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## ***COUNTRY REPORT: SWITZERLAND***

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Gianni D'Amato, Martina Kamm,  
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European University Institute, Florence  
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EUDO Citizenship Observatory

***Report on Switzerland***

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## Switzerland

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### 1 Introduction

In the French edition of his comparative study on the relationship between citizenship and nationhood in France and Germany, Rogers Brubaker mentions the difficulty of translating the concept of citizenship into different languages. In German, citizenship is mostly translated as *Staatsbürgerschaft* and/or *Staatsangehörigkeit* and in French as *citoyenneté* and/or *nationalité*.<sup>2</sup> Both of the German terms are rooted in very different historical developments of the nation and the nation-state. The origins, connotations and meanings of the notions that determine what citizenship exactly means, therefore vary considerably from country to country. These notions strongly depend on the country's specific historical, political and cultural development. In multilingual Switzerland the situation is complex insofar as the historicity of the notion 'citizenship' is combined with parallel language systems (Studer et al. 2008).

In the largest part of Switzerland, the German-speaking part, the legal affiliation to a state is called *Bürgerrecht* (formerly *Schweizerbürgerrecht*). The use of the term *Bürgerrecht* in this sense is specific to the German-speaking part of Switzerland. The *Bürgerrecht* includes a person's citizenship on the municipal level [German *Gemeindebürgerrecht*], citizenship on the cantonal level [German: *Kantonsbürgerrecht*] and citizenship on the state level (German: *Staatsbürgerrecht*). The term *Bürgerrecht* does not only refer to the affiliation of the citizen to the three levels of the state (municipality, canton, and state), but also the social dimensions—the rights and duties—that are linked to that affiliation.<sup>3</sup> Together with Swiss citizenship or the *Bürgerrecht*, a naturalised person acquires political rights, diplomatic protection, freedom of movement, and protection against extradition and expulsion.

In the French-speaking part of Switzerland, the term *nationalité* is mainly used today to determine the legal status of affiliation with the country. The term was incorporated into the Swiss Federal Constitution in 1874. *Nationalité* is a relatively recent term, in the sense that it was introduced into the political vocabulary of the country only in 1820, with the aim to describe a national community. Before 1820, different notions such as *droit de cité* were used in the French-speaking part of Switzerland in order to characterise the relationship between citizens [French: *citoyens*] and the state. The term *droit de cité* is still used in parallel to the official term *nationalité*. It refers to the relationship between citizens in French-speaking cantons and their municipalities. The term can be found in the Swiss Citizenship Law of 1952 and in the Federal Constitution of 1999. Cantons such as the Canton of Geneva have varied their terminology of citizenship over the years. The Canton of Geneva introduced the concept of a Genevan nationality [French: *nationalité genevoise*] in 1885 and continued to describe it in 1955 in the following words: 'The Genevan citizen shall possess right to

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<sup>1</sup> The authors want to thank the Swiss Federal Office for Migration who generously sponsored this research on Swiss citizenship.

<sup>2</sup> 'La traduction des concepts politiques d'une langue dans une autre pose toujours des problèmes redoutables, du fait même que ces concepts sont le produit d'une histoire nationale spécifique' (Brubaker 1997).

<sup>3</sup> For more details, see the introduction of Studer et al. (2008: 15-18).

citizenship [French: *droit de cité*] of a municipality and Swiss Nationality [French: *nationalité Suisse*]<sup>4</sup> (Studer et al. 2008: 19).

In the following report, we use the terms ‘citizenship’ and ‘nationality’ synonymously, when speaking about Swiss citizenship. We generally use the term ‘citizenship’, especially in a political, social and/or cultural context (cf. parts 2 and 4), but the term ‘nationality’ is used in the purely legal context of part 3 (Current citizenship regime).

## 2 Historical background

### 2.1 The birth of the Swiss federal state

Although Switzerland is said to be over 700 years old, the contemporary federal state can only be traced back to the Federal Constitution of 1848. The victory of the liberal, mostly Protestant cantons over the secessionist, Catholic-conservative cantons of the ‘separatist league’ [German: *Sonderbund*] during the Civil War of 1847 established, for the first time in the country’s history, a permanent federal government that abolished the annual meetings of a previously loose confederation. Claiming political hegemony in the new state, the liberals learned from the failures of the first centralist Helvetic Republic (1798–1803) installed by the French army of occupation. The new Federal Constitution respected the linguistic, religious, economic, and political cleavages of the new nation-state (D’Amato 2008; Linder 1998: 8), and used federalism to ensure that the Catholic and French-speaking cantons were not dominated by the central government. At the same time, the liberal founders used patriotic associations and shooting competitions rooted in the founding myth of 1291 and other heroic battles against foreign oppressors to form a common national identity based on a liberal-republican political ethos (Braun 1970). The federal state thus played a dual role: creating a national identity rooted in a liberal-republican political culture, and creating a local identity rooted in the cantonal municipality. Nation as a political category referred only to the republicanism of the state, whereas cantons and municipalities were decisive for everyday life. The political vocabulary of Switzerland uses the term ‘nation’ carefully and sparingly. The only political institutions claiming the attribute today are the National Council [German: *Nationalrat*], the chamber of representatives, and the Swiss National Bank (D’Amato 2009a: 66).

The diverging interests between the centralised government and the cantons and municipalities who defended more particulate goals are crucial not only for the understanding of the nationalisation process but also for the development of citizenship until today. Argast and Arlettaz (2003: 129-158) emphasise that these diverging interests have played a central role for the development of the Swiss nation-state and citizenship between 1798 and 1925. This means that a rather tense relationship between the three political players preceded the foundation of the Swiss federal state, and played an important role during the three historical periods. First, it contributed to the failure of the first Helvetic Republic (1789–1803) and marked the unstable years when the nation was torn between a unitarian and more centralistic structure and the one hand and a federal form on the other. Second, conflict of interest continued to play a crucial role during the first years of the young federal state and the development of its juridical, political and social fundamentals including citizenship (1848–1903). Third, the divergent interests between state, cantons and municipalities influenced the period when the nation-building process was affected by discussions on nationality and its cultural and/or more ethnic foundations (1900–1925).

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<sup>4</sup> *Le citoyen genevois possède le droit de cité d'une commune et la nationalité Suisse.*

All three periods were not only affected by what Argast et al. (2003: 158) called a strong ‘federal tension’ but also by a strong ‘public discourse on the Swiss nation and an imaginary Other’. The latter has been an important element in the nation-building process since its beginning, and it means that the ‘people’ [German: *Volk*] should always be able to defend themselves against an imaginary ‘Other’: the foreigner who potentially puts in danger the nationhood of the Swiss population. More than in other countries, national identity in Switzerland seemed to be coupled with an adoration of the common ‘people’ as a strong unit that stands together, known in history as ‘brothers in arms’ [German: *einig Volk von Brüdern*] (Altermatt et al. 1998: 12).<sup>5</sup> At the same time, this conception of nationhood implied a rather defensive attitude not only towards foreigners but also towards progress, liberalism and modernity (Argast et al. 2003: 148ff). As a result Swiss nationhood traditionally defined itself *ex negativo*: it drew from a rather negative attitude that was directed against the ‘Other’, whose potentially menacing presence traditionally allowed to build up a homogenous ‘Self’ in the name of the ‘Swiss people’.

This myth of a homogenous people continued to influence the history of Switzerland: it was a central element in the self-conception of the patriotic and radical right-wing associations [*Vaterländische Gesellschaft, Fröntler*] in the 1920s and 1930s, or in the programme of the Swiss Democrats and the *Nationale Aktion* in the 1960s. It is still present today in the political programmes of the ‘Swiss People’s Party’ [German: *Schweizerische Volkspartei, (SVP)*]. The populist right-wing party proudly keeps the ambivalent term ‘people’ [German: *Volk*] in its name, and regularly refers in its political programme about the sovereignty of the Swiss people. The SVP launched popular initiatives to make it more difficult for foreigners to acquire Swiss citizenship, or to demand the loss of permanent residence rights for migrants who committed a crime. For the SVP and its supporters citizenship functions as a mechanism of social exclusion rather than one of inclusion (Achermann & Gass 2003: 56), and citizenship regulations are used with the aim to separate foreign populations from the national community on a legal basis. At the same time, the SVP makes use of the myth of people’s sovereignty when it defends municipal decisions on naturalisations against federal laws and regulations. The SVP argues that Swiss citizens should preserve their right to decide at the ballot box who can and who cannot become a Swiss citizen (cf. part 3). The SVP associates itself with the founding myth of people’s sovereignty with the aim to achieve the highest possible support of the electorate (D’Amato 2008; D’Amato & Skenderovic 2009).

The SVP has a long, and recently professional, tradition of self-manifestation. The fact that not only major cities such as Zurich, Geneva or Bern but also smaller municipalities tend to professionalise their naturalisation procedures and delegate more and more of their decision-making powers to the executive (Steiner & Wicker 2004), does not seem to do any harm to the regular success of popular initiatives launched by the SVP, which are regularly accompanied by a high presence in the media. Nevertheless, many municipalities have kept their decision-making power concerning naturalisations in the hands of the citizens. The political domain of citizenship illustrates quite well that throughout Switzerland’s history the divergent interests of municipalities, cantons and the federal government have consistently challenged the national cohesion of the country (cf. part 4).

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<sup>5</sup> Following this line of argument, in the past, a Swiss woman who married a foreigner lost the capacity to give birth to a member of ‘her’ people. She was deprived of Swiss nationality (Studer 2001).

## 2.2 The development of the Swiss citizenship law

Before the modern Swiss nation-state was founded in 1848, there were practically no national regulations on citizenship. Instead, the cantons decided based on their cantonal citizenship law who could become a citizen of the country, and they ruled in their jurisdictions independently. The affiliation of citizens to the nation-state stemmed from their belonging to a specific canton (Achermann & Gass 2003: 56; Helbling 2008; Steiner & Wicker 2004).

In 1848, through art. 42 of the Swiss Federal Constitution, a federal law on citizenship was implemented and imposed over the cantonal citizenship laws (Achermann & Gass 2003: 56; Kreis & Kury 1996). Between 1848 and 1874, however, the federal state had no competences for establishing citizenship regulations. The Federal Constitution specified only that the citizens of a canton who were citizens of a Swiss municipality were automatically considered citizens of the federal state. Since 1874, Swiss citizenship has been regulated at the federal, cantonal and local level, and a three level citizenship regime was set up – which has lasted until now – which is unique in the world (Helbling 2008: 12ff) (for more details on the current citizenship regime cf. part 3). Since then, citizenship in Switzerland has been transmitted based on descent, which means that it follows the principles of *ius sanguinis*: The Swiss Confederation regulates the granting of citizenship through descent, marriage, and adoption, and enacts minimal regulations on the naturalisations of foreigners, which can be amended by the cantons and the municipalities. The cantons have the competence to regulate naturalisation procedures at the local level, but rarely interfere with local naturalisation politics (Helbling 2008: 13).<sup>6</sup> The ordinary naturalisation of alien residents in Switzerland is thus largely the responsibility of the municipalities.

