Korbmacher, H. (1987). Besteht auf dem Gebiet des Asyl- und Flüchtlingsrechts ein Bedarf an gesetzlicher Regelung? In W. Fürst (Ed.), *Festschrift für Wolfgang Zeidler* (pp. 901–918). Berlin: de Gruyter.

Mahnig, H. (2004). The politics of minority-majority relations: How immigrant policies developed in Paris, Berlin and Zurich. In R. Penninx, K. Kraal, M. Martiniello, & S. Vertovec (Eds.), *Citizenship in European Cities: Immigrants, Local Politics and Integration Policies* (pp. 17–37). Aldershot: Ashgate.

Marks, G., Hooghe, L., & Blank, K. (1996). European integration since the 1980s. State-centric versus multi-level governance. *Journal of Common Market Studies*, *34*(3), 341–378.

Messina, A. (2007). *The logics and politics of post-WWII migration to Europe*. Cambridge: Cambridge University Press.

Migration, Sachverständigenrat deutscher Stiftungen für Integration und Migration. (2012). Integration im föderalen System: Bund, Länder und die Rolle der Kommunen. Jahresgutachten 2012 mit Integrationsbarometer. Berlin.

Motomura, H. (1994). Immigration, alienage, federalism and proposition 187. *Virginia Journal of International Law*, *35*, 201–216.

Mushaben, J. M. (2008). *The changing faces of citizenship: Social integration and political mobilization among ethnic minorities in Germany*. New York: Berghahn.

Neuman, G. L. (1996). *Strangers to the constitution: Immigrants, borders and fundamental law*. Princeton: Princeton University Press.

Oeter, S. (2006). Federal Republic of Germany. In K. Le Roy & C. Saunders (Eds.), *Legislative, executive, and judicial governance in federal countries* (pp. 135–164, A Global Dialogue on Federalism, Vol. 3). Montreal: McGill-Queen's.

Penninx, R., Kraal, K., Martiniello, M., & Vertovec, S. (Eds.). (2004). *Citizenship in European cities: Immigrants, Local politics and integration policies* (*Research in migration and ethnic relations*). Aldershot: Ashgate.

Pierson, P. (2004). *Politics in time: History, institutions and social analysis*. Princeton: Princeton University Press.

Provine, M., & Varsanyi, M. W. (2012). Scaled down: Perspectives on state and local creation and enforcement of immigration law: Introduction to the special issue of law & policy. *Law & Policy*, *34*(2), 105–112.

Scharpf, F. W. (1988). The joint-decision trap: Lessons from German federalism and European integration. *Public Administration*, *66*(Autumn), 239–278.

Schmitter Heisler, B. (2008). Local authority responses to immigrants: The German case. In L. M. Hanley, B. A. Ruble, & A. M. Garland (Eds.), *Immigration and integration in urban communities: Renegotiating the city* (pp. 237–267). Washington, D.C.: Woodrow Wilson Centre Press.

Schönwälder, K. (2003). Zukunftsblindheit oder Steuerversagen? Zur Ausländerpolitik der Bundesregierungen der 1960iger und frühen 1970iger Jahre. In J. Oltmer (Ed.), *Migration Steuern und Verwalten. Deutschland vom späten 19. Jahrhundert bis zur Gegenwart* (pp. 123–144). Göttingen: IMIS-Schriften.

Schuster, L. (2003). *The use and abuse of political asylum in Britain and Germany*. London: Frank Cass.

Shachar, A. (2006). Race for talent: Highly skilled migrants and competitive immigration regimes. *New York University Law Review*, *81*, 148–206.

Spiro, P. J. (2001). Federalism and immigration: Models and trends. *International Social Science Journal*, *53*, 67–73.

Thränhardt, D. (2001). Integrationspolitik in föderalistischen Systemen. In L. Akgün & D. Thränhardt (Eds.), *Integrationspolitik in föderalistischen Systemen. Jahrbuch Migration—Yearbook Migration 2000/2001* (pp. 15–34). Münster: LIT.

Triadafilopoulos, T., & Schönwälder, K. (2006). How the Federal Republic became an immigration country: Norms, politics and the failure of West Germany's guest worker system. *German Politics and Society*, *24*(80), 1.

Tsebelis, G. (1995). Decision making in political systems: Veto players in presidentialism, parliamentarism, multicameralism and multipartyism. *British Journal of Political Science*, *25*(3), 289–325.

Varsanyi, M. W. (2008). Rescaling the "Alien," rescaled personhood: Neoliberalism, immigration and the state. *Annals of the Association of American Geographers*, *98*(4), 877–896.

Chapter 9
Swiss Immigration Federalism

Anita Manatschal

Abstract In Switzerland, sub-national regulation in the field of immigration has developed mainly in relation to immigrant integration, whereas the areas of immigrant selection and immigration enforcement remain predominantly regulated by the central government. The current regulatory situation can be read as the result of three interacting factors: Switzerland's pronounced federal system, the country's former guest-worker approach to immigration and the bottom up nature of local processes of immigrant integration.

Two principles characterize Switzerland's federalism; subsidiarity and executive federalism. Accordingly, cantons are not only the main responsible units for all areas which are not or only partially regulated at the national level, such as integration policy, but they can also decide how to implement existing national law, for instance in the field of immigration policy. As challenges related to immigrant integration arose primarily at the local city level where most immigrants live, cities and urban cantons were the first to formulate formal regulations and informal guidelines in this policy field. By contrast, the national government, long time neglected the topic of immigrant integration; a typical reaction for former guest-worker countries which were assuming that, eventually, the guest-workers would return to their countries of origin. To this day, national regulations on integration remain minimal and are worded in a very open way, which leaves the cantons considerable liberty in formulating their own integration policies.

Considering ongoing political debates within Switzerland, opinions vary on whether the cantonal variety of integration policies is rather beneficial or detrimental. On the one hand, opponents contend that subnational policy variations constitute a potential source of structural discrimination for immigrants, and that the heterogeneous puzzle of cantonal integration policies challenges the formulation of a coherent national strategy in the field. Proponents of cantonal autonomy, on the other hand, argue that adapted, context specific solutions for the local issue of immigrant integration are better than a "one size fits all" national framework and that Switzerland's federalist laboratory facilitates the evolution of cantonal best practices. This policy-learning potential could be used more systematically, for instance by fostering inter-cantonal exchange.

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9.1 Introduction

Over the last years, an increasing number of studies witnessed decentralizing processes of immigration regulation in federal states such as Canada, the United States or Australia (cf. Tessier 1995; Schmidtke 2001; Spiro 2002). In the Swiss federation, by contrast, we cannot speak of a *trend* towards a greater devolution of policy making competences to the subnational level in the realm of immigration, as the subnational units of Swiss cantons are already traditionally endowed with a large autonomy in this policy field.

Considering recent developments, one would rather be tempted, if at all, to speak of a trend towards centralization or even supra-nationalization of migration policy making in specific areas such as immigration policy, which deals with questions of immigrant selection, immigration enforcement and settlement. Conflicts between national and supranational interests are particularly salient in the area of immigrant selection, where the agreement on free movement of persons with the European Union clearly restricts Swiss state sovereignty (Mahnig and Piguet 2004; Koch and Lavenex 2006; Sassen 2005). At the same time, sovereign decision making is fiercely defended through popular initiatives of right wing anti-immigrant parties who try to limit free movement for EU citizens across Swiss borders.

