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Whither the Liberal Democratic Model? Immigration Politics in Switzerland and Japan

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Abstract
A comparison of Japan’s and Switzerland’s immigration policies disclaims both globalist and public choice explanations that would predict a similar increase in immigrant numbers and an expansion of immigrant rights in liberal democracies. Although both countries have traditionally espoused a rather exclusionary approach towards immigration, Japan is unique in having hitherto succeeded in preempting large numbers of immigrants from entering the country and in having avoided the legal and societal integration of those migrants already present in its territory. In seeking to explain the different trajectories followed by immigration politics in Japan and Switzerland, despite their similar internal and external economic constellations, this article highlights the role of domestic institutions and norms in filtering economic pressure for immigration. Whereas these internal determinants explain to a large degree why Switzerland has become a country of immigration while Japan has not, the central factor explaining the recent expansion of foreign residents’ rights in Switzerland lies not so much in internal determinants but in the country’s progressing approximation to the European Union and its single market. Notwithstanding these differences, the article concludes that Japan’s greater resistance to change might now have reached a critical juncture, where demographic pressure and economic demand will make an opening up to increased labor migration unavoidable.

Keywords: Europeanization, immigration policy, new institutionalism, public choice

Introduction
Immigration politics are high on the agenda of all liberal democratic states, Japan and Switzerland included. Both countries face the dilemma of reconciling a serious economic and demographic need for foreign workers with a critical and sometimes xenophobic public opinion. Yet despite these similarities, the two countries have hitherto presented drastically different responses to immigration. Whereas Switzerland is a paradigmatic example of the “liberal paradox”
(Hollifield 1992a) of an expansive immigration policy despite negative public opinion and restrictionist political rhetoric, Japan has so far resisted substantial immigration and has been described as a unique and exceptional “negative case” in the scholarly literature (Bartram 2000). A glance at statistical data confirms this opposition: whereas Switzerland has one of the largest proportions of foreign-born population among OECD countries (19.4 percent), Japan, at merely 1.2 percent, has the lowest.¹ This contrast is especially intriguing if one considers that both countries, given their relative wealth and stability, share strong internal and external pull-factors for economic and humanitarian migrants. In order to understand the context of contemporary reform discussions, we need to know how to explain why Switzerland has received such a large share of immigrants despite critical public opinion, and why Japan has not. This is the first question explored in this article. The second question relates to the way in which the two countries deal with the incoming migrants and the question of to what extent these persons remain “temporary workers” or become “future citizens” (Weiner and Hanami 1998). Turning to the future, the last part of the article asks how stable these differences are likely to be, and in particular how the two countries will be able to adapt to intensifying pressure in spite of internal institutional and ideational rigidities.

Immigration politics in liberal democracies: academic consensus and analytical puzzle

There is a growing consensus among migration scholars that migration politics in liberal democracies have followed similarly expansionist trajectories. In sharp contrast to the restrictionist discourse of policy makers and the often xenophobic public opinion, the scholarly community maintains that continuous immigration has been coupled with an incremental widening of the social, civil, and sometimes even political rights of immigrants in the receiving country.² From a ‘globalist’ perspective, the expansion of migrant flows and rights is seen as a function of economic globalization (Sassen 1996b, Sassen 1996a) or the diffusion of international human rights’ norms (Soysal 1994, Jacobson 1996). According to Sassen, globalization results in “the relocation of various components of state authority to supranational organizations” and “the de-facto privatization of public sector activities” (including the regulation of migration) to firms and multinational enterprises, thereby undermining state sovereignty.

² The trilogy of civil, political and social rights draws on (Marshall 1950: Chapter 4).
This argument, taken from international political economy, is complemented by the claims of sociological institutionalists who detect a decline in the importance of citizenship in distinguishing the rights of immigrants from those of the indigenous society. According to Soysal, a postwar global discourse on human rights has evolved which endows people, rather than just citizens, with universal rights, thereby yielding a new mode of “postnational membership.”

Students of domestic politics have noted a similar decline of sovereignty. From this perspective, however, the growing “gap” (Cornelius, Martin and Hollifield 1994) between the desire to limit the intake and actual flows of immigration is not a consequence of external pressure, but a home-made problem. Claiming to accommodate “the experience of all the liberal democratic receiving states” (Freeman 1995: 881), this political economy approach explains the “liberal paradox” of expansive policies despite restrictionist public opinion as a function of specific collective action problems in liberal democratic states and in particular the influence of economic interest groups on the policy-making process (Freeman 1995, Hollifield 1992b).

If this is so, why is it that Japan has taken so few immigrants, and, furthermore, how could it avoid expanding their rights? This article argues that conventional political economy explanations, both from a global and domestic perspective, fall short of explaining the different trajectories taken by Switzerland and Japan. Conceding to the danger of losing parsimony, I argue that the paths adopted by Switzerland and Japan respectively may best be explained by looking at the role of institutional factors and norms in structuring state-economy relations, policy making, and legal reasoning. Whereas these factors successfully explain the continuities and basic parameters of national responses, recent developments in Switzerland point at another, external factor which plays a major role in overcoming institutional rigidities: these are the dynamics of Europeanization and Switzerland’s gradual approximation to the EU single market.

In the following sections, these arguments are discussed consecutively. The analysis starts with the economic determinants of immigration in the two countries and scrutinizes the scope for collective action in favor of more foreign workers. After identifying similar interest-group constellations, the next section explores the institutional determinants which have translated this economic demand into policy in Switzerland, as well as those which have obstructed it in Japan. While this combination of public choice and institutional analysis explains to some degree the different approaches adopted towards economic immigration, the response to humanitarian migration (refugees and families), as well as the

\[3\text{One simple answer would be that Japan simply is not a liberal democracy – a difficult point to hold.}\]
handling of immigrant rights, rest in more fundamental orientations which refer to the conception of national identity and the delineation between universal and particular rights in the respective legal systems. That these boundaries of belonging need not be perpetual is shown in the gradual redefinition of who counts as an alien in Switzerland. Rather than being the result of a global human rights discourse or of the legal activism of domestic courts, the shifting lines between inclusion and exclusion in Switzerland follow changes in its external environment and are basically a consequence of the country’s approximation to the European Union. The factors engendering a shift in established patterns of immigration politics are scrutinized in section four.

Foreigners in Switzerland and Japan: an introductory overview

As stated above, Japan and Switzerland differ significantly in the way they have addressed the issue of immigration. Switzerland exemplifies the notion of a “liberal paradox,” in which more immigrants are actually received than political rhetoric would suggest, it has reluctantly expanded the rights of the former temporary workers to allow for permanent residence, ‘denizenship’\(^4\) (Hammar 1990), and, although highly discretionary, also naturalization (Steiner and Wicker 2000, Piguet and Wanner 2000). Japan, by contrast, has the lowest proportion of foreigners of any major industrial country and has maintained a strongly exclusionary approach towards those immigrants already present in its territory.\(^5\) Before analyzing the reasons for these differences, this section sketches very briefly the main steps in the evolution of immigration policies in the two countries up to this point, and thereby serves as a sort of introductory overview for those readers not very familiar with either country’s situation.

Switzerland

Switzerland’s approach towards immigration can divided into three phases, with a fourth phase starting in the late 1990s. Immigration to Switzerland began in the mid-19\(^{th}\) century, and was spurred on by the intensifying process of industrialization and high economic growth. Much like the open market ideology which guided commercial policy, the approach towards immigration

\(^4\) This term was coined by Tomas Hammar who has made a distinction between foreigners (temporary workers and political refugees), denizens (permanent residents without full political citizenship, yet with access to civic and social rights) and citizens.

