiliation²⁰.

In spite of these institutional and legal protections, in public discourses there are several aspects that problematize persons of Muslim faith that are needed to make legal judgments. It is obvious that the disputes are connected with the visibility of aspects of Islam in the public space. One of the most intensely debated questions was the Islamic headscarf. This proceeded differently than in France, where the debate started in 1989 and culminated in 2004 in the judicial prohibition on wearing religious symbols in public schools. In Switzerland, the question mainly revolved around teachers wearing headscarves. Pupils are usually allowed to wear headscarves except in Neuchâtel and Grenchen. This practice has found support at the Federal Tribunal in Lausanne (BGE 123 I 296) and the European Court of Human Rights in Strasbourg (Judgment 42393/98 of 15th February 2001).

Many other debates touch on education as a central pillar of the secular state. Religious education in public schools is one of these. Like other religions, Muslim parents were asking that their children be permitted to follow such an education within the school. It is still an ongoing argument to what extent public schools should support Muslim education financially in their structures. Again, a disagreement has arisen between the secular state and respect for religious heritage. Constitutional liberties are balanced with the idea of a school as a religiously neutral space. This also touches on Christian issues: in 2010 a teacher in the Catholic canton of Valais removed a crucifix in the classroom since it offended his view of state neutrality with regard to religion. A further aspect that repeatedly causes conflicts is the demand by Muslim parents that their children be exempted from mixed-sex swimming lessons. The legal practice of the Federal Tribunal regarding this demand converges with the public debate on migration issues. In a ruling of 1993, the refusal of the canton of Zurich to dispense school girls from swimming lessons was judged by the Supreme Court to be a violation of religious freedom, following the argument of a girl's father that Islamic belief bans mixed-sex swimming. In 2008 the Federal Tribunal changed its mind and refused to accept an appeal against the school authorities of the canton of Schaffhausen and their decision to force a boy to attend mixed-sex swimming lessons. The Supreme Court relied on the argument that the obligation to go to school also included mixed participation in sports, since this contributed to ensuring equal opportunities for all children, respect for equality between the sexes, and the integration of foreign cultures and religions in Switzerland. Attempts to integrate culturally different young people therefore have a priority over individual claim to religious freedom. The Federal Tribunal confirmed this practice in a further judgment with regard to a similar case in Basel-Stadt on 7th March 2012²¹.

Another subject that is intensively debated affects cemeteries. According to Gianni²², in several cantons, cities and municipalities Muslim organizations have asked to establish Muslim or segregated cemeteries in order to bury their dead according to Islamic rites, since the direction of the graves, the eternal silence, the shroud instead of the coffin and separation from other religions

are central to this understanding of their faith. The last claim in particular caused strong reactions in public opinion, since it was read as a frontal attack on the secularist principle of equality when faced with death²³. After long debates, the authorities in a number of cities (Neuchâtel, Zurich, Geneva, Basel and Berne) decided to change the laws and cemetery regulations in order to meet the demands of the Muslim population.

The production of butchered *halal* meat in Switzerland was another major issue of debate in the early 2000s. According to Swiss law any form of unstunned slaughter is prohibited. The origins of this ban are not only found in notions of animal protection, but deeply connected with anti-Semitic feelings in the second half of the 19th century. Anchored in the constitution at that time, it has been included in the Animal Protection Law of 1978. After a hearing was launched in 2001 in order to determine whether this law could be loosened, heavy reactions by animal rights campaigners led the Government to withdraw the bill in order to “keep the religious peace”²⁴.

