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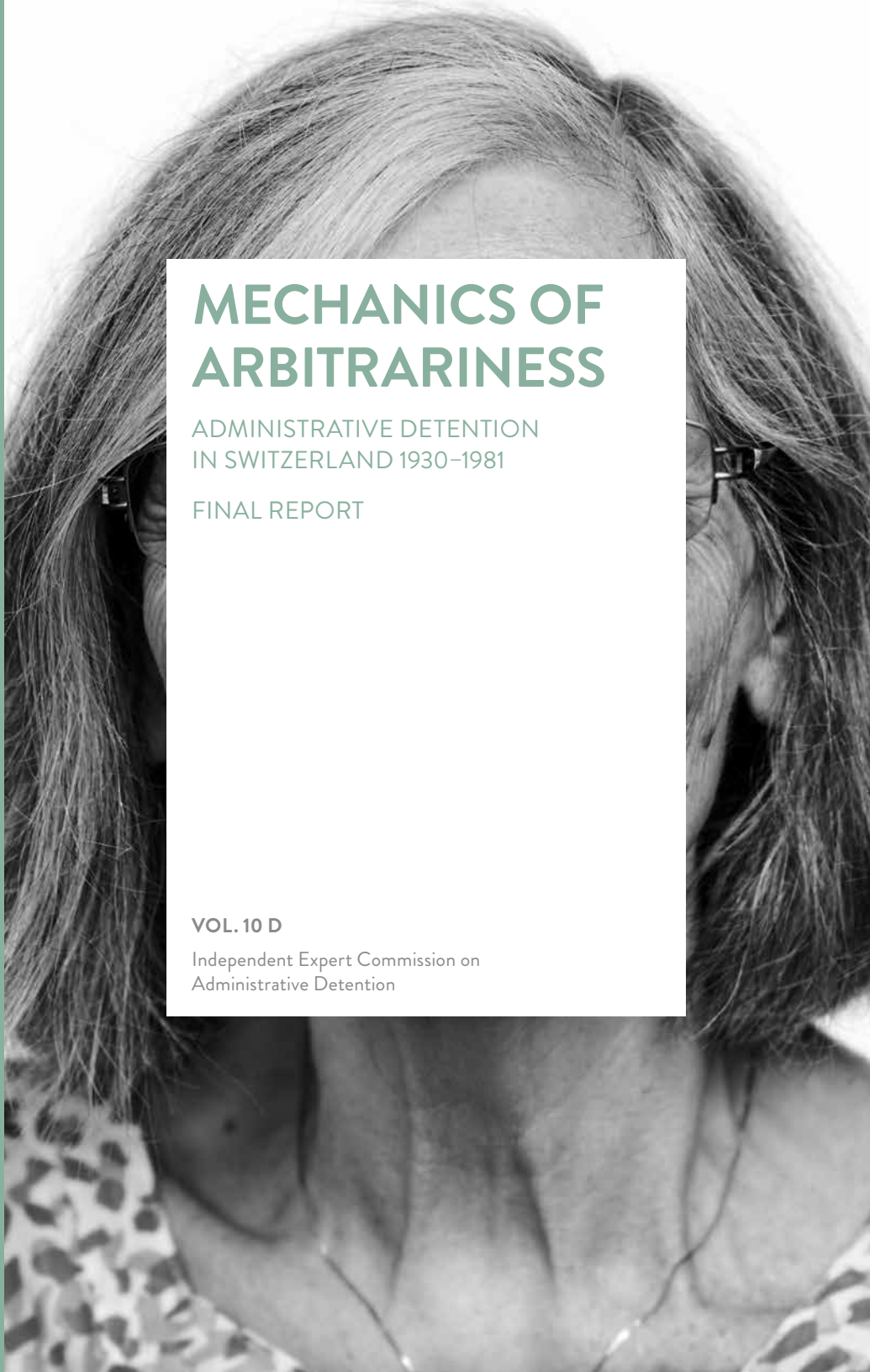

MECHANICS OF ARBITRARINESS

ADMINISTRATIVE DETENTION IN SWITZERLAND 1930–1981

FINAL REPORT

VOL. 10 D

Independent Expert Commission on Administrative Detention

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INDEPENDENT EXPERT COMMISSION (IEC)
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CHRONOS VERLAG | ÉDITIONS ALPHIL | EDIZIONI CASAGRANDE

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FOREWORD

In this Final Report, the Independent Expert Commission (IEC) on Administrative Detention illustrates the results of its research work and presents its recommendations for the authorities. The Federal Council appointed the IEC on 5 November 2014, electing Markus Notter president and Jacques Gasser, Beat Gnädinger, Lukas Gschwend, Gisela Hauss, Thomas Huonker, Martin Lengwiler, Anne-Françoise Praz and Loretta Seglias members. The IEC was charged with the task of examining administrative detention up to 1981 with a measure-oriented approach and of drawing up conclusions for the authorities. The research was to focus on the history of administrative detention, on the point of view of the people involved and of the victims as well as on the analysis of state intervention and official action. The IEC also had to take into account the correlations with all the other kinds of compulsory welfare measures and custody arrangements before 1981. The appointment of an IEC was set forth in the Federal Act of 21 March 2014 on the Rehabilitation of Administrative Detainees.

In line with the appointment order, the IEC was assigned to the Federal Department of Justice and Police and had its headquarters in Bern. It had its own secretariat and was authorised to employ academic and administrative personnel independently as well as assign mandates to external experts. As far as the financial means were concerned, 9.9 million Swiss francs were allocated for the planned four-year period of activity. The IEC defined its organisation and workflows in an internal set of rules, as prescribed. Setting up an academic project with over 30 researchers within the Federal Administration, where the regulations in force are moulded on the requirements of a governmental administrative apparatus, was in itself a challenging task. A temporary academic unit is essentially an alien body. Nonetheless, together with the offices involved, the IEC was able to find pragmatic solutions and create a productive working environment.

Even though the project was not actually structured as a participative research, it was our wish from the outset that the victims be involved in the research process on equal terms. We maintained regular contact with the victims and their organisations, discussed the research design together with them, and informed them at public workshops and exchange events

about the interim results and the progress of the research. In so doing, we received valuable feedback and benefited from the victims' knowledge and experiences, which made them experts in the matter. We are, however, also aware that we were unable to fulfil all the expectations regarding the scientific reassessment of administrative detention. Our encounters with the victims were the most impressive aspect of our work. We discovered the myriad of ways of coping with the past and can today better understand how years of damage caused by state action cannot simply be undone with official declarations and one-off payments. That is why many victims cannot reconcile themselves with this state. And they have every right not to.

The Final Report is divided into three parts.

The scientific synthesis develops an independent point of view, sets the main focus and creates cross references between the individual research volumes. It pursues three objectives: first, it gives concise and differentiated answers to the most pressing questions regarding the forms and causes of the wrongdoings of the state. Here the report accomplishes a balancing act between analytical generalisations and detailed analyses of case examples. Second, the results of the IEC's research are embedded in the national and, where possible, international research environment. At the same time, the IEC creates specific references to current discussions on measures involving deprivation and limitation of liberty. Third, the Synthesis Report points out open issues and indicates possible future areas of research. The report was drawn up on behalf of the Commission by Urs Germann and Lorraine Odier with the collaboration of Noemi Dissler and Laura Schneider and in close cooperation with the IEC President and his two deputies.

In the 14 texts that form the second part of the Final Report, the victims express their expectations concerning the work of the IEC, but also describe their life situation and the circumstances of their rehabilitation. It was important for us that the Final Report reproduce the victims' voices in their original form.

The IEC's mandate also included drawing up conclusions for the authorities. With the recommendations in the third part of the Final Report we fulfil this task. On the one hand, we illustrate measures which aim to reduce the damage caused and, on the other hand, we wish to disseminate knowledge and considerations regarding current issues in the fields of adult and child protection, but also of poverty, exclusion and marginalisation in general. The recommendations were discussed with the victims

and were developed and drawn up by Christel Gumy in close collaboration with the Commission.

The IEC was supported in its work by many people. Without the co-operation of the various archives, especially the cantonal archives, our research would not have been possible. A number of Federal Administration offices helped us with issues concerning infrastructure and organisation. We were also grateful for the interest and the responses of the researchers we contacted both in Switzerland and abroad. The particular expert knowledge of the victims and our personal contact with them defined and enhanced our work. We wish to thank each and every one of them. A special word of thanks goes to our collaborators, particularly to the two General Secretaries Sara Zimmermann and Elie Burgos. They all made the work of the IEC possible in the first place and helped bring it to a successful conclusion.

Bern, September 2019

Independent Expert Commission on Administrative Detention

ADMINISTRATIVE DETENTION IN SWITZERLAND 1930–1981

SYNTHESIS REPORT

URS GERMANN, LORRAINE ODIER

WITH THE ASSISTANCE OF
NOEMI DISSLER AND LAURA SCHNEIDER

1 INTRODUCTION

Being deprived of his freedom was a routine occurrence for Hans Albrecht. Born in 1938, he was committed four times to the Witzwil correctional facility, in the Seeland District of the canton of Bern, between 1960 and 1990. The experience of growing up in 'closed' institutions, separated from her family, was something that Annemarie Berger was also familiar with. While still a young woman, her life became an odyssey between reform schools and psychiatric clinics. Finally, in 1962, she landed in a local prison, narrowly escaping detainment in the more restrictive Hindelbank correctional facility.[1] Hans Albrecht and Annemarie Berger are two of the many people who were deprived of their liberty in Switzerland "by administrative means". They were held in confinement against their will in correctional labour, juvenile reform or regular prison facilities, not by court decision and not because they had committed any crime, but for the simple reason that they had been stigmatised by society and were considered by the responsible authorities to be "indolent", "dissolute" or "at risk", and thus a "threat to the public order". The use of administrative detention in Switzerland was widespread until 1981, when in response to international pressure the applicable laws were changed. The laws under which administrative detention was permitted were replaced by provisions on involuntary commitment for welfare purposes (*fürsorgerische Freiheitsentziehung / placement à des fins d'assistance*). The exact number of individuals against whom administrative detention orders were issued is unknown. It is estimated that between 1930 and 1981 a minimum of between 20,000 and 40,000 men and women were held in administrative detention. The number of administrative detention orders issued reached its peak in the 1930s. Even in the post-war years, the use of administrative detention remained frequent.[2]

It is difficult for us to comprehend today how the use of administrative detention could have been so common a practice until as late as the 1980s. From a 21st century perspective, such measures are clearly a viola-

1 IEC, vol. 1, 136–143, 200–207. The names of both individuals have been changed, at their request, for the purposes of this publication.

