

Muddling between Responsiveness and Responsibility: The Swiss case of a non-implementation of a constitutional rule

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Abstract:

The tensions between responsible and responsive government have increased in the age of populism. How do politicians deal with this challenge? Do they give priority to short-term voter demands or are their strategies guided by the Weberian ethics of responsibility? We study this dilemma in the case of the Swiss popular vote establishing a constitutional amendment to cap immigration. This cap went against treaties with the European Union, which are of utmost economic importance to the Swiss people. We argue that politicians try to avoid a decision when facing a dilemma between responsibility and responsiveness to the people. If forced to take a stance, they may opt for responsibility, while shifting blame for being unresponsive to external scapegoats. Hence politicians try to be responsive as long as possible before turning responsible and externalizing blame to minimize the electoral costs of non-responsiveness. This is a policy of muddling through. Our findings bear important implications for representative democracy in times of external constraints.

Key words: responsibility, responsiveness, popular vote, blame shifting

1 Introduction

This article studies how leading politicians from political parties and democratic governments respond to the strategic dilemma when the will of the majority of their voters conflicts with what these political elites perceive to be in their supporters' best interest. Politicians have to choose between showing true leadership or pandering to their electorates. A classic example of true leadership is Abraham Lincoln's unwillingness to offer the Confederacy a truce without the emancipation of slaves in 1864, even though this decision seemed to hamper his re-election prospects. Lincoln decided to take the risk of defeat in the election. He was convinced that his decision was in the best interest of his voters and he hoped – rightly – that in the end the electorate would appreciate that (Canes-Wrone et al., 2001). From a Weberian perspective, Lincoln was driven by the ethics of responsibility (Weber, 1980). Examples of pandering or 'populist' policy abound. In these cases, politicians pursue popular policies even if they have a reason to assume that such choices may violate the interests of their supporters in the long run.

Such dilemmas can frequently be observed when international treaties and commitments signed in the past contradict voters' current preferences. This becomes particularly obvious in the case of popular votes when citizens express a demand against the government's preference. Such popular votes that challenge states' international commitments are becoming more frequent – e.g. the Brexit vote, – and governments are forced to take these popular decisions into account when they elaborate their foreign policy (Schimmelfennig, 2018). Peter Mair (Mair, 2013) described such situations in terms of a conflict between responsibility and responsiveness. In this article we study a prototypical case of such a conflict: the constitutional amendment on mass immigration that was approved by a majority of Swiss citizens and cantons in a popular vote held in February 2014 and came coupled with an obligation to implement the new rule within three years. This decision violates an existing treaty on free movement of persons between Switzerland and the European Union. In contrast to what happens in purely representative systems, there was no chance to debate about the will of the majority: both the goal (reduction of immigration) and the means (quota and priority for nationals in the labor market) were clearly stipulated and approved by the popular vote. All but one political party had the strong preference to comply with

the treaty with the EU that they saw as an important pillar of the country's economic prosperity. Nevertheless, they were also under pressure to implement a constitutional rule supported by many of their voters and the majority of Swiss citizens.

Knowing that they had to neutralize the problem within three years, most Swiss politicians just sat and waited until the day of the decision drew close. When the deadline was just half a year ahead and taking a stance was hardly avoidable any longer, they seized upon the first chance to externalize the blame for their subsequent course of action. They argued that they were being forced to develop an implementation law that claimed to implement the popular initiative in a 'light way' without restricting EU immigration, as requested by the people and stipulated by the constitution. We call this a strategy of muddling through. It is inherently unstable but allows political elites to minimize the electoral costs of non-responsiveness in the short term and to pursue a largely responsible policy without admitting it.

We start by describing the decisional dilemma between responsibility and responsiveness that the Swiss political elites faced. Then, we develop the argument that muddling through is a strategic response. This is followed by the presentation of the research design and the database we use. We rely on systematic media content analysis, analysis of public opinion surveys, and textual evidence of politicians' claims. After presenting our findings, we discuss possible counterfactuals and alternative explanations.

2 The case

Switzerland's direct democracy allows citizens to initiate a popular vote on a constitutional change by collecting 100'000 signatures. If the proposal meets with the support of a majority of voters and cantons, it becomes part of the constitution. On February 9th, 2014, the Swiss people approved of such a proposal on immigration control that set an immigration quota and a priority for Swiss nationals in the labor market. The new article and related rules stated that any international treaty contradicting this provision to curb immigration would have to be re-negotiated within the following three years. In the case that an

implementation law was not in place by February 8th, 2017, the Federal government was obliged to issue a decree of implementationⁱ. This demand for a restriction on immigration, however, is in direct conflict with the bilateral treaty on free movement of persons between the EU and Switzerland. The treaty guarantees reciprocal rights of free movement and entered into force in June, 2002 (SR 0.142.112.681). The Swiss government and major business associations view the access to the European single market, facilitated by bilateral agreements between Switzerland and the EU, as key to the success of the export-dependent Swiss economy (Bundesrat, 2015, Ecoplan, 2015). The implementation of an immigration quota would risk the formal or informal termination of this agreement. Given the institutional and political constraints on terminating treaties with Switzerland, for example, the requirement of unanimity, the likelihood was small that the EU will terminate the treaty on free movement of persons in case Switzerland sticks to the plan of implementing the constitutional rule. More likely, the EU would have suspended the treaty on free movement (and probably other bilateral treaties, which are connected to this treaty (NZZ 24.01.2014)) or it could have retaliated in several other fields of cooperation. In any case, an extension of market access treaties between Switzerland and the EU could have been out of reach had Switzerland implemented an immigration quota for EU citizens. In addition, there could have been a conflict of legal norms. On the one hand, the constitution demands the introduction of an immigration cap, and on the other, the constitution declares that international treaties are binding. In its ruling of November 2015, the Federal Court argued that international law had supremacy over constitutional rulesⁱⁱ. By implication, the Swiss government would have been under pressure to terminate the bilateral agreements in case the new constitutional rule had been implemented. As a result, any implementation of immigration restrictions as demanded by the popular vote were believed to lead to detrimental consequences for the economy and society at large that the Swiss government wanted to avoid.

Most voters had been aware of the contradiction between the treaty and the new constitutional law. However, most voters had also relied on the assumption that once the constitutional rule was approved, the EU would start negotiations on the implementation of immigration restrictions since the EU has a strong interest in a stable relationship with Switzerland (Sciarini et al., 2014, Sciarini et al., 2015, Milic, 2015). That is, when voters voted for the constitutional amendment, they perceived no irreconcilable

conflict between retaining a stable economic and political relationship with the EU and the restriction on immigration.

After the constitutional amendment passed in February 2014, the Swiss government signaled that it would seek to implement the popular vote by petitioning the EU to enter negotiations. However, right from the start, the EU rejected the Swiss request to negotiate about immigration restrictions, arguing that the free movement of labor belonged to the core of European integration and that the four freedoms of the single market were indivisible. The EU did not change its position thereafter. Hence, the premise of most voters was not met. Nevertheless, most voters continued to believe that the EU would finally enter negotiations if Switzerland adopted a hard line. Hence, the government faced the dilemma that being responsive to the popular demand of a restriction on immigration was not reconcilable with the popular expectation of preserving the countries' economic interests regarding the European Union.

The implementation of the new constitutional rule is the shared responsibility of the Swiss government and parliament. The *consociational* government of Switzerland shares government responsibility among the main parties of the country. The cabinet consists of a grand coalition that relies on about 80% of all seats in the lower house. Therefore, the government and the governing coalition are distinct from governments in purely representative democracies. There is no dichotomy of government and opposition and there is no prime minister. As a collegial body – like the European Commission – the government defends its decisions as a unitary actor. Policymaking takes place thanks to negotiations and amicable agreements between the government and the major parties.

Despite the main political parties' shared government responsibility, the parties had different preferences about the implementation of the new constitutional rule and varied in their exposure to electoral pressure in favor of such an implementation. While the right-wing populist party (Swiss People's Party /Schweizerische Volkspartei, SVP) that initiated the constitutional change expressed a strong preference for immigration restrictions, the other main parties had a clear preference for retaining the bilateral treaties between Switzerland and the EU. Figure 1 shows the way party candidates in the national election of 2014 answered a survey question asking whether they preferred the implementation

of the initiative to the bilateral treaties. Party elites are much more polarized about the implementation dilemma than their voters (Figure 2). Nevertheless, all governing parties are motivated to respect the popular vote by being responsive to voters' demands while preserving what they perceive to be Swiss voters' common interest.