\(^5\) The average percentage of non-nationals in the OECD world is between 4 and 9 percent, Japan has only 1,2%.
followed a liberal paradigm (Dhima 1991: 48ff). While foreign residents only accounted for 3 percent of the Swiss population in 1850, this number had risen to 14.7 percent by 1910, and 15.4 percent by 1914 (EJPD 2000: 2). During this period, citizens of countries which had signed so-called establishment treaties with Switzerland could stay and establish themselves in Switzerland without restrictions.\footnote{The liberal approach did however not extend to the citizenship practice.}

Like in most other European countries, the regulation of immigration began only after World War I. Since aliens’ issues were still the responsibility of the subnational units, i.e., the cantons, the first federal rules relating to the border police and foreigners were adopted on the basis of emergency decrees, before the formal basis for federal legislation was laid with a constitutional amendment in 1925. Six years later, in 1931, a new aliens’ law entered into force, which has regulated the stay and establishment of foreigners right up to this day.\footnote{Bundesgesetz über Aufenthalt und Niederlassung der Ausländer (ANAG) of 26.3.1931, in force since 1.4.1934 (SR 142.20). A complete revision of this law is currently under way, see below.}

This second phase ended with the rapid economic growth of the post-World War II period, which engendered a new demand for foreign labor. The approach developed towards immigration thereafter may accurately be described as an attempt to mediate between two contrary societal pressures: economic demand on the one hand and xenophobic sentiments on the other. The politicization of immigration and the instrumentalization of the foreign workers’ policy in electoral battles began in the 1970s, when economic recession and changes in the composition of immigrant flows, in particular the rising numbers of asylum seekers and refugees from Third World countries, contributed to an increased perception of immigration as an economic and social problem. In contrast to most other European countries which, during the economic recession of the 1970s, had to accept that the people who they had invited to come intended to stay, Switzerland ‘managed’ to send back a significant share of its foreign workers. Due to insufficient insurance against unemployment and a low degree of legal and social integration, it was possible to send back some 150,000 persons—two-thirds of whom had permanent or renewable yearly residence permits (Mahnig 2000). Although espousing an official “no immigration” rhetoric, the 1980s saw once again an increase in the number of labor migrants, while regulative efforts focused on the acceleration of asylum procedures, the facilitation of return and a dissuasion of potential asylum seekers. This trend continued in the 1990s when, given the presence of numerous citizens from the former Yugoslavia, Switzerland received the largest share of refugees from Bosnia and Kosovo per capita in Europe, exacerbating the already strong societal
and political polarization over the issues of asylum and refugees. Heralding the main thrust of current reforms, the government announced the so-called “three circles model,” according to which immigration from outside the EU/EFTA (1st circle) and North America/Australia (2nd circle) should be abolished.\(^8\)

With the adoption of the Bilateral Treaty with the EU on the Free Movement of Persons and the comprehensive overhaul of the 1931 Immigration Act, Switzerland is now entering a fourth phase in its immigration history. Four developments induced the current reorientation of immigration policies. Firstly, the economic recession in the first half of the 1990s revealed that, unlike in the 1970s, foreign workers hit by unemployment could no longer be sent back and had been endowed with enforceable rights. Secondly, the numbers of asylum seekers and refugees increased significantly, and declining recognition rates gave way to an increasing perception of abuses in the asylum system. Thirdly, and linked to these developments, the political landscape in Switzerland became increasingly polarized, with the right-wing Swiss People’s Party (SVP) winning votes on xenophobic claims. Yet, beyond these internal cleavages, a fourth, external development has come to determine the direction of Swiss immigration policies—namely, the process of European integration.

### Japan

Japan’s experience with immigration is very different from that of Switzerland. From the Meiji restoration until the onset of the Second World war, Japan was a labor-exporting country. Although, at least officially, Japan “remains firmly opposed to immigration” (Koshiro 1998: 154), this does not mean that no immigration has occurred. During the colonial period, Japan recruited large numbers of Korean and Chinese workers to fill short-term domestic labor shortages.\(^9\) However, after 1945, only half of these workers left the country, and today nearly 700,000 Koreans form the single largest group of ‘foreigners’ in Japan.

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\(^8\) The proclamation of the 3-circles was on the one hand the expression of an approximation to the EU and a preparation for membership in the European Economic Area (which was rejected by popular vote in 1992); on the other hand, it was a reaction to the increased asylum migration. The fact that this model was officially justified as a means to counter the entry of “culturally distant” and therefore allegedly less assimilable migrants (including e.g persons from ex-Yugoslavia which has been a major sending country of guestworkers to Switzerland) invoked the criticism of the newly created Commission Against Racism. Faced with the reproach of discrimination and overt racism (EKR 1996), the government then withdrew the model, and resubmitted it in a different shape in the current proposal for a new Aliens Law (Ausländergesetz, AuG).

\(^9\) Between 1939 and 1945, Japan drew nearly 800,000 workers from Korea and 80,000 from China.
(Mori 1997: 32ff.). Although the law does not provide for a permanent resident status for foreigners, most Koreans in Japan have been granted permanent residence on the basis of a 1965 agreement between the governments of Japan and South Korea (Weiner 1998: 5).

Apart from the pre-World War II immigrants, the two other official categories of immigrants in Japan are nikkeijin and trainees. These two categories were introduced in the 1990s to meet the pressing economic demand for foreign labor in Japan. Much like the saisonnier status in Switzerland, these two legal categories must be understood as an attempt to find a compromise between the needs of the labor market and a xenophobic public opinion and national philosophy. The term nikkeijin refers to Japanese emigrants and their descendants who “return” to their home country. Although tolerated since the 1980s, their employment was permitted by the government only in 1990 through the new Immigration Control Act (Kajita 1998: 127).\(^\text{10}\) This act also introduced the third category of trainees, which allows small and medium-sized enterprises (SMEs) without an overseas presence to hire unskilled foreign workers for up to two years, with the possibility of extending the arrangement for another three years. This program, which became effective in 1993, has officially been presented as development aid by the Japanese government (Papademetriou and Hamilton 2000: 40).\(^\text{11}\)

The fourth, unofficial category of foreign workers in Japan are illegal immigrants whose numbers have been rising constantly since the mid-1980s (Morita and Sassen 1994, Spencer 1992). Originally composed of young female migrants working in the entertainment industry, unauthorized migrants are now concentrated in the low-skilled segments of the Japanese economy, especially the construction and manufacturing sectors. Unlike other liberal democracies, however, Japan has not seen significant asylum-seeking migration (Takeda 1998: 448).

Today, Japanese immigration politics are at a crossroads. Although mitigated by the recent recession and the unprecedented rise in the number of unemployed, Japan faces a dramatic shrinking of its labor force due to demographic developments. According to a recent study by the United Nations population division, declining fertility rates and increases in survivorship (aging) are leading to a steady decline of the working-age population in Japan, so that if the potential support ratio\(^\text{12}\) were to be kept constant at the 1995 level, 553 million immigrants,

\(^\text{10}\) Under this act, nikkeijin were granted rights of employment and residence for an initial, renewable period of three years. By 1998, it is estimated that the number of legally employed nikkeijin in Japan counted 220,844 [OECD internal statistic quoted in Papademetriou and Hamilton, 2000 #213: 38].

\(^\text{11}\) Unlike the nikkeijin, trainees are not allowed to bring their families or establish a sense of permanency.

\(^\text{12}\) Ratio of the working age population to the retired age population.
or an average of 10 million immigrants per year, would be needed from 1995 to 2050. Recognizing the unlikeliness of this scenario, the study concludes “that substantial ageing of the population ... is inevitable even if Japan increased immigration greatly” (UN Population Division 2000: 50).