2 IEC, vol. 6, 90–91.

tion of the most fundamental human rights and of human dignity. In 2014, Swiss Parliament officially recognised the injustice that had been done to tens of thousands of individuals like Hans Albrecht and Annemarie Berger. In November 2014, the Federal Council appointed the Independent Expert Commission on Administrative Detention (IEC) to conduct a historical inquiry into what had taken place. The IEC completed its work at the end of 2018. This report presents a synthesis of the IEC's research findings, based on interviews conducted with contemporary eyewitnesses and on documentary sources preserved in federal and cantonal archives.

The following introduction starts by sketching the historical context that led to the establishment of the IEC. This is followed by an outline of the mandate given to the Commission, of its working methods, and of the objectives and structure of this Synthesis Report. The remaining chapters provide a summary of the research findings and consider them within the context of modern Swiss history. The Synthesis Report describes how administrative detention established itself in the 19th century as a repressive instrument in the hands of social welfare and guardianship authorities. It considers the factors that contributed to the continued use of such measures until the early 1980s, and the consequences of such invasions into the lives of the individuals concerned. As such, it provides the foundations for a historical assessment of detention practice in Switzerland and a critical examination of its relevance to the present. At the same time, it offers the individuals concerned a basis for an ongoing discussion of the injustice that was committed and the consequences thereof for present and future generations.

1.1 HISTORICAL INJUSTICE AS A CHALLENGE FOR TODAY

The fate of individuals who were held in administrative detention has occupied the attention of the Swiss public and its political leaders for a number of years now. The fate of two young female detainees as portrayed in the films *Lina* and *The Divine Order* touched a broad audience. Discussion focused on the coercive welfare and foster care measures that were widely in use up to the 1980s. Those measures included the dissolution of families, the placement of children in foster care, the "reform" of juveniles and adults in correctional labour and penal facilities, as well as non-consensual adoption, sterilisation, castration and drug testing. Administrative deten-

tion was one of a large assortment of involuntary socio-political measures and is now part of an extensive discussion over the way in which the Swiss welfare state and its legal system dealt with individuals who found themselves in economically precarious circumstances or were for other reasons pushed to the margins of society. At issue are questions relating to society's demand for order, hierarchies of status and gender, and the resistance – and powerlessness – of the individuals concerned.

FROM THE MOBILISATION OF FORMER DETAINEES TO REHABILITATION

The public attention that the use of administrative detention has attracted in recent years is largely the result of efforts by individuals who themselves were subjected to such measures in the past. For decades, a veil of silence had shrouded the former deeds of public authorities. Official Switzerland saw no reason to reopen the past; for many of the former detainees themselves, their own stories were a source of shame and guilt; for historians, the first memoirs of those involved were barely regarded. It was not until the turn of the millennium that the voices of former detainees began to meet with greater understanding and elicit a response. With the help of the media, representatives of the arts, political leaders and historians, former administrative detainees, such as Louisette Buchard-Molteni, Ursula Biondi and many others, succeeded in drawing the attention of a broader public to the suffering, deprivation and violence that they had been subjected to. They demanded official recognition of the injustices that had been committed and a historical inquiry that would shed light on the social dimension of what had taken place. Some also demanded financial reparations.[3]

The women and men who had been subjected to administrative detention threw a spotlight on a deeply disturbing aspect of contemporary Swiss history, on something that does not sit well with the country's self-image as a haven of direct democracy, social equality and international humanitarian law. The discrepancy is all the more glaring when it is recalled that commitment to correctional labour facilities or penal correctional facilities was still possible throughout the 1970s, at a time when Switzerland

3 Strebel 2010; Biondi 2003; Buchard-Molteni 1995. For the background, see Ziegler, Hauss, Lengwiler 2018, especially the articles by Loretta Seglias, Martin Lengwiler, Annegret Wigger and Urs Hafner.

had become one of the wealthiest countries in the world, propounding liberal social attitudes. The former detainees told stories of arbitrary conduct by the authorities, of being deprived of their rights. They spoke of isolation and despair, violence and humiliation, exploitation, forced labour, unrelenting surveillance, lifelong stigmatisation and traumatisation. They were living testimony to the fact that the deprivation of personal liberty has effects that continue long after actual detention comes to an end, that there are social and health consequences with which the individuals must endure for the rest of their lives. The continued experience of injustice and suffering that marked the lives of former detainees transformed the notion of coming to terms with past into an ongoing challenge for today.

On 10 September 2010, at a ceremony held at the Hindelbank correctional facility, Federal Councillor Eveline Widmer-Schlumpf and representatives of the cantons formally apologised to all those who had been held in detention without conviction by a court of law. Thereafter, former detainees and the individuals on whom other forms of institutionalisation or coercive administrative measures had been inflicted joined together to form a broad movement to seek reparations. On 11 April 2013, at a ceremony in the Bern Casino, Federal Councillor Simonetta Sommaruga, together with representatives of the cantons, municipalities, denominational groups and associations, officially acknowledged the injustices that had been done. On behalf of the Federal Council, she asked the former contract children (*Verdingkinder*) and the victims of other coercive welfare measures for their forgiveness and announced the establishment of the roundtable, together with cantonal assistance offices and a hardship fund. On 21 March 2014, Parliament passed the Federal Act on the Rehabilitation of Administrative Detainees. The new law acknowledged that numerous administrative detention orders had been issued or enforced in a manner that, from today's point of view, must be considered unjust. This included, in particular, incarcerations in penal institutions without a criminal conviction. Parliament instructed the Federal Council to establish an independent expert commission tasked with carrying out a historical inquiry into what had happened; it also enacted provisions on the archiving and granting of access to the relevant documentation.[4] Two years later, the Rehabilitation Act was incorporated into the more comprehensive Federal Act of

4 Federal Act of 21 March 2014 on the Rehabilitation of Administrative Detainees (AS 2014 2293).

30 September 2016 on Compulsory Social Measures and Placements Prior to 1981. Recognition of past injustices was extended to further categories of victims, and provision was made for a solidarity contribution.[5]

REMEMBRANCE, REPARATIONS AND HISTORICAL INQUIRY

Official apologies, reparation and compensation payments, as well as the establishment of truth and history commissions have, in recent decades, become fixed elements in the culture of remembrance in democratic countries. In this, the efforts to remember and memorialise the victims of the Holocaust and the National Socialist tyranny played a seminal role.[6] The growing sensitivity to historical injustices first came to expression in Switzerland in connection with the *Hilfswerk für die Kinder der Landstrasse* ("Relief Organisation for Children of the Open Road"). In 1986, Federal Councillor Alphons Egli apologised for the Confederation having supported the work of that "benevolent association" over a period of decades and thus facilitated the systematic persecution of the Yenish minority by forcibly separating some 600 children from their families. In 1995, the President of the Swiss Confederation, Kaspar Villiger, apologised for Swiss policies toward Jews persecuted during the Second World War. The ensuing controversy over unclaimed Jewish assets and over Switzerland's conduct during the Second World War caused the country's historical self-image to be called into question and led to a critical reassessment of different aspects of its past. A version of history whose main emphasis had been on the achievements of earlier generations gradually began to give way to a view of the past that placed acknowledgement and the perspective of the victims at its centre and which took its orientation from the fundamental values of human rights. In rapid succession, various other aspects of Switzerland's recent history then became the focus of government-initiated historical inquiry projects and reparation efforts: the "Relief Organisation for Children of the Open Road" (1999), Switzerland's relations with the apartheid regime in South Africa (2001), the use of coercive measures in psychiatric and welfare care (2002), and the treatment of persons who had provided assistance to refugees during the Second World War (2004) or to fighters in the Spanish Civil War (2008). Another subject of intense debate today

5 Federal Act of 30 September 2016 on Compulsory Social Measures and Placements Prior to 1981 (SR 211.223.13).

6 Barkan 2000.

is Switzerland's involvement in the slave trade. The historical inquiry has become something of a permanent construction site, though there have been hitches along the way. As recently as 2004, for example, Parliament rejected a draft bill for the rehabilitation of victims of forced sterilisation and a historical study of compulsory foster care measures.[7]

The focus of interest in investigating historical injustices has shifted in recent years to the problematic aspects of democratic welfare states in the period following the Second World War. The discussion over administrative detention, coercive welfare measures and compulsory foster care in Switzerland is no exception to that rule. Historians Katie Wright, Johanna Sköld and Shurlee Swain have argued that many Western societies have entered a phase of self-critical questioning of their history, in what they call an "age of inquiry".[8] It is also true that in many countries – such as Ireland, Germany, Austria, Sweden, Canada and Australia – discussions are ongoing with regard to the recognition of past injustices, apology and reparations, similar to what is happening in Switzerland. In recent years, many countries have established investigative bodies on the example of the South African Truth and Reconciliation Commission (1995–2002) to hear the testimony of contemporary eyewitnesses who were concerned by the events, to document incidents of torture and abuse, and to formulate recommendations for compensation arrangements.[9]

One finding common to all of the international debates over the past is that violence and the violation of fundamental rights have played a prominent role in connection with poverty and other forms of social segregation in the post-war era. The population groups concerned are predominantly children and adolescents who were subjected to physical or sexual abuse while in foster care or – particularly in post-colonial contexts – were separated from their families for ethnic reasons. Switzerland is something of an exception in this regard, in that the rehabilitation process here extends to different groups of former detainees and victims. By contrast, however, Switzerland has thus far limited reparation payments to the symbolic amount of 25,000 Swiss francs per individual and has given higher priority to historical inquiry than to a legal assessment of the facts. Also com-

7 Seglias 2018, 25–30; Schürer 2009.

8 Wright, Sköld, Swain 2018.

9 Lengwiler 2018. Almost simultaneously with the IEC, the Independent Inquiry into Child Sexual Abuse in Germany has published its first Interim Report (Independent Inquiry 2019).

mon to many countries as they examine their past is the strong emphasis they place in the public debate on the recollections of contemporary eyewitnesses to the events under discussion. After years of being ignored and having their credibility questioned, former detainees and victims are now being listened to and taken seriously. The growing resonance reflects an increasing sensitivity among political actors to the problematic aspects of their countries' histories. At the same time, the standing of the victims has generally risen in today's society, not least as a result of the successful mobilisation of concerned sectors of the population and the support they have received in the media and political action groups.