[Figure 1 about here]

[Figure 2 about here]

All main political parties promised to implement the will of the people and supported the government strategy of renegotiating the free movement agreement with the EU. For that reason, the choice on the implementation was postponed till the end of the three-year implementation period granted by the constitution. In the fall of 2016, the Swiss parliament took the lead and drafted a law for an indirect domestic implementation. The law did not contain any quantitative restrictions on immigration from the EU and therefore did not violate the fundamental principle of free movement within Europe. Compliance with the bilateral treaties took precedence over the strict implementation of the constitutional rule. In fact, the Parliament's solution is nothing more than an expansion of the public employment service. The new law promised to reduce immigration pressures by bringing more domestic labor into employment. Under conditions of full employment and a very high employment rate, it is very unlikely that this 'indirect control of migration' will have substantial effects. Most political elites argued that this is an 'implementation light' which avoided a strict implementation of the constitutional rule but may contribute to fulfilling its substantial goals of reducing immigration. The right-wing populist Swiss People's Party that has initiated the popular vote fiercely criticized the implementation law for failing to restrict immigration as demanded by its initiative. In fact, political elites have given priority to preserving the economic relations with the EU over the demand of limiting the immigration of EU citizens.

In the following section, we will show that the political struggle to implement the initiative of controlling immigration is best described starting from the assumption of parties reconciling their programmatic policy strategies (policy seeking) with the goals of re-election (vote seeking). We will also show that political elites avoided making a decision until the very last months of the window of

implementation. Only when push came to shove did political elites change their discourse and avoid losing face by shifting blame onto an external actor, in this case on British politicians and the UK's decision to leave the EU.

3 The argument

In this section, we develop our argument about how political elites respond to the cross-pressure between popular demands and government responsibility. We start with Peter Mair who argued that Western democracies face a growing tension between the demands of representation and the demands of government or in the words of Scharpf (1999) a tension between democracy and efficiency. On the one hand, political parties in government must represent the people and implement the policy preferences of their citizens. They must be responsive to their demands and must not neglect the preferences of their voters. Otherwise, they risk losing votes and therewith damaged input legitimacy. On the other hand, parties have to act in a responsible manner when they take up the role of governors. As a responsible government, they should preserve the capability to deliver collective solutions to problems that cannot be solved by markets, individuals or networks of civil society. If they fail to do so, the output legitimacy of the political system is damaged. Efficient problem-solving requires governments to acknowledge that there are other constraints on their governmental action besides the the preferences of voters which have to be taken into account. Mair identifies two major external constraints on efficient government: international interdependencies and previous policy decisions that are legacies in the political process. By implication, responsible government acknowledges the limitation of its room of maneuver by international integration and by political decisions taken in the past. In a narrow sense, this means that 'leaders and governments are expected to act prudently and consistently, and to follow accepted procedural norms and institutions. This also means living up to the commitments that have been entered into by their predecessors in office and abiding by agreements that these predecessors have made with other governments and institutions.' Even when breaking with established traditions and practices, a responsible government effects '...changes according to accepted procedures and ...[avoids] random,

reckless or illegal decision-making. Responsible government is therefore ‘good’ government’ (Mair, 2013: 158).

The tensions between responsible and responsive government are growing due to a number of challenges, such as the problems (a) of aggregating the preferences of voters who become ever more detached from established parties, (b) of the policy space being constrained by previous political decisions, (c) of increasing international and supranational constraints on governments’ maneuverability, and (d) of citizens’ decreasing willingness to build lasting loyalties to political parties (Mair, 2013: 156-162). How do responsible political elites manage these tensions in democracies? Are they sheer victims who are losing votes and who are increasingly challenged by populist parties or do they stick to their responsible behavior in the hope that their core constituencies will honor that? Peter Mair feared that in Western democracies, populism would clash with a weakened responsible government. In contrast, a hundred years before, Max Weber hoped for the victory of a government driven by the ethics of responsibility (Weber, 1980). Such a true leadership might even be compatible with the goal of re-election if politicians speculate that in the long run the outcome of their policies will be appreciated by their electorate.

We apply this theoretical framework to the analysis of the non-implementation of a constitutional rule in Switzerland outlined in the previous section. By choosing the implementation of the Swiss initiative against mass immigration, we select a prototypical case of the conflict between responsiveness and responsibility. How can we explain the way the mainstream governing parties dealt with the challenges of implementing a constitutional article that violated previously accepted commitments and that was, in their view, not in the best interests of their voters?

Facing the implementation dilemma between the demand for immigration restrictions and retaining international treaties viewed as crucially important for their nation’s economic prosperity, the political elites had two main options: they could either give priority to responsiveness or to responsibility. They could either implement the constitutional amendment as it was, hoping that its negative effects could be contained and claiming that they represented the people, even if this could bring the nation to a situation of ‘*après moi le déluge*.’ Or they could report to the people that the administration had learned that the

EU was not willing to negotiate, that, therefore, the premise of the vote – the EU has such strong interests in Switzerland that it will be ready to modify its rule on the free movement of labor – was wrong and that, consequently, the new constitutional article should not be implemented and should be revoked in a second referendum.

We describe a third way in which political elites can neutralize (but not resolve) the tension between responsiveness and responsibility. It consists of muddling through in an attempt to optimize the goal of re-election (vote-seeking) by claiming responsiveness, while eventually pursuing the responsible (i.e. commitment-honoring) policies of whose long-term benefits the party elites are convinced (policy-seeking). Hence, in the case of the implementation of the new constitutional article parties try to represent the preferences of their voters and to implement the foreign policies that they have hitherto pursued and that they consider appropriate means to realizing goals in the best interest of their voters, such as economic growth and stability. We argue that all mainstream parties with government responsibility decided to muddle through, in order to avoid conflicts with the citizenry and the international environment. Immediately after the vote, parties could not argue that the decision was based on false assumptions. The norms of the Swiss system of direct democracy require that all politicians have to accept the decision of the majority in a popular vote (Gilg and Gruner, 1968: 10, Linder, 1996: 3). Additionally, it is uncontested that sovereignty rests with the people who have final legal authority (Vatter, 2014: 45 et passim). Therefore, politicians are expected to do what the people have decided in a vote, even if the leaderships of all mainstream parties have clearly advised against the initiative. Any non-implementation of the popular will is vulnerable to the accusation of betraying the people. Unless these parties are willing to risk voter dissatisfaction, the most rational strategy consists in avoiding taking a side in the implementation process. When finally forced to take a stance, political elites largely prioritized responsibility. We argue that in order to minimize its electoral costs, a turn to responsible policymaking is combined with the externalization of blame for non-responsiveness to scapegoats. The Brexit vote offered the opportunity for a face-saving change of discourse; but it was not the cause of a preference change. It allowed parties to signal their commitment to responsiveness while implementing a largely non-responsive policy.

This response was most likely to be adopted by the center-right parties since their constituencies were split over the issue: 34% of voters attached to the Christian-Democratic party (Christlichdemokratische Volkspartei, CVP) and 40% of the voters attached to the Liberal party (Freisinnig-Demokratische Partei, Die Liberalen, FDP) had supported the initiative (Sciarini et al., 2014). If these parties had implemented the policy they thought to be in the common interest, a large part of their voter base would have been deeply disappointed that their demands had been ignored. Muddling-through helped the FDP and the CVP reconcile the conflicting demands of their voters and their responsibility as main governing parties.

Such a strategy of muddling through did not at all apply to the right-wing populist Swiss People's Party, which had put the initiative in motion and campaigned for it. Around 95% of its voters supported the proposed reform (Sciarini et al., 2014: 24). The party prioritized responsiveness and accused national and European political elites of acting against the interest of the people. Despite being part of the government, the Swiss People's Party continues its populist appeals and can avoid direct accountability for government policies thanks to its status of a minority party opposed to the mainstream parties.

The largest party on the left, the Social Democratic Party (Sozialdemokratische Partei, SP), was in a situation that mirrored the position of the right-populist party. The Social Democrats have a history of supporting European integration and openness to immigration. They were very clearly against the initiative and 84% of their voters opted against the initiative (Sciarini et al., 2014: 24). The most rational strategy as far as vote maximization was concerned consisted in insisting on the party's traditional position. In this context, the SP was most vulnerable to being accused of not respecting the people's vote and hence it had to do at least some lip service to the majority of the Swiss citizens supporting the constitutional amendment.

We expect parties' positioning during the implementation process to depend on whether the views of the party elite and the party voters are aligned or in conflict with each other. Assuming that parties consider both re-election and policy concerns, one would expect that the two polar parties (the SVP and the SP) take a very clear (SVP) or relatively clear (SP) position right from the beginning. In contrast, the centrist parties CVP and FDP could only lose, either in terms of voter support or in terms of policy preferences, by taking a clear stance.

In implementing the constitutional article, party elites had to choose from four main positions, defined by two questions: (1) Do we want to keep the country open to the EU or do we want to close it? and (2) In pursuing these goals, are we in a situation that the EU may negotiate with us or do we have to pander to external forces, i.e. the economic needs of Switzerland's close integration in European markets? The initial position of the majority of the people was that Switzerland could afford to restrict immigration and that the EU would be willing to negotiate on this issue (Position 1). The final position of the majority of party elites at the end of the implementation process was that there was no choice other than to keep the country open to EU immigration - or face detrimental economic consequences – and that the EU would not pander to Swiss demands but severely limit Switzerland's policy options (Position 2).