Apart from immigrant selection, however, it appears more adequate to state that cantons remain important actors in Swiss migration policy, to use an umbrella term for immigration and integration policy (Giugni and Passy 2006). Firstly, cantons are the principal responsible authorities for the implementation of national immigration policy with a large room for interpreting federal immigration law (Spescha 1999). Secondly, cantons are the main regulatory units in the field of immigrant integration policy. In line with international concepts (cf. Koopmans et al. 2005; Koopmans et al. 2012; Huddleston et al. 2011; Waldrauch and Hofinger 1997), the definition of integration policy used in this chapter comprises a broad range of immigrant rights and obligations such as civic rights (i.e. naturalization policy), political rights (e.g. voting-rights for non-nationals), but also rights regarding cultural difference (e.g. religious minority rights) or cultural obligations (i.e. demands for assimilation to the host culture) respectively.[1] Cantonal regulations and practices vary strongly in all of

[1] While I base my understanding of integration policy on established international concepts, I am aware that there is no unanimous and generally accepted definition of this multidimensional and contested term (cf. Castles et al. 2002; Robinson 1998). In line with the empirical-analytical approach taken in this chapter, the definition of integration policy used here is not normative, but descriptive, as the aim is to illustrate cantonal diversity in integration policy making. For a more comprehensive overview and discussion including additional aspects of integration policy such as access to socio-structural rights, family reunification and anti-discrimination, see Manatschal (2011).

the aforementioned areas, leading to a heterogeneous puzzle of cantonal integration policies (cf. Cattacin and Kaya 2005; Ireland 1994; Soysal 1994; Manatschal 2011). This cantonal policy variety takes the shape of a "limitrophe" coinage of integration policies along Switzerland's cultural-linguistic regions: while French-speaking cantons are influenced by France's more inclusive and liberal jus soli citizenship conception, integration policies of German-speaking cantons correspond more closely to Germany's exclusive and restrictive jus sanguinis citizenship tradition (Cattacin and Kaya 2005; D'Amato 2010; Manatschal 2012).

In this chapter, I argue that the current regulatory situation in the fields of Swiss immigration and integration policy can be read as a result of three interacting factors: Switzerland's pronounced federal system, the country's former guest-worker approach to immigration, and the bottom up nature of local processes of immigrant integration. The first part of this contribution on Swiss immigration federalism contains a more thorough elaboration of these three aspects, offering thereby insights into how the distribution of competences between central state and cantons evolved in a non-settler state whose self-conception was for a long time shaped by the neglect of being a country of immigration. In the second part of the chapter, I turn to the specific topic of cantonal autonomy in integration policy making by discussing its implications for Switzerland's immigrant population. More specifically, part two of the chapter addresses the question whether varying cantonal integration policies, which I exemplify using selected areas of immigrant rights and obligations, harm or benefit non-citizens. As for benefits, I will show that cantonal autonomy facilitates efficient and problem oriented policy making, whereas negative effects of subnational policy making are mainly related to immigrants' unequal access to political and civic participation rights. Overall, the evolution of (cantonal and national) integration policy in Switzerland illustrates the high potential of the country's "federal laboratory" for policy learning processes. This potential could be used more systematically, for instance by fostering inter-cantonal exchange.

9.2 Peculiarities, Historical Evolution and Contemporary Nature of Swiss Immigration Federalism

9.2.1 Constitutional Division of Powers

In his book on immigration and integration policy in federal states, Tränhardt (2001) identifies four channels for subnational influence on migration policy making. First, subnational units may act autonomously, for instance when they are designated as the main regulatory actors in a given policy area. Second, subnational units often enjoy considerable flexibility and scope of interpretation when acting as the main responsible authorities for the implementation of national legislation. Third, subnational units may influence national legislation in the field of migration policy through a second parliamentary chamber, or, fourth, through symbolic politics.

All four channels are used extensively by Swiss cantons to shape migration policy at the national or cantonal levels. As suggested by Tränhardt, cantons may influence national legislation in migration policy directly through the second parliamentary chamber ("Ständerat"). Unlike the first chamber ("Nationalrat"), which is based on proportional representation of cantonal populations (200 members of parliament or MP's in total), each canton is accorded the same number of two seats in the Ständerat[2], amounting to a total of 46 MP's for the second chamber. The Ständerat guarantees that the interests of all cantons are equally represented in the legislative process. Yet, it also implies an overrepresentation of rural and conservative interests and thus, a rather restrictive stance in the field of migration policy, as the vote of a Ständerat (MP of the second chamber) from the small rural canton of Uri, for instance, outweighs the vote of a Ständerat from the urban canton of Zürich by 39 times in terms of electoral representativeness (cf. Linder 2005; Vatter 2006)

Besides this, Switzerland's manifold instruments of direct democracy on all three federal levels (local, cantonal, national) offer additional channels for the cantons to control or influence national and cantonal migration policy making. More specifically, cantons may impact national policies through the cantonal legislative initiative ("Standesinitiative"), which allows cantons to introduce a legislative proposal into parliament, or through the cantonal referendum, which can be invoked by at least eight cantons (Linder 2005; Vatter 2002, 2006). Direct democracy offers also a very fertile ground for symbolic party politics, the fourth channel identified by Tränhardt (2001). Ever since the post World War II era, right populist parties have been using the instruments of direct democracy in order to restrict national legislation in the fields of immigration, asylum and immigrant rights (Niederberger 2004; Skenderovic 2009). The most recent successes of initiatives from the right populist Swiss People's Party ("Schweizerische Volkspartei", SVP) at national polls, such as the minaret ban in 2009 and the approval of the deportation initiative in 2010, demonstrated that direct democracy provides powerful instruments for (right) populist mobilization against immigration and its consequences (cf. Giugni and Passy 2006).

When it comes to cantonal policy making, the room to maneuver is, as proposed by Tränhardt (2001), basically determined by the degree of cantonal autonomy as well as by the cantons' freedom to implement national law. Both aspects, subsidiarity and executive federalism, are pronounced in the Swiss context. The principle of subsidiarity, as it is defined in article 3 of the Swiss constitution, states that Swiss cantons are responsible for all policy areas which are not regulated by a higher (i.e. the national) level. In the field of integration policy, the minimal and open-worded national standards in this matter imply that cantons enjoy considerable autonomy in policy making (Eggert and Murigande 2004; Cattacin and Kaya 2005; Manatschal 2011). Voting rights for non-nationals, for instance, as one aspect of integration

[2] With the exception of the "half-cantons" Obwald, Nidwald, Basel-City, Basel-Country, Appenzell Inner Rhodes, and Appenzell Outer Rhodes, who are accorded only one seat each. See: http://www.parlament.ch/D/ORGANE-MITGLIEDER/STAENDERAT/Seiten/default.aspx (last accessed: 7 November 2012).

policy (cf. Koopmans et al. 2012; Huddleston et al. 2011), are attributed at the cantonal level. In general, cantons hold a referendum on the topic and let the cantonal population decide whether immigrants should have voting-rights at the cantonal or local level or not (see examples in Sect. 9.3.2).

The principle of executive federalism, in turn, which is defined in article 1 of the constitution, stipulates that the cantons are responsible for the implementation of national law (Linder 2005; Vatter and Wälti 2003). The fact that certain national legal propositions are formulated in a facultative way implies that in these instances, cantons have de facto liberty in policy making. One example is the restrictive policy instrument "integration agreement", which is an indicator for cultural obligations as one aspect of integration policy. According to article 54 of the new aliens' law ("neues Ausländergesetz, AuG"), the attribution of (temporary) residence permits can (but does not have to) be tied to the condition that the applicant attends an integration or language course. This means that cantons have the option to prescribe course attendance as a requirement for residence permits in form of a written integration agreement.[3] As a result of the facultative nature of integration agreements, certain cantons use them systematically when attributing residence permits, whereas other cantons prefer to issue unconditional residence permits, foregoing thus this restrictive policy instrument (cf. BFM 2008; Kübler and Piñeiro 2010) (see examples in Sect. 9.3.1).

As the overview on the constitutional division of powers in Switzerland revealed, the principles of subsidiarity and executive federalism leave to the cantons considerable autonomy in policy making. The following elaboration on the historical evolution and contemporary nature of immigration federalism in Switzerland illustrates the implications of this constitutional division of powers for the fields of immigration and integration policy.