### *The citizenship regime before and after the First World War*

During the First World War, the citizenship regime of Switzerland was marked by a rebound. One principal reason for this rebound was the constantly increasing number of labour migrants who had been coming to Switzerland since the late nineteenth century. In the liberal period preceding the First World War, immigration was mainly the responsibility of the cantons, whose laws had to be consistent with the bilateral agreements that Switzerland had signed with other European states. No immigration laws existed, because until the First World War, it was not a political aim of the government to control the settlement of foreigners. Like other agreements that affect the freedom of movement in Europe, Swiss agreements were open toward immigration. This was because Switzerland depended on the possibility that Swiss citizens could easily emigrate if they wanted to find work abroad. Later, during the late nineteenth and the early twentieth century, the situation changed and the size of the foreign population in Swiss cities increased: 41 per cent of the population in Geneva, 28 per cent in Basel, and 29 per cent in Zurich were born outside the country around the turn of the century. The increase of the foreign-born population was mainly because of the need for workers in the industrial and commercial sectors, who were often recruited abroad. Measured at the national level, German migrants outnumbered the Italians and French (Efionayi-Mäder et al. 2005: 12-13). The proportion of foreigners in the total population increased from 3 per cent in 1850 to 14.7 per cent in 1910. Most of the foreigners came from neighbouring countries. Only 35 per cent of the foreign population who lived in Switzerland in 1910 was born in Switzerland, and

<sup>6</sup> The Canton of Geneva is an exception. Here, municipalities are not involved in the decision-making procedures, and naturalisations are centralised at the cantonal level.

more than half of the foreign population had been living in Switzerland for at least ten years (Achermann & Gass 2003: 57).

With the rise in the number of immigrants, the indigenous population grew increasingly concerned that welfare costs would get out of control. Voices calling for a reduction in the number of immigrants got louder. At that moment, naturalisation was considered a helpful tool to cut back the number of foreigners in the country. The idea was to promote and facilitate the assimilation of foreigners that already lived in Switzerland through naturalisations.<sup>7</sup> The cantons with the highest number of immigrants such as Basel, Geneva or Zurich, asked for measures to facilitate the naturalisation of foreign nationals and the federal government even proposed forced naturalisation measures on jus soli principle with the aim to alleviate fears of being swamped by foreigners [German: *Überfremdung*]. Although the Council of States [German: *Ständerat*] defeated this proposal, consequently the first Federal Law on Acquisition and Loss of Swiss citizenship was introduced in 1903. This law allowed cantons to naturalise children with foreign nationality without specific federal agreement, if the children were born in the canton, their mother was Swiss, and their parents had lived in Switzerland for at least five years (Achermann & Gass 2003: 58ff).

This rather liberal position of the government changed with the outbreak of the First World War. Although the number of foreign nationals dropped to 10 per cent during the war because the participating states called back their citizens, a first campaign against the presence of foreign nationals in Switzerland was launched after the First World War and a restrictive period in Swiss foreign policy began then. It was characterised by ‘emergency law regulations’ [German: *Notrechtsverordnungen*] through which the federal government wanted to prevent poor immigrants and refugees without personal documents from entering the country. The government’s aim was to better control and close national borders to unwanted migrants. Consequently, the question of naturalisation disappeared from the political agenda and the possibility of naturalisation on jus soli principle was heavily constrained. From that point onward the question for the federal government was no longer how to integrate foreign nationals into society in the most gainful way but rather how a culture perceived as typically Swiss could be preserved in the face of foreign influence. This meant that foreign nationals had to prove that they were capable and willing to assimilate before they could apply for Swiss citizenship. With this conceptual change, the cornerstone was laid for the naturalisation policy valid today.

After the First World War, a new article was included into the Federal Constitution in 1925, which permitted the federal government to address immigration issues at the national level. The article formed the legal basis for the Federal Aliens Police [German: *Fremdenpolizei*], which was created shortly after, and for the ‘Federal Law on Residence and Settlement of Foreigners’ [German: *Bundesgesetz über Aufenthalt und Niederlassung der Ausländer (ANAG)*], which came into force shortly after in 1934.<sup>8</sup> With the application of the ANAG Switzerland transferred immigration control to the borders of the country, ending a process that had started with the emergency law regulations of the First World War. The new foreigners law ANAG allowed the Federal Aliens Police to implement immigration policy at its discretion, although at the time the aim was to maintain national identity rather than to regulate migration (D’Amato 2009b). In their decisions, the authorities were primarily concerned with the country’s moral and economic interests and the degree of foreign

<sup>7</sup> In 1898, the Swiss National Council expressed its aim to assimilate suitable candidates through naturalisation: ‘*Durch Erleichterung der Bürgerrechtsaufnahme (sollen) die sich dazu überhaupt eignenden Elemente der schweizerischen Nation assimiliert (werden).*’ (Achermann & Gass 2003: 58)

<sup>8</sup> The ANAG was recently replaced by the Federal Law on Foreign Nationals (German: *Bundesgesetz über die Ausländerinnen und Ausländer, AuG*), which came into force on 1 January 2008.



influence [German: *Grad der Überfremdung*]. As D'Amato (2009b) points out, the political consensus to ensure what was described as 'cultural purity' prevented the drafting of consistent immigrant policy until very recently. Foreign nationals, in principle, had to leave the country after completing their work assignments and could not settle permanently. This political attitude did not change during the interwar period and the Second World War. The Swiss Aliens policy became more and more restrictive, although the foreign population had already decreased significantly. By 1941, Switzerland's foreign population had declined to 5.2 per cent and by 1944 the number of naturalisations had dropped to their lowest (Arlettaz 1985).

### *The 'Federal Act on the Acquisition and the Loss of Swiss Citizenship' of 1952*

Shortly after the Second World War, the economic recovery of the neighbouring countries stimulated a 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, which enabled the recruitment of Italian guest workers. This was the first of a series of such agreements to invite guest workers. The construction sector but also textile and machine factories mainly employed these workers. Since then, a steady flow of foreign workers has immigrated to Switzerland (D'Amato 2009b). Their number increased from 285,000 in 1950 (6.1 per cent of the total population) to 585,000 (10.8 per cent) in 1960 to 1,080,000 (17.2 per cent) in 1970. Predominantly Italian during the 1950s, the composition of foreign workers diversified in the 1960s: while in 1970 over 50 per cent were Italians, about 20 per cent were natives of Germany, France, and Austria, 10 per cent were Spaniards, and 4 per cent were Yugoslavs, Portuguese and Turks (Mahnig & Piguet 2003).

Initially, foreign nationals were entitled to stay for one year, but their contracts could be extended and this happened frequently. To ensure that the workers did not settle permanently and could be sent home when no longer needed, the residence period required for obtaining a permanent residence permit was increased from five years to ten, and restrictive conditions on family reunions were adopted. This policy was known as the 'rotation model' because it meant that new workers could be brought in as others returned home. Only the refugees arriving from Eastern Europe and South-East Asia in the 1950s, 1960s and 1970s were met with tolerance and patience, which came close to what is known today as accommodative multiculturalism. However, labour migrants continued to be faced with the demand to adapt to dominant cultural values and to assimilate as much as they could, or they could be forced to return home (D'Amato 2009b).

Pressure to assimilate was one of the factors that led to the implementation of the new 'Federal Act on the Acquisition and the Loss of Swiss Citizenship' in 1952 [German: *Bundesgesetz über Erwerb und Verlust des Schweizer Bürgerrechts* or *Bürgerrechtsgesetz*, (BüG)]. Since its implementation, the BüG has been reformed and adapted, but it is still in force today and remained in essence the same (see parts 2.4 and 2.5). With the implementation of the BüG, the Swiss immigration and naturalisation policies were clearly separated. While immigration policy concentrated on the temporally limited access of the foreign workforce to the Swiss labour market, access to Swiss citizenship was reserved for those who lived in Switzerland for many years. Both, immigration and naturalisation policies, worked as two different modes of social closure (Helbling 2008: 31ff): internally concerning the possibility to obtain Swiss citizenship, externally concerning access to the country and the difficulty to stay in the long run. One of the results is the low naturalisation rate in

Switzerland compared to other European countries, combined with a high rate of foreign nationals.<sup>9</sup>

The new law on citizenship (BüG) was strictly based upon *ius sanguinis*, and the path to citizenship was patrilineal (art. 1 BüG). A fundamental principle that preceded the decisions of authorities was that the candidates had to demonstrate that they are ‘apt’ [German: *geeignet*] to become Swiss citizens (art. 14 BüG). Before the authorities gave their consent, the candidate had to pass a so-called ‘aptitude test’ [German: *Eignungstest*], conducted by the police of the municipalities where the candidate lived. The aptitude tests were introduced following the federal decision on 11 November 1941, which stated that the authorities should convince themselves that the ‘candidate was adapted to Swiss values, views and conditions and that in character and attitude it could be expected from them, that they would become a reliable Swiss citizen’.<sup>10</sup> (Achermann & Gass 2003: 62). The different aspects that were checked in the test concerned their ‘reputation’ [German: *Leumund*], ‘living circumstances’ [German: *geordnete Verhältnisse*], ‘personal character’, health circumstances, assimilation, age, ‘citizenship examination’ [German: *bürgerliche Prüfung*], ‘capacity to act’ [German: *Handlungsfähigkeit*] and the nature of their relationship with the country of origin. These criteria have been modified and specified since, but in essence, they remain the same today. With the introduction of the aptitude test, a crucial step in the naturalisation procedure was delegated to the municipalities. Nevertheless, the new law on citizenship (BüG) meant that from that point onward all three actors, municipalities, cantons and the federal government, were involved in the naturalisation procedure together and constituted an ‘integrated whole’ (Achermann & Gass 2003: 63).

The new BüG distinguishes between three modes of naturalisation: a) ordinary naturalisation, b) facilitated naturalisation and c) reacquisition of nationality. The path to ordinary naturalisation (a) can be complemented by cantonal regulations and includes a minimal residence of 12 years in Switzerland (art. 15 BüG). The duration doubled since 1919. The second condition for ordinary naturalisation was that the candidate had to pass the aptitude test mentioned above. Facilitated naturalisation (b) was only attributed to children of a Swiss mother, who had lost her Swiss nationality through marriage. Facilitated naturalisation did not cost anything, and was executed by the federal government rather than the municipalities. The third mode, reacquisition of nationality (c) concerned mainly women who were now able to keep or regain their Swiss nationality when marrying a foreign national, rather than having to give it up as was previously the case. This was a first step towards the principle of equal treatment between men and women before the law, which was not guaranteed in the old citizenship law: Until 1952, all Swiss women who married foreign nationals had to give up their Swiss nationality. This caused the politically unacceptable case of stateless citizens who had lost both nationalities when they lived for example in France or Germany. Female spouses of German-Jewish citizens, for example, who wanted to save their lives from persecution during the Second World War, could not return home because they had lost their Swiss citizenship, a fact that for some of them had fatal and dramatic consequences (Studer 2001).