Swiss and Japanese immigration politics compared: whither the liberal democratic model?

Having briefly sketched the opposed historical approaches towards immigration in Switzerland and Japan, this comparison seeks to respond to the two questions outlined in the introduction. Firstly, how can we explain that Switzerland has accepted more immigrants than either public opinion or official rhetoric suggest, while Japan has not? Secondly, regarding the way in which those immigrants already present on the territory are handled, how is it that Switzerland has gradually expanded immigrants’ rights, while Japan still doesn’t grant permanent residence? In addressing these questions, the following analysis explores the explanatory potential of hypotheses taken from political economy, institutionalism, and social constructivism. It is argued that the comparison of Switzerland and Japan dismisses the dominant political economy models (both from domestic politics and IR) which claim to explain the evolution of immigration in liberal democracies. It will be shown that while arguments taken from public choice theory explain the demand for foreign workers, the actual political response to this public pressure and the handling of humanitarian migration and immigrant rights may be best understood by looking at differences in the institutional determinants of state-society relations and the basic normative conception of national identity.

Public choice and the limits of economic reasoning

Arguments taken from political economy would predict a large intake of labor migrants in Switzerland and Japan and an exclusionary handling of their social, economic and political rights. The reason is that state policies are seen to reflect the interests of the most influential groups in society. This influence is on the one hand a function of the distribution of costs and benefits of immigration and on the other hand of the different groups’ capacity to organize and articulate their interests in the decision-making process (Olson 1971). According to Gary Freeman, liberal democratic states share a similar constellation of interests vis-

13 Alternatively, in absence of migration, Japan would have to raise the upper limit of the working-age to about 77 years to obtain in 2050 the same potential support ratio observed in 1995 in Japan, i.e. 4.8 persons of working-age per retiree (ibid.).
à-vis immigration which, so goes his hypothesis, leads to expansionist policies “which tend to be more liberal than public opinion and [to] annual intakes larger than is politically optional” (1995: 882f.). The reason for this is that immigration produces diffuse costs and concentrated benefits, whereby “those who benefit from immigration in direct and concrete ways are better placed to organize than are those who bear immigration’s costs” (Freeman 1995: 885). Those who benefit most are employers in labor-intensive industries and those dependent on a cheap, unskilled workforce. As a consequence, “the interest group system is dominated by those groups supportive of larger intakes” (ibid, 885).

The Swiss experience with immigration fits this public choice explanation very well. In the 1950s and 1960s, immigration was co-substantial to the rebuilding of the national economy. After the economic recession of the 1970s, seasonal workers gradually moved into disadvantaged sectors, providing a buffer against market pressures and structural change (Dhima 1991). Responding to the needs of non-competitive businesses (esp. agriculture, construction, and tourism), immigration has thus complemented state intervention and has played a role in the maintenance and deepening of the structural cleavage between the highly competitive and export-oriented segments of the Swiss economy on the one hand, and the domestic-oriented, protected segments on the other (Sheldon 2001). The same holds for the government’s regional policy, as cantons with structurally weak regions threatened by emigration have been systematically favored in the definition of cantonal immigrant quotas by the central government (Dhima 1991: 56). The traditional reliance of these protected sectors on public subsidies and public procurement implied a strong organization of their interest groups and the existence of close links with public authorities and parliaments at different levels of government (local, cantonal, federal). As a result, Switzerland has always accepted more immigrants than public opinion and the official political rhetoric would have predicted (see below for how this is expressed in xenophobic popular initiatives since the 1970s). The predominantly unskilled guestworkers and saisonniers (seasonal workers) were thus seen as a flexible workforce which could be adapted to changing economic need through the determination of annual intakes (“Globalplafonierung”). In fact, the saisonniers status granted the public authorities nearly full discretion over entry and stay: it provided for a limited residence permit of nine months, with the families allowed to follow only after three consecutive years of seasonal work in Switzerland. What this parsimonious model fails to explain, however, is why

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14 With regard to diffuse costs Freeman mentions the time-lag between immigration and its (negative) unintended consequences such as the tendency of migration flows to start small and build up over time and the tendency for temporary labor migrations to develop into permanent settlements, implying family reunification and raising the problems of economic, social and political integration into the host societies.
**saisonniers** were gradually endowed with rights and their status transformed to temporary and then permanent work permits (“Umwandlung”). Moreover, it cannot explain why, in the light of similar internal economic demand, Japan has not followed the guestworker model.

Japan has not only the lowest share of foreign residents among the industrialized countries, a look at its economic and demographic data shows that it also has one of the greatest demands for additional labor in the OECD world. From a demographic point of view, the labor shortage in Japan began as early as 1965 (Spencer 1992: 766). The decline of fertility rates below two children per woman coincided with the most extraordinary period of high growth rates lasting until the early 1970s, the so-called Izanagi boom. This period thus “seemed to combine the elements that had led other countries to turn to imported labor” (Bartram 2000: 9). The existence of a domestic demand is reflected in a 1970 resolution adopted by the Japanese Chamber of Commerce and Industry, representing small and medium-sized enterprises (SMEs), in which it urged the government to explore the option of importing labor (ibid.: 17). While in the 1960s and early 1970s some of the labor shortfalls could be met by drawing on the labor reserve of women and the agricultural and fisheries sectors, the “Heisei boom” of the 1980s and early 1990s exacerbated the situation. On the one hand, the traditional reservoir of workers was exhausted, yet on the other hand, economic growth allowed more and more native workers to move upward to more prestigious and better-paid white-collar occupations, thus leaving an important gap in the so-called “3K” jobs—*kitanai* (dirty), *kitsui* (demanding or difficult), and *kiken* (dangerous)—particularly in the construction sector, certain segments of low-technology manufacturing, and low value-added service industries (Mori 1997, Papademetriou and Hamilton 2000: 11f.). By contrast, the large, export-oriented firms were able to circumvent domestic labor shortages by exporting jobs overseas (through foreign direct investment, FDI).

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15 Before the entry into force of the Bilateral Agreement on the Free Movement of Persons with the EU in June 2002 and the concomitant abolition of the *saisonnier* status (see below), the Swiss Aliens Law recognized four main categories of residence and work permits: the unlimited residence permit; annual renewable residence permits (”Jahresaufenthaltsbewilligung”); the *saisonnier* status for up to nine months, which had to be applied for each year anew; and short term residence permit (”Kurzaufenthaltsbewilligung”) for professional training or other purposes limited in time. The “Umwandlung” from a *saisonnier* status into an annual permit was possible after 32 months of work in Switzerland within the last four consecutive years. Annual permits may be converted into permanent permits after a ten-year unbroken presence in Switzerland.

16 The reason is that it is difficult to base a healthy economy on a shrinking labor force. Economic models with capital and labor as the two factors of production show a decrease in returns to capital as labor input decreases. This, in turn, acts as a disincentive to capital investment. Although wages will go up as labor becomes a scarcer resource, aggregate income for the entire society will actually go down.
As a result, the constellation of economic interests in favor of immigration in Japan very much resembles the Swiss situation. Rather than embracing an official guestworker or immigration policy, however, the Japanese government has followed three parallel strategies: firstly, the optimum use of existing manpower resources; secondly, processes of automation, mechanization and rationalization; and, thirdly, the encouragement of direct investment and job creation in developing countries (in particular ASEAN, see Koshiro 1998: 154ff, Mori 1997: 95f). A fourth, unofficial strategy has been that of turning a blind eye on illegal immigration (Morita and Sassen 1994, Spencer 1992). Analyses have shown that local governments (especially company towns) have often adopted a more generous stance than that espoused by the national government, thus responding to the needs of local businesses (Cornelius et al. 1994: 391f.). Although the 1990 Immigration Control Act introduced draconian penalties for agents who recruit and employers who hire clandestine workers, neither tougher enforcement efforts nor growing unemployment following economic recession have led to a significant decrease in the number of unauthorized migrants (SOPEMI 1999: 167).