We show that most party leaders eschewed dealing with the implementation of the constitutional changes: Position 1 had to be accepted since it was the preference of the people, but it was not realistic and all politicians from the center-right to the left of the political spectrum agreed that it would hurt their voters' best interests. However, Position 2 was not acceptable, since it contradicted the will of the people and, therewith, large shares of their own electorates. We then show how, amid this stalemate, the Brexit vote allowed party leaders to alleviate the tension between responsibility and responsiveness by arguing that a fully responsive implementation had become unfeasible due to external actors' actions, i.e. the British citizens voting for the 'leave' option. In order to test our argument, we need to present data on the way the discourse on the implementation of the constitutional reform evolved and on public opinion, and also demonstrate that Brexit became the scapegoat for a largely non-responsive policy.

4 Tracking the path to non-responsiveness

Immediately after the vote in February 2014, most party politicians shared in their public discourse the perspective dominant among the majority of the people. According to survey results (Sciarini et al., 2015, Milic, 2015), this perspective was premised upon the following core elements: (1) Switzerland should and can control the influx of EU migrants; (2) The new constitutional article violates existing bilateral treaties; (3) The bilateral treaties enjoy the support of most citizens; (4) The new constitutional

article can be reconciled with the bilateral agreements by means of further negotiations between the EU and Switzerland; (5) The EU is willing to make substantial concessions in the field of the free movement of labor since it has major economic (and other) interests in Switzerland. The public discourse was based on the assumptions that (a) Switzerland can choose between policies closing or opening the country to migration, and that (b) it is in the position of negotiating a new favorable deal with the EU. This deal would include both the continuation of the bilateral treaties and an effective control of the influx of foreign labor.

Knowing that this discourse was not tenable in the long term because it was based on unrealistic assumptions, the political elites needed to justify a discursive shift before the non-implementation of the constitutional rule. The justification consisted in arguing that negotiations with the EU had failed because of Brexit, which absorbed all of the EU Commission's energy and attention.

To track the political elite's discourse from their initial responsiveness to the eventual non-implementation of the constitutional rule, we conducted a content-analysis of statements on migration and EU-Swiss negotiations reported in four major Swiss newspapers. We covered the period from the day of the popular vote on the 9th of February, 2014 to the final parliamentary decision on the implementation law in December 2016ⁱⁱⁱ. The data for our analysis stem from a larger media study of elite statements about the free movement of persons in six countries. In each country, we selected a quality newspaper and a tabloid. For Switzerland these are '*Neue Zürcher Zeitung*' and '*Blick*' in the German-speaking area and '*Le Temps*' and '*Le Matin*' in the French-speaking area. These newspapers cover the two main linguistic regions of Switzerland. They are leading quality papers (NZZ, Le Temps) or the tabloids with the highest number of copies sold (Blick, Le Matin) in the two linguistic regions. We selected multiple two-week periods (and a longer period of one and a half month immediately after the popular vote in February, 2014) separated from one another by about two months. This selection results in 14 periods equally distributed over the 32 months between February 2014 and December 2016 (see also appendix, Figure A-1)^{iv}.

We extracted all articles featuring the key words 'migration' or 'free movement' (their respective translations to German and French) that were published during these periods. We coded an article as

relevant if it contained a political actor making a political statement on either (their preference for) migration policy or on their strategic evaluation of the Swiss-EU negotiations on the agreement on free movement^v. The codebook is included in the online appendix. Inter-Coder-Reliability (Cohen's Kappa) is over 0.8 indicating a high agreement between coders^{vi}. The policy preference takes the form of support for a more restrictive policy (closure) or for maintaining the status quo of free movement (openness). The strategic evaluation of the EU-Swiss negotiations takes one of two values: Switzerland has considerable space for maneuver to negotiate (options) or Switzerland has limited space for maneuver to negotiate (constraints). We expect that the initial discourse after the popular vote reflects politicians' acknowledgment of the vote (closure) and the view that Switzerland is in a position to negotiate with the EU (options). In contrast, during the following period we expect a move towards the acceptance of external constraints and the need to allow for international mobility of labor.

4.1 From the popular vote to the Brexit decision

We start our analysis by tracking the intensity of the debate (indicated by the frequency of statements reported in the press) and the shares of responsive and responsible discourse. We expect that the initial responsive discourse reflects the acceptance of the vote (closure) and the view that Switzerland is in a position to negotiate with the EU (options). In case of a clear dominance of politics of responsibility become evident during the following period, we would expect that political elites move to a responsible discourse of accepting external constraints (constraints) and acknowledge the need to uphold the free movement of persons (openness). If, however, politicians try to avoid taking stances, we would expect that their positions remain substantially unchanged until Brexit offered them the opportunity to change discourse without losing face. In this case, the major changes should take place in the periods during and after the Brexit vote.

Our data support the last pattern. Turning to the frequency with which implementation was debated in national newspapers, we observe its withering away from the public debate in the periods up until the Brexit vote and its subsequent re-emergence. Figure 3 demonstrates that Swiss elites successfully retreated from discussing the problem after the popular vote. Only during and after the Brexit vote did elites increasingly take a position^{vii}.

[Figure 3 about here]

Before Brexit and following the initial debate immediately after the popular vote of February 2014, most politicians arguably had nothing to win from any position taking and much to gain from remaining silent. In particular, this applies to the parties in opposition to the constitutional amendment. In contrast, had we assumed that political elites were responsible, we would have expected to see the intensity of the debate increase in a linear way as the deadline drew closer. This is certainly not the case.

We now turn to the evolution of the discourse over time (Figure 4). We analyzed statements on the subject of Switzerland being able to negotiate or just being forced to accept the existing rules (constraints vs. options) separately from the statements on the subject of having the option to close the country to foreign labor or complying with the stipulation on the free movement of persons (openness vs. closure). The black line in Figure 4 indicates the share of statements saying that Switzerland is not in a position to negotiate from all statements on the question of being able to negotiate or not. For example, during Phase 1 about 40% of all statements emphasized that Switzerland cannot negotiate (while 60% said it could). This share increased to almost 80% in Phase 6. The dotted line indicates the share of all statements arguing that there is no alternative to keeping the free movement of labor. In Phase 1, about 40 % of all elite statements supported that view (while correspondingly about 60% said that there is a feasible option of controlling the influx of foreign labor). Only in Phase 6 do we see the majority switching to the view that Switzerland should continue complying with the free movement of persons.

Overall, we observe a relatively stable discourse over the first two years of the implementation period with a dominant preference for restricting free movement and discussions of the possibility of re-negotiating the bilateral agreement with the European Union. After the vote, the political elite shied away from telling people that this time direct democracy would not work as expected. Politicians might have been reluctant to confront voters with interpretations that are hard to reconcile with the self-image upheld by the majority of the electorate just before the national elections took place in October, 2015. However, the election of 2015 cannot be the primary reason for the time-consistent discourse because the latter did not change after the election period.

[Figure 4 about here]

4.2 From Brexit to implementation light

Only over 2016, the last year of the implementation period, do we observe a substantial shift towards a responsible discourse. In Phase 6 following the Brexit vote, elites adopted a ‘responsible’ discourse (Figure 4). If we disaggregate Period 5 from the day of the Brexit vote to the 9th of July, we observe that the majority of political elite statements shifted from communicating options to communicating constraints, while the dominant discourse on the restriction on free movement of persons remained unchanged during the June/July period. The basic message was that Switzerland could not hope to conduct effective negotiations with the EU. Meanwhile, little changed as far as the tenable goal of effectively controlling migration (closure) was concerned. The latter was only adopted in the final period, when the parliament deliberated on the implementation law (29th August - 10th September). Now elites could dare to draw the logical conclusion in their public communication that once Brexit had made it clear that there would be no concessions from the EU during the negotiations, the goal of controlling the influx of workers from the EU has become a pie in the sky. Most voters accepted this justification and the subsequent implementation law: They trust the federal administration and its EU policy – with only 11 % of citizens distrusting them^{viii} - and they do not oppose the solution: 57% of citizens agree with the ‘implementation light’^{ix}. The Swiss constitution allows for a referendum on the implementation law; but the supporters of such a referendum have failed to get enough citizen signatures to trigger a public vote.

Figure 5 summarizes the major finding of a substantial move away from a responsive discourse to a responsible discourse triggered by the Brexit vote. For this – and the following analysis – we aggregated our data into two periods: before and after the Brexit vote (see also appendix, Table A-3).

[Figure 5 about here]

Despite the change in the dominant discourse, both types of discourse were present over the whole

implementation period, raising the question how the discourse of individual actors changed. In this analysis, we only consider partisan actors. Figure 6 summarizes the relative shares of each type of discourse by political party.