As the recommendations adopted by the 2014 roundtable illustrate, any serious effort to make reparations must include a number of different elements: recognition by the political leadership and representatives of the former "perpetrator organisations" (church organisations, social institutions, associations) of the historical injustices done; establishment of counselling and support services for victims of abuse and former detainees; proper archiving of the relevant documentation and provision of a means of ready public access thereto; payments of financial compensation; historical inquiry and communications efforts in order to raise public awareness for the wrongs committed. This combination of measures is intended to prevent the recurrence of similar events in the future.[10] The historical inquiry that the IEC was mandated to conduct represents one part of that effort. Reparations for the injustices perpetrated cannot be achieved by this means alone, however. The IEC has therefore formulated various recommendations that indicate ways in which the rehabilitation process can be further pursued (see pp. 383–403 in this volume).

CURRENT STATUS OF RESEARCH

The IEC's research investigations were carried out using a historical approach based on the principles of scientific method. Various earlier historical studies and works from other academic disciplines proved useful in this regard. It is true, however, that for many years academic historical research into the lives of people in socially and economically deprived circumstances barely looked beyond the bounds of the organised working class and the development of social welfare institutions. More detailed inquiries into the problematic aspects of the modern notions of the rule of

10 Federal Department of Justice and Police 2014.

law and the welfare state – including such issues as the history of social welfare measures, public guardianship practices, welfare homes and care facilities, and correctional systems – began to be conducted only after the turn of the millennium. Until that time, mainstream academic research and general treatments on such matters took only marginal note of the pioneering works that had thus far been published in those areas.[11]

Studies on the "Relief Organisation for Children of the Open Road" and research into eugenic practices and other (coercive) measures used by public guardianship and psychiatric authorities – some of which was conducted within the framework of the National Research Programme (NRP 51) "Social Integration and Social Exclusion" (2002–2007) – served as a catalyst.[12] These were followed, after 2005, by studies dealing with the placement of children in foster care, based on interviews with contemporary eyewitnesses.[13] Nevertheless, it was only as demands for moral and financial reparations by former detainees began to be voiced, that the eyes of academic researchers were opened to the wide range of coercive welfare measures that had been available, and to the heterogeneity and complexity of the manner in which they were applied. In the meantime, the initial reticence of the academic community has given way to a veritable research boom on the subject. The research focus of the Sinergia project "Placing children in care" (2013–2017), financed by the Swiss National Science Foundation, was primarily on the institutionalisation of children and adolescents in foster care homes.[14] Other studies have also been commissioned in recent years by different cantons, municipalities, social institutions and associations interested in a critical inquiry into their own past actions. In addition, there is a growing number of masters' and PhD theses currently in preparation dealing with the placement of children in foster care and other forms of institutional coercion.[15] A further intensification of research activity in this area is to be expected from the National Research Programme (NRP 76) "Welfare and Coercion" (2018–2023), an interdisciplinary academic project with a broader mandate than that of the IEC.

11 See Hürlimann et al. 2011, in particular, the articles by Matthieu Leimgruber and Rebecca Wyler.

12 Grunder 2009, with references to the individual research projects conducted within the overall framework of NRP 51.

13 Leuenberger, Seglias 2008.

14 Hauss, Gabriel, Lengwiler 2018.

15 See the research surveys in: Seglias 2018; Hauss, Gabriel, Lengwiler 2018; Huonker 2014; Lengwiler et al. 2013.

Administrative detention, as a specific form of coercive welfare measure, was first drawn to the attention of academic researchers in connection with the controversy surrounding the "Relief Organisation for Children of the Open Road" and the use of protective custody in cases that fall within the grey zone between psychiatric and correctional measures.[16] A systematic treatment of the subject was first undertaken by historians Sabine Lippuner (2005) and Tanja Rietmann (2006, 2013). Based on evidence from two cantons (Thurgau and Bern), they reconstructed the legal-institutional bases for such measures and laid bare the connections between their use and a fundamentally repressive social policy in which the distinctions between welfare, disciplinary and custodianship measures had become blurred. These studies showed that it was primarily members of the lower social echelons – and particularly men – against whom detention orders were issued in disproportionate numbers.[17] Both works have since been supplemented by numerous individual and cantonal case studies, undertaken as commissioned papers, research projects or university degree theses.[18]

The studies published to date provide a highly differentiated picture of administrative detention practice in Switzerland.[19] On the one hand, they identify specific features of each cantonal regime. At the same time, however, they also make it clear that there was often a remarkable similarity between the different regimes. As the most salient – and problematic – aspects of those detention regimes may be noted the following: the complexity and multiplicity of administrative detention laws; the almost unlimited decision-making powers of administrative authorities; the obvious gender bias that prevailed in practice; and the significant role played by multifunctional detention facilities that allowed for greater flexibility than ordinary correctional facilities. Various factors can also be identified as having contributed to the susceptibility of the regimes to arbitrariness: strong social pressure to conform and a highly hierarchical understanding

16 Lengwiler et al. 2013, 44–45.

17 Rietmann 2013; Rietmann 2006; Lippuner 2005.

18 In reverse chronological order; abbreviations in parentheses indicate the canton on which the investigations focused: Businger, Ramsauer 2019 (ZH); Christensen 2018 (ZH); Germann 2018 (BE); Badran 2017 (LU); Rietmann 2017 (GR); Crettaz 2016 (VS); Knecht 2016 (SG); Collaud et al. 2015 (VD); Kälin 2015 (ZG); Marti 2015 (LU); Bignasca, Valsangiacomo, Poncioni 2015 (TI); Gönitzer 2014 (SG); Locher 2014 (FR); Lavoyer 2013 (NE); Badran 2012 (NW), Collaud 2012 (VD); Rossier 2010 (FR).

19 See the research surveys in Minder 2017; Germann 2014.

of the structure of society; the sluggish development of the Swiss welfare state; and the delay in the introduction of internationally accepted fundamental rights standards in Switzerland as a consequence of the country's direct democratic system of government. The last point also explains why the use of administrative detention remained possible up to as late as 1981.[20] Research gaps remain, however, particularly with regard to the period after 1950, to the financial aspects involved in the use of administrative detention, and to Switzerland's policies in this area as compared with those of other countries.

1.2 MANDATE OF THE IEC, RESEARCH PRIORITIES AND METHODOLOGY

The IEC was established on 5 November 2014 by the Federal Council, in conformity with the terms of the Rehabilitation Act of 21 March 2014. A research programme and a research design were drafted by the Commission detailing the manner in which it proposed to fulfil its mandate.[21]

MANDATE AND SUBJECT OF INVESTIGATION

In accordance with its mandate, the IEC's inquiry focused on the history of the use of administrative detention in Switzerland. In the context of this inquiry, it also considered other coercive welfare measures and the placement of children in foster care, but did not attempt to provide a comprehensive analysis thereof.[22] In this sense, NRP 76 "Welfare and Coercion" is an important complement to the IEC.

Administrative detention – as already noted – is a general term for measures employed to deprive individuals of their liberty without due criminal process. The legal bases for ordering such measures were in effect in Switzerland until 1981 and have since been either repealed or amended. The measures were used primarily for adults, and the usual justification given was that they were necessary – depending on the circumstances – ei-

20 See, with critical relativisation, Ferreira, Maugué, Maulini 2017.

21 Both documents are available online at www.uek-administrative-versorgungen.ch/research/research-design?filter=22, consulted on 22 March 2019.

22 Federal Act of 21 March 2014 on the Rehabilitation of Administrative Detainees (AS 2014 2293), art. 5; Federal Act of 30 September 2016 on Compulsory Social Measures and Placements Prior to 1981 (SR 211.223.13), art. 15.

ther for the individuals' own welfare or education, or for the protection of society. The notion of administrative detention is not very clearly circumscribed. Both the terminology and the nature of the measures used were strongly context-dependent and varied over time. There was also some overlap between the different types of measures used. Until 1981, authority for the legislation of administrative detention measures and over the detention facilities used for their enforcement lay for the most part with the cantons. The result of this was a bewildering multiplicity of applicable legal bases, shared powers and enforcement institutions. To come to terms with this historical diversity and the terminological imprecision, the IEC chose not to place fixed bounds on the scope of its research from the outset. It was decided that a contextual analysis of the subject matter, including a critical investigation of the historical terminology and the conceptual background thereto was more urgent than a precise delineation of its research scope (see chapter 2.1).

The history of administrative detention can be investigated from different standpoints – e.g. from a legal-historical point of view, from the perspective of the decision-makers involved, or from the standpoint of those against whom its use was ordered. The IEC chose to proceed in a manner that combined various approaches. On the one hand, it was decided to investigate the structures underlying the acts of intervention carried out by the public authorities along with the actual practice of the authorities involved, and to consider them in their respective contexts. This approach was important in identifying the social, institutional and economic forces and factors that made it possible, until 1981, for individuals in Switzerland to be detained against their will in closed facilities, without having been convicted by a court of law. In order to determine where the responsibility for this lay, it was necessary to investigate the legal framework, the policies pursued by the authorities, and the manner in which the measures ordered were enforced in different facilities, so as to obtain a full picture of the situation. One part of this investigation was the reconstruction of the historical context in which such stigmatising characterisations as "indolent" or "dissolute" were applied. The official use of such terms by the authorities has been rightly criticised by those against whom administrative detention measures were ordered. Many of them suffered their entire lives from having been characterised early on in a manner that, in reality, had nothing to do with them. For a historical inquiry, however, analysis of the language used in the sources is essential for obtaining an understanding

of the logic behind the actions of those involved in the historical events at issue – and for identifying the problematic value judgements associated with them.