9.2.2 *Immigrants in Switzerland: From "guest workers" to Fellow Citizens*

Today, one third of Switzerland's population has a migrant background while one fourth was born in a country other than Switzerland (BFS 2010; Lavenex 2006). From a quantitative perspective, Switzerland is comparable to typical settler states such as Canada, the United States or Australia (Piguet 2004). Yet unlike the settler states, this immigration reality did not reflect in Switzerland's national identity which was long time shaped by the perception that Switzerland is no country of immigration. From a political perspective, Switzerland was formerly a prime example of a continental-European guest-worker country, meaning that on the one hand, it pursued an active strategy of foreign worker recruitment while on the other hand maintaining a restrictive position regarding naturalization and immigrant integra-

[3] See also art. 5 in the decree on immigrant integration ("Verordnung über die Integration von Ausländerinnen und Ausländern", VIntA).

tion. This former segregationist integration strategy (cf. Koopmans et al. 2005) is largely responsible for the late and tentative development of a national integration policy in Switzerland.

9.2.2.1 Immigration Policy

The end of World War II marked the beginning of Switzerland's "guest-worker" era (Cattacin 1996; Lavenex 2006; Wicker 2004). In order to reestablish national postwar economy, Switzerland pursued an active strategy of foreign worker recruitment, mainly from Italy and Spain. The concept of the guest-worker, which was also prominent in Germany, based on the assumption that foreign workers are only temporary residents who would eventually leave and return to their home country. Former guest-worker countries invested a considerable effort in so called guest-worker-programs, which encouraged foreign workers to maintain cultural ties to their home land in order to facilitate their return (Koopmans et al. 2005). Over the years, legal entitlements for foreign workers were steadily extended,[4] and increasing family reunifications soon invalidated the hope that immigrants would eventually return to their home countries, with the result that the guest worker concept was gradually watered down.

The agreement on the free movement of persons within the European Union, which Switzerland as a non-EU member state concluded with the European Union in 2002, definitely terminated the guest-worker era. Since that time, Switzerland has a dual or "two-circles" immigration system. While citizens from the European Union as well as countries from the European Free Trade Area (EFTA) enjoy de jure free mobility (first circle), the admission for citizens from the rest of the world (second circle, generally referred to as "third-country nationals") is restricted to highly skilled immigrants.[5] Yet, during a transitional period which should originally not last later than 2014 (cf. Lavenex 2006), Switzerland continued to apply a quota system which allows for limited admission of EU citizens. Ten years after agreeing with the EU on the free movement of persons, the country has not established free mobility yet. On the contrary, in May 2012, Switzerland activated the so called "valve clause", limiting the admission of immigrants from eight Eastern EU countries. This act was sharply criticized by the EU commission which considers the valve clause a contravention of the agreement on free movement from 2002.[6]

[4] The legal situation was first improved for Italian immigrants in a "recruitment agreement" with Italy in 1964. This agreement facilitated family reunifications as well as a conversion of guest worker-permits into temporary residence permits. In the 1980's, residence conditions were further improved for Italian, Spanish and Portuguese foreign workers, meaning that they were faster eligible for unlimited residence permits and family reunification (Lavenex 2006).

[5] Yet, there are special arrangements for permanent residence permits for immigrants from the United States and Canada (see: http://www.bfm.admin.ch/bfm/de/home/themen/aufenthalt/nicht_eu_efta/ausweis_c__niederlassungsbewilligung.html, last accessed: 2 November 2012).

[6] See *Neue Zürcher Zeitung*, April 18 2012. Online: http://www.nzz.ch/nachrichten/politik/schweiz/schweiz-droht-konflikt-mit-eu-wegen-ventilklausel-1.16509769 (last accessed: July 23 2012).

As the preceding discussion shows, the topic of immigrant selection is a very relevant national matter in Switzerland. Although immigration regulation increasingly intersects with the international arena (cf. Sassen 2005), more specifically the European Union, the most recent developments highlight that Switzerland still adheres to sovereign state control in immigration policy. The expression of this protectionist stance which is quite widespread among Switzerland's population is facilitated by the instruments of direct democracy. Most recent example thereof is a new immigration bill which plans the reintroduction of fix quotas, on which the Swiss population will presumably vote in 2014, and which subverts de facto the agreement on free movement with the EU. Not surprisingly, this protectionist popular initiative was launched by the right populist SVP.[7]

At the same time, and in line with Switzerland's tradition of executive federalism (see Sect. 9.2.1), cantons remain responsible for policy implementation and they enjoy a large room for interpreting national immigration law (Spescha 1999). This holds true for immigrant selection, as cantons can for instance unilaterally extend immigration quota, as well as for immigrant settlement, since cantons can deny the issuance of residence permits unless there is a legal entitlement for such a permit (Lavenex 2006).

In Switzerland, immigrants are eligible for a temporary working permit if they possess a valid Swiss working contract. After 5 years, this temporary permit can be converted into a permanent residence permit. All permits are issued by cantonal migration offices, whereby the Federal Office for Migration ("Bundesamt für Migration", BFM) determines the exact date for the issuance of permanent residence permits.[8] While permits for EU/EFTA nationals have a nationwide scope, granting geographical and occupational mobility all over Switzerland (see art.8, 14 and 24, par.7, appendix I in the agreement on free movement of persons with the European Union), the permits for third-country nationals are insofar restricted as working in another canton is possible, whereas a change of domicile to another canton requires that a new permit is issued by this canton (see art. 37 and 38 AuG).

9.2.2.2 Integration Policy

Against the background of Switzerland's history as a guest worker country, it is not surprising that the topic of immigrant integration was long time neglected at the federal level. The traditionally strong position of Swiss cantons in the area of immigrant inclusion can be best illustrated with one of the central tenets of integration policy, naturalization policy. Until the foundation of the Swiss federation in 1848, naturalization was regulated solely by the cantons (Auer et al. 2000; Lavenex 2006; Eggert and Murigande 2004). This historical legacy reflects in Switzerland's current and unique three-stage regulation of citizenship acquisition, where any naturaliza-

[7] See *Neue Zürcher Zeitung*, July 5 2012, p. 9.

[8] See http://www.bfm.admin.ch/content/bfm/de/home/themen/aufenthalt.html (last accessed: November 1 2012).

tion process has to pass through local and cantonal authorities, before it is approved at the national level (Helbling 2008; Kleger and D'Amato 1995). The national citizenship law and the 26 cantonal citizenship laws respectively define formal eligibility criteria for naturalization, such as residence requirements, costs, or conditions for facilitated naturalization (Manatschal 2011). Yet contrary to practices in most other countries, the responsibility for naturalizing foreigners is largely delegated to municipalities which enact the naturalization procedures and ultimately decide on the applications (Hainmüller and Hangartner 2012; Helbling 2008).

Most recent developments in the field of integration policy are attributed to the fact that political, social and economic rights are decreasingly linked to civic rights (Soysal 1994), leading to a change in awareness: today, immigrants in Switzerland are no longer perceived as foreign workers but as fellow citizens facing however high hurdles for citizenship acquisition (Lavenex 2006). Questions regarding the broader integration of immigrants into Swiss society, which surpass the narrow civic inclusion in terms of citizenship acquisition, such as political (e.g. voting rights), economic (school, labour market) and cultural integration (cf. Ager and Strang 2008), arose primarily at the local city level where most immigrants live. Accordingly, cities and urban cantons were the first to formulate formal regulations and informal guidelines in this policy field (Lavenex 2006). One of the pioneer cantons in this respect was Basel-City, where a guiding principle on integration was enacted in 1999 (Ehret 2002). This local and cantonal activity in the regulation of immigrant integration is a prime example of how the principle of subsidiarity which characterizes Swiss federalism (see Sect. 9.2.1) works in practice.

In 2008, five out of overall 26 cantons possessed own integration laws, 11 cantons provided constitutional articles on integration and in several cantons and cities specific guiding principles on integration were in force (Manatschal 2011). Although these formal cantonal integration provisions were generally worded in an open and target-oriented way,[9] the regulatory activity of cities and cantons sensitized the national level for the issue of immigrant integration. As the following overview on the legal development of Swiss integration policy shows, the Confederation still represents a minimal and very open-worded understanding of the term integration with rather general objectives (cf. Niederberger 2004). This situation leaves the cantons considerable autonomy in integration policy making, and in the definition of immigrants' rights and obligations. Over the last years, cantonal competences in this policy field have even been consolidated by national law.