[Figure 6 about here]

Our argument finds strong support: The polar parties – the Social Democrats and the Swiss People’s Party – barely altered their discourse. It was the center-right Liberal Party (FDP) that changed the most. It is telling that this is the party that is closest to business. And business – represented by its political spokesman, ‘*economie suisse*,’ made it very clear that it wanted to keep the bilateral treaties in place even if this meant that the constitutional article remained far from implemented. The politician who led the development of the draft of the implementation legislation in the lower house of parliament (*Nationalrat*/House of Representatives), Kurt Fluri, is a member of the FDP. According to him, the new law was drafted by representatives of both the FDP and the business circles (Berner Zeitung, 17.9.2016). Likewise, the politician in the upper house of Parliament (*Ständerat/Senat*) who drafted the corresponding draft, Philipp Müller, was also a politician from the Free Democratic Party and leader of a SME (small and medium enterprise).

Seen from the outside, it does not seem very plausible that saving face was facilitated by the Brexit vote, given the fact that at no time had there been any negotiations between the EU and Switzerland, and that the EU had made it absolutely clear that it did not intend to water down its core rule of free movement of persons. However, rich textual evidence documents that Swiss politicians used the Brexit argument extensively. Little public discussion took place as to the validity of this argument. For example, the Federal Government argued in May, 2017: ‘After the vote in Great Britain about exiting the EU (Brexit), it became clear that a successful negotiation with the EU about an adjustment of the bilateral treaty on free movement of persons is no longer feasible for the time being’^x. Likewise, leading politicians made the same argument (Table 1).

[Table 1 about here]

5 Alternative explanations and counterfactuals

In this section we briefly discuss alternative explanations and counterfactuals.

Learning processes within the electorate

The institutions of the European Union very clearly voiced their unwillingness to re-open the negotiations on the free movement of labor after the Swiss popular vote in February 2014. Did politicians just adapt to the electorate's learning process, after voters increasingly recognized that the underlying assumptions of the vote in February of 2014 were not warranted? Survey data do not support such an argument. Swiss voters did not change their opinion on the initiative and are still likely to vote the same way (Figure 4). A survey carried out shortly after the Swiss parliament's adoption of the implementation revealed that citizens have hardly changed their policy preferences. Among those who voted in favor of the initiative, 91% would still vote the same way, compared to 95% of those who initially opposed the initiative^{xi}. The electorate continues to be split in half on the issue of a quota on immigration. This finding is further bolstered by another survey result indicating that Swiss voters have not substantially altered their evaluation of the perspectives for negotiation (Figure 7). The majority is convinced that the EU will eventually change its position on free movement and negotiate with Switzerland about the implementation of a curb on immigration. A survey conducted after the Brexit referendum in Britain even showed that most respondents believed that Brexit improved Switzerland's bargaining position (Gfs, 2016). Hence, we find no indication of a learning process at the level of the electorate. After three years of the EU consistently rejecting the possibility of re-negotiating the treaty on free movement of people, the majority of Swiss citizens still think this is nothing but bluffing.

[Figure 7 about here]

[Figure 8 about here]

Did the Swiss need Brexit?

With the wisdom of hindsight, it was obvious that Switzerland had to give in by February of 2017 by the latest. National elections were held in November, 2015. Any deviation from the responsive discourse

before the national election would have been electorally very risky. This means that the unavoidable deviation had had to take place between November 2015 and February 2017. This argument is highly plausible in light of the constraints posed by the electoral campaign. However, it does not explain why there was no move immediately after the election (see Table A-1 in the Appendix). Given the enormous importance of the bilateral treaties, any delay of the adjustment needs to be explained, if only the election were the relevant variable.

Likewise, one could argue that the Swiss did not need the Brexit vote to justify the discursive shift and that they could have also pointed to the intransigence of both Council and Commission in giving legitimacy to their deviation from the text and meaning of the popular vote. However, this would not have allowed justifying the shift in discourse with the changing circumstances. The Swiss political elite seemed to be trapped in its initial responsive discourse that nourished expectations of negotiations with the EU and therefore needed a good reason why these were not realistic anymore. Anything else would have risked further undermining their legitimacy by admitting that they had been wrong about their bargaining position and would hence suffer a loss of face.

One could also argue that the Swiss People's Party has suffered a major defeat in another vote in criminal law ("Durchsetzungsinitiative") in February 2016 and that party leaders of the major non-populist parties could have interpreted that as a sea change allowing for deviations from the constitutional rule. On the one hand, initiatives are typically rejected in Switzerland and therefore a defeat in such a vote does not necessarily mean a major change of attitudes towards migration. Survey data do not show a major attitudinal change on migration in Switzerland (see above). On the other hand, if this had been a signal to policy makers, then it is not clear why the strategic reversal only happened in June 2016.

Does the argument apply to a direct and consociational democracy?

In a direct democracy, voters can frustrate government in a popular vote; they do not need elections to change policies. In addition, in a consociational democracy, party competition for votes is very limited due to the lack of clarity of responsibility of parties in a grand coalition and due to the stability of electoral behavior. We do not agree with these two potential objections against our argument. (1)

Typically, parties in all types of democracy are policy and vote seekers. Even if the people can frustrate parties as policy-seekers in popular votes, there remains the vulnerability of parties at the ballot box. Hence, there is no reason to assume that re-election concerns are not important in direct democracies.

(2) In an ideal-type consociational democracy there is no electoral competition, since voters are members of socio-economic sub-cultures, have an extreme extent of party identification and political parties can count on stable support by their respective electorates. This does not apply to Switzerland in the recent decades, though. There is low party identification, traditional socio-economic subcultures have been eroded and electoral volatility is substantial. Governing parties distinguish themselves as issue-owners with the openness-closure / EU issue being one of the most important issues in party competition. Positions towards the European integration are one of the most salient aspects of the party system.

A division of labour between parliament and government?

An alternative explanation points to a division of labor between parliament and government: The government behaved in a responsive way. Since this did not work and time ran out, the responsible parliament took over. By implication, we would expect that government pursued a responsive discourse all over the period under study, while members of parliament pursued a responsible discourse. We replicated the analysis underlying Figure 5 for members of government and of parliament separately. Before Brexit, 98% of all governmental statements were ‘responsive’, after Brexit this dropped dramatically to about 50%^{xii}. Likewise, before Brexit, about third thirds of statements of MPs were ‘responsive’, dropping to 16% after Brexit. Therefore, there was a substantial and parallel shift of discourse both in government and parliament questioning the idea that there might have been an effect of division of labor.

6 Conclusions

This article has analyzed the decisions and strategies that Swiss political elites adopted to deal with the tension between responsiveness and responsibility during the implementation process following the popular vote against immigration. Faced with a dilemma between following the popular will of restricting immigration from the EU and upholding bilateral treaties with the EU which were essential to the good performance of the Swiss economy, politicians opted for a ‘super-light’ implementation that did not violate the free movement rights of EU citizens. They could avoid the major electoral costs of this non-responsiveness by shifting the blame to external actors. This strategy does not comply with the Weberian ideal type of a decidedly responsible government. Neither does it reflect Mair’s fear that constrained political choices lead to the success of populist parties and result in corresponding policies. Rather, we see a process of muddling through, where politicians justify their strategic moves blaming them on scapegoats and the majority of citizens accept that. On the one hand, by spring 2017, citizens had not changed their basic evaluations of the situation. Only a minority had arrived at the conclusion that the EU was not willing to negotiate with Switzerland on the issue of free movement of labor. On the other hand, a majority thought that the ‘implementation light’ was an acceptable way of implementing the constitutional norm of a cap on immigration.

The Swiss case represents the situation of a ‘discursive gap’ - a substantial difference between political rhetoric and actual policy making which is frequently found in modern democracies (Czaika and De Haas, 2013). With ‘tough talk’ on immigration, political elites signal their responsiveness to the electorate’s concerns and its preference for fewer immigrants (Castles et al., 2013). However, such a strategy could become a trap since any move to a responsible discourse might be seen as treachery. Therefore, our analysis holds some relevance for the general debate on reconciling domestic and European politics. The Swiss case suggests that the tension can be neutralized (but not solved), if an external event produces a crucial moment that allows changing an unsustainable discourse without losing face in the eyes of the electorate.

The Swiss case is prototypical for EU politics wherein the ‘permissive consensus’ on further integration has been replaced by a ‘constraining dissensus’ (Hooghe and Marks, 2009). Popular referendums have

become key in recent integration processes. At least since the early 1990s, major treaty revisions have been subjected to nation-wide votes in at least one member state and there are new efforts of increasing citizen participation in integration policy, such as the withdrawal referendums that took place in Greece in 2015 or Great Britain in 2016 (Schimmelfennig, 2018). Governments have had to deal with these clear statements of preferences on specific issues related to integration. In that regard the Swiss non-implementation of a constitutional rule may provide a model of how governments can deal with the unavoidable tension between responsiveness and responsibility.

While possibly being a typical strategy, it is not necessarily conducive to increases in democratic quality. The underlying conflict between the preferences of the people and external constraints is still there and remains blurred. At the time of writing (Fall 2018), Swiss citizens accept the solution of the elites. However, they do not acknowledge that their premises about Switzerland's maneuverability vis-a-vis the EU were wrong. Citizens' interpretations of the room for maneuver may diverge from political realities, and 'muddling through' may allow for the continuation of the gap between the self-perceptions of a sovereign people and the realities of constrained national democracies in times of close economic interconnectedness.