This comparison of economic demand for immigration in Switzerland and Japan shows that simple explanations taken from political economy fail to explain why interest group pressure leads to the intake of immigrants in one country, but not in another. Furthermore, this perspective has little to say about the reasons for humanitarian immigration or on the dynamics which lead to an expansion of immigrant rights over time. Therefore, I propose to extend Freeman’s public choice model to include the role of institutions and norms.

Institutions as empowerment and constraint

From an institutionalist perspective, one would argue that the trajectory of immigrant politics in different political systems is a function of the relationship between societal demand and the policy-making process, as it is structured by historically grown institutions. Institutions are thereby defined as “formally organized ... practices and rules that are embedded in organized systems of authority, resources, and meaning” (March and Olsen 1995: 6). By structuring “the relationship between individuals in various units of the polity and economy” (Hall 1986: 19), institutions can both empower particular societal actors in the pursuit of their interests and they can act as veto points (Hall 1989,

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17 First, a joint committee of the Ministries of Labor and Justice and the National Police Agency was set up to coordinate these efforts, then, in 2000, the sanctions against unauthorized immigrants were significantly tightened (Papademetriou and Hamilton 2000: 39).
Katzenstein 1985, Steinmo et al. 1992, Scharpf 1997). This article focuses on the impact of centralized versus fragmented political structures for the conduct of immigration politics. In particular, it highlights the role of federalism and corporatism in empowering economic actors in Switzerland and constraining the scope for political reform. Although one may argue that in the light of an often xenophobic public opinion the institution of direct democracy has a significant constraining effect on the realization of the expansive interests of parts of the economy, one may also argue that, ironically, this very threat of a popular veto has increased rather than limited the impact of organized groups by giving them extensive opportunities of consultation and articulation in the complex pre-parliamentary consultation procedure which precedes legislative reforms in Switzerland (Linder 1998: 118ff, Neidhart 1970). The fact that for more than seventy years—since the Swiss Aliens Law of 1931—Swiss foreign worker policy has basically been in the hands of the executive, and was regulated through directives and decrees rather than ordinary laws, has further facilitated the articulation of economic interest groups.\footnote{Cattacin has therefore defined the Swiss policy towards aliens as the “regulation of foreign workers through decrees” (Cattacin 1987).}

Although Article 69ter of the Federal Constitution adopted in 1925 granted the federal government legislative competence in the area of aliens’ law, the implementation remained predominantly in the hands of cantonal authorities. The cantons not only decide upon the distribution of their share of foreign workers per annum across enterprises, they also have considerable discretion over the interpretation of the law (Spescha 1999: 41). This strong federalism has found its expression in a very diversified application of the aliens’ law across the different cantons, reaching from the unilateral extension of officially accorded immigrant quotas to differences in the definition of protected jobs\footnote{A comparison of the cantonal lists for professions which are reserved to Swiss citizen or permanent residence confirms this often amusing cantonal diversity and unveils the incremental, \textit{ad hoc} nature of immigration norms in Switzerland – how could we otherwise explain why two cantons exclude foreigners from the exercise of pedicure, while allowing them to do manicure? (Gutzwiller and Baumgartner 1997: 33ff).} and the handling and interpretation of aliens’ rights, including local voting rights\footnote{For instance, in some communes in the canton of Neuchâtel, foreigners’ participation in local elections and votes has been allowed since 1850.} and the acquisition of Swiss citizenship (Spescha 1999, Steiner and Wicker 2000, Piguet and Wanner 2000).\footnote{The differential impact of cantonal discretion is also visible in the handling of asylum claims (Holzer et al. 2000).} Given that the cantons usually represent the interests of their most influential domestic industries, their strong autonomy in the area of immigration and their influence on the decision-making process...
have further supported the interests of those groups which have traditionally favored the intake of ‘cheap’ foreign labor (Dhima 1991: 167). In stark contrast with the polemics on asylum seekers and refugees, this corporatist handling of foreign workers has had a low prominence in partisan debates and in this sense has benefited from the consensus-orientation of the Swiss “concordance” democracy.\(^22\) As a result, one can say that from the coming into force of the Federal Aliens Law in the 1930s until the recent reform activities starting in the late 1990s, Swiss immigration policy has been largely defined by an alliance between the Federal Office for Industry, Business and Work (Bundesamt für Industrie, Gewerbe und Arbeit, BIGN\(^23\)), the cantonal authorities, and employers’ associations from labor-intensive sectors.\(^24\) Taking these institutional parameters into consideration, the Swiss case confirms Freeman’s hypothesis that “the typical mode of immigration politics ... is client politics,” which take place “largely out of public view and with little outside interference.”\(^25\)

This interpretation might be astonishing for those who have in mind the polemic tone of public debates in Switzerland and the strong sentiments of xenophobia expressed in different popular initiatives and electoral campaigns.\(^26\) Although immigration has indeed been a highly salient and controversial issue in political debate since the 1970s and especially since the 1990s, political action has consisted less in a reduction of the inflow of foreign workers than in more symbolic measures aimed at fighting clandestine immigration and making the asylum system less attractive to potential newcomers.

\(^{22}\) Linder defines the system of “concordance” in Switzerland as a form of “preparliamentary, governmental and parliamentary cooperation, in which there is no fundamental opposition except for marginal parties” (Linder 1998; 124ff).

\(^{23}\) After being re-named into Federal Office for Economy and Work (Bundesamt für Wirtschaft und Arbeit, BWA) in 1998, this office was fused together with the former Federal Office for Foreign Economic Relations (Bundesamt für Aussenwirtschaft, BAWI) into the newly created State Secretariat for Economic Affairs (Staatssekretariat für Wirtschaft, SECO) in 1999.

\(^{24}\) The most important employers’ associations in this regard are the Schweizerischer Gewerbeverband, the Vorort and the Zentralverband schweizerischer Arbeitgeber-Organisationen.

\(^{25}\) Similarly, in his analysis of Swiss immigration politics until the early 1990s, Dhima concluded that “there is a tacit understanding that aliens policy is regulated by the associations and executive authorities, while the parliament and political parties do not intervene” (Dhima 1991: 172, own translation).