In 2000, the Federal Council enacted for the first time a decree on immigrant integration (SR 142.205 "Verordnung über die Integration von Ausländerinnen und Ausländern", VIntA) which defines the objectives of immigrant integration. According to art.2 par.1 of the VIntA, the aim of integration consists of the equal participation of immigrants and Swiss citizens in the economic, social and societal life. Yet, it is hardly specified how this aim of equal opportunities should be reached. Two factors might explain this lack of specificity: firstly, article 2 of the VIntA defines integration primarily as a task of the existing societal structures such as schools and the labor market, whereas governmental support for immigrant integration should only be supplementary. Secondly, integration is defined as a comprehensive cross-sectional task, which involves the federal, cantonal and local authorities as well as non-governmental authorities including social partners and immigrant organizations (art. 2 par. 2 VIntA). Thus, the Confederation is only one, and not the most important actor among many who are responsible for the task of integration, which precludes more specific national prescriptions on integration.

The aforementioned legal integration provisions (art. 2 VIntA) can also be found in article 4 of the new alien's law (SR 142.20 "Bundesgesetz über Ausländerinnen und Ausländer", AuG), which came into force in 2008 and replaced the former federal law on residence and settlement (ANAG). What is more, the AuG specifies the role of Swiss cantons in integration policy: they are now officially considered principal actors and contacts for the Confederation when it comes to immigrant integration (art. 57 AuG), whereas the Confederation confines itself to the financial and strategic support of cantonal integration programs.[10] Cantonal law is furthermore decisive when it comes to define the competences of municipalities and cities regarding integration tasks (TAK 2005).

In 2009, the Federal Council initiated a process on the future development of Swiss integration policy to find out whether Switzerland needs a national law on integration (TAK 2009). In his final report on this process, the Federal Council adheres to the status quo, concluding that the topic of integration should first and foremost be regulated more consistently through existing legislation instead of creating a new law (Bundesrat 2010). While traces of such a national unification of integration standards are looming in the current partial revision of the new aliens' law (AuG), which eventually will be renamed to "aliens' and integration law", these modifications do not imply a restriction of cantonal autonomy in integration policy making [11].

As the discussion in the first part of this chapter showed, Swiss immigration federalism did not undergo significant changes recently, but the division of competences between the Confederation and cantons which emerged over the last decades rather manifested itself. Thus, immigration, particularly immigrant selection, remains a contested national topic, even more so in the light of increasing supranational regulations of migration streams, whereas the implementation of immigration policy (selection and settlement) as well as the regulation of immigrant integration

[9] According to article 15 of the constitution of Basel-City, for instance, the canton "supports cultural diversity, immigrant integration and equal opportunities in the population". Similarly, the integration law of the canton of Fribourg aims at fostering the process of immigrant integration by facilitating equal societal participation of immigrants and Swiss citizens.

[10] See Federal Office of Migration (2010) "Entwicklung kantonaler Integrationsprogramme und begleitende Massnahmen (EKIM)" from May 20 2010. Online: http://www.bfm.admin.ch/bfm/de/home/themen/integration/politik/weiterentwicklung.html (last accessed: July 23 2012).

[11] See *Neue Zürcher Zeitung*, March 23 2012. Online: http://www.nzz.ch/nachrichten/politik/schweiz/vereinheitlichung_der_standards_bei_der_auslaenderintegration_wird_begruesst-1.16041622 (last accessed: July 23 2012).

fall largely into the domain of Swiss cantons. From an immigrant perspective, this raises the question on the implications of the subnational heterogeneity in integration policy making for non-citizens, which will be addressed in part two of this chapter.

9.3 Consequences of Swiss Immigration Federalism for Non-Citizens

Considering ongoing political debates within Switzerland, opinions diverge on whether the cantonal variety of integration policy is rather beneficial or detrimental for non-citizens.[12] On the one hand, proponents of cantonal autonomy argue that adapted, context specific solutions for the local issue of immigrant integration are better than a "one size fits all" national framework (cf. Bundesrat 2010, p. 32). This argument is not only shared by migration scholars who claim that decentralized solutions provide better opportunities for participative and responsive policy making due to the reduced distance between state and citizens (cf. Holzer and Schneider 2004; Abu-Laban 2009). It also corresponds with the prominent argument brought forward by federalist scholars claiming that Switzerland's federalist laboratory facilitates the evolution of cantonal "best practices" (cf. Kriesi and Trechsel 2010; Linder 2011; Vatter 2011).

Opponents, on the other hand, contend that subnational policy variations constitute a potential source of structural discrimination, and that the heterogeneous puzzle of cantonal integration policies challenges the formulation of a coherent national strategy in this area (cf. Kübler and Piñeiro 2010; EKR 2009). Skeptical voices can also be found in the migration literature which warns about a potentially detrimental impact of devolution in immigration regulation on non-citizens' rights, particularly keeping in mind the inherently discriminatory nature of immigration law (cf. Fitzpatrick 1995, 2011).

In what follows, I present a detailed discussion of both aspects, potential benefits and harms of subnational integration policy making for non-citizens. The discussion of benefits turns around varying shares and composition of cantonal immigrant populations. Using the examples of cultural obligations as well as religious minority rights as elements of cantonal integration policy, I will show that cantonal autonomy facilitates problem-oriented and pragmatic policy making. By contrast, I argue that harm or discriminatory potential arises primarily from immigrants' unequal access to civic and political rights, as access to these rights is clearly restricted in German speaking cantons compared to Latin Switzerland, where a more liberal citizenship conception prevails.

[12] This question was also at the core of the convention of the Federal Commission for Migration ("Eidgenössische Kommission für Migrationsfragen", EKM) in 2010, which was entitled "Federalism, blessing or curse for migration policy?" See: http://www.ekm.admin.ch/de/themen/foederalismus.php (last accessed: August 8 2012).

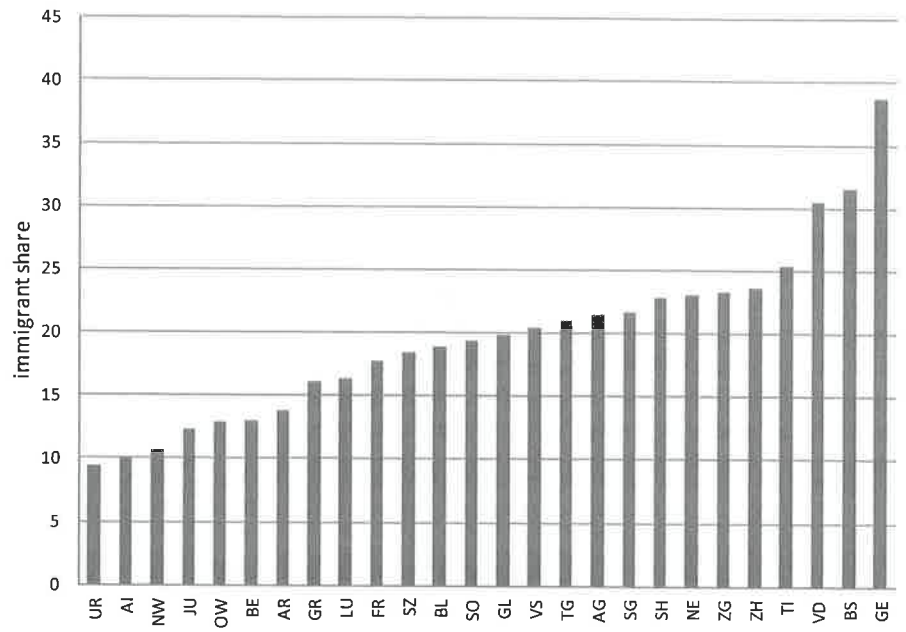

Fig. 9.1 Cantonal immigrant shares 2009 (in percent). *AG* Argovia; *AI* Appenzell Inner Rhodes; *AR* Appenzell Outer Rhodes; *BE* Berne; *BL* Basel-Country; *BS* Basel-City; *FR* Fribourg; *GE* Geneva; *GL* Glarus; *GR* Grisons; *JU* Jura; *LU* Lucerne; *NE* Neuchâtel; *NW* Nidwald; *OW* Obwald; *SG* St. Gall; *SH* Schaffhausen; *SO* Solothurn; *SZ* Schwyz; *TG* Thurgovia; *TI* Ticino; *UR* Uri; *VD* Vaud; *VS* Valais; *ZG* Zug; *ZH* Zürich. National average: 21.7%. (Source: Swiss Federal Statistical Office 2009, own illustration)