Notes:

ⁱ This is the text of the new article [Art. 121a](#): “Control of immigration: Switzerland shall control the immigration of foreign nationals autonomously.² The number of residence permits for foreign nationals in Switzerland shall be restricted by annual quantitative limits and quotas. The quantitative limits apply to all permits issued under legislation on foreign nationals, including those related to asylum matters. The right to permanent residence, family reunification and social benefits may be restricted.³ The annual quantitative limits and quotas for foreign nationals in gainful employment must be determined according to Switzerland's general economic interests, while giving priority to Swiss citizens; the limits and quotas must include cross-border commuters. The decisive criteria for granting residence permits are primarily an application from an employer, ability to integrate, and adequate, independent means of subsistence.⁴ No international agreements may be concluded that breach this Article.“. The deadline is fixed in a transitional provision (Art 197.9: „*Transitional provision to Art. 121a (Control of immigration)*):¹ International agreements that contradict Article 121a must be renegotiated and amended within three years of its adoption by the People and the Cantons.² If the implementing legislation for Article 121a has not come into force within three years of its adoption by the People and the Cantons, the Federal Council shall issue temporary implementing provisions in the form of an ordinance.“

ⁱⁱ Ruling 2C_716/2014, Swiss Federal Court of Nov. 26, 2015.

ⁱⁱⁱ We only focus on select periods due to the extensive workload of manually coding newspaper reports for the whole period.

^{iv} The details of the covered time periods are listed in Table A-1 in the Appendix.

^v As political actors are considered member of government and parliament as well as political parties and their representatives.

^{vi} Inter-Coder-Reliability measured by Cohen's Kappa is 0.841 for the policy variable (openness/closure) and 0.814 for the strategy variable (options/constraints).

^{vii} The increase in intensity observed during Period 10 is almost entirely the result of reactions to the Federal Council's proposal about how to implement the constitutional article presented on the 4th of December. When the articles published on the 5th December are excluded, the intensity rate almost halves to 3.6 statements per week.

^{viii} Re-analysis MOSAiCH 2017 survey.

^{ix} Survey by gfs Bern (2017) 57% in favour of the bill, 35% against it (n=1715). The results of the survey are available on-line at <http://www.gfsbern.ch/de-ch/Detail/pragmatische-umsetzung-der-initiative-gegen-masseneinwanderung-ist-mehrheitsfaehig>.

^x ‘Nach der Abstimmung in Grossbritannien über den Austritt aus der EU (Brexit) hat sich jedoch herausgestellt, dass eine erfolgreiche Verhandlung mit der EU über eine Anpassung des FZA auf absehbare Zeit nicht mehr möglich ist.’ (<https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20173017>, accessed 06.03.2018)

^{xi} MOSAiCH 2017, detailed wording in Table A-2 in the Appendix.

^{xi} ‘Nach der Abstimmung in Grossbritannien über den Austritt aus der EU (Brexit) hat sich jedoch herausgestellt, dass eine erfolgreiche Verhandlung mit der EU über eine Anpassung des FZA auf absehbare Zeit nicht mehr möglich ist.’ (<https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20173017>, accessed 06.03.2018)

^{xii} MOSAiCH 2017, detailed wording in Table A-2 in the Appendix.

^{xiii} We have to admit, that the number of observations after Brexit for government statements is very low: 13 observations; but they allow the statement of a dramatic decline.

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Appendix

[Table A-1 about here]

[Table A-2 about here]

[Figure A-1 about here]

Tables

Table 1: Textual evidence: The Brexit has been the ‘stab-in-the-back’ of the Swiss negotiations with the EU

Political actor	Where / When	Statement (English Translation)
Minister of Justice, Ms. Sommaruga (Social Democratic Party)	SRF, „Umsetzung der MEI: Das Protokoll zum Nachlesen“ 1.12.2016.	«The Brexit-vote of last June has been the ‘stab-in-the-back’ of the search for solutions with the EU.» «You may blame the government for many things, but that it has no influence on British internal politics you should all acknowledge.»
Pirmin Bischof (Christian-Democratic Party - CVP)	Neue Zürcher Zeitung, 28.06.2016	«With the Brexit the risk has increased that we will not reach a unilateral law that is compatible with the EU.»
Kurt Fluri (Liberal Party -FDP)	Neue Zürcher Zeitung, 27.06.2016	«The repercussions of the decision on Switzerland are overestimated – and we can only speculate whether the position of the EU is hardening or softening as a result of it.»
Liberal Party -FDP	FDP, Brexit-Memorandum, 25.06.2016	«With the British decision it will become more difficult for our country to find a solution based on mutual agreement. Because of that, Switzerland has to do everything in its power, to reduce immigration by its own while not jeopardizing the Bilateral Treaties.» «Such a demand [quotas] unnecessarily jeopardizes the bilateral relations and is therefore dangerous. It is illusionary to believe that the EU will compromise in this point.»
Christian-Democratic Party-CVP	CVP, press release, 24.06.2016	«With the British decision to leave the EU a solution to implement the initiative against mass immigration based on mutual agreement has become more difficult, but cannot be ruled out.» «Apart from that the EU has to stick to the principle of free movement of persons, it will be occupied with other problems in the coming months than negotiation with Switzerland. Because of that the CVP calls upon the other parties to implement the initiative against mass immigration by the parliament. Otherwise the government is forced to implement the initiative unilaterally by a safeguard clause.»
Christian Levrat, Chairman Social-Democratic Party	1. Speech to party delegates, 25.06.2016 2. Neue Zürcher Zeitung, 25.06.2016	1. «In short-term, the perspectives to find a solution with the EU on the issue of immigration have receded into dim distance. Most likely, we have to find an internal solution to implement the constitutional article 121a.» 2. «We are against a unilateral safeguard clause or a formal preference for nationals on the labor market because this would undermine our relationship with the EU», says SP-leader Christian Levrat. He is convinced that with the Brexit the hopes of a solution with Brussels have been shattered.
Kathy Riklin (Christian-Democratic Party-CVP)	SRF, Arena, 24.06.2016	«Over the next two years there is nothing to gain for Switzerland.»
Johann Schneider-Ammann (Liberal Party -FDP)	Interview Sonntagszeitung, 26.06.2016	JSA concedes that it has not become easier.
Christian Lüscher (Liberal Party -FDP)	Le Matin, 25.06.2016	After the British decision «it will be even more complicated for our country to find a compromise with the EU» states Christian Lüscher (FDP).

Table A-1: Periods of newspaper analysis, total number of statements, % of responsive and responsible discourse

Period	% responsive (closure and options)	% responsible (openness and constraints)	N
Period 1 (10.Feb. - 29.Mar. 2014)	60	40	82
Period 2 (12. - 24.May 2014)	100	0	13
Period 3: (21.Jul. - 2.Aug. 2014)	100	0	7
Period 4: (29.Sept. - 11.Oct. 2014)	83	17	6
Period 5: (8. - 20.Dec. 2014)	83	17	6
Period 6 (16. - 28.Feb. 2015)	100	0	5
Period 7 (27.Apr. - 9.May 2015)	50	50	6
Period 8 (7. - 18.Jul. 2015)	100	0	3
Period 9 (15. - 26.Sept. 2015)	100	0	4
Period 10 (23.Nov. - 5.Dec. 2015)	94	7	17
Period 11 (1. - 13.Feb. 2016)	100	0	3
Period 12 (11. - 23.Apr. 2016)	100	0	2
Period 13 (20.Jun. – 9.Jul. 2016)	63	37	19
Period 14 (29.Aug. - 10.Sep. 2016)	35	65	23
Period 15 (5.Dec. – 17.Dec. 2016)	14	86	56
All periods (10.Feb. 2014 – 17.Dec. 2016)	57	43	252

Table A-2: Details of survey questions

<u>Survey date</u>	<u>Survey institute</u>	<u>Sample</u>	<u>Wording</u>
<u>May 2014</u>	Marketagent.com (<u>commissioned by</u> ,Schweiz am Sonntag')	<u>1200</u> (<u>online</u>)	«Wie würden Sie über die Masseneinwanderungsinitiative abstimmen, wenn Sie heute nochmals die Möglichkeit dazu hätten?»