On the other hand, however, it is not possible to write the history of administrative detention in Switzerland without a full appreciation of the standpoint of the victims and former detainees themselves. The IEC has addressed this point at three levels. First, it has considered the interviews and testimonies of former detainees as sources of equal value to others drawn on in the study and thus provided a corrective to the one-sided portrayal of events by the authorities. The volume of portraits (IEC, vol. 1), in particular, is designed to give a face – in the most literal sense – to the stories of former detainees and to make their voices heard. Second, it has investigated in full the questions that are today considered particularly troubling by former detainees. Among these figure, for example, the question of how it was possible for adolescents to have been placed in correctional facilities alongside adults; or whether detainees, or their families, were forced to pay for boarding costs out of their own resources. Third, the IEC has placed a spotlight on the impact that the measures had on the course of the lives of those who were deprived of their liberty. The Commission has documented the suffering and trauma caused by the experience of disenfranchisement, exploitation and violence. In so doing, the collective nature of what was experienced individually by each of the former detainees is also brought into sharper focus. The reality is that administrative detention was not ordered solely in isolated cases; it was a routine practice, widely entrenched in Swiss society.

The different studies focus on the period beginning in the 1930s and continuing until the replacement of administrative detention by involuntary commitment measures in 1981. With regard to the after-effects of the former practice, the scope of the study extends to the present. While it is inevitable that earlier events – reaching as far back as the 19th century – must sometimes be taken into account as well, the temporal scope of the study was fixed so as to coincide with the lifetimes of former detainees still alive today. Special attention has also been given to detention practices in the 1950s and 1960s, as it was during this period that the discrepancy between the invasiveness of the administrative measures and the prevailing social trend towards greater openness and liberalisation became more and more glaring. The point in time when the study ends was fixed by the mandate given to the IEC. There is good reason, however, to question the

well-foundedness of the presumption that the period under inquiry truly came to an end in 1981. Questionable practices do not disappear from one day to the next. Quite possibly, responsibility for invasive practices by the authorities was simply shifted to other domains, in particular, to that of psychiatric care. To this very day, under the provisions governing involuntary commitment for welfare purposes – which replaced involuntary commitment (*fürsorgerische Unterbringung* / *placement à des fins d'assistance*) in 2013 – highly invasive infringements of personal liberty are still possible.[23]

ORGANISATION AND WORK PROCEDURES

By prevailing standards for research projects in the humanities or social sciences, the IEC budget of just under 10 million Swiss francs was exceptionally large. The Independent Commission of Experts Switzerland – Second World War (1996–2001) was of comparable size and served as a precedent.[24] At the same time, however, the expectations placed on the two commissions by the public and the political leaderships differed in many respects. The two projects also faced very different challenges in terms of research methodology and organisation. Unlike its "predecessor", the IEC was never under political pressure from abroad. It did not have the same privileged access to archives, nor was it required to consult archival material from around the world. By contrast, the IEC was faced with the task of finding a way for those who had actively fought for a historical re-examination of the facts – the former detainees themselves – to participate in the Commission's work. The IEC needed to devise a methodology for dealing with a widely heterogeneous research topic for which the extant source material was fragmentary. And finally – like its "predecessor" – the Commission was obliged to establish a research organisation that would allow it to work in a purposeful manner and facilitate the easy flow of knowledge and experience between those involved in the project.

It was a matter of great concern to the IEC that the viewpoints of former detainees be included with equal standing in the Commission's research. This was accomplished – as already noted – through the formulation of appropriate research questions and a balanced selection of sources.

23 Mona, Weber 2018; Schuler, Tuch, Peter 2018; Gassmann 2010.

24 Independent Commission of Experts Switzerland – Second World War 2002 (Bergier Commission).

In addition, while it was not the IEC's intent to conduct participative research in the narrow sense of the term, it did maintain a regular exchange of views and information with the former detainees and their organisations. Discussions took place concerning the overall research design, and public workshops and communications events were held to keep the interested parties informed as to the status of the various research sub-projects and their interim findings. On these occasions, the IEC also received valuable suggestions and ideas concerning its work. In this way, it was able to benefit greatly from the knowledge and experience of the former detainees acting, as it were, as their own expert witnesses.

The IEC study considers Switzerland as a whole. Its purpose is to provide the Swiss public with a comprehensive and detailed view of the subject under investigation. The objective was to gain insights that go beyond the findings of individual case studies. In order to achieve this, the IEC divided its subject matter thematically and combined that structure with case studies on individual cantons or detention facilities. This made it possible to connect different thematic areas with one another. While specific cantons were chosen as reference points, attention was also given to individual, local and national standpoints; the historical perspective was enriched by sociological considerations. This multi-perspectival approach has the advantage of making it possible to describe overlapping developments without neglecting the heterogeneous nature of the subject under investigation.

The IEC divided its research into five areas, each of which was concerned with a specific aspect of the subject matter. The research findings in each area were presented in separate publications. One area was devoted to fundamental research; the relevant research team was responsible for conducting interviews with contemporary eyewitnesses, the IEC's communications efforts (IEC, vol. 2), and the calculation of estimates on the total number of former administrative detainees (IEC, vol. 6). The other four research areas focused on the relevant legal bases (IEC, vol. 3), policies followed by the administrative authorities (IEC, vol. 7), detention facilities (IEC, vol. 8), the surviving ego-documentation (IEC, vol. 4), and an analysis of the interviews with former detainees (IEC, vol. 5). The publication series is supplemented by a volume of portraits (IEC, vol. 1) as well as by a volume which presents an annotated selection of the documentation (IEC, vol. 9). In addition, the IEC has created a website where the interested public can find resources and information on the different detention facilities

that were operated as well as copies of the laws under which administrative detention orders were issued.[25]

TRANSMISSION AND SELECTION OF SOURCE MATERIAL

The IEC analysed a body of source material that reflected a wide range of perspectives and is representative of the disparate circumstances under which it was transmitted. The material includes both interviews with, and ego-documents by, former detainees, documents preserved in public and private archives, and published sources. This combination of sources provides the basis for a polyphonic presentation of the past.

A particular challenge for the IEC researchers arose from the fact that the majority of the extant source material reflects the viewpoints of the administrative officials and professionals responsible for ordering administrative detention measures. Documents produced and conserved by the competent authorities were designed to explain the grounds for the laws and decisions that were implemented. They were an integral part of the system that rendered possible and legitimised serious infringements of personal liberty. Files kept by the various administrative and guardianship authorities often ascribe negative character attributes to the individuals concerned and give them the responsibility for their own economic or family difficulties. Once on record, stigmatisations of that kind took on a life of their own and perpetuated themselves (see “Stigma and stigmatisation”, p. 31). For the individuals concerned, it was very difficult to defend themselves. Moreover, the official documents contain many omissions and often exclude any mention of the violations of detainees’ rights, for example, or of acts of violence committed against them. For this reason, many former detainees are at pains to recognise their own life stories as recounted in the official records that were assembled on them decades earlier.[26]

Interviews and ego-documents produced by former detainees thus also constitute a necessary counterweight to the written records preserved by the authorities. The IEC has catalogued and analysed a large number of letters, transcripts and other so-called ego-documents[27] from the archives. With the help of those sources, the perspective of the individuals concerned

25 Guggisberg, Dalmolin 2019; Gönitzer, Gumy 2019.
26 IEC, vol. 7, chap. 3.6; Galle, Meier 2009; Kaufmann, Leimgruber 2008.
27 See Schulze 1996. See also IEC, vol. 4.

becomes palpable. In addition, IEC staff conducted 58 interviews in which former detainees spoke of what they experienced in the time before, during and after their being committed to a closed facility.[28] Ego-documents are a source of insight that build not solely on official records, but also take into consideration the way in which the individuals concerned actually experienced the infringements of their personal liberty, and the strategies they developed for putting up resistance and defending themselves. Like all sources, ego-documents are position-dependent and necessarily selective. They represent a subjective perspective and thus constitute one aspect of a larger, more complex reality. In the interviews, temporal distance also plays a role: the events recalled may have taken place decades before the moment they are remembered and recounted. The experiences that a person has had since that time, the framework in which the interview is conducted, and the questions that are asked all have an influence on the way in which the interviewee tells his or her own story. Through that retelling, however, the ways in which the experience of administrative detention still affects the former detainees to this day become all the more evident.

Despite their obvious partiality, it is indispensable that documents from government actors also be included in the investigation. It is only in this way that the distribution of political responsibility and the underlying government structures that made administrative detention possible can be identified and comprehended. Analysis of the sources was carried out in keeping with the critical principles of the scientific method. This means that also the context-dependent nature of these documents and the language used in them can be a subject of critical reflection. The manner in which official documents were transmitted is not consistent, making it difficult to draw comparisons between the different cantons, authorities and institutions. This is a consequence of the fact that such a large number of authorities were involved in administrative detention procedures. The relevant cantonal and federal archive holdings are correspondingly vast. In addition, despite intense efforts on the part of archivists to find further documentation, there remain very many gaps in the extant material.

The choice of official documents cited depends in each case on the questions to which answers were sought and the case studies that were selected as being representative. The grounds on which the choice was

28 IEC, vol. 5, chap. 1. The IEC also conducted twelve interviews with former public officials. That source material was not systematically analysed, however.