\(^{26}\) Examples include seven (unsuccessful) popular initiatives since 1970 calling for the limitation or even reduction of the share of foreign residents in Switzerland, the last unsuccessful attempt being the so-called “18 percent” – initiative launched last year which was turned down by 64% of the votes. Other examples are the fears of immigration expressed in popular votes on accession to the European Economic Area (1992, see Kriesi et al. 1993) and the crucial role of the immigration and asylum questions in recent parliamentary elections.
In comparison, Japan lacks the institutional characteristics which constrained (restrictive) political action in Switzerland and which allowed for the intake of significantly more foreign workers than either public opinion or official rhetoric would have suggested. Notwithstanding significant pressure from parts of the economy from the 1960s onwards, the Japanese government has remained “firmly opposed to immigration as a solution to its shortage of manpower” (Koshiro 1998: 154). One important reason why the government could maintain such a resistance to economic and increasingly also demographic pressure is the greater institutional independence of the policy-making process from bottom-up pressure. As Knöke et al. have argued, economic policy in Japan has long been distinguished by the fact that most major decisions were not made by the Diet, but by the bureaucracies (Knöke 1996). In contrast to Switzerland, however, where the decision-making authority at the federal level was concentrated in one federal office with strong links to the social partners, and was shared with cantonal governments, the fact that in Japan several ministries compete on immigration matters may have favored their greater independence from interest group pressure. According to Koshiro (1998: 157), there are no less than seventeen ministries and agencies involved, which, according to another observer, are “plagued by interministerial conflicts and turf wars” (Berger 1998: 342). In the absence of a clear consensus and without clear political leadership on the issue of immigration, policy has tended to follow the approach of the most conservative parts of the Japanese bureaucracy, represented by the Ministries of Justice and Labor. Rather than allowing new immigrants to come in, the Ministry of Labor has called for increasing automation, the extension of the mandatory retirement age, the greater use of female labor, and the export of some production facilities (Weiner 1998: 12, Koshiro 1998: 154f). In line with most labor unions, the Labor Ministry has argued that a less stringent approach to immigration could lead to an uncontrollable inflow of foreigners, bearing with it the risk of increasing stratification of the labor market, and an undermining of social cohesion (Koshiro 1998: 157, Papademetriou and Hamilton 2000: 47). The Ministry of Justice, responsible for the maintenance of social peace and order, has taken an even more conservative approach, arguing that immigrants have higher crime rates than the Japanese (Hanami 1998: 230f, Koshiro 1998: 157, Weiner 1998: 12). These positions were expressed in the 1990 reform of the Immigration Law and in the restrictive stance adopted against illegal immigration (Spencer 1992: 762f). The Ministry of Foreign Affairs (which promotes international cooperation), the Ministry for Construction (which represents those industries with the strongest reliance on unauthorized migrants), or the Chamber of Commerce (promoting training programs for guestworkers) seem to advocate more liberal positions; however, their influence on the policy output is small.
The same holds for those actors who are most in need of foreign workers, the SMEs. Although large corporations do have a strong impact on economic policy making in Japan (esp. through the Ministry of International Trade and Industry, MITI), the political voice of small and uncompetitive industries is small. Favored by the relative stability of a long-term single party government (the LDP), immigration policy has thus been largely kept outside overt public debates and, restrained by an exclusive public philosophy, has not evolved very much.

Cultural exceptionalism, humanitarian norms and rights expansion

This last point leads us to another, more fundamental factor explaining Japan’s exceptionalism, which is the role of social norms as public philosophies and collective identity formations in shaping political responses. Contrasting the way the Japanese define themselves with the self-descriptions of Americans, Myron Weiner has emphasized the importance of the group and an ethic of harmony and primordialism in Japanese collective identity which, with respect to immigrants, excludes a priori the possibility of assimilation (Weiner 1998: 7, see also Weiner 1994). As a result, the Japanese government, but also many Japanese employers, are opposed to the idea of Japan becoming a country of immigration and, insofar as economic or demographic determinants would make a limited intake unavoidable, the newcomers are perceived strictly in terms of temporary workers who will eventually return to their country of origin (Kajita 1998).

This dominant public philosophy has a two-fold effect on the way Japan deals with immigration: it limits the scope to which Japan is willing to accept new immigrants and refugees, and restricts the degree to which those immigrants who are already present in the country will be integrated into the host society. Herewith, the case of Japan challenges the globalist thesis of a decline of sovereignty due to the emergence of an all-encompassing international human rights discourse (Jacobson 1996, Soysal 1994), and highlights the need to specify better the conditions for the institutionalization of humanitarian norms and the expansion of immigrant rights in domestic constituencies.

The first category of humanitarian migrants are refugees as defined by the 1951 Geneva Convention and other human rights treaties. Notwithstanding its inglorious behavior during World War II, Switzerland sees itself as a traditional asylum country (Henry 1995, Parini 1997)27 and has seen a sharp increase in

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27 This is reflected in the following Declaration of the Federal Council of 1957, according to which “The Swiss asylum law is not only tradition, but a political maxim of the state; it is the expression of the Swiss understanding of freedom and independence....” (quoted in Gattiker 2000:11, own translation).
the numbers of asylum seekers since the late 1980s. Although compared to other Western European countries the institutional basis of asylum law has long remained relatively weak—allowing the Swiss authorities to exercise surprising flexibility in the recognition and rejection of asylum seekers—increasing inflows have corresponded to an incremental consolidation of the asylum system. As a result, the 1990s and early 2000s have seen the parallelism of repeated and often incisive restrictions of asylum regulations on the one hand, and an affirmation of administrative and jurisdictional structures on the other hand, culminating in the explicit recognition of the norm of non-refoulement in Article 25 of the new federal constitution (in force since 1 January 2000).

In comparison to Switzerland and other countries in Europe and North America, the asylum system in Japan is strikingly underdeveloped. Japan joined the 1951 Refugee Convention only in 1981 and introduced a new Immigration Control and Asylum Law the following year. However, the admission of asylum seekers has remained remarkably modest. According to official statistics, the numbers of asylum applications per annum vary between 40 and 200, and, by the end of 1999, a total of merely 50 persons were known to have been granted refugee status according to the Geneva Convention. Rather than giving refugee status, the Ministry of Justice has preferred to accept a number of persons in need of protection on an exceptional and fully discretionary basis as “long term residents” (Takeda 1998: 444), but “the Japanese main priority is to help refugees overseas through foreign assistance programs” (ibid: 448). It seems that in the absence of strong legal commitments and without specialized agencies and courts in charge of the asylum procedure, even a state which lies in the midst of potential refugee-producing countries can close its borders to asylum-seeking migration.

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28 The number of asylum requests in Switzerland increased from about 3000 requests a year in 1980 to a first peak of ca. 41’000 requests in 1991, then going down to an average 19’000 between 1992 and 1997 and reaching a new peak of 46’000 in 1999, after going down again to ca. 17’000 in 2000 (numbers from the Federal Office for Refugees). Herewith, Switzerland has one of the highest shares of asylum seekers per capita in Europe.

29 Examples of this consolidation are the creation of a specialized agency in charge of examining asylum requests in 1990 (the Federal Office for Refugees), the establishment of an independent administrative recourse commission in 1992 (The Swiss Asylum Recourse Commission), and the conversion of asylum regulation from administrative decrees into an orderly Asylum Law in 1999.


31 Indeed, Japan is one of the largest donors to UNHCR, after the US and the EU.

32 Takeda mentions that the competent Ministry of Justice doesn’t have the financial resources and the specialized staff needed for providing asylum in accordance with international standards (Takeda 1998: 448f).
Japan’s lack of commitment to the Refugee Convention of the United Nations and other relevant international treaties is the expression of a more general reluctance to engage fully in international society and its norms (Gurowitz 1999, Katzenstein 1996). In some respect, this isolationism resembles Switzerland’s reluctance to take on membership in international organizations (including the UN!) and its aversion against “foreign judges.”