<u>Feb 2015</u> <u>Oct. 2015</u> <u>Apr. 2016</u>	<u>Gfs Bern</u>	<u>~2500</u>	"Wenn Sie heute noch einmal über die Masseneinwanderungsinitiative abstimmen würden, wie würden Sie abstimmen: Würden Sie Ja zur Initiative stimmen, Nein stimmen oder an der Abstimmung nicht teilnehmen?"
<u>Sept./Dec. 2016</u>	Opinionplus (commissioned by <u>SonntagsBlick</u>)	<u>1000</u>	“ Im Jahr 2014 haben die Schweizer Stimmberechtigten die Masseneinwanderungsinitiative angenommen. Wenn Sie jetzt nochmals entscheiden könnten, würden Sie die Masseneinwanderungsinitiative heute annehmen oder würden Sie diese ablehnen?“
<u>Feb 2015</u> <u>Oct. 2015</u> <u>Apr. 2016</u> <u>Feb. 2017</u>	Gfs Bern	~ 2500	"In der Diskussion über die Beziehung zwischen der Schweiz und der EU wird auch immer wieder über die Rolle der EU diskutiert. Ich nenne Ihnen nun einige Aussagen rund um die Rolle der EU. Sagen Sie mir bitte jeweils, ob Sie damit voll einverstanden, eher, eher nicht oder gar nicht einverstanden sind." "Die EU wird die Personenfreizügigkeit mit der Schweiz nicht neu verhandeln“
<u>Sommer/Automn 2015</u>	SmartVote (Candidate Survey)	3206	„Hat für Sie die strikte Umsetzung der Masseneinwanderungsinitiative Priorität gegenüber dem Erhalt der bilateralen Verträge mit der EU?“
<u>February 2017</u>	MOSAiCH 2017 (Fors Lausanne)	1032	„Am 9. Februar 2014 hat das Schweizer Stimmvolk über die Masseneinwanderungsinitiative abgestimmt. Falls Sie auch abgestimmt haben: Haben Sie Ja oder Nein gestimmt?“
<u>February 2017</u>	MOSAiCH 2017 (Fors Lausanne)	639	„Angenommen, wir müssten am nächsten Sonntag erneut über diese Initiative gegen die Masseneinwanderung abstimmen: Wie würden Sie abstimmen?“

Figures

Figure 1. Implementation Preferences Party Elites

Figure 2. Implementation Preferences Party Voters

Figure 3. Intensity of debate on policy (closure or openness) and negotiations (options or constraints)

Figure 4. From responsive to responsible discourse

Figure 5. Responsive and responsible discourse before and after Brexit

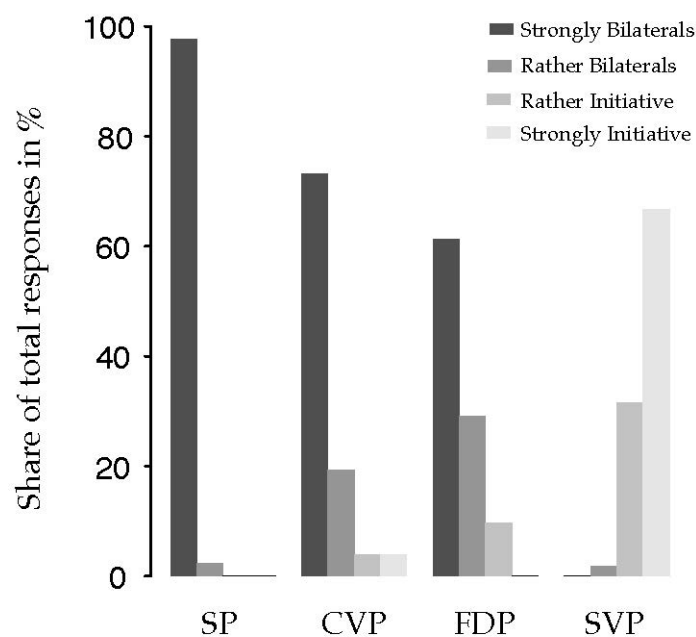
Figure 6. Change of discourse by political party

Figure 7. Popular support for the initiative ‘against mass immigration’ over time

Figure 8. Popular evaluations of Swiss bargaining position over time

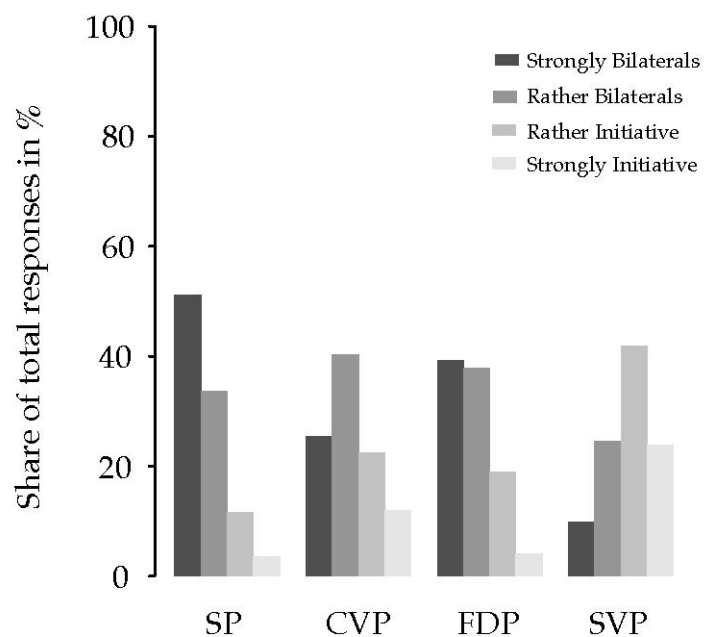
Figure A-1. Timeline Media Analysis

Figure 1. Implementation Preferences Party Elites



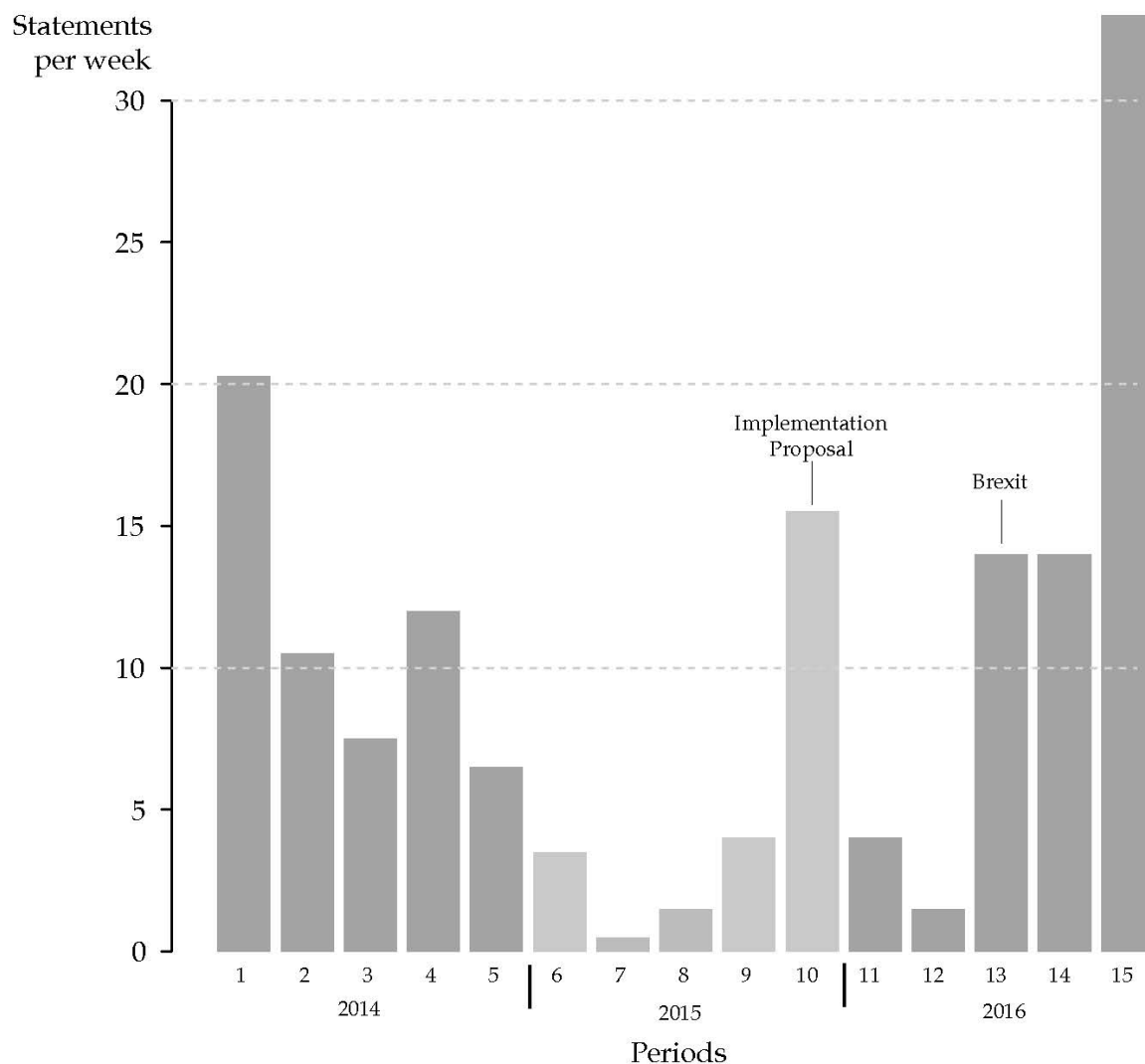
Notes: The graph is based on the candidate survey SmartVote from summer 2015 that asked whether candidates for the national election prefer restricting immigration or the Bilateral Treaties with the EU. For the detailed wording see Table A-2 in the Appendix. Number of observations $N = 154$.