STIGMA AND STIGMATISATION

Stigma and stigmatisation are terms widely used in the social sciences when investigating the processes by which individuals are categorised and excluded from society.[1] The term stigma was originally used to signify a (physical) sign that signalled the moral condition of the bearer. In the early modern era, beggars and criminals were often physically branded. Stigmatisation is defined as the imputation of negatively connoted attributes to other persons by third parties (often due to physical characteristics or social affiliations). These ascribed attributes tend to obscure other aspects of the life or identity of the persons thus stigmatised and subsequently affect all their social dealings. Their words and deeds tend to be perceived and judged in the light of the discrediting attributes imputed to them. These imputations have an influence on the social standing of the individuals concerned and serve as grounds for discriminating against them. Stigmatised individuals can develop negative perceptions of themselves and may resort to various strategies in order to cope with their stigmatisation. In this way, the stigmas also have an impact on their position within their social surroundings.

1 See Goffman 1963.

made are explained in detail in the individual volumes. Official sources can be roughly divided into three groups. The first includes legislative and administrative enactments and the related documentation: administrative and financial reports, legal texts, draft laws, records of oversight bodies, case files, entry and exit registers of institutions, and the private archives of former public officials. To the second group belong the records and resolutions of the decision-making authorities and bodies that were responsible for issuing administrative detention orders or for ruling on appeals. Finally, there are the case files and personal dossiers that were kept on the proceedings for the ordering and enforcement of an administrative detention measure against specific individuals. These include the files of the guardianship and social welfare offices, case files on individual proceedings, the personal dossiers maintained by detention facilities, and psychiatric opinions. The official documents are supplemented by source

material that reflects the perspective of experts and the general public. This includes legal and medical publications, newspaper articles, and radio and television broadcasts.

1.3 OBJECTIVES AND STRUCTURE

This IEC Synthesis Report presents an independent perspective, sets key priorities and establishes connections between the different volumes in the IEC publication series. It does this with three objectives in mind. First, the synthesis is intended to provide concise and nuanced responses to the most salient questions as to the forms and origins of state-sanctioned injustices. In so doing, the report tries to find a proper balance between analytical generalisations and highly detailed analyses of representative cases. Second, an attempt has been made to situate the IEC's findings within the context of other Swiss and – where possible – international research efforts. In addition, with regard to specific points, we have endeavoured to establish a relationship between our findings and the current discourse in Switzerland over measures for the deprivation or restriction of individual liberty. Third, the report identifies questions that remain open and suggests possibilities for further research in those areas.

COMMON THREAD OF THE SYNTHESIS REPORT

The common thread running through the report comprises three sets of questions that address the IEC's research strategy concerns and engage with major issues on which the former detainees, the public and the political leadership have a need to know. The questions of "why" and "how much" are understandably the core issues for the individuals who suffered personally from the injustices committed. Unfortunately, it is not always possible to provide well-founded, scientifically objective answers to these questions. Historical events and processes depend on countless conditions, factors and circumstances that influence one another reciprocally. In many cases, the extant source material is also incomplete. Because of this, historical explanations are necessarily complex, and their scope is inevitably limited.

The first set of questions looks at the issue of how and why human beings were held against their will in closed facilities for correctional labour, juvenile reform or penal correction, without having committed any crime

or having been convicted by a court of law. What were the objectives pursued by those who allowed or ordered such measures? This question relates to the legal bases that made provision for such invasions of individual liberty and the strategies deployed to justify them politically. A further question concerns the manner in which the legal provisions were applied on a day-to-day basis by local authorities and detention facilities. Who were the actors involved? How did they exercise their authority? And what were the mechanisms and logic of social conduct at work here?

The second set of questions addresses the factors that made it possible for the administrative detention regime to endure up to as late as the 1980s. The central issue here is the degree to which the political elite were prepared – during a period of rapid social change and the construction of the Swiss welfare state – to adapt the detention regime to changing social norms and to make the requisite funding available for the creation of other alternatives. Closely related thereto is the question of the manner in which the competent authorities performed their monitoring and oversight duties. An important point of reference for the assessments presented in the Synthesis Report are the critical voices that were raised at various points in time, questioning both the legality and practical usefulness of administrative detention. Those voices help to illustrate the point that the use of administrative detention was not simply the expression of some vaguely defined *zeitgeist*: it was a matter of debate, and conceivable alternatives existed.

The third set of questions concerns the capacity for action of former detainees, their processing and coping strategies, and the long-term effects of their experiences on their lives. One of the central questions here is: for which population groups were administrative detention measures designed? Are the earlier findings correct, which assert that it was primarily men from the lowest social echelon who were targeted by the authorities? Were different groups targeted at different times, particularly after 1945? The question also arises as to how the individuals who were targeted came to terms with the flagrant power imbalance that prevailed and with the after-effects of a prolonged period of closed detention. What means and strategies were available to them for resisting? How did the experience of being deprived of their liberty affect the later course of detainees' lives? What after-effects do they still suffer from today?

The assessments contained in the Synthesis Report are historical, not legal, in nature. The report does not seek to play judge, using hindsight

to assign guilt. A retrospective evaluation of earlier detention legislation and practices is inherently problematic, due to numerous obstacles and methodological imponderabilities. Aside from the gaps in the source material, there is another question that would have to be answered: which is the superior law to be applied when making a judgement – the laws applicable at the time, or today's laws? And which method of legal interpretation should be applied? The analyses presented in the Synthesis Report are thus not of a legal nature, but of a legal *historical* nature. They are intended as a contribution to contemporary legal history. The report shows that the laws under which administrative detention was permitted undermined recognised legal guarantees, such as the right to due process, and were politically controversial from the outset. It also makes clear the way in which imprecise legal provisions and excessive discretionary latitude facilitated arbitrary and error-prone policies in local administrations and detention facilities, thus making it possible for the law to become a source of injustice.

STRUCTURE AND FORM

The Synthesis Report has a clear and easy-to-follow structure for readers. The five main chapters are ordered in keeping with the stages of the administrative detention procedure as experienced by the individuals against whom such measures were ordered. Each chapter responds to a simple question: What were administrative detention measures and what forms could they take (chap. 2)? Against whom were administrative detention orders issued (chap. 3)? Under what circumstances were men and women placed in detention (chap. 4)? Where and under what conditions were administrative detention orders executed (chap. 5)? What were the effects of administrative detention on the individuals who were detained (chap. 6)? The conclusions (chap. 7) summarise the main findings presented in the report. An overall assessment is also offered together with an outline of potential subjects for further research. The chapters are supplemented by nine annotated and illustrated examples of source materials, which focus on significant specific issues and highlight the importance of source analysis for the process of historical inquiry. Selected documents accompanied by brief commentaries elucidate the key stations along a detainee's journey. They provide representative examples of the mechanisms in operation, the manner in which measures were applied, and the consequences they had.

The Synthesis Report is based on IEC publications, the relevant scholarly literature and general works on the history of Switzerland in the 19th and 20th centuries. The report is addressed to the Federal Council, as the IEC's appointing body, to the general public and, in particular, to the men and women who themselves were targeted by administrative detention measures.

Every effort has been made to write the report in a straightforward style, avoiding (or explaining) technical terminology. Contrary to normal academic usage, the scholarly apparatus has been kept to a minimum. The footnotes provide references to other IEC publications, where further and more detailed information can be found. Archival sources are cited with their signature and the places where they are cited in other IEC publications. Also mentioned in the footnotes are publications directly referred to in the text, of immediate relevance to the subject under discussion, or of central importance to the arguments presented. Additional bibliographies may be found in IEC publications.

The Synthesis Report uses a range of terms to refer to the people against whom administrative detention or other coercive administrative measures were ordered, including "former detainees", "detainees", "individuals concerned" or "individuals targeted by administrative detention measures". The intent is to give expression to the fact that the individuals concerned were not just passive objects, but possessed their own powers to act, even if these may at times have been severely curtailed. The chosen terminology is also intended to signal that the identities and lives of the individuals in question cannot be reduced to their status as victims. The term "victim" is used when speaking of situations in which individuals were exposed to physical, sexual or mental violence, or to other violations of their rights, and were thus made victims in the narrower sense of the term.

The introduction as well as chapters 2, 4 and 5 were originally written in German. The original language of chapters 3 and 6 was French. The conclusions were drafted as a bilingual text. The names of individuals referred to in the text have been changed in accordance with the IEC's anonymisation rules. Former detainees are referred to in the Synthesis Report using the same names as in other IEC publications.

2 A RULE-OF-LAW "MONSTER": DEVELOPMENT, CRITICISM AND REPEAL OF THE LAWS ON COERCIVE WELFARE MEASURES

> "What I would like to know once and for all is whether this is a case of compulsory detention or one of false imprisonment. A ministry that issues *lettres de cachet* […] strikes me as more than suspect."[1]

In the summer of 1936, the detainee R.C. filed a complaint over his placement in detention in the Bellechasse facilities. He compared the measure to the notorious use of *lettres de cachet* by the kings of France prior to the French Revolution in 1789 as a means of arbitrarily depriving individuals of their liberty, at whim. The "order of the sovereign" is still to this day considered the epitome of institutionalised abuse of power. By means of this historical comparison, R.C. sought to draw attention to the fact that the arbitrary use of power and denial of rights were phenomena that also occurred in democratic Switzerland. It is true that administrative detention had been regulated by law and democratically sanctioned since the 19th century. The compatibility of that practice with modern principles of the rule of law and constitutionality had always been a subject of controversy. In a polemical essay entitled *"Administrativjustiz" und Schweizerische Konzentrationslager* ["Administrative Justice" and Swiss Concentration Camps], Carl Albert Loosli, writer and vocal critic of the Swiss detention system, bluntly characterised the laws on compulsory institutionalisation as a "monstrosity" (*Ungeheuer*).[2] Despite such criticism, a barely comprehensible complex of administrative detention laws was maintained in effect until 1981. These laws made it possible for individuals to be deprived of their liberty without having committed any crime. This chapter provides an overview of administrative detention measures and the historical context in which they developed. What were administrative detention measures? What were

1 Letter to the head of the Department of Justice and Police, 21 June 1936, Archives of the canton of Fribourg, Bellechasse A 7492, quoted in IEC, vol. 4, chap. 3.1, 98.

2 Loosli 2007, 197.

the political and legal arguments used to justify them, and why were they problematic? Why did it take so long before the applicable legal provisions began to be questioned and ultimately repealed?