<sup>9</sup> At about 20 per cent, the foreign population Switzerland is relatively high, compared to other European countries. This has, among other, to do with naturalisation barriers, such as strict residence terms and the complexity of the Swiss citizenship law. On average during 1990–2000, the raw naturalisation rate (the share of naturalizations by all foreign nationals) was 1.3 per cent in Switzerland (Münz & Ulrich 2003).

<sup>10</sup> ‘*Der Kandidat ist für die Einbürgerung geeignet, wenn “die Behörde die volle Überzeugung gewonnen hat, dass der Bewerber den schweizerischen Verhältnissen angepasst ist und wenn nach Charakter und Gesinnung von ihm erwartet werden kann, dass er ein zuverlässiger Schweizer werde.”*’ (Achermann & Gass ebd.).

A normative change began with the introduction of the BüG, which influenced future developments and reform plans. Until 1952, the unity of the family [German: *Einheit der Familie*] was one of the founding principles and criteria for granting Swiss citizenship. Women lost their Swiss citizenship when they married a foreign national, or conversely, foreign women automatically acquired Swiss citizenship when they married a Swiss national. The introduction of the BüG changed this. The concept of citizenship became less bound to the unity of the family and the nationality of the 'patriarch' and came to be seen more as a personal right [German: *Persönlichkeitsrecht*] (Steiner & Wicker 2004: 17ff).

### 2.3 Revisions and reform plans (1970-2004)

In the 1970s and 1980s, the unequal treatment of women, men and children before the law on citizenship was criticised more vehemently than before. Especially the fact that Swiss women and their children living in bi-national marriages were disadvantaged compared to men, was increasingly seen as unacceptable (Studer 2001). Consequently, the law was adjusted, and since 1978, children of Swiss women married to a foreigner automatically obtain Swiss citizenship.

On 1 January 1992, one of the most important reforms came into force. It established the possibility of facilitated naturalisation for foreign spouses of Swiss citizens, and was applied equally to men and women.<sup>11</sup> Since then, foreign spouses have a legal right [German: *Rechtsanspruch*] to acquire Swiss citizenship after three years of marriage and at a minimum of five years residence in Switzerland.<sup>12</sup> This mode of acquisition applies irrespective of sex. The newly naturalised husband or wife has the right to keep his or her previous citizenship (if the country of origin accepts dual or multiple citizenship). With this step, an important change in the naturalisation procedure took place. The confederation became the main authority for facilitated naturalisation. Herewith facilitated naturalisation was centralised and became an administrative act, even though cantons and municipalities are usually consulted before citizenship is granted (Steiner & Wicker 2004: 24ff).

Two further important reform bills concerning facilitated naturalisation and the naturalisation of second-generation immigrants failed: The majority of voters supported a reform bill in 1994, but this failed because the majority of the cantons rejected the reform proposal [German: *Ständemehr*]. As a consequence, some cantons in the French-speaking part of Switzerland, in which the proposal had found a clear majority, decided to offer second-generation immigrants the possibility to acquire Swiss citizenship through a facilitated naturalisation procedure at the cantonal level (Meister 2005: 7; Münz & Ulrich 2003: 23-28).

The second reform bill, which failed in 2004, reached further: It provided a right to appeal for the candidates if he or she had suspicions that the decisions on naturalisation were made arbitrarily. The bill also stipulated that the minimum residence be reduced to eight years, envisaged that second-generation immigrants could gain facilitated access to citizenship, and it envisaged automatic naturalization on a *ius soli* principle for third-generation immigrants. This important and ambitious reform bill failed to gain a majority in the population (Meister 2005: 7).

Reform plans such as the equal treatment of foreign nationals in marriage, a reduction of the minimum residence or facilitated naturalisation for second or third generation

<sup>11</sup> Registered partners of a Swiss citizen do not qualify for facilitated naturalization.

<sup>12</sup> The rules for couples living abroad are slightly different, as discussed in chapter 3 below.

immigrants, however successful, were an expression of the federal government's efforts to promote the integration of foreigners—first rather reluctantly, then in an increasingly active manner. The adjustments to the federal law on citizenship were an indicator of more general changes in migration and alien policy since the 1970s. In the late 1970s, the Swiss government started to replace its 'rotation' system with an integration-oriented scheme in small steps (D'Amato 2009b; Niederberger 2004). The reason for this approach was that, on the one hand, the economic boom continued throughout the 1960s and the Swiss government's guest-worker system became less tightly controlled. If Switzerland wanted to remain attractive for foreign guest workers, who came mainly from Italy, it had to introduce more generous family reunification laws (D'Amato 2009b), offer the possibility to lead a family life in Switzerland, and guarantee some security at the workplace.

On the other hand, following the oil crisis in 1973, many workers became unneeded and had to leave the country because they did not have adequate unemployment insurance. This allowed Switzerland to 'export' its unemployed guest workers without renewing their resident permits (Katzenstein 1987) and to use them as an 'economic buffer' [German: *Konjunkturpuffer*] (D'Amato 2001; Meister 2005). The foreign population in Switzerland fell from 17.2 per cent in 1970 to 14.8 per cent in 1980. However, as the economy recovered, new guest workers arrived not only from Italy, as was the case before the oil crisis, but this time also from Spain, Portugal and Turkey. The foreign population in Switzerland increased from 14.8 per cent (or 945,000 persons) in 1980 to 18.1 per cent (or 1,245,000 persons) in 1990, and to 22.4 per cent in 2000 (nearly 1.5 million) (Mahnig & Piguet 2003). By that time, the worldwide recession of the early 1990s reached Switzerland, and the unskilled and aging guest workers suffered high rates of unemployment. They found it very difficult to find new jobs. This situation led to an unprecedented level of structural unemployment and social hardship that Switzerland had not experienced in previous decades (D'Amato 2009b). Switzerland's larger cities, which, according to the subsidiary logic of the Swiss federal system, had to cover the expenses of welfare, urged the federal government to act and support extended integration patterns towards immigrant workers (D'Amato 2005).

Consequently, the existing integration scheme had to be modified further. Integration could no longer be limited to the workplace but had to include the integration into everyday life and the situation in which the foreign nationals lived in Switzerland, and in which their children grew up. The integration of foreign workers and their families touched important societal domains such as neighbourhoods, communities, or schools. The federal government had to take integration into its own hands and defined it as a task of national politics and one of the pillars of Swiss migration policy. From the end of the 1990s onward, integration was promoted in an increasingly active manner, and financial means were freed to support integration practices.<sup>13</sup> The new 'Federal Regulation on the Integration of Foreigners' [German: *Verordnung über die Integration von Ausländern*, (VINTA)] of 13 September 2000, for example, included for the first time the general education of foreign nationals and their knowledge of one of the country's languages as possible domains to promote integration (Schweiz. Eidgenössische Ausländerkommission (EKA) 2006).

This relatively recent shift towards a more active integration policy has found its way into the Swiss Federal Law on Citizenship. In the government's 'Message on the Law on Citizenship for young foreigners and the revision of the Law on Citizenship' [German: *Botschaft zum Bürgerrecht für junge Ausländerinnen und Ausländer und zur Revision des Bürgerrechtsgesetzes*] of 21 November 2001, two elements were mentioned that described the

<sup>13</sup> The juridical basis for this new integration policy had been laid in art. 25a of the 'Federal Law on Residency and Settlement of Foreign Nationals' [German *Bundesgesetz über den Aufenthalt und die Niederlassung der Ausländer* (ANAG)] of 1998.

aptitude of potential candidates for Swiss citizenship: integration into society, and familiarity with an official language. Both aspects would allow the candidates to participate in politics, and candidates were therefore required to acquire basic knowledge of the political and social system of Switzerland. Today's 'Swiss Federal Commission on Migration' [German: *Eidgenössische Kommission für Migrationsfragen*, (EKM)], formerly known as the 'Federal Commission for Foreigners' [German: *Eidgenössische Kommission für Ausländerfragen*, (EKA)] complained about this development in a position paper in 2006 and criticised the idea that an active knowledge of language was not only considered as a key to integration, but was even considered a precondition for foreign nationals wanting to exercise their political rights (Schweiz. Eidgenössische Ausländerkommission (EKA) 2006). This issue has become more important since knowledge of one of the country's official languages is used today as a central criterion for aptitude in naturalisation procedures, not only for ordinary but also for facilitated naturalisations.<sup>14</sup>

## 2.4 The Swiss Federal Law on Citizenship BüG today

Today naturalisation is still governed by the Swiss Federal Law on citizenship [German: *Bürgerrechtsgesetz*, (BüG)] of 1952. (For more details see part 3 on the current citizenship regime). The BüG requires candidates to demonstrate that they are worthy of being naturalised by showing that they have adapted to Swiss culture, which means the locally dominant culture. The BüG requires a minimum residence of twelve years, counting the residence between ages of 10 and 20 double. It grants the authority the ability to determine whether candidates are worthy to become citizens of the municipality. Therefore local, not national, political actors determine access to citizenship and political rights in Switzerland. The federal office only initiates the process and receives the decision made by the canton. The local legislative body makes decisions on granting citizenship, and the different cantons have different procedures. Each candidate must demonstrate aptitude by showing that he or she has successfully integrated into the local community and is observing local laws.

Cantonal citizenship commissions often use such tests of aptitude to filter out undesired candidates, for example those who are not cooperative or do not participate in local associations or events. Although the federal administration does not require explicit assimilation, many municipalities and cantons, particularly in the German-speaking part of Switzerland, stress this aspect of integration. They require not only knowledge of laws and citizenship rights but also a more subjective embracing of cantonal culture. They look for genuine internalisation of local customs and habits, something that can only be learned through socialisation (D'Amato 2009b).

## 2.5 Development of naturalisation

Because of the immigration flows since the end of the Second World War, the number of foreign nationals who could technically apply for citizenship or did naturalise increased considerably. In the 1970s the average number of naturalisations per year was 16,000 (Meister 2005). In the 1980s the average number of naturalizations per year dropped as a consequence of the 'recruitment stop' in 1972 [German: *Anwerbestopp*] (Münz & Ulrich 2003: 29f). At the

<sup>14</sup> See for example the judgement of the Federal Department of Justice and Police, 4 February 2005 (Schweiz. Eidgenössische Ausländerkommission (EKA) 2006: 6)

same time, the naturalisation rate, which measures the number of naturalised persons per year compared to the total of foreign population, also dropped. This was mainly due to Swiss citizenship becoming less attractive for citizens from the European Union (Haug 1995: 13f.). Through the revisions of the federal law on citizenship in 1992, the naturalisation rate increased again and reached a first high in the ten years that followed: while in 1990 only 8,700 foreign nationals successfully acquired Swiss citizenship, in 2002 there were 36,500 candidates who became Swiss citizens. This is more than four times the number of naturalisations in 1990; during the entire period a total of 236,400 foreign nationals acquired Swiss citizenship (Münz & Ulrich 2003: 30). This considerable increase was only partly due to the facilitated naturalizations for foreign spouses and the introduction of dual citizenship. The increase also had to do with the fact that more foreign nationals could apply for citizenship and fulfilled the technical requirements (such as residence requirements), and that more foreign nationals with a residence permit from non-European states could now apply for Swiss citizenship and seemed interested to acquire Swiss citizenship (Münz & Ulrich 2003: 44). As candidates from non-European countries tended to come from economically unstable and politically unsafe countries, they can be thought to have a greater interest in acquiring Swiss citizenship than citizens from the EU do.