Figure 2. Implementation Preferences Party Voters



Notes: The graph is based on the population survey MOSAiCH 2015 between February and July 2015 that asked Swiss voters whether they prefer restricting immigration or the Bilateral Treaties with the EU - separated for the voters of the major Swiss parties. For the detailed wording see Table A-2 in the Appendix. Number of observations N = 349.

Figure 3. Intensity of debate on policy (closure or openness) and negotiations (options or constraints)



Note: The graph represents the frequency of political statements by Swiss political elites on the implementation of the constitutional amendment to cap EU immigration. The periods cover a period of two weeks except the first period of seven weeks. The measurements unit is therefore standardized by time unit (week). Based on N = 252 statements from Neue Zürcher Zeitung, Blick, Le Temps, Le Matin.

Data: The Authors 2017.

Figure 4. From responsive to responsible discourse

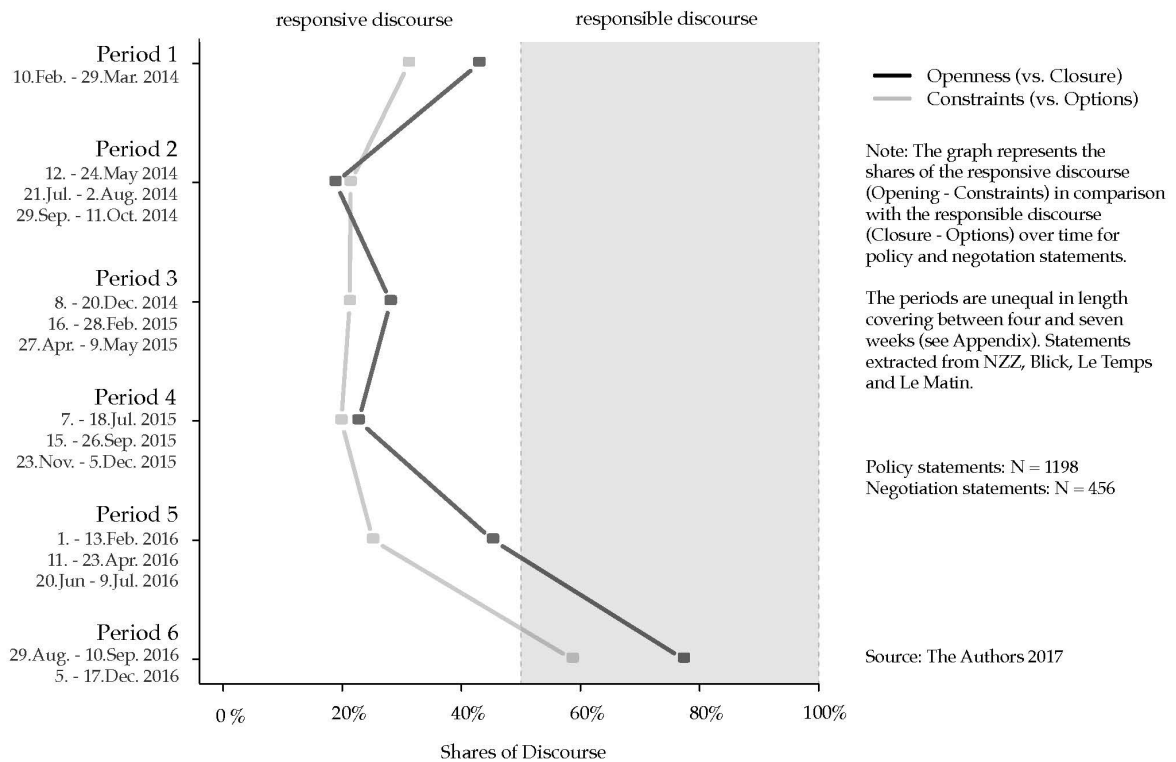


Figure 5. Responsive and responsible discourse before and after Brexit

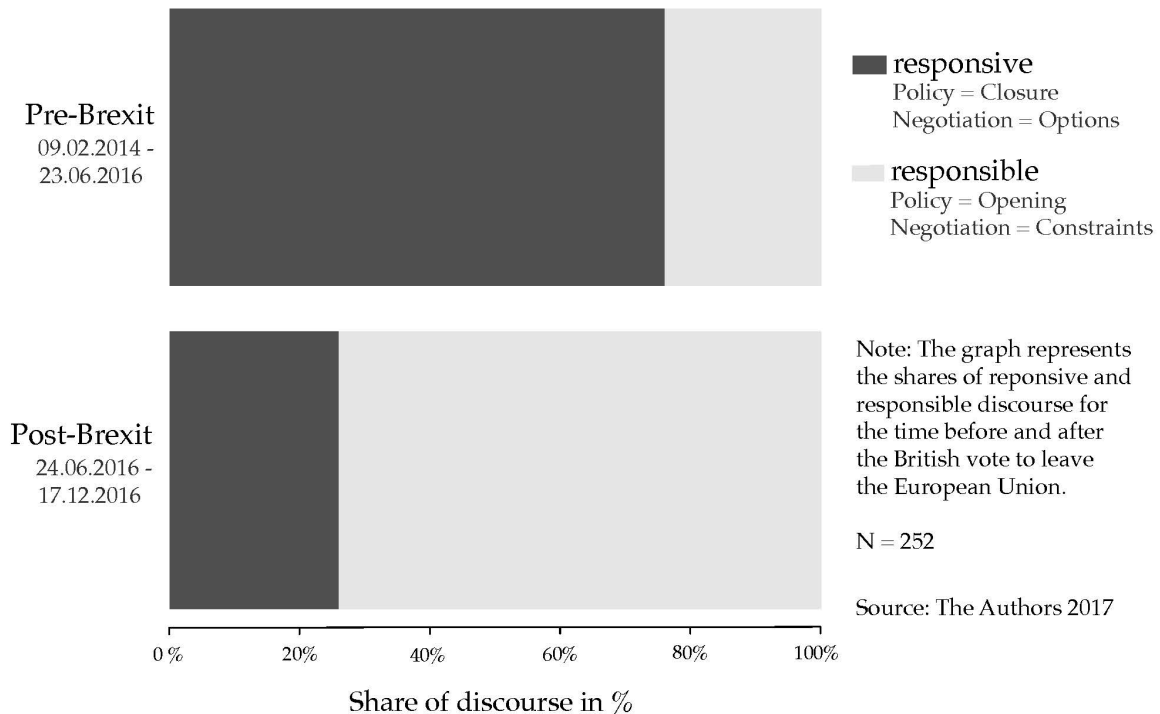
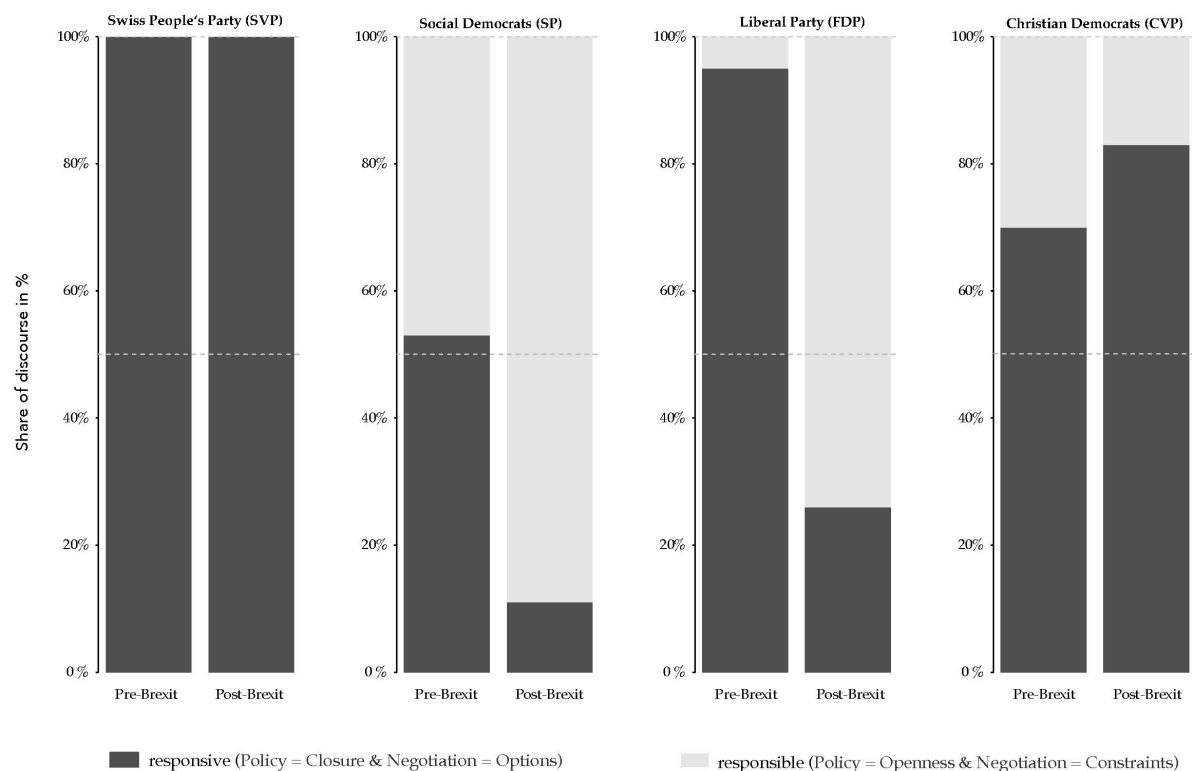