2.1 OPENING CONSIDERATIONS: THE PLACE OF ADMINISTRATIVE DETENTION IN THE SWISS LEGAL ORDER

What precisely does the term "administrative detention measures" refer to? How do administrative detention measures differ from other compulsory welfare measures? The term "administrative detention" is not nearly as precise as the impression created by the current debate over its use in the past. This being the case, it will be useful to begin with a critical discussion of the term.

DEPRIVATION OF LIBERTY MEASURES OUTSIDE THE CRIMINAL JUSTICE SYSTEM

Philippe Frioud tells in his memoirs how, in the mid-1960s, he was enlightened by another adolescent about the meaning of his being committed to the Tessenberg juvenile reform facility: "[…] Are you an administrative detainee? – A what? […] – But I didn't do anything! I haven't committed any crime! I was never convicted by a court! […] – […] Listen! You don't have to have a conviction, or commit a crime, to be an administrative detainee. It's enough if just one person, one of the social services, or a cantonal administration issues a decision." The exchange between two adolescents, as related above, is not unique. Similar stories are also found in the reports of other contemporary eyewitnesses.[3]

The brief narrative contains important features that still characterise the term administrative detention as it is used in the legal literature and understood in general parlance today.[4] The IEC – as noted in the introduction – has adopted a similar working definition: administrative detention measures are defined as measures for the deprivation of liberty in a closed facility, with no direct connection to a criminal act, and ordered by decision of an administrative authority. The individuals against whom such

3 Frioud 2014, 139–140. Similarly Honegger 2018 [1974], 163; Haslimeier 1955, 39–40.
4 Bossart 1965, 5; Bersier 1968, 154.

measures were ordered, without prior criminal conviction, were adults and, in part, also minors. As grounds for such intervention, the authorities generally named the moral conduct of the individuals in question or a threat to the public order.

The meaning of the term administrative detention was, however, never entirely unambiguous. This may be seen from the history of the term. In the period preceding the First World War, there is hardly any use of the term to be found in the sources. Up to that time, the adjective "administrative" was normally used in collocation with the competent authorities ("administrative authorities") or the respective procedures ("by administrative means") and not to describe the sanction as such ("administrative detention" / "*administrative Versorgung*" / "*internement administratif*"). In 19th century laws on correctional labour facilities, the terms "detention" or "custody" were used without the modifying adjective.[5] It is presumably no coincidence that the new collocation first came into regular use following the codification of civil and criminal law and the ensuing systematisation of the legal terminology.[6] A similar observation can be made with regard to the expression "administrative justice", which was introduced as a polemical term by Carl Albert Loosli shortly before the Second World War in the fight against internment without conviction by a court. The term, as such, already had a long tradition in the legal literature, where it had been used in discussions on the separation of powers in connection with control over the administrative branch of government and with the introduction of administrative courts.[7] Nevertheless, the linkage with measures for the deprivation of liberty ordered by non-judicial (administrative or police) authorities was far from commonplace (though not entirely unknown) prior to the publication of Loosli's pamphlet. Critics of such measures thus also contributed to greater terminological precision.[8]

The core problem associated with the issue of administrative detention since the 19th century was that it constituted an invasion of the sphere of individual personal liberty outside the scope of the criminal justice sys-

5 For example, Badran 2017, 31; Rietmann 2013, 54; Lippuner 2005, 48–49.

6 Swiss Federal Council 1904, 47.

7 Hofer 2010. At the centre of early discussions on the subject of "administrative justice" was – in keeping with liberal theories of government – intervention by the public administration into private financial affairs, and not restrictions on the personal liberty of citizens.

8 Marti, Grunder 2018, 327; Loosli 2007, 103–104. For an early example of the use of the term "administrative justice", see Christensen 2018, 26, who refers to the 1878 debate in the Cantonal Council of Zurich.

tem. Measures for such intervention were first introduced in the cantonal (poor) laws, under which the ordering of detention in a closed facility was permitted for the destitute who refused to accept work. As the number of legislative acts allowing administrative detention began to increase in the early 20th century, conceptual ambiguities also mounted. Could the terminology of administrative detention also be applied to commitment to a psychiatric institution, to alcohol treatment facilities, or to orders for the deprivation of liberty by guardianship authorities? An unambiguous and definitive response to these questions was never provided by legal scholars. Depending on the author and the standpoint taken, the bounds were drawn in one way or in another. These legal-historical ambiguities remain to the present day and a final resolution is not entirely possible. Consequently, it will be useful to start from a general working definition – measures for deprivation of liberty outside the criminal justice system – and to reconstruct the terminology and the concepts that underlie it depending on the respective context in which it is used.

In the current debate over coercive welfare measures and placement in care, the terminological issue has been partially displaced by a purely legal-historical understanding. Administrative detention has become synonymous with arbitrary institutionalisation, that is, for the injustice and suffering inflicted on former detainees. The latter today use the term "administrative detainee" to describe themselves and have fought successfully under that banner for their rehabilitation.[9] For them, it is not a matter of great importance under which specific legal provision and by what procedure they were locked away. What binds them is the experience of having been imprisoned – and the accompanying stigmatisation – with no direct connection to any criminal offence. It is also this experience to which reference is made in the recognition of historical injustice officialised by the Rehabilitation Act of 2014.

Empathy with those who experienced injustice and the historical reconstruction of the associated terminology are not mutually exclusive. The question is not one of determining right and wrong, but of understanding the respective points of view. This notwithstanding, historians must make choices when defining the area of their research. How should they deal with terminological ambiguities? How should they treat terms used in the

9 Such as the Association for the Rehabilitation of Administrative Detainees, RAVIA (Rehabilitierung der administrativ Versorgten / Réhabilitation des internés administratifs).

DETENTION: VERSORGUNG, INTERNEMENT, INTERNAMENTO

Language is never neutral. It always transmits value judgements. This is also evidenced by a comparison of the terminology used in the country's different official languages. The German term *administrative Versorgung* is used as the equivalent to the French *internement administratif* and the Italian *internamento amministrativo*. The French and Italian terms give primary emphasis to the act of confinement. The German term, by contrast, is more complex. The word *Versorgung* derives from the word *Sorge*, meaning "concern" or "care", bringing with it a connotation of concern for the interests of the individual being "taken care of". In Swiss German, the verb *versorgen* can also have the meaning of to put something in its "proper place" or "in storage". If understood in this way, the connotations of German term more closely approximate those of its counterparts in the Romance languages.[1] In real life, for people whose native language is Swiss German, the term *administrative Versorgung* has always carried the implication of a drastic – and thus also problematic – deprivation of liberty.

Use of the term *Versorgung* was criticised by Carl Albert Loosli as early as 1938, who claimed it was "euphemistic" and falsely suggested that there was a humanitarian component to the measure.[2] Criticism of the terminology was later revived. In 1965, the legal expert Peter Bossart suggested that the German term *Internierung* – derived from the Latin *internare* – be used in place of *Versorgung*.[3] In Swiss German, however, the term *Internierung* is traditionally used in connection with the accommodation of foreign soldiers and refugees, so that a change in the terminology would not have brought greater clarity. At the time of the revision of administrative detention law in the mid-1970s, the Federal Council also characterised the term *Versorgung* as "rather heavily encumbered"; it chose therefore to replace it with the term *fürsorgerische Freiheitsentziehung* (literally: "deprivation of liberty for welfare care purposes"; conventionally rendered in English as "involuntary commitment for welfare purposes"), which was more consistent with the intent of the new law.[4]

1 See Schweizerisches Idiotikon, vol. 8, coll. 1307–1313. The same issue, in modified form, also arises in connection with the Swiss Criminal Code of 1937. There a distinction is drawn between *Versorgung*, which – similar to the French *hospitalisation* – placed an emphasis on the therapeutic-welfare care aspect of the measure (art. 15), and *Verwahrung* (the French *internement*), which stressed instead the custodial aspect (arts. 14 and 42).

2 Loosli 2007, 101.

3 Bossart 1965, 7.

4 Swiss Federal Council 1977, 21.

sources that to today's sensibilities seem euphemistic and inappropriate? The IEC has adopted a fluid definition of the subject matter, whereby the aforementioned working definition serves as a guideline. In addition to the cantonal laws, it also considers the deprivation of liberty measures provided for by the Swiss Civil Code and, to a lesser extent, reformatory education measures under juvenile criminal law. The latter served a function similar to that of interventions by guardianship authorities. As noted in the introduction, the IEC sees itself as having an obligation to reconstruct the historical terminological concepts and the fields of meaning associated with them as they were employed by the historical actors. It is not otherwise possible to historically classify or evaluate what took place. Careful contextualisation of the terminology used in the sources is not a pretext for glossing over unpleasant facts. It is, quite to the contrary, a prerequisite for exposing problematic reference values (see "Detention: Versorgung, internement, internamente", p. 41).

Administrative detention measures, as here defined, were applied for the most part to adults, but occasionally also to minors above the age of 16. In keeping with its mandate, the IEC focused primarily on measures employed against those above compulsory school age. It has thus addressed only a limited portion of a wide range of coercive welfare measures. Specifically, it has dealt only marginally with the custody arrangements for contract children or foster children. Consideration has, however, been given to continuities in the lives of detainees who had already been placed in foster care as children. Similarly, the IEC has examined the confiscation of children, (forced) sterilisations, and castrations, where these were carried out in connection with administrative detention measures.

AN INCOMPREHENSIBLE PATCHWORK

With the emergence in the 19th century of the modern notion of government based on the rule of law, the penalty of imprisonment came to be seen as the prototype of state intrusion on personal liberty. Still today, however, the deprivation of personal liberty is also possible outside the bounds of the criminal justice system. Involuntary commitment and pre-deportation custody are but two examples.[10] Prior to the introduction

10 The criminal justice system also includes measures of security and treatment, which have been governed since 1942 by the Criminal Code, and may be ordered by the court in addition to, or in lieu of, criminal punishment. Before 1942, such sanctions fell under cantonal administrative law.

of the measure termed "involuntary commitment" (1981), such infringements of rights took place within an incomprehensible patchwork of legal provisions, administrative powers and enforcement facilities. The deprivation of liberty by order of an administrative authority, without judicial oversight, was legally permitted, in particular, in the areas of welfare care (commitment to poorhouses and correctional labour facilities), guardianship, healthcare (commitment to psychiatric or detoxification facilities, quarantine measures), education (juvenile reform facilities for children and adolescents), and migration (detention of refugees, pre-deportation custody).[11] The political and legal justifications given for such infringements and the degree of coercion exercised differed sometimes markedly. Common to them, however, was the logic of detention, according to which disruptive individuals were to be excluded from society for a given period of time.