9.3.1 Benefits of Cantonal Autonomy in Integration Policy Making

The advantages of a federal solution to integration policy become already apparent considering the strongly varying immigrant shares between cantons. Figure 9.1 shows that the rate of non-nationals is clearly elevated in urban cantons such as Geneva, Basel-City or Zurich, whereas the rural cantons of Uri, Appenzell Inner Rhodes and Nidwald exhibit the lowest immigrant share. Overall, inter cantonal variance is considerable: in Geneva, non-nationals represent 38.7% of the whole population, which is four times higher than the immigrant share of Uri, which amounts to only 9.4%.

Thus, the challenges of integration are particularly salient in Swiss cities, i.e. urban cantons, with the highest concentration of non-national population. What is more, the composition of the immigrant population varies considerably between Switzerland's linguistic regions. As Fig. 9.2 reveals, 46% of immigrants in Switzerland's Latin region (i.e. French and Italian speaking cantons) stem from south-western Europe (Italy included), meaning countries with Romanic languages, whereas

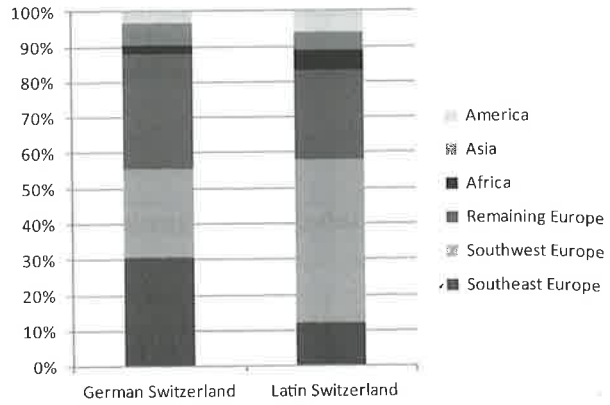

Fig. 9.2 Composition of immigrant population in Swiss linguistic regions 2009. (Source: Swiss Federal Statistical Office 2009, own illustration)

only 24 % of the immigrants in German-speaking Switzerland are supposedly German-speaking (i.e. of German or Austrian descent) and can benefit from familiarity with Germanic languages.

Obviously, these structural differences in extent and composition of cantonal immigrant populations require specific integration strategies. Autonomy in integration policy making allows the cantons for instance to take into account the varying ethno-linguistic composition of the non-national cantonal population when it comes to language acquisition. As Fig. 9.2 suggests, linguistic difficulties constitute a bigger challenge for immigrants in German speaking cantons, where only one quarter of the immigrant population is familiar with the local language (German), compared to Latin cantons, where almost half of the immigrant population speaks a local, i.e. a Latin language. Thus, one could expect that learning the local language is considered more important in German speaking than Latin cantons. A look at cantonal integration policies at least partly corroborates this assumption. From a legal perspective, language proficiency is considered roughly equally important in German speaking and Latin Switzerland: in 2008, the cantonal citizenship laws of eight out of overall 19 German speaking cantons mention linguistic skills as a requirement for naturalization (42.1 %), while in Latin Switzerland—Italian speaking canton Ticino included—it is four out of seven (57.1 %) (cf. Manatschal 2011). However, when considering cantonal practices, there is indeed a stronger emphasis on linguistic skills in German speaking than in Latin Switzerland. When the new aliens' law introduced the optional use of integration agreements, only German speaking cantons and the bilingual canton of Valais (German and French) applied this restrictive policy instrument systematically, which ties the allocation of residence permits to language proficiency (cf. Sect. 9.2.1). By contrast, Latin cantons applied integration agreements only selectively (Ticino, Neuchâtel, Jura, and Fribourg) or refrained completely from applying this restrictive policy instrument (Vaud and Geneva) (BFM 2008).

Another example for pragmatic policy making through cantonal autonomy is the demand for minority specific rights such as the right for an Islamic burial, which arose primarily in cities: in 2008, ten out of 26 cantons provided special areas for Islamic cemeteries, mainly urban cantons, where most Muslims live.[13] This problem oriented subnational approach stands in a stark contrast to the national policy arena, where minority issues are more likely to become instrumentalized for symbolic party politics. The most prominent example thereof is the national ban on minarets which the Swiss population adopted in 2009. At that time, only four minarets existed in Switzerland, two in the canton of Zurich (cities of Zurich and Winterthur), one in the canton of Solothurn (city of Olten), and one in the city canton Geneva. In 2009, only one additional minaret was planned for the town of Langenthal in the canton of Berne. The administrative court of Berne decided in 2012 that this minaret conflicts with local building regulations and prohibited its construction, without however referring directly to the minaret ban.[14] The preceding discussion suggests that the difference between cantonal and national approaches can be traced back to varying degrees of polarization. This is in line with Richner's (2006) argument, according to which public attention combined with a party political polarization of immigrant specific rights hampers pragmatic policy making when it comes to the topic of non-Christian burials.

Cantonal autonomy does not only facilitate the formulation of pragmatic and problem oriented integration policy making which is optimally adapted to local needs. Ongoing policy learning processes within and between cantons suggest that cantons indeed represent a "federal laboratory", which facilitates evolution and diffusion of innovations and best practices in policy making. One example of this diffusion process is the popular slogan that integration implies rights and duties ("fördern und fordern") at the same time. The concept "fördern und fordern" was first formulated in the integration guiding principle of the canton Basel-City and is based on the assumption that equal opportunities for everyone require mutuality of rights and duties of immigrants and Swiss citizens alike.[15] The motto "fördern und fordern" did not only inspire other cantons, such as for instance the canton of Zurich, which included this slogan into its cantonal integration strategy,[16] but it also entered the national discourse and constitutes now one of the central tenets of Swiss integration policy (Bundesrat 2010, p. 6).

9.3.2 Discriminatory Potential of Swiss Immigration Federalism

The implications of Swiss immigration federalism are not only positive. Especially when considering the target population of immigrants, cantonal autonomy in migra-

[13] More specifically, these were the cantons of Zurich, Berne, Lucerne, Solothurn, Basel-City, Basel-Country, St. Gall, Ticino, Neuchâtel and Geneva (Manatschal 2011).

[14] See *Neue Zürcher Zeitung*, April 3 2012. Online: http://www.nzz.ch/aktuell/schweiz/gericht-verbietet-langenthaler-minarett-1.16242621 (last accessed: August 8 2012).

[15] See integration guiding principle of Basel-City. Online: http://www.welcome-to-basel.bs.ch/leitbild_original-2.pdf (last accessed: November 7 2012).

[16] See integration strategy of the canton of Zurich. Online: http://www.integration.zh.ch/internet/justiz_inneres/integration/de/integrationspolitik/strategie.html (last accessed: August 13 2012).

tion policy making can imply unequal and thus, potentially discriminatory treatment, which is an inherent consequence of legal regulations themselves (Fitzpatrick 1995, 2011). As Fitzpatrick (1995) observes, although the rule of law attempts to constitute itself in universal terms, in so doing it exposes its own particularistic and even racist underpinnings, since the legal discourse is always informed by nationalism and national identity.