Expressed in relative numbers, the naturalisation rate of European nationals decreased constantly between 1980 and 2003. While in 1981 77 per cent of all naturalised foreigners came from a European country, in 2000 their share dropped to 40 per cent coming from an EU member states. Whereas it was especially Italian, German and French nationals who acquired Swiss citizenship from the beginning to the mid 1980s, at the end of the 1990s besides the Italians, who counted 25 per cent of all naturalisations, it was especially nationals from Former Yugoslavia and Turkey who acquired Swiss citizenship (Münz & Ulrich 2003: 33).

The number of naturalisations started to increase significantly after 2006, an unintended but important effect of the popular vote in 2004. The reform bill of 2004 introduced a third change to citizenship law, which was not part of the referendum, was therefore not defeated at the ballot, and was successfully implemented. This change to citizenship law restricted citizenship fees at all three levels (confederation, canton, and municipality) to the real administrative costs linked to the naturalisation procedure. With this step, municipalities were prevented from demanding so-called 'buying sums', which effectively 'offered' a candidate the possibility to buy him or herself into the country. Such fees would easily reach CHF 10,000 in the past. Often the fees asked depended on the candidate's income. This practice was susceptible to arbitrary and unequal access to citizenship. The new regulation came into force only in 2006, as the municipalities had already budgeted the income from naturalisations for 2005. Consequently, the number of naturalisations increased significantly compared to the years before. It reached 44,365 naturalisations in 2008 compared to 38,437 in 2005. Candidates from Serbia constituted the biggest group (10,272 persons), followed by Italians (4,921 persons) and more and more German citizens (3,022 persons) (Federal Office of Statistics, Homepage).

How naturalisations will develop in the near future depends on different factors such as the number of candidates who are entitled to acquire Swiss citizenship, on the citizenship law regime, and on the intention of foreign nationals to naturalise (Münz & Ulrich 2003: 9). Using a demographic simulation model, Münz & Ulrich (2003) have come to the conclusion that the number of foreign nationals entitled to become Swiss will increase, even if the intention to naturalise and the law remain unchanged. This means that the naturalisation rate is likely to increase, even though the naturalisation rate will depend to a certain degree on policy makers to promote reforms and sensitise public opinion. Legal reforms, such as the one

rejected by Swiss population in 2004, with shorter residence requirements, facilitated naturalisation for the second generation, and automatic access to citizenship for the third generation, would simply accelerate this process of increased naturalisation rates (Münz & Ulrich 2003: 9).

### **3 Current citizenship regime**

#### **3.1 Main modes of acquisition and loss of nationality**

##### *Acquisition of Swiss nationality*

The Federal Act on the Acquisition and the Loss of Swiss Citizenship of 1952 [Naturalisation Act, German, *Bundesgesetz über Erwerb und Verlust des Schweizer Bürgerrechts, Bürgerrechtsgesetz, (BüG)*] differentiates between two mechanisms of acquisition of Swiss nationality: the automatic acquisition by law through descent or adoption, and the non-automatic acquisition by means of naturalisation. In addition, there is the possibility for reacquiring formerly lost Swiss nationality.

##### *Acquisition by law (arts. 1–7 BüG)*

Switzerland follows the principle of *ius sanguinis*; the principle of *ius soli* is not applicable. According to art. 1 of the Swiss Naturalisation Act, every child of Swiss descent acquires Swiss nationality at birth. The acquisition is automatic if the parents are married or if the mother of the child has Swiss nationality. If a child is born out of wedlock to a foreign mother, the acquisition of Swiss nationality is based on legitimisation by the Swiss father. If the father recognises his paternity, the child acquires Swiss nationality retrospectively. If the child is born abroad, he or she must be registered with a Swiss authority in or outside of Switzerland and has to declare the intention to keep Swiss nationality. If this registration and the declaration are completed before the child is 23 years old, then Swiss nationality is acquired retrospectively since birth. Otherwise, the Swiss nationality of the child ceases. In this case, a facilitated reacquisition of Swiss nationality is still possible.

Swiss nationality is also automatically transferred when a Swiss national adopts an underage foreign child (art. 7 BüG). The adopted child acquires the nationality of the adopting parent retrospectively since birth. Foundlings also acquire Swiss nationality by law (art. 6 BüG). A child of unknown descent found on the territory of Switzerland acquires the citizenship of the canton in which he or she was found, and with that Swiss nationality. If the real parentage of the child is revealed before the age of 18, the child loses his or her Swiss nationality again, but only if he or she does not thereby become stateless.

##### *Acquisition by naturalisation (arts. 12–41 BüG)*

If a person does not become a Swiss national by descent, he or she can acquire Swiss nationality by means of naturalisation. The Swiss Naturalisation Act mentions three modes of naturalisation: regular naturalisation, facilitated naturalisation and the reacquisition of nationality. The unique aspect of Swiss nationality law is that nationality extends over three levels; each Swiss national is a citizen of his or her municipality, his or her canton, and of the

federation. A person can be naturalised if he or she fulfils the legal requirements for naturalisation. However, there is no legal entitlement to acquiring Swiss nationality; the decision is always at the discretion of the authorities.

A foreign person can acquire Swiss citizenship through so-called regular naturalisation (arts. 12–17 BÜG, *ordentliche Einbürgerung*). The naturalisation procedure is divided in three different stages on the three federal levels: federal state, canton, and municipality. Regular naturalisation is a residence-based mode of acquisition of nationality. Naturalisation is only possible if a person has legally lived in Switzerland for twelve years, three of which during the last five years before the application for naturalisation. For children the years between the ages of 10 and 20 are counted double. Furthermore, the person has to be integrated into the Swiss way of life and be familiar with Swiss customs and traditions. This includes the ability to communicate in one of the official languages, the maintenance of contacts with Swiss citizens, the willingness to be economically active or to acquire education, and the person concerned already has to be integrated into the Swiss environment. If a person is on welfare or unemployment benefits, this does not hinder naturalisation.

It is not the case that all of the criteria outlined have to be met if the person seems to be sufficiently integrated. According to the Federal High Court, integration does not mean that the applicant must give up his or her former cultural identity. Another requirement for naturalisation is a respect for the Swiss legal order. This includes the requirement that the applicant does not have a criminal record or unpaid debts, and respects the public order and safety as well as the fundamental principles of the Swiss constitution. During court proceedings or the enforcement of sentences, naturalisation is not possible. Naturalisation is only possible after all entries have been deleted from the criminal record. Naturalisation is impossible if a person has pending debt recovery and enforcements [German: *Betreibungen*] or certificates of unpaid debts [German: *Verlustscheine*] or is bankrupt. What is more, a person applying for Swiss nationality must not endanger Switzerland's interior and exterior safety. Additionally to all these criteria laid down by federal legislation, the cantons and municipalities can issue their own criteria for applicants wanting to become citizens. Cantons and municipalities, for instance very often have their own requirements regarding the time of residence in the respective canton or municipality. The cantonal or municipal criteria can go beyond the criteria set by the federal legislation.

Facilitated naturalisation [German: *erleichterte Einbürgerung*] is intended for persons who should, according to the law, be able to acquire Swiss nationality more easily. This includes in particular foreign spouses or children of Swiss nationals. The Swiss Naturalisation Act recognises eight modes of facilitated naturalisation (arts. 26–32 BÜG). These are for spouses of Swiss nationals, for spouses of Swiss nationals living abroad (expatriates), for persons who in good faith believed to be Swiss nationals, for stateless underage children, for children of persons who have been naturalised, and for children of persons who lost their Swiss nationality. Furthermore, according to transitory provisions, facilitated naturalisation is available to children born to a Swiss mother before 1 July 1985 (art. 58a BÜG), and for children born to a Swiss father before 3 October 2003 (art. 58c BÜG). Facilitated naturalisation requires that the person concerned is integrated in Switzerland, respects the Swiss legal order, and does not endanger the interior and exterior safety of Switzerland. Integration implies, similar to regular naturalisation, that the candidate has basic knowledge of one of the official languages and is able to conduct basic conversations in this language. Furthermore, the applicant has to respect law and order, and the fundamental principles of the Swiss constitution, and has to demonstrate the intention to be economically active. Moreover, he or she must not have a criminal record or unpaid debts. Overall, the requirements are lower than for regular naturalisation.



Facilitated naturalisation for spouses of Swiss nationals requires that husband and wife live in an actual, un-separated, stable marital partnership, and that there are no intentions for a separation or divorce. In the process of naturalisation, both partners have to sign a corresponding declaration. If within five years it is revealed that the spouses have not lived in an actual and stable marital partnership during the naturalisation process, the newly acquired nationality can be revoked. For facilitated naturalisation, five years of legal residency in Switzerland are generally required. For spouses of Swiss nationals living abroad, and for children of parents who lost their Swiss nationality there are no residence requirements, since these persons are not generally living in Switzerland. Instead, they have to demonstrate 'close ties' [German: *enge Verbundenheit*] to Switzerland. This criterion is met, for instance, if the applicant shows interest in current events in Switzerland, has basic knowledge of the geography, history and political system of Switzerland, knows the Swiss community abroad, or has knowledge of one of the official languages. In any case, the applicant has to spend vacations or longer periods in Switzerland, and has to present letters of recommendation by persons living in Switzerland that know him or her personally. If he or she is working for a Swiss company or a Swiss NGO, or is attending a Swiss school abroad this is considered advantageous. All the other criteria for naturalisation have to be met analogously, i.e. the applicant has to respect the legal order in his country as far as this is comparable to the Swiss legal order.