Administrative detention measures comprise, according to the IEC's mandate, measures for the deprivation of liberty in cases that fall within the scope of an undefined area, where social welfare, guardianship and addiction treatment intersect. Depending on the context, the dividing lines could be permeable, particularly where psychiatric or (juvenile) criminal correctional measures were concerned. Social welfare and addiction treatment were domains that were subject to cantonal administrative law (*Verwaltungsrecht* / *droit administratif*) during the period under review. The cantons structured their legislation in different ways. The cantons of Vaud and Fribourg, for example, had a number of separate specialised laws, each dealing with a different target group, which were repeatedly amended over the years. Other cantons – such as Zurich and Bern – had consolidated detention laws with highly detailed provisions. Others still – such as Schwyz, Valais or Graubünden – made do with very rudimentary provisions, which could be applied with great flexibility. The institutionalisation of individuals who had been placed in guardianship was governed, from 1912 onwards, by the Civil Code. Practical implementation of the applicable provisions, however, was the responsibility of the cantons. It was also always possible to order the administrative detention of people under guardianship by applying cantonal law.

The patchwork of countless rules, along with the simultaneous existence of different procedural routes, was a reflection of the Switzerland's federalist form of government. "Is it not too much of a good thing?" asked

11 Gönitzer, Gumy 2019; Germann 2018a.

legal expert August Egger in 1948, in reaction to the plethora of diverse legal provisions.[12] There was, however, broad political acceptance of that "colourful mosaic"[13] and its legitimacy was never seriously questioned by the Federal Supreme Court (see "Success against the arbitrariness of office", p. 94). The existence of so many different laws in parallel and in combination with each other made it possible for the authorities to act against a very wide range of men and women who – for whatever reasons – did not conform with prevailing social norms or had fallen through the meshes of the social safety net. The inscrutable legal situation gave rise to blatant cases of unequal treatment. It left many officials baffled, was a major obstacle to reform, and hindered individuals against whom measures were ordered from exercising their rights.

2.2 BETWEEN INERTIA AND TRANSITION: THE ORIGINS AND DEVELOPMENT OF ADMINISTRATIVE DETENTION LAW

The majority of the former administrative detainees who are fighting today for rehabilitation were placed in institutions between 1950 and 1970. Many of the provisions that rendered the detention measures legal were already decades old at the time. Some dated as far back as the 19th century. It was not until the 1960s that some cantons undertook major revisions of the laws. It was 1981 before federal legislative action taken, resulting in the replacement of administrative detention by involuntary commitment. Administrative detention law proved highly resilient over the years. Nevertheless, as time went on, it managed to adapt itself repeatedly to new circumstances and changing social needs. In order to retrace this complex history and place it in proper context, it is necessary to go back to the 19th century. The extension of government intervention powers to include non-judicial detention measures had its origin in attempts by the liberal middle-class establishment to come to terms with the "social question". With the consolidation of the federal government and the transition of Switzerland into an industrialised capitalist society in the 20th century, concerns for prevention and demands for preservation of the social order came to play an increasingly dominant role.

12 Egger 1948, 442.
13 Zbinden 1942, 6.

CORRECTIONAL LABOUR FACILITIES: SOCIAL POLICY BETWEEN WELFARE AND COERCION

Detention in closed facilities under circumstances not provided for within the criminal justice system were a subject of legal and political debate in Switzerland from the mid-19th century onwards. The historical background was shaped by the social consequences of industrialisation – the so-called social question – and the establishment of a democratic, constitutional federal government. Within that context, discussion over the establishment of correctional labour facilities assumed the function of a pacemaker. The establishment of such "poorhouses with heightened discipline"[14] reflected the fears and uneasiness of the liberal and conservative majority in the face of widespread mass poverty and the inability of existing institutions designed for the care of the poor to cope with the situation. At that time, social welfare was understood in such a way that only those who had fallen into hardship because of age, illness or disability were entitled to assistance. In all other cases, poverty was considered to be the consequence of a dissolute way of life and of self-inflicted "ruin" due to alcohol consumption, vagrancy or prostitution. The destitute who were capable of working were depicted as a menace to society and, labelled as "indolent" and viewed as little better than criminals. At the same time, the new middle-class democracy criminalised traditional means of surviving poverty, such as begging, migrant labour or wood-gathering.

The practice of ostracising or imprisoning marginal groups had a long tradition that can be traced back to the prosecution of beggars, vagabonds and other "disreputable persons" and to the gaols and work houses that arose at the time of the Protestant Reformation. While pre-modern states tended to drive marginal populations off their territory or to compel them to perform forced public labour, the middle-class constitutional democracies adopted a socio-politically motivated policy of coercing such minorities into conformity. In that context, the question of how to legitimise such coercive interference took on a new urgency. It also revealed the contradictions inherent in the liberal-democratic social model. For modern societies, the tension between individual freedom and social order was constitutive. They were oriented towards progressive liberalisation, democratisation and social integration through education and social welfare. Furthermore, the new liberal order also gave rise to social and gender

14 Christensen 2018, 22, with reference to the 1873 debate in the Cantonal Council of Zurich.

roles that brought with them new pressures to conform and to internalise evolving values.[15] The question arose as to how society should deal with individuals who did not conform with the new life models, either because they were poor or because they were otherwise excluded from society. Under what conditions was it permissible to deprive individuals of their liberty? Could a court of law punish non-conformist lifestyles in the same way as a criminal offence? Were the relevant authorities permitted to use police measures against the poor? The debate between social policymakers and legal experts over these issues raised questions not only with regard to the freedom of the individual, but also in connection with the relationship between the various holders of state power in a constitutional democracy.

The treatment of poverty as a moral issue and the exclusion of the poor from society, which characterised the debate over correctional labour facilities, were symptomatic of the structural problems inherent in the social welfare system of the time. Prior to the introduction of social insurance in the 20th century, both the federal government and the cantons left matters of social welfare in the hands of the local municipalities and private or denominational charities. In parallel, the social and political elite perceived mass poverty as a mounting horror that came to be embodied by such terms as "pauperism" and "moral degeneration". Population growth and urban migration placed an increasing burden on the existing social safety nets, threatening them with collapse. As welfare assistance for large families strained the budgets of local municipalities to their limits, new ways were sought to reduce the number of welfare dependants. Emigration was encouraged and poorhouses established. Local authorities resorted to repressive measures, including the repatriation of individuals to their municipalities of origin, marriage restrictions, the dissolution of families, injunctions on visiting taverns, or the punishment of begging and misuse of welfare assistance. The well-being of the individuals subject to such measures played a subordinate role. Without a second thought, population groups suffering from poverty were simply denied such basic rights as the right of establishment, or – in the case of men – the right to vote or be elected. They were, *de facto*, demoted to the status of second-class citizens.

It was not until well into the 20th century that fundamental reform efforts were undertaken. Transfer payments by social insurance services did not reach a substantial level until after 1945. Many structural improve-

15 Tanner 2008, 151–152.

ments – such as the shifting of welfare responsibility from the place of origin to the place of residence or the introduction of financial burden-sharing mechanisms – were also delayed until the post-war era. Innovations in social work were introduced earlier. Cities that leaned to the political left began to modernise their social services and expand the available forms of assistance (employment services, day-care centres, school medical services) early in the 20th century. Their aim was to improve the working class's lot and to counter the threatened disintegration of society by means of preventive measures. The notion of "rational social welfare" was based on a scientific approach and new monitoring methods (house visits, systematic record-keeping). Like the majority of private charities, public welfare institutions were marked by the influence of middle-class values and demands to exercise control over poorly integrated members of the lower classes. There was thus little change in the fundamentally paternalistic attitude towards individuals in precarious living circumstances.

SPECIAL LAWS FOR DEALING WITH THE POOR

The fears provoked by awareness of the possible social consequences of poverty caused many cantons in the mid-19th century to tighten their repressive measures against the poor and other marginalised population groups. Among the cantons to establish correctional labour facilities were Graubünden (1840), Thurgau (1849), St. Gallen (1872), Zurich (1879), Bern (1884) and Lucerne (1885). Not included among them initially were the French-speaking cantons and Ticino.[16] With the establishment of these new correctional institutions, procedures for non-judicial internment – and therewith administrative detention in the narrow sense of the term – also emerged. The decisions that delegated the power to order the deprivation of personal liberty to the administrative authorities (as a rule, the cantonal governments) were often preceded by political and legal disputes (see chap. 2.4). That the advocates who favoured an administrative procedure were able to carry the day, notwithstanding constitutional reservations, was not accidental. There was, in reality, a political majority interested in circumventing the legal barriers that would have existed if coercive measures of a comparable nature were made subject to criminal or civil law, rather than administrative law. With the new laws, the administrative au-

16 Rietmann 2017 (GR); Lippuner 2005 (TG); Knecht 2015 (SG); Christensen 2018 (ZH); Rietmann 2013 (BE); Badran 2017 (LU); Badran 2012 (NW); Stooss 1892/93 328. 1, 328.

thorities were furnished with possibilities for imposing sanctions that went far beyond the misdemeanour penalties that had hitherto been meted out to the poor for petty offences, such as begging or misuse of welfare assistance. In addition, through the use of summary procedures, it was possible to avoid the conduct of protracted proceedings against the defendant. In reality, the detention orders issued "by administrative means" were a legal exception that contravened important principles of ordinary law and were specifically targeted against the poor and other members of marginalised groups.[17] The class bias of these "police measures for the poor" was no secret. The fact that it was, for the most part, men from the lower social echelons, and hardly ever "wealthy idlers and profligates",[18] whose rights were infringed was fully consistent with the political objective of protecting society from the "dangerous classes". There was, indeed, no other way to properly satisfy the security requirements and financial interests of the liberal and conservative circles that set the tone in the cantonal and local government councils.