Migration policy making in Swiss cantons offers a paradigmatic illustration of this seeming paradox, as cantonal integration policies reflect deeply embedded historical notions or "public philosophies" of citizenship and nationhood (Favell 2001b). Following this line of thought, national citizenship conceptions are assumed to crystallize in and shape integration policies of the respective countries as either restrictive and assimilationist or permissive and inclusive (Favell 2001b; Koopmans et al. 2005). The case is slightly more complex in multilingual and thus, multicultural countries, such as Switzerland. Here, it can be assumed that such citizenship conceptions and understandings of nationhood are transmitted by language, and thereby cross national borders. More specifically, different values, attitudes and norms of the cultural spheres in the countries surrounding Switzerland (i.e. France, Italy, Austria and Germany) are transmitted into French-/Italian- or German speaking cantons by way of diverse communication—(i.e. media) and exchange processes, shaping thereby the social culture in Switzerland's linguistic regions (Kriesi and Baglioni 2003).

The assumption that cantonal populations share varying citizenship conceptions and thus attitudes toward immigrant integration is corroborated on a regular basis in national votes on the topic, with Switzerland's French-speaking population being clearly less skeptical towards immigrants, and less restrictive regarding immigrant integration than its German-speaking population (Kriesi et al. 1996). Distinct historical-linguistic understandings of citizenship (French jus soli and Germanic jus sanguinis) indeed shape the cantonal public opinion regarding immigrants which, in turn, reflects in cantonal integration policies, resulting in a "limitrophe" coinage of integration policies in Switzerland's linguistic regions (Cattacin and Kaya 2005; D'Amato 2010; Manatschal 2012). This transnational pattern is no Swiss specificity but has also been observed in Belgium, another multilingual country, where Walloon and Flemish integration policies are said to be influenced by French and Dutch understandings of citizenship (Favell 2001a; Ireland 2006; Koopmans 2010).

The underlying argument that public sentiments such as exclusionary attitudes towards immigrants may be contagious and could, by being spread, influence government policies (Raijman 2010) has been proved by several international studies of countries as different as Spain (Zapata-Barrero 2009), New Zealand (Ward and Masgoret 2008), or more generally the countries of the European Union (Weldon 2006). By providing an immediate channel for popular participation, Switzerland's system of direct democracy seems particularly prone to such an impact of the popular will on policy formulation.

The varying cantonal integration philosophies imply that non-citizens living in one canton are treated differently compared to another canton. Due to the varying degrees of inclusiveness or exclusiveness of cantonal integration regimes (cf. Eggert and Murigande 2004; Giugni and Passy 1997; Kleger and D'Amato 1995), cantonal integration regulations constitute a source of structural discrimination (cf. EKR 2009). More specifically, immigrants living in French speaking Switzerland enjoy more participation rights than non-nationals in German speaking cantons.

One example to illustrate this unequal treatment is political participation rights such as non-nationals' right to vote (cf. Sect. 9.2.1). In 2008, immigrants were endowed to vote in five out of six French speaking cantons at the municipal level, meaning Vaud, Fribourg, Jura, Geneva, and Neuchâtel, and in two French speaking cantons (Jura and Neuchâtel) even at the cantonal level (Manatschal 2011). The only exception is the bilingual canton of Valais, where immigrants have no right to vote. Similarly, non-nationals living in Italian speaking Ticino as well as in most German speaking cantons are not allowed to vote. Ticino is an exception only at first sight, which becomes feasible when extending our argument stipulating a limitrophe impact of citizenship regimes to Italy: similar to Germanic countries, Italy's citizenship regime corresponds to the restrictive jus sanguinis type (Zincone and Basili 2010). Thus, the Italian understanding of citizenship is in line with Ticino's restrictive stance when it comes to political participation rights. As for German speaking cantons, only three out of 19 cantons, Grisons, Appenzell Outer Rhodes and Basel-City, provide immigrants the right to vote, but only at the local level and in selected municipalities. At regular intervals, the topic of non-national's right to vote enters the political debate in German speaking cantons. In 2010, three cantons, Bern, Basel-City and Glarus, voted on the introduction or extension (cantonal level in Basel-City) of non-national voting rights.[17] Yet, the proposals were clearly rejected in all three cantons, corroborating thereby the restrictive Germanic citizenship regime. These cases illustrate how direct democracy helps to reinforce conservative popular tendencies and cultural perceptions of "who belongs to us", which inform cantonal integration policy making.

Immigrants' unequal access to rights within Switzerland's linguistic regions can furthermore be illustrated using the example of cantonal citizenship regulations. As already elaborated in Sect. 9.2.2.2, access to citizenship involves all three state levels in Switzerland, with cantons and federation providing formal eligibility requirements, whereas the responsibility for naturalizing foreigners is largely delegated to the local level, meaning that Swiss municipalities are the decisive authorities in this process. Nevertheless, formal requirements as they are defined in the 26 cantonal citizenship laws vary strongly. Overall, and in line with the expected pattern, these requirements are less demanding in French speaking and more restrictive in German speaking cantons. Besides the 12 years of residence required for naturalization at the national level, for instance, an applicant from the rural German speaking canton Nidwald has to prove that he lived for 12 years in this canton in order to be eligible for naturalization, whereas the same residence requirements in French speaking cantons Jura and Genève amount to only 2 years. Similar differences can

[17] From 2000 to 2010, cantons have been very active in this respect. During this period, 12 referenda were held in 10 cantons on voting-rights for non-nationals. See: http://www.ekm.admin.ch/content/ekm/de/home/themen/Citoy/stimmrecht.html (last accessed: October 25 2012).

be observed when it comes to requirements regarding cultural integration (cultural obligations): while applicants in the French speaking canton Neuchâtel are solely expected to know the local language (French), much more is expected from applicants in the rural German speaking canton Uri. Besides knowledge of the local language (German), an applicant must be integrated into the Swiss context, be familiar with the Swiss way of life, adapt to the laws, traditions and customs, respect the legal order and pose no threat to the internal and external security of Switzerland. While these last three points are likewise required by the national citizenship law (BüG) and thereby mandatory for immigrants in all cantons, eligibility for naturalization in the canton of Uri surpasses these requirements as applicants must also know the rights and duties related to Swiss citizenship and live in "ordered financial circumstances" (see article 5 of the cantonal citizenship law of Uri).

9.4 Concluding Remarks

The present contribution showed that Swiss immigration federalism is mainly shaped by three factors: firstly, the features of Swiss federalism, i.e. the principles of subsidiarity and executive federalism, which guarantee the cantons considerable autonomy in policy making and implementation, secondly, Switzerland's history as a guest worker country, which implied that the topic of integration was long time neglected by the national policy level, and thirdly, the regulatory logic of integration policy which addresses individual, locally embedded processes of immigrant incorporation into the larger society which ask for adapted, context sensitive policy measures.

Accordingly, national policy regulation regards mainly questions of immigration, i.e. immigrants' access to the country. As illustrated in part 1 of this chapter, immigration policy regulation involves the national and occasionally even the supranational level, while it is implemented by Swiss cantons. Thereby, immigrant selection constitutes a particularly contested policy field in non-EU member state Switzerland, as the country is increasingly confronted with supranational demands for free mobility of EU citizens from above, which conflict with protectionist popular claims for national sovereignty in the field of immigration arising from below. In this context, direct democracy turns out to be a particularly powerful tool for right populist anti-immigrant parties to counter international pressures for free mobility with protectionist and isolationist demands.

By contrast, cantons are the main regulatory units when it comes to immigrant integration policy. As the second part of this chapter illustrated, comprehensive cantonal autonomy allows for pragmatic, problem oriented and locally adapted solutions to challenges related to immigrant integration. At the same time, the devolution of integration policy making to Swiss cantons is not only for the benefit of non-citizens. Varying cultural notions of citizenship, which are more inclusive in French speaking cantons compared to German speaking cantons, imply unequal treatment, meaning unequal access to rights and obligations, for immigrants living

in different cantons. One might argue that this unequal access to rights or "voice" is not too problematic, as long as immigrants are granted "exit" options in terms of geographical and occupational mobility within Switzerland, which is de facto true for immigrants from EU/EFTA states as well as third-country nationals (see Sect. 9.2.2.1).[18]

Although cantonal integration policy making implies both, benefits and harms for non-citizens, I argue that policy devolution is preferable to a centralization of integration policy making for three reasons. Firstly, and as the discussion of benefits clearly showed, subnational units are closer to local needs regarding immigrant integration and therefore better able to formulate responsive and efficient policy measures. Secondly, and compared to the national level, cantonal integration policy making appears to be less prone to symbolic party politics and a polarization of the public opinion, which would clearly hamper pragmatic and problem-oriented policy making. Yet my third and most important point is that Switzerland's federal laboratory facilitates the evolution of best practices through policy diffusion, i.e. horizontal (between cantons) as well as vertical (from cantons to Confederation) policy learning processes.