There are three forms for the reacquisition of Swiss nationality according to the Swiss Naturalisation Act (arts. 18–25 BüG). These are the reacquisition of Swiss nationality for persons who lost their Swiss nationality due to birth outside of Switzerland, the reacquisition of Swiss nationality for persons who renounced their Swiss nationality, and the reacquisition for women who lost their Swiss nationality due to marriage to a foreign national, or due to divorce from their husband. Reacquisition of Swiss nationality requires that the person concerned is connected to Switzerland, respects the Swiss legal order, and does not endanger the interior or exterior safety of Switzerland. The criterion of the so-called 'simple tie' [German: *einfache Verbundenheit*] to Switzerland that is required for the reacquisition is lower than the close ties to Switzerland required for facilitated naturalisation. The simple tie is given, if the applicant has certain contacts to Switzerland, or knows persons living in Switzerland. Reacquisition of Swiss nationality is even possible if the person concerned has never been to Switzerland. As for facilitated naturalisation, the criterion of respect for the Swiss legal order has to be met accordingly, i.e. the applicant must not commit any offence that is liable to prosecution according to Swiss law. With the reacquisition of the Swiss nationality, applicants receive the citizenship of the canton respectively of the municipality they or their parents had before the loss of nationality.

### *Loss of Swiss nationality*

As for the acquisition of Swiss nationality, the Swiss Naturalisation Act also differentiates between the loss of Swiss nationality by law and the loss by resolution.

### *Loss by law (arts. 8–11 BüG)*

The Swiss Naturalisation Act outlines three events in which Swiss nationality is lost automatically. First, a child loses his or her Swiss nationality if the paternity to the parent that

transferred Swiss nationality to the child is nullified. Second, Swiss nationality is lost if an underage Swiss child is adopted by a foreign national and there is no relationship to a Swiss parent anymore. Third, Swiss nationality can be lost if a Swiss child born abroad is not registered with the Swiss authorities in or outside Switzerland and does not declare the intention to maintain Swiss nationality before the age of 22. If the person concerned was prevented from registering on time, the registration can be made up until one year after the obstacle is removed. If the person has justifiable reasons for not registering in a timely manner, he or she can reacquire Swiss nationality during a period of ten years. In any case, the loss of Swiss nationality by law is only possible if the person concerned does not become stateless in the process.

#### *Loss by resolution (arts. 41–48 BÜG)*

For the loss of Swiss nationality by resolution of an authority, the Swiss Naturalisation Act also outlines three modes. The most important case is the nullification of naturalisation according to art. 41 BÜG. Once a person is naturalised, the naturalisation can be revoked, if it was acquired based on false information or by concealing relevant facts during the naturalisation process. The lack of one of the requirements for naturalisation is not sufficient for a nullification of the naturalisation. The nullification requires that the naturalisation was obtained by fraud. Naturalisation is obtained by fraud if the applicant willingly made wrong statements during the naturalisation process, or if he or she did not inform the authorities of essential facts, which he or she should have been aware that they would contradict naturalisation, and thereby willingly mislead the authorities in order to acquire Swiss nationality. In principle, the authorities have to prove that the criteria for nullification are met. However, if a proof is hard to find, for instance in the case of whether a marriage was actual and stable at the time of naturalisation, the authorities can operate based on indications. The person concerned then, based on his obligation to co-operate, has to try to disprove assumptions made on indications. The period of five years during which a naturalisation can be nullified starts with the legal force of the naturalisation. Nullifications of naturalisations mostly occur in the context of facilitated naturalisations for spouses of Swiss nationals when no actual and stable matrimonial partnership exists at the time of naturalisation. However, nullification is also possible, for instance, if a person does not inform the authorities about pending criminal proceedings. The consequences of nullification are that the person concerned loses his or her Swiss nationality. Swiss nationality may even be nullified if the person concerned becomes stateless. If the naturalisation is nullified the person concerned has no entitlement to automatically regain his or her former status under alien's law, at least as long as he or she does not have an entitlement for this status. Otherwise, the responsible authority reconsiders the legal status. In most cases, nullification of naturalisation is extended to all family members who acquired the Swiss nationality based on the annulled citizenship.

Another form of loss of nationality by resolution is the renunciation of nationality according to arts. 42–47 BÜG. A Swiss national can be released from Swiss nationality if he or she does not have his or her residence in Switzerland and does not become stateless. To be released from Swiss nationality, the person concerned has to request release from nationality, and has to prove that he or she is residing abroad and has or is about to receive the nationality of another state. Children under the age of 16 are normally included in the release, as long as they do not have their residence in Switzerland and they do not become stateless. Children over 16 have to give their written consent to the release. Once the release is effective, the former Swiss citizens can make a request for reacquisition of Swiss nationality.

Finally, the authorities can withdraw Swiss nationality (art. 48 BüG). A withdrawal is possible, if a person seriously harms the interests or reputation of Switzerland, if the person does not become stateless as a result. In practice, this form of loss of nationality is nearly irrelevant. So far, efforts in parliament, attempting to change the Swiss Naturalization Act to create a possibility that naturalised persons can be 'denaturalised' if they violate the legal order or endanger Switzerland's public safety, have not been successful.

### *Multiple nationalities*

Since the suspension of the former art. 17 of the Swiss Naturalisation Act on 1 January 1992, dual and multiple nationalities are unrestricted. Swiss nationals applying for nationality in another state do not lose their Swiss nationality, as long as the other state does not require that the person applying for nationality renounce his or her former nationality. Persons applying for Swiss nationality do not have to give up their former nationality, as long as their country of origin allows multiple nationalities. None of the Swiss cantons prohibits multiple nationalities. However, a few municipalities take the applicant's relationship and connection to his or her country of origin into consideration as part of the process of naturalisation. This practice appears to be problematic, but it has not been considered by the Federal High Court up to the present.

Double nationals are generally treated in the same way as other nationals. The only difference exists with regard to military service, where special rules apply. As a basic principle, military service has to be done in the state where the person resides at the time of recruitment. If a person has already completed military service in his or her 'other' home country, he or she will not be conscripted in Switzerland again. He or she still is obliged to pay taxes for the military and has to serve for civilian service though.

In 1998, Switzerland and Italy concluded a contract on the mutual acceptance of dual nationality. Both states agreed not to require applicants for nationality to renounce their former nationality. So far, political efforts in parliament and by cantons attempting to prohibit multiple nationalities in Switzerland have not been successful. Changes to Switzerland's policy regarding multiple nationalities do not appear likely at the moment (see 4.3).

### *Expatriates / Swiss citizens living abroad*

Swiss nationals who are living in another country but who keep their Swiss nationality are called *Auslandschweizer*. Swiss citizens living abroad keep their Swiss nationality and civil rights connected to the Swiss citizenship. As long as they are registered with the local Swiss embassy or consulate responsible for their country of residence, they can participate in all national Swiss elections and votes, and in some cases on the cantonal and municipal level. Children born to Swiss nationals living abroad acquire Swiss nationality by law if they are registered with a Swiss authority in- or outside Switzerland before their 23<sup>rd</sup> birthday, and declare their intention to maintain Swiss nationality. Spouses of Swiss nationals living abroad can acquire Swiss nationality in a facilitated way, if they have been married to the Swiss national for six years and have close ties to Switzerland. Swiss nationals living abroad who acquire another nationality do not have to give up their Swiss nationality. Thus, it is possible that Swiss nationality is passed from one generation of Swiss living abroad to the next, even though the family is not living in Switzerland (extraterritorial *ius sanguinis*).

### 3.2 Specialities

#### *Federalism, three level citizenship regime*

The prominent feature of Swiss nationality law is that in Switzerland nationality is distributed on the three levels: the federal state, cantons, and municipalities (art. 37 of the Swiss constitution; art. 12 BüG). According to the constitution, a person is a Swiss national if he or she is a citizen of a municipality and a canton. Therefore, when talking about Swiss nationality law, one has to take into consideration not only the federal legislation but also the cantonal and municipal legislation, the authorities in charge and the respective procedures. Since the legislation in each canton may differ, it is possible that the procedures and requirements for naturalisation vary from one canton to the other.

According to the constitution, the federal state is responsible for the acquisition of Swiss nationality by descent, marriage and adoption, for the loss of Swiss nationality, and for reacquisition of Swiss nationality. Regular naturalisation primarily falls under the jurisdiction of the cantons and the municipalities. Cantons and municipalities confer citizenship for their canton or their municipality respectively, whereby the applicant automatically acquires the citizenship of the federal state: Swiss nationality. The Federal Office for Migration has to agree with naturalisation by means of a so-called naturalisation authorisation. With this federal naturalisation authorisation and the minimal requirements for a regular naturalisation according to the Federal Naturalisation Act, a minimal standard is created, which allows a certain degree of harmonisation and control over naturalisations in Switzerland. These measures attempt to prevent abuses, and ensure that cantons do not confer citizenship rights too easily. What is more, the naturalisation procedure needs to follow basic constitutional principles, such as the *Legalitätsprinzip* (the principle requiring a sufficient legal foundation for state actions), the principle of equality before the law, the non-discrimination rule, the prohibition of arbitrariness, the protection of privacy, and fundamental provisions of proceedings.

#### *Procedures in the canton and in the municipalities*

As stated above, the cantons and municipalities are responsible primarily for decisions on regular naturalisation. Only the federal state, or more precisely, the Federal Office for Migration, issues federal naturalisation authorisation. For naturalisation to become effective, all of the authorities concerned on all three levels have to give their consent. Relevant cantonal law and procedures determine the authority to which the request for naturalisation has to be addressed, which authority decides first, and which authority has the final decision. In most cantons, the request for naturalisation is directed to the communal naturalisation office. In other cantons, the applicant has to obtain federal naturalisation authorisation first. In most cantons, it is the federal state or the canton that decides as the second authority. If the first authority deciding was the federal state, then the municipality is responsible second. The third and last decision is in most cases taken by the canton, in a few cases by the federal state. Cantonal law determines which cantonal authority is responsible. In most cantons, it is the executive deciding, in others the legislative, and sometimes the cantons have created a special institution, such as a special naturalisation commission. Cantonal law also determines the appeal procedure. For this reason, it is difficult to make general statements about the naturalisation procedure and nationality law in Switzerland. The concrete circumstances of

each particular case and especially the legislations of the respective canton always have to be considered.

### *Cantonal and municipal naturalisation requirements*

Since the regulations on regular naturalisation in the Swiss Federal Naturalisation Act can only be considered as a minimal standard, and since the actual decision on naturalisation is taken by the cantons and the municipalities, both the cantons and the municipalities are also authorised to enact their own legislation on naturalisation and citizenship. Hence, every canton and many municipalities have their own naturalisation laws or rules that regulate the acquisition of citizenship in a canton or municipality. Many cantons formulate the federal requirements for naturalisation more precisely, and increase the requirements needed to demonstrate the aptitude of applicants. Many cantons regulate precisely what level of knowledge and of which of the official languages an applicant must have, make certain requirements regarding the financial background of the applicant, his or her good reputation, the willingness to perform certain public obligations, and specify general requirements regarding the integration of the applicant.