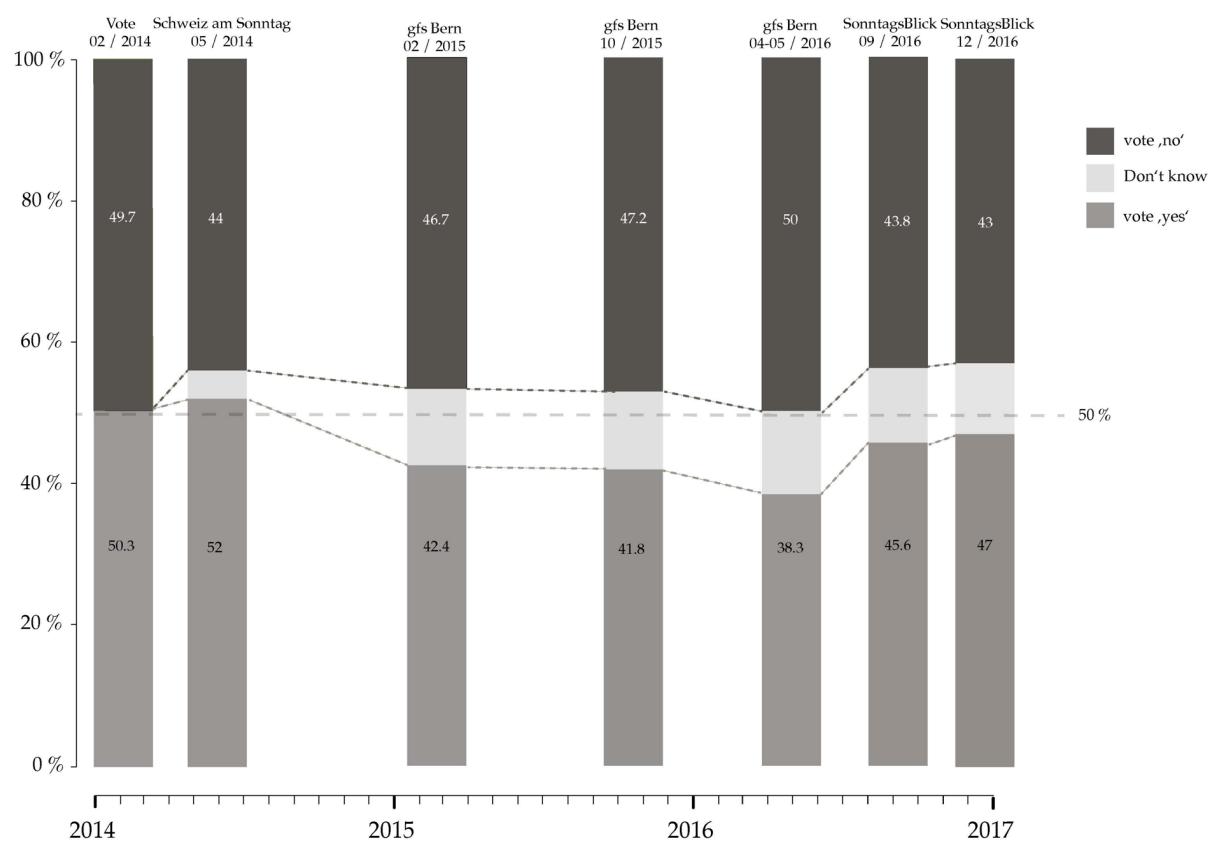
Figure 6. Change of discourse by political party



Note: The graph represents the shares of responsible and responsive discourse for the four largest parties in Swiss Parliament in the time before (09.02.2014 - 23.06.2016) and after (24.06.2016 - 17.12.2016) the British vote to leave the European Union. SVP (N = 45) SP (N = 55) FDP (N = 43) CVP (N = 16)

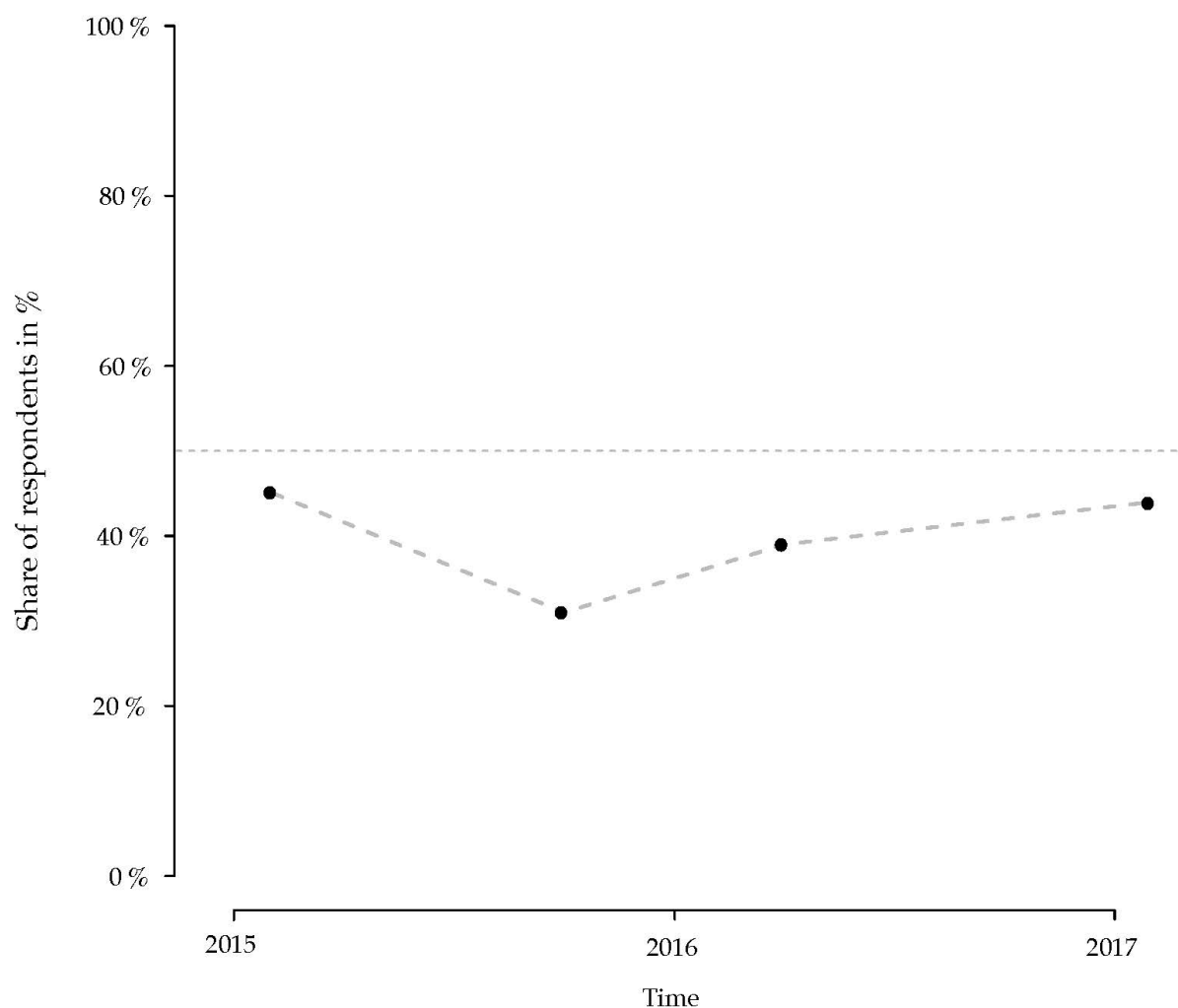
Source: The Authors 2017

Figure 7. Popular support for the initiative 'against mass immigration' over time



Note: The graph represent the vote result of the initiative 'against mass immigration' and six representative surveys asking Swiss voters how they would vote on the initiative if they could vote again. Details to the different surveys in Table A-2 in the Appendix.

Figure 8. Popular evaluations of Swiss bargaining position over time



Note: the line-graph plots the share of respondents believing that EU will not negotiate about free movement with Switzerland. All four polls were conducted by gfs Bern. Representative survey with four waves conducted by gfs Bern. For details of the survey see Table A-2 in the Appendix.

Figure A-1. Timeline Media Analysis