Another public dispute has been ignited by the question of religious buildings. In a municipality in the canton of Solothurn in 2005, the local Muslim community applied for permission to build a minaret. Hundreds of complaints against this building immediately reached the authorities, also supported by the local Catholic and Protestant churches. The claimants argued their appeal with reference to the dangers of expanding Islamist fundamentalism, the compromising of religious peace and the impact of such a sacred building on the Christian image of the village. With reference to building regulations and hostile public opinion, in 2006 the authorities rejected an application for a building license for the minaret, even though cantonal legal experts found the building compliant with the regulations for the peripheral commercial area in which the minaret would have been built. It is true that Muslim sacred buildings do exist to a large extent in Switzerland, but only Geneva and Zurich have mosques with minarets. All attempts by Muslim communities to come out of backyards and commercial areas have failed. Therefore, the Turkish Cultural Association, a main applicant of the project to build a minaret, filed a complaint against the decision of the municipality, which was accepted by the cantonal authorities. Shortly afterwards, a committee dominated by party members on the radical right launched an initiative to ban minarets in Switzerland, since, in symbolizing the claim to power of Islam, they are said to question the Swiss constitution and laws. Even though the Federal Government wanted to reject this initiative in a ballot, since it was considered as endangering religious peace and freedom and also undermining the ban on discrimination through its focus on one particular religion, on 29th November 2009 the initiative was accepted by 57.5% of the voting population. The decision placed Switzerland in the headlines of the world’s press. In December 2009 two complainants brought a case against the initiative at the European Court of Human Rights, but this was declared invalid in 2011. In its judgment, the ECHR argued that the complainants were not directly affected by the ban, since they were not planning to build a minaret. Furthermore it made it clear that Swiss courts would be able to determine whether planning applications were compatible with the human rights conventions. In order to keep the religious peace and discuss the demands of Muslims after this popular decision, and following the example of Germany, the Government launched a “Muslim dialogue”.

7. Artistic Diversity

The expression of cultural diversity through arts is a state obligation because it is included in programs that promote culture in Switzerland. Cultural promotion is primarily the duty of the cantons, but the Confederation supports the activities of the cantons in order to create artistic

bridges across all the parts of Swiss society, notably in the form of cultural exchanges between different regions and cultures. Activities at the federal level draw on the Law on the Promotion of Culture (Kulturbotschaft), and the total budget is 900 million Swiss Francs.

The programs detect challenges to Switzerland in the circulation of globalized cultural artistic forms, demographic change, and in the societal pluralization, partly caused by immigration, that may affect the social cohesion of the country. Individualization and urbanization form other major challenges.

On this legal basis, cultural artistic diversity should be guaranteed through cultural participation, currently in a program covering 2016 to 2019. The intuition of this program is to strengthen the participation of individuals in cultural life because this may counteract polarizing trends in society and contribute to coexistence in plural societies. To do so, the confederation will in particular contribute to translations of literature, and develop and enhance exchange programs between the linguistic regions.

Pro Helvetia, a foundation under public law entirely funded by the federal government, plays the biggest role in promoting artistic creation in Switzerland, with an explicit eye on diversity. Already in 2004 it highlighted the fact that a substantial proportion of the artists working in Switzerland have foreign roots. By interacting and exchange with Swiss artists and cultural practitioners, immigrant artists help shape the country's cultural landscape, be it in music, the visual arts, literature, theatre, dance or popular culture.

In 2006, Pro Helvetia's swiss programme extended its activities in an invitation to discover the interplay between a wide variety of cultures in the context of contemporary art and culture in Switzerland. The goal was to attract the attention of contemporary creations in Switzerland, in particular to a relatively unknown and politically sensitive issue of artistic creations by persons with other origins. It tried to give voice to those who do not believe that cultural production has a passport, so to speak. Many of the immigrant artists continue to seek acknowledgement and recognition by mainstream actors like Pro Helvetia, since the status of being a migrant may have an impact on the reception of their work. It started with concerts in jazz, rap, hip-hop and showing, how peripheral cities as Neuchâtel have a vivid scene in artistic production unknown to the larger public. Concerts, exhibits, manifestations, cinema and readings during 12 months completed the program in 2006 and showed the variety of productions at the high end of the migrant community (prohelvetia.ch).

Because immigrants constitute a "group" while at the same time not being a group, it is difficult to generalize findings in this respect. Cultural expressions are the products of single scenes and to give an autonomous view on the world. Perhaps, the only common denominator is the search for a place that does not trace the artist back to his or her origin. The immigrant artist may be a privileged spokesperson to explore the spaces between the "cultures", in order to give us information about our existence. The challenge is to get out of the "ghetto" of migrant artistic production - figuratively speaking - and become an artist in order to find one's own expression beyond the classified concepts of culture, even if there are four cultures. This happens in concrete theater projects in different Swiss towns, but also in different world music scenes (see www.norient.com). The strength of these projects is not limited by the Swiss geography of cantons and municipalities, but goes beyond this by showing the creativity of the artists. Different festivals organized with support by Pro Helvetia and other sponsors help trans-frontier conceptions. This transgressing conception is

obvious in music but more difficult to realize in the other arts.