In detail, these requirements may vary quite significantly. Some cantons, for instance, require that applicants are able to communicate without problems in German or French, having reached level B1 of the Common European Framework of Reference for Languages (CEFR), while others may only demand that the applicants are able to communicate in one of the official languages of Switzerland on a more basic level. Some of the cantons claim that applicants have to be in a financial position that allows them to support themselves and their family, or do not allow naturalisation if the applicant receives social benefits, whereas others do not make any requirements concerning the financial background of applicants. While some cantons require that applicants have to be integrated in a general sense, others require that the person concerned must have personal relationships with Swiss nationals, must demonstrate interest in their place of residence, or should have substantial knowledge of the history, culture, geography, and politics of their canton or municipality. Furthermore, cantons establish their own criteria with regard to the duration of residence in the respective canton and municipality. Cantonal regulations often vary significantly with regard to this criterion. Ten cantons require a short period of residence of up to three years, the majority of cantons require residence of five to six years, and two cantons demand a period of residence in the canton of ten years. To sum up, the requirements for regular naturalisation an applicant is confronted with can vary significantly depending on the legislation of the canton the applicant lives in. Even though cantons can enact their own requirements which may go beyond those of the federal legislation, they always have to observe the fundamental principles of the constitution, especially the non-discrimination rule.

### *Ballot box naturalisations / naturalisations by the local assembly (town meeting)*

As mentioned above, the cantons decide which institution is responsible for decisions on the naturalisation of a foreign person. The municipalities may also charge a particular authority with the task of naturalisation. In principle, the responsibility for decisions on naturalisations may also be conferred to the voters. Until a few years ago, decisions on naturalisations in Switzerland did not require explanations or reasons. This practice was justified with the fact

that there is no legal entitlement to naturalisation and the broad scope of discretion the deciding authority enjoyed. In some municipalities, the decisions on naturalisation were delegated to the voters, who could vote on naturalisations in their municipality at the ballot box and decide whether they wanted to confer citizenship rights to somebody. This practice caused uproar and considerable stir in the media. As a result, the Federal High Court overthrew this practice in two judgements in 2003. The Federal High Court argued that naturalisation procedures are cases of governments applying the law, although there is no entitlement to naturalisation, and that applicants are part of the procedures and enjoy all procedural guarantees. Based on the principle of the right to be heard and the non-discrimination rule, the authorities are now required to justify their decisions on naturalisations. The obligation to respect fundamental rights also binds voters. Consequently, naturalisations at the ballot box cannot be legal, since it is not possible to give a proper justification for a decision made at the ballot box. It is not possible to determine the motives for a decision in an anonymous vote. A vote at the ballot box also creates difficulties regarding the private sphere of the applicant, since every voter would be informed in detail about personal facts of the applicant in order to be able to make a decision.

Since these two decisions by the Federal High Court in 2003, there have been no more votes on naturalisations at the ballot box in Switzerland. Most of the cantons and municipalities have since readjusted their legislation and naturalisation procedures and abandoned votes on naturalisations at the ballot box. However, the local assembly remains responsible for naturalisations in a significant number of municipalities. According to the Federal High Court, this is permissible as long as there is a public discussion on the decision before the vote and negative arguments are produced in advance in order to be able to justify a negative decision after the vote.

The authority responsible for decisions on naturalisations is now in many cases transferred to the executive or to specific institutions. On 1 June 2008 Switzerland's voters clearly defeated a popular initiative ('for democratic naturalisations') by the 'Swiss People's Party' [*Schweizerische Volkspartei* (SVP)], which attempted to reverse the judgements by the Federal High Court by explicitly allowing votes on naturalisations at the ballot box. Because of this vote, the Federal Citizenship Act was revised, and the practice according to the Federal High Court judgements was regulated. The Federal Naturalisation Act outlaws votes on naturalisations at the ballot box. Naturalisations by the local assembly are permissible under the condition that negative decisions are justified in advance in written form. Furthermore, there were changes regarding appeals on cantonal level. These changes have been in force since 1 January 2009.

#### **4 Current political debates**

The political system of Switzerland with its founding pillars of direct and consociational democracy, federalism and sovereignty of the people, asks for a continuous exchange between the different political actors. When policymakers, experts and/or lawyers advance the liberalisation of the citizenship regime and promote equal access to citizenship rights, their efforts must be transferred subsequently to the cantons and municipalities who may have particular interests. This implies a large amount of persuasion, since municipalities apparently want to restrict rather than broaden access to citizenship. Municipalities often pursue different strategies and may wish to grant citizenship primarily to candidates who are wealthy, come from a culturally similar background, are highly qualified, are well integrated if not assimilated, and are not a financial burden for the municipality. Some of the larger

municipalities have started to change their rather exclusive handling of the granting of citizenship over the past few years, also in order to follow the legal requirements set by the Federal Court. This process can be seen as a result from the continuous exchange as illustrated below. Despite what the media regularly make the public believe, many municipalities are trying to professionalise their citizenship regime and prove to be 'better than their reputation'. The Swiss People's Party (SVP) launched a highly publicized popular initiative [German: *Volksabstimmung*] on 'democratic naturalisations' [German: *demokratische Einbürgerungen*] in 2008. With this initiative, the SVP attempted to restrict access to citizenship on the municipal level, but a clear majority of the voters defeated the initiative. This initiative is also part of an ongoing exchange between different political actors.

We shall first have a look at the two contradictory developments, liberalisation of the citizenship regime on the one hand side, restrictions on the other. By relying on recent examples we illustrate how citizenship until today serves as a 'contested political field' (D'Amato 2009a: 71). Political battles are fought over citizenship rights that are often of symbolic rather than legal nature. The aim of the participants is to define cultural belonging and struggles over national and/or cultural identity in order to separate those who 'deserve' to become Swiss from those who do not.

#### 4.1 Liberalisation of the citizenship regime

Liberalisation, as we understand it, rests upon the universal principle of equal rights. Citizenship rights should be granted to individuals on an equal basis, irrespective of their cultural, religious, or ethnic background, or their civil status. As Steiner and Wicker point out (2004: 16ff), Swiss citizenship law has already undergone an important evolution in this direction and developed during the past fifty years away from a family law in the direction of a personal rights. The latter is applied independently from the candidates' (marital or civil) status. Analogously, over the years gender became less and less decisive for the granting of citizenship. What liberals as well as conservatives put forward instead, was that the candidate had to demonstrate that he or she was capable to integrate into society and was a person of integrity. As Wicker (2004: 12ff) pointed out, educational aspects gain importance in naturalisation procedures.

Today, individual traits are highlighted in such a way that is becoming problematic – especially when 'individualisation' places responsibility for all naturalisation requirements on the individual.

In the eyes of its supporters, liberalisation should not only take place in the domain of access to citizenship (the 'liberals' strongly promoted facilitated access to citizenship for migrants of the second and/or third generation in 2004). Liberalisation also concerns the naturalisation procedures that in their view should be further professionalised, standardised and simplified. Historically, it was not necessarily the Confederation to pioneer liberalisation of naturalisation procedures, but rather the three largest cities in Switzerland: Basel, Geneva and Zurich (Argast 2004: 52ff). All three cities traditionally promoted the centralisation and simplification of naturalisation procedures, a trend that can recently be observed in other cities such as Bern. In these cities, responsibilities for decisions on naturalisation matters are shifted from the legislative to the executive. Argast (2004: 7ff) goes as far as to ask the rather provocative question whether the 'municipal citizenship law' is not outdated and should be completely abandoned ('*Hat das Gemeindebürgerrecht ausgedient?*', as the title of an article written by Argast in 2004 put it). In her opinion, the main function of the municipal

citizenship law of today remains what the sociologist Ferdinand Tönnies once called a ‘sense of community’ [German: *Gemeinschaftssinn*] among the citizens of a municipality, and to maintain the traditional ‘citizen’s communities’ (or *Bürgergemeinden*). Such citizens’ communities once served as institutions inside the municipalities, with the task to support citizens who depended on public welfare. The communities played a gatekeeper role in the access to cantonal and federal citizenship right, and as Steiner and Wicker (2004: 197) pointed out, their specific interests were of less a political than of a financial nature. Today many of the citizens’ communities have become charitable trusts and they administrate the public welfare of the municipality or its funds. Following Argast (2004) neither these ‘citizens’ communities’ nor the communality law are necessary for the maintenance of democracy as such. Instead, and especially after the decision of the Federal High Court that naturalisations at the ballot box of the municipalities are not legal, it is justified from a liberal perspective to ask under which conditions municipal citizenship laws should be maintained.

Recently, Eveline Widmer-Schlumpf, member of the Swiss Federal Council and Minister for Justice and Police, announced further simplifications in naturalisation procedures. During the yearly National Conference on Migration Law [German *Migrationsrechtstage*] in Bern in August 2009, Widmer-Schlumpf spoke about forthcoming reforms to the current Citizenship Law and mentioned the concrete plans of the Federal Council to harmonise residence requirements. The delicacy of this topic becomes apparent by the reaction of the newspaper *Neue Zürcher Zeitung* (NZZ). The journalist of the NZZ wrote ‘that Widmer-Schlumpf dared with the general support of the entire Federal Council to touch the highly sensitive topic of the different residence requirements’.<sup>15</sup> Whereas the Confederation requires twelve years of residence in Switzerland before a candidate can apply for Swiss citizenship, the cantons and municipalities can add additional requirements, such as residence requirements in the canton or municipality. In times of increasing mobility, such additional requirements can become problematic for candidates who move and change their domicile more often. This is one of the reasons why residence requirements should be harmonised, according to the Minister. At the same time, Widmer-Schlumpf did not leave any doubt that only candidates who are well integrated should be naturalised.

#### 4.2 Restrictive access to citizenship

The most successful party representative of a conservative if not obstructive approach to naturalisations in Switzerland is the Swiss People’s Party (SVP). Using a new orientation and strategy, and engaging in a radicalisation of its program, the former conservative SVP has since the 1990s gradually turned into a radical right-wing party, so it is justified to speak of a ‘new’ SVP (D’Amato & Skenderovic 2009; Mazzoleni 2003). In a populist manner, the ‘new’ SVP highlighted the gap between the elite and the common people, and emphasised direct democratic mechanisms as an expression of the will of the people. In terms of citizenship law, the SVP consistently objected to creating a right of appeal for those who applied to Swiss citizenship. By doing so, they opened a Pandora’s Box, inasmuch as there is a latent tension in between Swiss law and the sovereign rights of the citizens: the former provides guarantees for procedures according to the rule of law, the latter emphasises direct democratic sovereignty. The fundamental conflict between the intention behind legal procedures and popular sovereignty expressed through referendums and initiatives was presented to the public in a dramatic fashion by the SVP, particularly after the Federal Court decision in 2003 regarding

<sup>15</sup> ‘Widmer-Schlumpf wagt sich mit grundsätzlichem Rückhalt der ganzen Regierung auch an das heikle Thema der Wohnsitzfristen.’ (*Neue Zürcher Zeitung* NZZ, 1 September 2009)



the procedure of granting citizenship (cf. part 3.2). The declaration by the court that foreigners were protected by the Swiss Constitution even as subjects of decisions on naturalisations unleashed a veritable campaign against the 'republic of judges'. The decision itself was regarded as an attack on the tradition of direct democracy and as a sell-out of Swiss citizenship: a decision that had to be fought with every means possible (D'Amato & Skenderovic 2009).