Such policy-learning processes are facilitated by inter-cantonal exchange, which I consider a promising way to address questions of immigrants' unequal treatment across Switzerland's cultural-linguistic regions. Structures for an inter-cantonal dialogue already exist: regular horizontal and vertical exchange on the topic of integration policy takes for instance place through the "Tripartite Agglomeration Conference", which comprises representatives from all federal levels (Bundesrat 2010, p. 3). What is more, since 2008 every canton has an own integration delegate (see art. 57 AuG), meaning a cantonal expert for such an exchange. The only thing needed for inter-cantonal policy learning processes to unfold optimally is the political will for a truly integrative inter-cantonal exchange which overcomes cultural-linguistic differences and involves equally the experiences of all 26 cantons.

References

Abu-Laban, Y. (2009). The welfare state under Siege? Neo-liberalism, immigration, and multiculturalism. In A. Dobrowolsky (Ed.), *Women and public policy in Canada: Neo-liberalism and after?* (pp. 146–165). Toronto: Oxford University Press.

Ager, A., & Strang, A. (2008). Understanding integration: A conceptual framework. *Journal of Refugee Studies, 21*(2), 166–191.

Auer, A., Malinverni, G., & Hottelier, M. (2000). *Droit constitutionel suisse. Volume 1: L'Etat*. Bern: Staempfli.

BFM. (2008). *Anwendung der Integrationsvereinbarung 2008 und 2009 in den Kantonen*. Bern-Wabern: Bundesamt für Migration.

BFS. (2010). *Bilanz der ständigen Wohnbevölkerung nach Staatsangehörigkeit, 2010*. Bern: Bundesamt für Statistik.

[18] Unequal cantonal regulations can however be a problem for asylum seekers, who have no free mobility within Switzerland (cf. Holzer and Schneider 2004).

Bundesrat. (2010). Bericht zur Weiterentwicklung der Integrationspolitik des Bundes. Bern. http://www.ejpd.admin.ch/content/dam/data/migration/integration/berichte/ber-br-integrpolitik-d.pdf (last accessed: January 2 2014).

Castles, S., Korac, M., Vasta, E., & Vertovec, S. (2002). *Integration: Mapping the Field. Home Office Online Report 29/03*. London: Home Office.

Cattacin, S. (1996). Il federalismo integrativo. In V. Cesari Lusso, S. Cattacin & C. Allemann-Ghionda (Eds.), *I come... identità, integrazione, interculturalità* (pp. 67–82). Zürich: Federazione delle Colonie Libere Italiane in Svizzera.

Cattacin, S., & Kaya, B. (2005). Le développement des mesures d'intégration de la population migrante sur le plan local en Suisse. In H. Mahnig (Ed.), *Histoire de la politique de migration, d'asile et d'intégration en Suisse depuis 1948* (pp. 288–320). Zürich: Seismo.

D'Amato, G. (2010). Switzerland: A multicultural country without multicultural policies? In S. Vertovec & S. Wessendorf (Eds.), *The multiculturalism Backlash. European discourses, policies and practices* (pp. 130–151). London and New York: Routledge.

Eggert, N., & Murigande, A. (2004). Modèles de citoyenneté et mobilisation politique des migrants en Suisse: Le rôle des cantons. *Swiss Political Science Review, 10*(4), 125–145.

Ehret, R. (2002). Le discours de l'intégration. De quelle culture parlons-nous? *Ethnologie française, 32*(2), 253–261.

EKR. (2009). Strukturelle Diskriminierung. *Tangram* (Vol. 24). Bulletin der Eidgenössischen Kommission gegen Rassismus. http://www.ekr.admin.ch/pdf/Tangram_24.pdf (last accessed: January 2 2014).

Favell, A. (2001a). Integration policy and integration research in Europe: A review and critique. In A. T. Aleinikoff & D. Klusmeyer (Eds.), *Citizenship today: Global perspectives and practices* (pp. 349–399). Washington D.C: Carnegie Endowment for International Peace.

Favell, A. (2001b). *Philosophies of integration. Immigration and the idea of citizenship in France and Britain*. Basingstoke: Macmillan etc.

Fitzpatrick, P. (1995). *Nationalism, racism, and the rule of law*. Aldershot: Dartmouth.

Fitzpatrick, P. (2011). *Modernism and the grounds of law*. Cambridge: Cambridge University Press.

Giugni, M., & Passy, F. (1997). *Histoires de mobilisation politique en Suisse: De la contestation à l'intégration*. Paris: L'Harmattan.

Giugni, M., & Passy, F. (2006). *Dialogues on migration policy*. Lanham: Lexington Books.

Hainmüller, J., & Hangartner, D. (2012). Who gets a Swiss passport? A natural experiment in immigrant discrimination. *American Political Science Review, forthcoming, 107*(1), 159–187.

Helbling, M. (2008). *Practising citizenship and heterogeneous nationhood. Naturalisations in Swiss municipalities*. Amsterdam: Amsterdam University Press.

Holzer, T., & Schneider, G. (2004). Die Schattenseiten der dezentralen Durchführung von Asylverfahren-Erfahrungen aus der Schweiz, Perspektiven für die EU. In H. Wicker (Ed.), *Migration und die Schweiz* (pp. 161–179). Zürich: Seismo.

Huddleston, T., Niessen, J., Ni Chaoimh, E., & White, E. (2011). Migrant Integration Policy Index III. British Council and Migration Policy Group. http://www.mipex.eu/download (Last accessed: January 2 2014).

Ireland, P. (1994). *The policy challenge of ethnic diversity. Immigrant politics in France and Switzerland. Cambridge*. Massachusetts: Harvard University Press.

Ireland, P. (2006). Institutions, Political Opportunity Structures, and the Shaping of Migration Policies in Western Europe. In M. Giugni & F. Passy (Eds.), *Dialogues on Migration Policy* (pp. 137–155). Lanham: Lexington Books.

Kleger, H., & D'Amato, G. (1995). Staatsbürgerschaft und Einbürgerung-oder: Wer ist ein Bürger? Ein Vergleich zwischen Deutschland, Frankreich und der Schweiz. *Journal für Sozialforschung, 35*(3/4), 259–281.

Koch, P., & Lavenex, S. (2006). The (contentious) human face of Europeanization: Free movement and immigration. In C. Church (Ed.), *Switzerland and the European Union* (Vol. 148–166). London: Routledge.

Koopmans, R. (2010). Tradeoffs between Equality and Difference: Immigrant Integration, Multiculturalism and the Welfare State in Cross-National Perspective. *Journal of Ethnic and Migration Studies, 36*(1), 1–26.

Koopmans, R., Michaelowski, I., & Waibel, S. (2012). Citizenship Rights for Immigrants: National Political Processes and Cross-National Convergence in Western Europe, 1980–2008. *American Journal of Sociology, 117*(4), 1202–1245.

Koopmans, R., Statham, P., Giugni, M., & Passy, F. (2005). *Contested citizenship. Immigration and Cultural Diversity in Europe* (Vol. 25, Social Movements, Protest, Contention). Minneapolis: University of Minnesota Press.

Kriesi, H., & Baglioni, S. (2003). Putting local associations into their context. Preliminary results from a Swiss study of local associations. *Swiss Political Science Review, 9*(3), 1–34.