This exceptionalism in international relations has an equivalent in the respective conceptions on nationhood, and the emphasis they place on ethnic, pre-political elements. Whereas the Japanese conception of nationhood stands out for its emphasis on primordial, if not to say ‘racist’ conceptions of homogeneity and purity (Weiner 1994), the more civic conception of Swiss national identity and its intrinsic multiculturalism have also not precluded an ethno-national element, which has found its expression in the manner in which newcomers are received (Kriesi 1999). Compared with other immigration countries in Europe and North America, neither of the two countries may claim to be particularly inclusive or generous with social, civil or political entitlements to foreigners. In Japan, this is particularly striking, as the law still doesn’t provide for a permanent residence status and legal immigration is basically limited to nikkeijin— that is, persons of Japanese descent. Another blatant example of the exclusionary approach is the concept of “corporate trainees” introduced in the 1990s which, although officially sold as a form of development assistance to poorer countries, allows cheap foreign workers to enter “through the back door” and satisfy the unrelenting demand for unskilled labor (Cornelius 1994: 397f, Kajita 1998). Trainees, however, are not regarded as regular employees under Japanese labor law: they do not receive regular wages, health insurance, workmen’s compensation, or other fringe benefits. They get only small compensation for living and housing provided by the employer, who have no long-term obligations towards them (Cornelius 1994: 399, Gurowitz 2000: 435). Although the trainee status may be prolonged for a maximum of five years, no right to family reunification is granted (Papademetriou and Hamilton 2000: 40). Regardless of the legal status, discrimination against foreigners seems to be an established fact in Japan, not only for social rights such as access to employment (hiring, firing, etc.) and housing (renting and buying), but also naturalization (Kajita 1998, Weiner 1994).34

33 In so-far as permanent residence has been granted, e.g. to the Koreans and Chinese who were brought to Japan before World War II, this has occurred on an exceptional basis in the framework of bilateral intergovernmental agreements.

34 The 1950 Nationality Law emphasizes the principle of ius sanguinis but allows for naturalization after five years of consecutive residence in Japan and strong integration in Japanese Society. In practice, naturalization has been kept strongly discretionary. Until 1985, permanent residents wishing to become citizens were forced to adopt Japanese surnames. Although this requirement was officially abolished, most candidates still change their surnames in order to avoid discrimination (Papademetriou and Hamilton 2000: 44).
The Japanese Constitution of 1946 prohibits in its Article 14 discrimination because of race, creed, sex, social status, or family origin. However, according to Hanami, the applicability of constitutional norms to foreigners is contested among Japanese lawyers (Hanami 1998: 212) and, in practice, no effective enforcement mechanisms exist which would give civil courts the authority to issue enforcement orders with regard to the discrimination of foreigners (ibid.: 235).35 Yet, even in this exclusionary environment, some incremental expansion of immigrant rights has occurred. For instance, in 1986, the requirement of citizenship was abolished for health insurance and in 1991, the Ministry of Health and Welfare ruled that foreigners with visa status of one year or more could join the national health plan (Gurowitz 2000: 440). With regard to welfare pensions, a 1994 reform ended the discriminatory regulation which obliged all foreign employees to pay contributions but excluded most of them from entitlements by allowing for a lump-sum payment upon application before leaving the country (Hanami 1998: 226). Finally, although the problem of immigrant integration has so far not been embraced by the federal government—which still regards foreign workers as temporary visitors—some movement has been stated at the level of NGOs and local governments. Thus, and often against the will of the central government, some municipalities have partially or fully eliminated nationality requirements for municipal public service positions (Papademetriou and Hamilton 2000: 33) and have started providing language training, job-placement assistance, and classes in Japanese culture (Gurowitz 1999: 441).

In Switzerland too, the transition from an understanding of immigrants as temporary workers to a recognition of their status as permanent settlers with a right (and duty) of integration has been slow and not uncontroversial. The status of *saisonnier* was the prototype of an exclusionary approach, as it requested its holder to quit the country after nine months, was not automatically renewable, gave no right to family reunification, no insurance against unemployment, and no right to professional and residential mobility. In a similar vein, the Aliens’ Law of 1931 was marked by the fear of “Überfremdung” (alienation)36 and was designed to keep the rights of newcomers strictly limited (Spescha 1999: 32). Accordingly, a federal mandate for the integration of immigrants was not provided by the law (Niederberger 2000) and it was only in the second half of the 1990s that the need for proactive integration measures was recognized (EKA 1999: 4). One reason for this new awareness was the assertion that more than half the total foreign population (annual permits and permanent residents) were born in Switzerland or had been living there for more than ten years. This, of course, was not only the result of the

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35 Berger (1998: 341) argues that Japan has no tradition of judicial activism of the sort that may be seen in the United States or Germany.

36 Thus, Article 16 of this current law reads “Die Bewilligungsbehörden haben bei ihren Entscheidungen die geistigen und wirtschaftlichen Interessen sowie den Grad der Überfremdung des Landes zu berücksichtigen”.
emphasis on limited residence permits, but also the consequence of a rigid, highly
discretionary and often discriminatory naturalization practice with roots in an
unfortunate combination of communal competence and direct democracy (Kreis

Although many reforms concerning the social and civil rights of immigrants
are still under discussion, some incremental improvements have occurred over
the last fifty years which may be mainly explained by the interplay between
international pressure and internal organizational and legal activism. The
creation of a new specialized agency at the federal level has usually had a
positive impact on rights expansion, such as in 1970, with the introduction of
the Federal Commission for Foreigners (Eidgenössische Ausländerkommission), in
charge of promoting contact between the foreign and indigenous population.
Often, however, the creation of new agencies has followed developments
at the international level, such as the establishment in 1995 of the Federal
Commission against Racism (Eidgenössische Kommission gegen Rassismus), one
year after ratification of the 1965 UN Convention against Racism (see footnote
8). A similar dynamic can be observed with regard to national courts. In the
asylum field, the independent Asylum Recourse Commission created in 1992
played an important role in anchoring the norm of non-refoulement in the Swiss
asylum practice. The rulings of Federal Court are another source of rights
expansion, and have often been based on the interpretation of international
norms enshrined in the European Convention on Human Rights (ECHR).38

More than these juridical dynamics, however, the main reason behind the
improvement of the saisonnier status from the 1960s onwards (that is, the
possibility of Umwandlung into temporary permits and then, after ten years,
permanent residence) was external pressure: first, the intervention of the
Italian government in favor of its expatriates (Mahnig 2000) and second, the
need to conform to the rules of the EU single market. The latter reason led to
the full abolition of this precarious status. This view is shared by the Federal
Commission for Foreigners, which concluded in a report on the problems of
integration in 1999 that the imminent bilateral agreement with the EU on the
free movement of persons would have “a bigger impact on integration policy”
than any domestic concerns with unemployment or xenophobia (EKA 1999:
2).

37 The incidence in the small town of Emmen, which, in the year 2000, accepted (per
popular referendum) all eight applicants from Italy, but turned down all 48 applicants from
the former Yugoslavia, made headlines all over the world.

38 One example are the rulings concerning the right to family reunification which
ultimately led to an ECHR-compatible reformulation of the ANAG in 1992 (Spescha 1999:
33).
“Regime shift” and continuity in comparative perspective: the determinants of change

Domestically and internationally, legislative activism in the area of immigration is strong. However, it is important to ask whether contemporary reforms of aliens’ laws and asylum laws represent a fundamental redefinition of policy instruments, goals and belief systems in the sense of a change of paradigms or regime, or are they just adaptations of the old system to a changed environment? On the basis of the prior examination of the various economic, institutional, and normative determinants of immigration politics in Switzerland and Japan, this last section of the article focuses on current reform proposals in the two countries and discusses the scope for continuity and change in the light of changed exigencies and past experience. It is argued that the success of reforms will depend on the country’s capacity to adapt entrenched institutional and normative structures to new internal and external developments.

Switzerland: between Europeanization and self-determination

In some respects, Switzerland faces a very different immigration problematic today than when the basic pillars of its current policy were laid. Among these changes are the structural transformations in the economy linked to the processes of globalization and technological development; European integration; the amplification of refugee flows; demographic developments; and a shift of domestic cleavage structures cutting across established left-right and liberal-protectionist identifications.