The direct democratic devices of intervention offered by the political system mean that it is quite likely that in the future, the SVP will highlight its oppositional role by using migration policy including citizenship as a major issue, since controversial questions can never be confined to parliament alone. Other European countries may be able to adopt policies 'behind closed doors' in order to expand the political and social rights of migrants (Giraudon 2000), but this is nearly impossible in Switzerland. However, as we have seen, a determined right-wing populist strategy may not always find support in the population: the defeat of the SVP's popular initiative on 'democratic naturalisations' [German *demokratische Einbürgerungen*] in 2008 was an important point of reference. With its strategy the SVP intended to abolish the rule of law in the acquisition of Swiss citizenship by means of a popular initiative. It wanted to strengthen the power of the municipalities and give them the right to make arbitrary decisions. The eventual failure of the initiative demonstrates that even a strong and resolute party cannot always gain the support of the majority, especially when the arguments used contradict notions of equality and just access to rights (D'Amato 2009a).

### 4.3 Citizenship as a contested political field

Because the number of naturalisations in Switzerland remains relatively low compared to comparable European countries, citizenship continues to be a contested political field. For Steiner and Wicker (2004: 197ff) the principal reason lies in the fact that processes of naturalisations are primarily located in one of the around 3,000 Swiss municipalities. A strong 'sense of community' [German: *Gemeinschaftsgefühl*] can be found in most municipalities, and especially smaller municipalities expect that a candidate not only integrates into the community, but that he or she also assimilates and expresses his or her solidarity and loyalty to the community: 'The naturalisation into a municipality asks from the candidate that he expresses gestures of humility and submission'.<sup>16</sup> Here, the naturalisation process develops into a sort of 'rite of passage' (Centlivres 1990), which is symbolic and institutional at the same time. Naturalisation represents a transition during which all elements characteristic of rituals seem to occur: separation from the country of origin during immigration; slow integration in the host country; gradual association with the institutions of the host country (Di Donato & Mahon 2009: 291). In their paper *Federalism and cultural identities: some remarks on the naturalisation procedures in Switzerland* (2009) Di Donato and Mahon argue that the naturalisation process in Switzerland requires the candidate to naturalise 'culturally'. The authors refer to an expression used by the Swiss philosopher Denis de Rougement: *naturaliser culturellement*. The foreign candidate must fulfil the unilateral requirement to become adjusted to the Swiss institutions and way of life.<sup>17</sup> Liberals often perceive this

<sup>16</sup> 'Die Einbürgerung in die Gemeinden verlangt deshalb von den Kandidaten und Kandidatinnen nach wie vor nach Gesten der Demut und der Unterwerfung.' (Steiner & Wicker 2004: 197)

<sup>17</sup> 'The naturalisation process, in the way it is described, and, in particular, the 'conditions' both at federal and canton level, confirm to some extent the unilateral requirement for the foreigner to adjust to the Swiss institutions and way of life. This is what De Rougement defines as *naturaliser culturellement*. In contrast with the metaphor of *racines* [roots], Denis de Rougement proposes the image of *implantation* [implanting]: an action

requirement as incompatible with reality, and the requirement stands in strong contrast with the professional and personal lifestyle of many candidates. According to scholars such as Steiner and Wicker (2004), this is one of the reasons why the number of naturalisations among candidates who come from EU countries is significantly lower than the that of candidates from outside the EU.

Another reason why citizenship developed into a contested political field is that citizenship serves as a domain where political negotiation processes take place that are only remotely linked with the granting of citizenship. As the popular initiatives of the new SVP over the last years have demonstrated, municipal votes on naturalisations regularly serve as platform to discuss general political questions, such as whether preference should be given to fundamental rights [German: *Grundrechte*] or to the rights to political self-determination [German: *Volksrechte*]. Should decisions on naturalisations remain a ‘sovereign act’ [German: *hoheitlicher Akt*] as it is the case at the national level where candidates can appeal against naturalisation decisions? Alternatively, should naturalisation remain a political act, where the local population and members of the political bodies decide? Again, these questions are most vehemently discussed at the level of municipalities, as the municipalities are the places where the population and the administration are directly and regularly involved in decision-making processes.

### *Reform of municipality votes*

Naturalisation procedures are being changed not only in urban areas but also in rural cantons. In both cases, cantons and municipalities tend to delegate decisions to the executive and the decision-making processes increasingly follow an administrative path that permits legal remedies. A few recent examples follow.

In 2005, the citizens of the Canton of Bern voted in favour of legislation that encouraged decisions on naturalisation at the municipal or communal level to be taken only by the executive—as was already the case in the French-speaking Cantons of Geneva, Neuchâtel and Vaud. The bill was presented by the government and passed by the parliament despite strong opposition by SVP members. So far, in about 2/3 of all municipalities of the Canton of Bern it had been the legislative body (communality assembly or local parliament) which had been responsible for naturalisation decisions on its ground (Hirter et al. 2003-2007). Equally and perhaps surprisingly, the Canton of Appenzell Ausserrhoden, a rural, small and traditionally conservative canton, decided that from 2005 on the executive of its municipalities should decide upon naturalisations of candidates. In the Canton of Zurich, the canton with the largest population, the executive was already responsible for certain categories of facilitated naturalisations. With regard to regular naturalisations, a regulation was abolished in 2005, which stipulated that only local citizens could decide whether to grant municipal citizenship to candidates.

In 2006 and 2007, the citizenship regime continued to remain a ‘popular domain of action’ of the new SVP (Hirter et al. 2003-2007). The party called several referendums but most were defeated: In the traditionally conservative Canton of Solothurn, the SVP called an unsuccessful referendum in 2006. It was directed against an amendment to the law, which envisaged that each municipality was able to decide independently which authority

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deliberately chosen by man rather than the result of his inevitable destiny. According to the Neuchâtel philosopher ‘anyone can settle anywhere, everyone needs to settle somewhere, within the harmonic framework of a community’ (de Rougement, 1965: 20), cited in (Di Donato & Mahon 2009: 288ff).

(executive, naturalisation commission, or municipal assembly) deals with naturalisation demands. The SVP launched another unsuccessful referendum against a decision of the parliament of the Canton of Fribourg, which decided that decisions on naturalisation should be taken by the municipal executive rather than by the assembly or the parliament of each respective municipality.

#### 4.4 Integration and language requirements

##### *Integration requirements*

One of the reforms that are planned for the current citizenship law states that integration should be legally anchored as a condition for naturalisation (a parliamentary consultation procedure started in September 2009). What is new and certainly will be a challenge is that integration is currently not a legal term, and is applied on the national level without a clear definition. This is problematic as 'integration' has highly symbolic and cultural connotations, which have recently been linked to language requirements, but a legally sound definition of 'integration' will be difficult to implement.

Today, practically all of the Swiss cantons already apply strong integration requirements and require candidates for naturalisation to be well integrated. This may mean that foreigners are required to be adapted to Swiss 'conditions' [German: *Verhältnisse*], on the national, cantonal and municipal level. This requirement is used in the Cantons of Uri, Glarus, Basel-Stadt, Appenzell Innerrhoden, Appenzell Ausserrhoden, Thurgau and Aargau. Alternatively, foreigners may be required to be familiar with Swiss, cantonal, and local habits, customs, and traditions [German: *Lebensgewohnheiten, Sitten und Gebräuche*]. This rule is used in most cantons, including Schwyz, Glarus, Zug, Fribourg, Solothurn, Basel-Stadt, Basel-Landschaft, Aargau, Appenzell Innerrhoden, Graubünden and Valais. What is more, a social, professional and cultural integration into the cantonal and municipal community are especially required in the Cantons of Ticino, Vaud, Valais and Geneva. The Canton of Lucerne even asks that candidates to prove that they have contacts with Swiss citizens, and show an interest in social coexistence in their municipality.

In sum, this means that naturalisations are regarded a crucial step in the integration process of foreigners. The requirements for a successful integration needed for the granting of citizenship today demonstrate that candidates need to be integrated to a high degree. Especially on the municipal level, requirements for naturalisation go beyond integration and include assimilation into local structures. Some scholars criticise the fact that the term 'integration' is (mis-)used for 'culturalising' arguments and serves as a 'black box' for arbitrary decisions (Wicker 2004: 15f).

##### *Language requirements*

Probably the most controversial requirement asked for the granting of citizenship today is the sufficient knowledge of language that a candidate has to demonstrate. Language requirements refer mainly to the knowledge of one of the country's three official languages (German, French and Italian). The cantons have very different benchmarks: Some require a poorly defined 'linguistic integration' [German: *sprachliche Eingliederung*], such as the Canton of

Bern, or knowledge of one of the country's three languages (such as the Cantons of Glarus and Basel-Landschaft). Other cantons, in contrast, have higher requirements, namely 'problem-free communication in German' (such as in the Cantons of Zurich, Aargau and Basel-Stadt), or require level B1 in the European Language Portfolio, which may be substantiated in the form of a language test (Canton of Nidwalden). In the Canton of Aargau, knowledge of both the local dialect and standard German is accepted.

Most of the cantons just ask for sufficient knowledge of language to allow candidates to communicate without problems in their contact with administrative bodies, officials, and their co-habitants.<sup>18</sup> Or, in a similar way, cantons require candidates to be capable to express themselves in the official language of the canton they live in, or one of them in the case of multiple official languages.<sup>19</sup>

In recent years, new ideas on social and national cohesion have emerged in the expert community, changing the metaphor of integration currently measured in terms language proficiency. In theory, integration in terms of language should enable new citizens to communicate and to participate to the public sphere. However, how close does this come to empirical reality? Up to what extent did language have a historical significance in the Swiss nation-building process, and how was it debated over time in the context of political institutions and with regard to immigrants? Is there an empirically measurable link between language proficiency and civic participation, normatively legitimated in social and political theory? If this the case, under which conditions do these connections appear, normatively and empirically?

These questions are the topic of current research instigated by the Swiss Forum for Migration and Population Studies SFM (University of Neuchâtel).

#### 4.5 Dual and/or multiple citizenship

Since 1992, foreigners who want to acquire Swiss citizenship no longer have to give up previous nationality (cf. part 3.1). Before 1992, all foreigners who wanted to become Swiss following an ordinary naturalisation procedure had to renounce their previous nationality if they could be reasonably expected to do so, given the circumstances. Since 1992, dual citizenship has been allowed under Swiss law. Nevertheless, many foreigners who want to naturalise in Switzerland still automatically lose their original nationality because of the nationality law of their country of origin [German: *Heimatrecht*].