Kriesi, H., & Trechsel, A. (2010). *The politics of Switzerland: Continuity and change in a consensus democracy*. Cambridge: Cambridge University Press.

Kriesi, H., Wernli, B., Sciarini, P., & Gianni, M. (1996). *Le clivage linguistique*. Bern: Bundesamt für Statistik.

Kübler D. and Piñeiro E. (2010). Integrationspolitik des Zufalls. *Neue Zürcher Zeitung*, August 27, p.21.

Lavenex, S. (2006). Einwanderungs-, Asyl-, Integrations- und Einbürgerungspolitik. In U. e. a. Klöti (Ed.), *Handbuch der Schweizer Politik* (4 Ed., pp. 653–676). Zürich: Verlag Neue Zürcher Zeitung.

Linder, W. (2005). *Schweizerische Demokratie. Institutionen, Prozesse, Perspektiven* (2 Ed., vollst. überarb. und aktualis.). Bern: Haupt Verlag.

Linder, W. (2011). Multicultural Switzerland and the challenge of immigration. *Journal of Minority Studies, 5*(3).

Mahnig, H., & Piguet, E. (2004). Immigrationspolitik der Schweiz 1948–1998: Entwicklungen und Auswirkungen. In H.-R. Wicker (Ed.), *Migration und die Schweiz* (pp. 65–108). Zürich: Seismo.

Manatschal, A. (2011). Taking cantonal variations of integration policy seriously-or how to validate international concepts at the subnational comparative level. *Swiss Political Science Review, 17*(3), 336–357.

Manatschal, A. (2012). Path dependent or dynamic? Cantonal integration policies between Regional Citizenship Traditions and Right Populist Party Politics. *Ethnic and Racial Studies, 35*(2), 281–297.

Niederberger, J. M. (2004). *Ausgrenzen, assimilieren, integrieren. Die Entwicklung einer schweizerischen Integrationspolitik*. Zürich: Seismo.

Piguet, E. (2004). *L'immigration en Suisse. 50 ans d'entrouverture*. Lausanne: Presses polytechniques et universitaires romandes.

Raijman, R. (2010). Citizenship Status, Ethno-National Origin and Entitlement to Rights: Majority Attitudes towards Minorities and Immigrants in Israel. *Journal of Ethnic and Migration Studies, 36*(1), 87–106.

Richner, B. (2006). *Im Tod sind alle gleich. Die Bestattung nichtchristlicher Menschen in der Schweiz*. Zürich: Chronos.

Robinson, V. (1998). Defining and Measuring Succesfull Refugee Integration. In *ECRE International Conference on Integration of Refugees in Europe, Antwerp, November 1998.*

Sassen, S. (2005). Regulation immigration in a Global Age: A new political landscape. *Parallax, 11*(1), 35–45.

Schmidtke, O. (2001). Zwischen Standortpolitik und regionalem Nationalismus: Immigrations- und Integrationspolitik in den kanadischen Provinzen. In L. Akgün & D. Tränhardt (Eds.), *Integrationspolitik in föderalistischen Systemen* (pp. 219–247). Münster: Lit.

Skenderovic, D. (2009). *The radical right in Switzerland: Continuity and change, 1945–2000*. New York: Berghahn Books.

Soysal, Y. N. (1994). *Limits of citizenship. Migrants and postnational membership in Europe*. Chicago: University of Chicago Press.

Spescha, M. (1999). *Handbuch zum Ausländerrecht*. Bern: Haupt.

Spiro, P. J. (2002). Federalism and immigration: Models and trends. *International Social Science Journal, 53*(167), 67–73.
TAK. (2005). *Rechtliche Integrationshemmnisse. Auslegeordnung und Lösungsansätze*. Bern: Tripartite Agglomerationskonferenz.
TAK. (2009). *Weiterentwicklungen der schweizerischen Integrationspolitik. Bericht und Empfehlungen der TAK vom 29. Juni 2009*. Bern: Tripartite Agglomerationskonferenz.
Tessier, K. (1995). Immigration and the crisis in federalism: A comparison of the United Stated and Canada. *Indiana Journal of Global Legal Studies, 3*(1), 211–244.
Tränhardt, D. (2001). Zuwanderungs- und Integrationspolitik in föderalistischen Ländern. In L. Akgün & D. Tränhardt (Eds.), *Integrationspolitik in föderalistischen Systemen* (pp. 15–33). Münster: Lit.
Vatter, A. (2002). *Kantonale Demokratien im Vergleich. Entstehungsgründe, Interaktionen und Wirkungen politischer Institutionen in den Schweizer Kantonen*. Opladen: Leske und Budrich.
Vatter, A. (2006). Die Kantone. In U. Klöti & &e al. (Eds.), *Handbuch der Schweizer Politik* (4 Ed., pp. 203–227). Zürich: Verlag Neue Zürcher Zeitung.
Vatter, A. (2011). Warum ist der schweizerische Föderalismus reformbedürftig? *Terra cognita, 19*, 72–75.
Vatter, A., & Wälti, S. (2003). Schweizer Föderalismus in vergleichender Perspektive-Der Umgang mit Reformhindernissen. *Swiss Political Science Review, 9*(1), 1–15.
Waldrauch, H., & Hofinger, C. (1997). An index to measure the legal obstacles to the integration of migrants. *Journal of Ethnic and Migration Studies, 23*(2), 271–285.
Ward, C., & Masgoret, A.-M. (2008). Attitudes toward Immigrants, Immigration, and Multiculturalism in New Zealand: A Social Psychological Analysis. *International Migration Review, 42*(1), 227–248.
Weldon, S. A. (2006). The institutional context of tolerance for ethnic minorities: A comparative multilevel analysis of Western Europe. *American Journal of Political Science, 50*(2), 331–349.
Wicker, H.-R. (2004). *Migration und die Schweiz* (2 Ed., Nationales Forschungsprogramm 39 "Migration und interkulturelle Beziehungen" (Schweiz)). Zürich: Seismo.
Zapata-Barrero, R. (2009). Policies and public opinion towards immigrants: The Spanish case. *Ethnic and Racial Studies, 32*(7), 1101–1120.
Zincone, G., & Basili, M. (2010). *EUDO Citizenship Observatory. Country Report: Italy, EUI*. Florence: Robert Schuhman Centre of Advanced Studies.

Chapter 10
The Transformation of U.S. Immigration Federalism: A Critical Reading of *Arizona v. United States*

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Abstract In the United States, the legal challenges to a recent spate of state and local laws aimed at regulating migration have revolved primarily around questions of immigration federalism. The primary argument of litigants challenging state and local ordinances such as Arizona's S.B. 1070 or Hazelton, Pennsylvania's ordinance concerning the employment and housing of unauthorized migrants has been a federal preemption argument. Simply put, the argument is that state and local immigration regulations are preempted by the comprehensive federal scheme regulating immigration. Defenders of the laws have taken the position—again relying on the jurisprudence that has evolved in the context of immigration federalism—that these laws and ordinances are not preempted because they exist in the interstices of and do not conflict with federal immigration regulation. Additional constitutional questions such as equal protection arguments or Fourth Amendment arguments have been raised as well, but those questions are being litigated in the shadows of the preemption arguments. Thus, the body of law concerning immigration federalism has been the primary tool used by courts thus far to resolve increasingly common questions about sub-federal immigration regulation.

As a result of the spate of litigation over sub-federal immigration ordinances, the jurisprudence of immigration federalism in the United States is becoming more nuanced—with increasing space created for state and local participation in immigration regulation. Courts still generally take the position that the federal government has primacy in regulating immigration laws, but recent decisions have shown an increasing tolerance for state or local regulations that do not contravene the federal regulatory scheme. This Chapter assesses the recent evolution of the jurisprudence of immigration federalism in the United States. Part I discusses several recent, high-profile cases involving challenges to state or local immigration regulations and explains how the courts have addressed the preemption arguments in each of these cases. Part II discusses the ways in which these recent court decisions are transforming preemption doctrine, allowing greater latitude for sub-federal regulation,

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