The overhaul of the immigration policy, already initiated in the 1990s, consists of three main elements:

1. Europeanization, consisting of the liberalization of intra-EU/EFTA migration and the approximation of national asylum and immigration provisions to the EU acquis (bilateral agreement with the EU and implementing decree, police cooperation and readmission agreements with neighboring EU member states, and endeavors to participate in Schengen/Dublin);
2. the limitation of immigration from non-EU/EFTA nationals (Ausländergesetz, AuG); and
3. the promotion of the social and civil integration of those immigrants already present on the territory through a reform of the naturalization procedure (see BFA 2000) and the promotion of measures facilitating the social integration of immigrants (Verordnung über die soziale Integration der Ausländerinnen und Ausländer VIA).

39 On the various dimensions of policy change see (Sabatier 1993).
Together, these reform proposals can be read as an attempt to find a balance between economic and political priorities on the one hand, and popular fears on the other. But how far do they depart from the established patterns of immigration politics in Switzerland? Europeanization and the bilateral treaty with the EU clearly represent a major change in Swiss immigration policy as it shifts the dominant policy paradigm away from the questions of policing and control to a liberal free movement regime, eventually leading to an abolition of internal border controls for the citizens of these neighboring countries. The determination of the Swiss government to join the EC internal market, including with regard to the free circulation of persons, has been clear since the beginning of the 1990s, and has been a controversial issue, as the vote in 1992 against membership in the European Economic Area (which would have implied freedom of movement, see Kriesi 1993) and the recent vote on the bilateral treaties have shown (Hirter and Linder 2000). The implementation of this agreement requires a comprehensive overhaul of traditional policy instruments such as immigration controls, labor market regulations, work and residence permits, and the abolition of discriminatory measures with regard to the right of establishment and the acquisition of land, or more fundamental rights such as the freedom to choose the canton of residence and to change jobs (or employers) in Switzerland (Dreyer and Dubey 1998). In short, Europeanization gives EU and EFTA citizens equal rights on the Swiss labor market with Swiss citizens. How has such a reversal from strong regulation to (nearly) full liberalization been possible?

On the one hand, popular fears of an uncontrolled inflow of cheap workers have been alleviated through cautious negotiations by the federal government and in particular the introduction of precautionary safety clauses into the Bilateral Treaty and flanking measures with regard to minimal wages and collective wage agreements. On the other hand, this liberalization of intra-European migration has been compensated with a stronger restriction of extra-European immigration, reflected in a reduction of the categories of persons allowed to enter according to the draft new Aliens’ Law (AuG) and a tightening of the asylum procedures, including tougher visa regulations, the adoption of “safe country” and “manifestly unfounded” clauses, the conclusion of readmission agreements with third countries, the downgrading of reception facilities, and the enhancement of expulsion capacities. Although Switzerland is not bound by any international treaty to developments in the EU regarding questions of Justice and

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40 This includes the determination of annual quotas during the first five years after entry into force of the Agreement; then between the fifth and the 12th year the possibility to introduce quotas if the entries exceed a certain limit, and after the 12th year, the possibility to terminate the agreement,
Home Affairs (JHA, including non-EU migration and asylum), its regulations concerning asylum, temporary protection, and illegal immigration are fully compatible with the EU *acquis*. With the granting of Community competence over asylum and immigration matters, Switzerland has been progressively isolated from what used to be an area of purely intergovernmental cooperation. Since the 1990s, Switzerland has sought membership in the Schengen and Dublin Agreements and has unilaterally adapted its national provisions to the evolving *acquis*. Today, it is discussing an eventual association in the context of new bilateral negotiations (Brochman and Lavenex 2002).

It seems that while Europeanization has certainly led to a “regime shift” with regard to European migration, the old paradigm combining policing and control with the vision of economic migrants as a buffer for the national labor market still very much shapes the country’s approach towards non-EU migration. In this regard, the new draft Aliens’ Law includes little innovation. The *saisonnier* status is replaced by an annual work permit which may be converted into a permanent permit after ten years. The annual work permit grants no automatic right to family reunification, no right to professional and geographical mobility, and cannot be automatically prolonged. Furthermore, and in accordance with a policy which started with the proclamation of the “three-circles-model” in the early 1990s (see above), these annual permits shall be strictly limited to managers, specialists, and other “qualified” workers who meet the “general economic interests” of the country (Art. 4 draft law). A look at the procedures foreseen by the draft law confirms the continuity of the established model of corporatist pressure, exerted through the cantonal administrations, in determining the annual intakes and the distribution of short-term workers (Wimmer 2001: 100). However, the merger of the federal authority in charge of foreign labor issues (BIGA) with the office for foreign trade relations (BAWI) in 1998 and the subsequent transfer of the relevant Manpower and Immigration Section to the Federal Office for Foreigners (BFA) may have deprived the economic interest groups of their main interlocutor, thus altering the institutional context for collective action.

The latest developments on the immigration front concern the questions of integration and naturalization. Although the draft Aliens’ Law contains very little directive in this regard, it does provide for a competence of the federal government to support integration measures carried by the cantons or private organizations with financial means (see Niederberger 2001). Although still in its early stages, this realization of a need for enhanced integration has already led to a number of proactive projects concentrating on language courses, cultural exchanges, and participation in associations, schools, and local governments (EJPD 2000). The newest project is the reform of the naturalization law, which foresees the automatic granting of Swiss citizenship to third-generation immigrants born in Switzerland (ius soli) and a facilitated naturalization for
persons who have spent most of their school time in Switzerland and who
are well integrated, have not offended the laws, and do not endanger public
security. Although the draft law does not break with the popular sovereignty
of the communes over the granting of citizenship, it provides for legal remedies
against discrimination and arbitrariness (BFA 2000).

To conclude, the reform proposals currently discussed in Switzerland extend
to all aspects of immigration policy and seek to combine a tougher stance against
undesired, low-skilled immigration from outside EU and EFTA with a more
liberal regime inside and a greater integration of those foreigners already living
in the country. In terms of “regime shift,” the really revolutionary aspect of these
changes is not a radically new approach to immigration, but the delineation of
a new boundary between the Swiss as “Europeans” and the “rest.” Since the
implementation of the bilateral treaties, EU and EFTA nationals no longer fall
under the scope of the new Aliens’ Law, which now applies only to the so-
called “third-country nationals” (in Euro-jargon, “TCN”). Induced by external
changes, this reorientation of the Swiss immigration landscape may well prove
an elegant solution to the perpetual challenge of reconciling a strong economic
demand for foreign labor with a xenophobic public opinion, as European foreign
workers are no longer regarded as “aliens.” Although unpopular and linked
to a tightening of flanking measures, the EU’s enlargement to include ten
new countries in May 2004 has widened the pool of potential foreign workers
covered by the Bilateral Agreement. Yet this has not prevented certain parts of
the economy from calling for additional intakes of both high- and low-skilled
labor.

Japan: still an exceptional case?

As the previous analysis has shown, Japan is still nowhere near recognizing an
economic and demographic need for immigration, or accepting newcomers as
permanent members of society; indeed, such developments would require a

41 Flanking measures are designed to avert undesired effects of the implementation of the
Agreement and include e.g. the introduction of minimum wages and of new enforcement
mechanisms.

42 The corporatist model thus prevails both in the export-oriented and non-competitive
branches of the Swiss economy. Beginning of 2001, an MP from the (right-wing) Swiss
Peoples Party and ca. 20 supporters launched a motion in which they claimed for the
creation of an additional status for non-qualified workers from any origin for a limited
duration of eight weeks to counter the occupation of unauthorized migrants in agriculture
(see Neue Zürcher Zeitung of 4.1.2001, p.11). The fact that this motion was handed in by
members of the xenophobic SVP shows that traditional partisan cleavages do not work in
the question of (economic) immigration.
major paradigm shift. Yet, notwithstanding current problems of unemployment associated with economic recession and structural change, the demographic projections of the United Nations reveal drastic statistics indicating that “in the next decade, Japan will have the greatest need for more open immigration policies” (Papademetriou and Hamilton 2000: vii). Apart from this significant internal pressure for immigration, the geopolitical situation of Japan and the political uncertainties on the Korean peninsula, as well as the labor surplus in China, suggest that external migration pressure will also increase.