Dual citizenship remains a controversial topic on the political agenda. Parliamentarians of the SVP in particular tried to prevent the right to dual nationality in recent years. SVP representative Jasmin Hutter introduced a motion in 2004, called 'exclusion from dual citizenship right' [German: *Ausschluss des Doppelbürgerrechts*]. The motion did not cover dual citizenship of Swiss nationals living abroad wanting to acquire two nationalities, or dual citizenship caused by descent. The motion was directed against the possibility to acquire dual citizenship through ordinary naturalisation in Switzerland. The adversaries of a dual citizenship argued more from a republican than from a legal point of view. For the adversaries, the fact that a person may hold more than one nationality was seen as a potential conflict of loyalty in the following senses: a) a candidate for naturalisation might have

<sup>18</sup> This is the case for the cantons Schwyz, Zug, Solothurn, Schaffhausen and St Gallen.

<sup>19</sup> This is the case for the cantons Lucerne, Uri, Freiburg, Appenzell Innerrhoden, Graubünden, Thurgau, Ticino, Vaud, Valais, Neuchâtel, Geneva, and Jura.

problems in supporting Switzerland if a conflict broke out between his or her country of origin and Switzerland; and b) in times of peace, it would be unclear if a candidate could become a 'real Swiss' and unconditionally identify with Switzerland if he or she continues to belong culturally, socially and/or politically to another country.

In 2005, the Federal Office for Migration [German: *Bundesamt für Migration*] created a task force including both experts and practitioners. The task force was mandated to submit a report on pending questions of Swiss citizenship law, including the motion against the acquisition of dual citizenship mentioned above. The task force strongly recommended to reject the motion for the following reasons (Migration 2005):

- The experience of three groups who acquired dual nationality in the past (Swiss nationals living abroad, naturalised persons in Switzerland, and children from bi-national marriages) clearly showed that having two nationalities has not led to any societal problems worth mentioning.

- In individual cases, conflicts of loyalty may occur when there are conflicts between the country of origin and the country of residence. It is justified to ask if the fact of having more than one nationality could not be an element in promoting extremist attitudes or violence among young adults who do not know exactly who they are and where they belong (for example, the terrorist attacks in London on 7 July 2005 are mentioned).

- The idea to treat candidates differently, depending on where they come from, was rejected, because this would violate the right to non-discrimination.

- Many of the countries of origin do not allow candidates to abandon their original nationality (this is the case for example for candidates from Kosovo; men aged 16–60 years from Serbia and Montenegro; or second-generation immigrants from Turkey). The consistent application of a law that does not allow more than one nationality would mean that such candidates could never become Swiss. Such discrimination would even take place if the candidates are born in Switzerland and are well integrated and/or have lived in Switzerland for many years.

- Counted in absolute numbers, the exclusion from dual citizenship in Switzerland would most probably lead to a decrease in naturalisations. Experiences with Italian nationals show that the intention to acquire Swiss citizenship will probably triple for candidates from one of the neighbouring countries, if they are allowed to keep their original nationality. If the right to acquire more than one nationality were to be abandoned, in relative terms, the proportion of third-country nationals who naturalize would probably increase, while the proportion of naturalisation of foreigners from EU countries would decrease—also because these nationals can come and live in Switzerland regardless of Swiss nationality because of bilateral agreements.

- A consistent application of the prohibition to acquire dual citizenship would mean a significant bureaucratic effort.

- The removal of Swiss nationality is only possible for candidates who possess more than one nationality. This may occur if the behaviour of a naturalized citizen is in strong contrast with (or harms) the interests or the image of Switzerland. A naturalized citizen whose Swiss nationality was to be revoked would become stateless if he or she does not have another nationality; revoking Swiss nationality is therefore only possible for naturalized citizens who possess—at the same time—another nationality.

For the reasons outlined, neither the task force nor legal experts recommend the abolition of dual citizenship. It does not seem likely that legal changes will pass in the coming years. Nevertheless, the topic of dual citizenship remains strategically interesting and attractive for conservative politicians. They are likely to continue working on the issue, because it serves as an ideal basis and pretext to discuss more political and symbolic questions of who should belong ‘to us’ and who should not. The mechanisms of direct democracy foster such debates, as they allow conservative politicians to discuss this question in public on a regular basis.

#### 4.6 Concluding remarks

Dual and/or multiple nationalities, improved access to naturalisations, and the granting of local voting rights to immigrants have not proceeded evenly in Switzerland, a multilevel state. In the French-speaking part, the cantons have facilitated naturalisation procedures, and provided local voting rights. These changes transformed the French-speaking part of Switzerland into a form of transnational democracy. In contrast, the dominant German- (and also the Italian-) speaking remainder of the country has moved into the opposite direction, creating an ethnically bounded democracy (Peled 1992). As a result, only citizens are entitled to universal liberal rights, whereas immigrants enjoy only a reduced form of these rights, mainly in the social and (to a lesser degree) in the civic sphere. Voters in many parts of the country maintain a deeply rooted scepticism toward newly arrived immigrants, whom they suspect to be untrustworthy and whose loyalty to society and the state cannot be taken for granted. In rural and peri-urban Switzerland, established political actors seem committed to a deeply Rousseauian belief in republican traditions. For them, democracy can only work within the conditions of strong cultural homogeneity deep communal bonds reflecting a strong faith in common values (D’Amato 2009a).

This republican position stands in deep contrast to the principles embedded in the Swiss constitution and may ultimately lead the country into a continuous conflict between the supporters of the (national) rule of law and supporters of (local) popular sovereignty. This conflict is reflected in the reactions to the decree of the Federal High Court that naturalisations at the ballot box are unconstitutional. The judges of the Federal Supreme Court signalled that, even though foreigners may find themselves outside the procedures of legitimate decision-making, they are nevertheless protected by the constitution. Powerful devotees of absolute and unlimited local sovereignty interpreted this decision as an attack on the traditions of direct democracy and as a devaluation of Swiss citizenship. This struggle is ongoing even though the popular initiative was defeated in 2008.

The case of Switzerland thus shows that sovereignty can never be absolute if we are to prevent democracy from drifting towards an unbound, democratic form of ‘totalitarian’ rule (Lübbe 2004). Switzerland is far from a ‘totalitarian’ situation, but the deep conflict over citizenship rights for the large immigrant population in Switzerland raises the possibility that the country will come closer to such a position in the future. The possibility of transnationalising citizenship stands in contrast with a risk of renationalisation through xenophobic policies. Both sides are highly mobilised, and both have strong conceptions of citizenship. It remains to be seen whether the Swiss voters will favour an enlargement of its democratic base, as happened in the French-speaking part of Switzerland, or if they will continue to advantage the native majority.

## 5 Conclusion

Two divergent trends characterise the current development of citizenship in Switzerland. On the one hand, we can witness a paradigmatic change in law, leading to a liberalisation of the current citizenship regime. A younger generation of experts and lawyers occupy influential positions in the federal administration and promote guarantees to equal chances in access to and the granting of citizenship—irrespective of the candidate's ethnic origin, gender, or religion. The citizens of Switzerland support this approach in the sense that they have become more sensitive to arbitrary and unequal decisions on access to and the granting of citizenship. The voters repeatedly favoured the professionalised handling of naturalisation procedures at all levels (federal, cantonal and municipal).

On the other hand, we witness exponents of a strong federalist tradition. They prefer to leave the decision-making on questions of citizenship with the cantons and their municipalities and/or the local population. They defend particular interests, support the sovereignty of the people and oppose a common rule of law based on universal principles of equal rights. For them, citizenship is 'deserved', and the acquisition of citizenship should be the result of a long integration process. In the perception of the conservatives, citizenship is an instrument of social exclusion rather than one of inclusion into society.

The search for a common denominator that could help to bridge the gap between the two sides leads to the overall aim of strong social cohesion.<sup>20</sup> The social cohesion of a society is usually based on cooperative social relations between all inhabitants, and such relations play an important role on all levels (municipal, cantonal, and state). Social cohesion might be strengthened if migrants actively participate in local activities and are socially and culturally well integrated into their local community and/or municipality. The granting of local voting rights to non-citizens, for example, could positively influence the integration process of foreigners in the sense that they are better motivated to participate in the political, social and cultural life of their community. By contrast, stricter language requirements—as they are currently discussed—might have a negative effect on foreigners who want to participate in the community. It might be interesting to examine further the recent reversal of the Netherlands in its 'integration requirements'. The Netherlands gradually relaxed conditions for naturalisation and moved towards an understanding of citizenship as an entitlement for long-term first-generation migrants. Two opposing views on citizenship seemed to emerge: one that considered citizenship as a means to integrate newcomers more fully into the national community, and therefore welcomed early acquisition of citizenship; and a second, which regards citizenship as a prize, a reward and honour granted by the state on its own terms, and at its discretion.

The question that emerges is under which conditions and in what way migrants could contribute to new forms of social cohesion that are not forcibly linked to the traditional concepts of citizenship and nationality (D'Amato & Baglioni 2009). Scholars such as Zurbuchen (2007) suggested a re-conceptualisation of citizenship. From their point of view, citizenship should mean membership in a political community that is not necessarily a synonym for the nation-state, but could also imply membership in smaller unities (such as a

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<sup>20</sup> We understand social cohesion as did Vertovec (1999): a 'stable societal situation which implies the presence of basic patterns of cooperative social relations and core sets of collective values' (cited in (D'Amato and Baglioni 2009)).

city, community, or canton) or bigger communities such as the EU or World-society.<sup>21</sup> A re-conceptualisation is necessary, because, because of transnational migration movements, territorial borders and the borders of national participation do no longer necessarily overlap. Increasingly, the population of a nation-state is split into a class of citizens and of denizens<sup>22</sup> [German: *Wohnbürger*]: non-citizens who live in a country but who do not possess the same rights and duties as the majority population (Zurbuchen 2007: 9). As long as citizenship remains strongly linked to nationality, denizens remain second-class citizens, whose civic and social rights are jeopardised and who lack the rights to political participation (Bauböck 1994; Brubaker 1989; Hammar 1990). We have two possibilities to resolve the problem of a two-tiered society that strongly challenges the social cohesion of a country—and the two possibilities are not necessarily mutually exclusive (Zurbuchen 2007). On the one hand, we can facilitate access to citizenship, while partially renouncing *ius sanguinis* (for example for third generation immigrants living in Switzerland) and promote multiple citizenship. On the other hand, we can grant denizens more social and political rights at the local level. Both ways would eventually reduce the cleavage between the two tiers of society, help to better integrate non-citizens and contribute to better social cohesion, which lies in the interest of society as a whole.

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<sup>21</sup> ‘*Staatsbürgerschaft* wird somit als eine Art von *Bürgerschaft* verstanden, die durch andere Arten wie *Gemeinde-, Kantons-, EU- oder Weltbürgerschaft* ergänzt werden kann’ (cited in Zurbuchen 2007: 7)

<sup>22</sup> On the term ‘denizen’, cf. (Bauböck 1997: 83)



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