What is more, there is also a literary scene that confronts its readers with the condition humaine including the reality of migrants²⁵. Melinda Nadj Abonji, only to mention one example, won with her novel “Tauben fliegen auf”, a novel about two young girls and their discovery of the world between Vojvodina and Zurich, the German and Swiss Book Prize in the same year (2010). She did so without denying her origins, but also without being caught in the corner of migrant’s literature, as it was the case in the 1970s. In this case, singular realities succeeded to become the reality of others.

This is also true for the film making industry and stage productions that are particularly strong in Zurich - the media capital of the country. The current stars are Güzin Kar, Samir, Ruxandra Zenide, and Andra Staka, only to mention a few. They are able to insert new perspectives in human dramas, join the migration experience of modern societies and tell stories that were unheard before: dramatic stories that have a reflective relation to our urban realities. Migratory Theatre is the new slogan on stage and there are different programs in Basel, Zurich, Lausanne and Geneva that include this reality in the production of new plays. These plays are not about integration, but the expression to represent urbanity and life as it is lived.

8. Conclusion

Certain foreign scholars, puzzled by Switzerland’s apparent enduring stability, detect the source of this solidity in the clever management of a multicultural country through its federal institutions. Others²⁶ see Switzerland as a “paradigmatic case of political integration” as a result of the subsidiary structure of the Swiss state, which supports both the strong municipal autonomy and the comparatively high participation rate of the (male) constituency in the polity. Still 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 industrialization and which was based on the country’s small size and the idea that it was under permanent threat from strong neighboring countries (Überfremdung).

As already observed, Neuchâtel and Zurich are located in different linguistic regions of Switzerland. And it is true that globally the French speaking areas have a more inclusive migration policy than German and Italian speaking cantons. Some refer to a more liberal political culture that strongly emphasize the protection of individuals on the basis of universal rights. But it is also true that urbanity plays an important, even decisive role. More urban the cantons, more liberal are the policies with regard to newcomers and applicants to Swiss citizenship. Based on more institutionalized procedures, the more inclusive political forces may prevail in urban areas and follow a more migrant-friendly policy, whereas in rural areas the republican attitude of assuring loyalty through associational commitments may exclude newcomers. This is the reason why Zurich, even if in principle less inclusive in its policies towards immigrants compared to Neuchâtel, is still ranking high and has similar outcomes if compared to more rural areas when it comes to the implementation of integration policies.

Indeed, even if the country has evident and tangible differences that necessitate a regionally sensitive management of diversity, this approach of being cultural thoughtful may vary with respect to immigration. Cantons have ample room to maneuver, something particularly evident in the management of linguistic diversity and its connection to integration. Even in the cases where the

federal authorities provide general directions and supports the cantons with the necessary funding, the implementation of these policies is directed by the cantons: the cantons as the main actors of an executive federalism. Put differently, though the legislative authority is located at the federal level, its application is conferred to the cantons, which are given flexibility in applying federal laws in order to accomplish their role. This is particularly true for the issue of language policies linked to integration, where we can find marked differences how the cantons apply federal guidelines. This federated way to implement issues of diversity can also be found in the regulation of the relationship between religious communities and the state. The freedom of the cantons is guaranteed by the Swiss Constitution in this respect, and the 26 cantons have developed regulation of this relationship in accordance with their historical legacy. Within the realms of the Swiss federal constitution, the federal level is cautious to regulate religious matters in order to prevent a new "Kulturkampf". This is why the cantons are allowed to initiate new forms of recognition under public law if they wish. The same is true addressing the promotion of artistic diversity: the federal level may give impulses, provide finance within certain bodies and a limited number of initiatives, but the ordinary cultural promotion is a duty of the cantons. This leads to a horizontal fragmentation of power to the cantons and the vertical segmentation of duties, which jointly make it very challenging to address any one policy towards diversity management. In the absence of a strong central power, the only way to address new and emerging issues rests in the hands of communicating units and actors at all level of the state. Processes may advance slowly, but they usually have much stronger legitimacy.

Notes

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