Yet little progress has been made in the definition of an immigration policy in Japan. In April 1999, Japan’s Economic Council issued a report entitled “Considerations for the Japanese Socioeconomy in the 21st century,” which recommended that “we should actively consider aiming to become a vibrant socioeconomy that is open to the world by orderly accepting migrant labor from overseas countries” (quoted in Papademetriou and Hamilton 2000: 49). Similarly, the Prime Minister’s Commission on Japan’s Goals in the 21st Century in January 2000 requested “a more explicit immigration and permanent residence system so as to encourage foreigners who can be expected to contribute to the development of Japanese society to move in and possibly take permanent residence here” (quoted ibid., p. 50). This position is backed by the Japanese employers’ federation, Nikkeiren, which, apart from lobbying the government for a more liberal policy towards IT specialists, also presses for greater intakes of low-skilled workers, especially in the health industry (The Economist 2 September 2000). These proposals, however, have been bogged down in inter-ministerial disputes, with the labor ministry claiming that foreigners will take jobs from the Japanese (ibid.).

Rather than a comprehensive reform, what we observe in Japan are a number of ad hoc and selective adaptations, put in place with little, if any, coordination and which don’t challenge the established paradigm of “no immigration.” Although large parts of the Japanese economy now depend on illegal workers (esp. the 3K jobs, see above), one emphasis of current adaptations is the fight against illegal immigration, e.g., through an increase in the number of immigration officials (Japan Today, 17 July 2001). In order to alleviate the demand for unskilled workers, the favored strategy seems to be the concept of “corporate trainees” which, by granting nearly full discretion over the admission, entitlements, and return of foreign workers, has been steadily expanded—regardless of growing unemployment rates. Finally, and in line with all other industrialized nations, the third strategy is the relaxation of visa and immigration rules for foreign IT professionals. In order to attract more of these highly desirable professionals, Japan is currently concluding a number of bilateral treaties with other Asian nations which determine mutual recognition of certificates and diplomas. Apart from these selective adaptations, however,
little movement is currently observable. As mentioned above, it seems that local governments take a more flexible approach to immigration and have recognized the need and the benefits of promoting the integration of foreign nationals living in their district.

In discussing the reasons for Japan’s strong resistance to change, this analysis has highlighted the powerful influence of a public philosophy based on the notion of national and racial homogeneity. Rather than economic considerations, the deeper reasons for Japan’s exceptionalism are thus cultural and a sort of structural xenophobia which, a priori, excludes the possibility of assimilation. In institutional terms, this astonishing rigidity stems from a number of reasons: a strongly bureaucratic decision-making apparatus; its relative independence from those sectors of the economy that have traditionally been most in need for foreign labor; and conflicts of interest between the various ministries. From the analysis of the interplay of interests and institutions above, one could hypothesize that economic pressure might result in a greater opening if the export-oriented branches join their less competitive, domestic-oriented counterparts in lobbying activities and use their traditionally close relations with the Ministry of International Trade and Industry (MITI) to put pressure on the government. However, in the light of strong cultural, veto points, it seems likely that Japan will try to follow the example of the Gulf States (and Singapore) in accepting immigration on strictly temporary terms, and continue to pre-empt foreign workers from becoming permanent residents. The resistance it has hitherto showed vis-à-vis international human rights pressure, both with regard to refugees and immigrant rights, may help it in this respect. However, much like the case of Switzerland, it remains to be seen how far growing structural change and globalization will further allow the protection of domestic labor markets, and whether or not growing demand for highly specialized professionals and demographic decline will soon lead to an international competition for more attractive and more inclusive immigration policies.

Conclusion

This comparative analysis of immigration politics in Switzerland and Japan has shown that the two countries’ capacity to adapt to a changed migration environment is very much constrained by institutional rigidities and collective ideologies. In Switzerland, corporatism, federalism, and the humanitarian tradition have allowed for the unbroken intake of cheap labor and refugees, in spite of an official halt to immigration stop and increasingly xenophobic public opinion. In considering the determinants of change, one factor stands out which applies to Switzerland, but not to Japan: the dynamics of European
integration. Europeanization has not only gradually abolished the precarious *saisonnier* status, it has also led to a gradual expansion of the rights of foreigners in the country and a greater reflection on the need for measures of immigrant integration. Although these changes are far from being uncontroversial, they are not completely involuntary. Rather, one could say that the introduction of free movement with the EU and the concomitant restriction of non-EU/EFTA immigration is a welcome compromise to reconcile the unabated demand for foreign labor with xenophobic fears of “Überfremdung.” However, the redefinition of the “alien” into “third-country national” does not help much if we accept the enduring reality of refugee flows. The same holds for the discourse on the potential gains from “high-skilled” professionals. What we observe in Europe today may thus be less a change of paradigms than a differentiation in what we define as problematic immigration.

Japan seems to be lagging behind most European countries with regard to immigration. The higher degree of autonomy of bureaucratic actors, greater abstention from international humanitarian obligations, and the belief in a homogeneous cultural identity have hitherto allowed it to resist internal and external pressure for immigration. But even in the absence of such powerful external pressure as Europeanization, internal demographic and economic developments have placed the established policy pattern increasingly under strain. Rather than following the European countries in their problematic mutation into countries of immigration, the Japanese solution seeks to admit foreign workers on a strictly temporary basis, avoiding the social and legal dynamics which have led immigrants in other countries to turn into “denizens” and future citizens. It is doubtful that this will suffice to fill the deepening demographic gap, and that Japan, as a “liberal democracy,” will be able to continue resisting human rights pressure.

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Wider das liberal-demokratische Modell? Einwanderungspolitik in Japan und in der Schweiz


Quel avenir pour le modèle libéral-démocratique ? La politique d’immigration au Japon et en Suisse

Les théories de la globalisation et du public choice prédissent que, dans les démocraties libérales, le nombre d’immigrés devraient augmenter de manière similaire, et les droit des immigrants devraient être étendus.
La comparaison du Japon et de la Suisse ne permet pas de valider ces hypothèses. Même si les deux pays ont traditionnellement eu une approche de l’immigration visant plutôt l’exclusion, seul le Japon a jusqu’à maintenant réussi à empêcher une forte immigration et à empêcher l’intégration légale et sociale des immigrants déjà présents sur son territoire. Cet article cherche à expliquer les trajectoires différentes suivies par la politique d’immigration au Japon et en Suisse, ceci malgré les similarités de ces deux pays dans les configurations économiques interne et externe. L’article souligne le rôle des institutions et normes nationales, qui filtrent la pression économique concernant l’immigration. Ces facteurs internes sont importants pour expliquer pourquoi la Suisse, contrairement au Japon, est devenue un pays d’immigration. Néanmoins, l’élément central qui explique l’expansion récente des droits des immigrés en Suisse est plutôt le rapprochement progressif de ce pays de l’Union européenne et de son marché unique. Malgré ces différences, la conclusion de l’article est que la plus grande résistance du Japon au changement pourrait maintenant avoir atteint un point de rupture, car la pression démographique et économique va rendre désormais inévitable une plus grande ouverture à l’immigration de main-d’œuvre.

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