The situation in the canton of Fribourg, which until as late as the 1950s was one of the poorer regions of Switzerland, provides a good example of the direction taken by police measures for the poor. Welfare policies in Fribourg were very restrictive and strongly influenced by the social theories of the Catholic Church. Complaints over the "vile plague of pauperism", the drinking habits of the poorer part of the population, and the inability of local governments to cope with these problems, were widespread. At the same time, however, the political elite did not trust the courts to proceed with the desired resolve against begging and the neglect of family responsibilities. Initiatives for the introduction of administrative detention procedures, as had already been established by many cantons in the German-speaking part of Switzerland, failed twice – in 1888 because of a lack of suitable detention facilities, and in 1899 due to constitutionality concerns. It was only during the First World War that the willingness to throw overboard an "outdated concept of liberty" finally prevailed. The cantonal government subsequently decided to establish a labour colony

17 See IEC, vol. 3, chap. 1.1, 2.1 and 3.1; IEC, vol. 7, chap. 2.1; Badran 2017, 19–32; Rietmann 2013, 53–59; Lippuner 2005, 48–54, 182.

18 Christensen 2018, 24, with reference to the 1878 debate in the Cantonal Council of Zurich. The term "police measures for the poor" was used in the 19th century for sanctions that local municipal (police) authorities were able to impose for abuses of the welfare assistance system.

in Bellechasse (and, simultaneously, to centralise the penal correctional system), whereby the initial focus at the time was on the fight against alcoholism as a cause of poverty. The 1919 Taverns Act authorised district prefects to order the detention of "drunkards" who endangered their own health or neglected their social obligations, for a period of up to two years. A 1928 amendment to the Poor Law provided for the imposition of similar sanctions against persons on welfare assistance who misused their welfare benefits, violated directives, refused work, or engaged in begging. An even more far-reaching law followed in 1942.[19]

The example of the canton of Fribourg is typical in two respects. First, it shows that the primary purpose of administrative detention was not to solve social problems such as poverty. The main object was to lighten the burden on the social welfare system, to shorten procedures and to save costs. It was a measure that was supposed to succeed where other means had failed. Bluntly put, the problem administrative detention was designed to resolve was not poverty, but the inadequacy of the welfare system.[20] Second, it is notable that the political leadership justified the use of administrative detention by arguing that it was a means of providing welfare and education assistance. Legal experts and the courts denied the punitive nature of compulsory detention and labelled it as an "education and treatment measure", a "guardianship control measure" or a "disciplinary means of correction".[21] According to Carl Stooss, the drafter of the Swiss Criminal Code, the objective of administrative detention measures was "predominantly welfare and public morality"; their purpose was to "educate degenerate members of human society to work and accustom them to an orderly way of life".[22]

For legal scholars and political leaders, alleged character defects and the need for moral betterment on the part of the men and women subject to such measures were sufficiently convincing arguments for confining them in closed facilities for their compulsory re-education, in keeping with the liberal middle-class norms of the legal order. Social problems were seen as a consequence of individual failure, which justified their punishment. In this connection, gender-specific expectations played an im-

19 IEC, vol. 3, chaps. 1.1 and 2.1; Rossier 2010.

20 See the revealing statement of Fribourg prefect Hubert Lauper in an interview with the IEC: "[…] assistence was the great problem of the time […]." IEC, vol. 3, chap. 1.1, 30.

21 Orelli 1865, 31; Lippuner 2005, 48–52, 257–260.

22 Stooss 1892/93, vol. 1, 328–329.

portant role: men were expected to have regular jobs and to perform their family obligations. For women, by contrast, control over their sexuality was the more dominant issue. The reformatory education that was supposed to be provided in correctional labour facilities or labour colonies did not, however, have a great deal to do with middle-class educational ideals or notions of independence. "Education to work" was an idea that went back to the early modern workhouse tradition and was primarily a means of deterrence and discipline. The legal regime for administrative detention also never managed to shed its reputation as a parallel criminal justice system.[23] Even the public authorities repeatedly referred to administrative detention as a "punishment". The measures were entered into the criminal records and were modelled on the procedures for criminal punishments. The administrative detainees themselves – like Philippe Frioud, cited above – in objection to the injustice of such measures, pointed out their similarity to criminal sanctions. In 1904, even the Federal Supreme Court compared the infringement of rights inherent in the use of administrative detention with that of a "state-imposed legal punishment".[24]

EXTENDED SOCIAL CONTROLS IN THE 20TH CENTURY

Up to the time of the First World War, administrative detention was used primarily as a threat and a sanction by the welfare assistance system, that is, as a type of police measure for the poor. During the first half of the 20th century its function was extended, making it a more wide-ranging instrument of social control. In the process, socio-medical and preventive objectives took on an increasingly important role, without simultaneously diminishing the connection to welfare assistance, however. This extended use of detention for dealing with new problems meant that even men and women not living in hardship or threatened with poverty began to be targeted by "administrative justice". This included men and women about whom there were allegations of alcoholism or prostitution, "recalcitrant" adolescents or other "misfits" who did not conform to the expectations of society.

The extension of the laws on administrative detention reflects Switzerland's evolution to a more tightly organised society in which the industrial division of labour, technical and scientific progress, and social

23 See Christensen 2018.
24 IEC, vol. 7, chap. 2.3, 114.

security systems took on an increasingly important role. The social order, including gender roles, nevertheless remained conservative. Despite the improvement over earlier cantonal law, the Civil Code (1912) reaffirmed the subordinate role of women. Similarly, the possibilities for upward mobility among the lower and middle echelons of society remained limited, even as their level of education rose. Within the different social echelons, a certain uniformity emerged in the paths that family lives and careers followed. Completion of primary school, vocational training, military training, employment, club memberships and the nuclear family became the most effective agents of socialisation, though with varying degrees of relevance for men and women. The experience of two world wars, the idealisation of ensuring the spiritual defence of the homeland and the expansion of the social welfare institutions combined to reinforce the sense of national community with a shared destiny. To this belonged also the standardised ideals associated with respectable middle-class life, ideals that assigned to each individual – based on gender, origin and social echelon – a fixed place within the hierarchical social order.

With the *fin-de-siècle* cultural orientation crisis, the upheavals of the First World War and the world economic crisis of the 1930s, there came a growing awareness of the fragility of modern industrial and class society. In that context, there was a diminished willingness to tolerate non-conformist lifestyles and atypical family constellations. The idea of a national production community allied itself with the ideal of a compact social body. Individuals who lived at the margins of society or rebelled against the pressure of close-knit conformity had to reckon with reactions of mistrust and exclusion. Psychological defensive mechanisms fuelled fears of being "overrun by foreigners", which in turn nourished concern for the "body of the nation". To protect that body, it was necessary to combat the ills that threatened it: alcoholism, venereal disease and the uncontrolled reproduction of "inferior" women and men. This was also the reasoning behind the persecution of the Yenish minority. The tendency towards exclusion was deeply rooted in society; it was encountered no less in village communities, urban neighbourhoods and in families than in government offices. The sanctions imposed on outsiders and non-conformists served to reinforce the prevailing consensus on what was normal and the attendant social hierarchies.

BETWEEN WELFARE ASSISTANCE, THERAPY AND COERCION: ALCOHOL TREATMENT LAWS AND ADULT GUARDIANSHIP

The widening of the scope of administrative detention laws to include prevention was prompted, in particular, by a growing preoccupation with the issue of alcohol consumption at the turn of the 20th century. Neither in the scholarly literature nor in the current public discussion has the subject of welfare measures for the treatment of alcoholism hitherto attracted much attention. This is all the more surprising given the number of people who were affected by such measures – the overwhelming majority of whom were men – and the fact that the question of addiction remains topical to this day. The "alcohol question" and, above all, the consumption of alcohol by the lower classes, was a subject of constant socio-political debate in the 19th century. It took on growing significance as sobriety became an ideal for the promotion of industrial production. As seen in the above-cited example from the canton of Fribourg, alcoholism, poverty and delinquency were amalgamated into dense imaginings of a pervasive menace. In 1885, the federal government began to regulate consumption by means of alcohol laws. Towards the end of the 19th century, physiologists and psychiatrists, with the support of abstinence associations, gradually threw doubts on the traditional understanding of the problem: for modern scientists, alcoholism was no longer a vice, but a disease, for which adequate treatment was needed.[25]

Influenced by medical propaganda, numerous cantons adopted laws for the welfare of alcoholics, which permitted the ordering of compulsory treatment in a closed facility. Examples include St. Gallen (1891), Basel-Stadt (1901), Vaud (1906), Lucerne (1910), Fribourg (1919), Geneva (1927) and Ticino (1929). By 1939, 15 cantons had laws on the treatment of alcohol dependency. The incarceration of "drunkards" was, of course, far from a new phenomenon. With the establishment of alcohol treatment centres, however, a setting was created – at least in theory – that would make it possible to avoid stigmatisations and relieve some of the burden on existing correctional labour and psychiatric facilities.[26] Here, too, the use of administrative detention was able to impose itself. For example, in 1906, the government of the canton of Vaud rejected the conduct of court proceedings in such cases as being too complicated and costly. Administrative

25 IEC, vol. 3, chap. 2.2.

26 IEC, vol. 3, chap. 2.2; Bignasca, Valsangiacomo, Poncioni 2015.

detention, by contrast, was described as the "most practical system". Once again, infringements of personal liberty were rationalised by arguments that the measures in question were of an educational-therapeutic nature and not intended as punishments.[27]

Along with the treatment of alcoholism, the notion of prevention also played an important role in the Civil Code (1912).[28] Designated as a code of "social private law", the new law was designed for use by the authorities as a regulating instrument for intervention in the social life and family relations of the citizenry. The notion of "neglect" was developed into a central concept. It was used to refer to a vaguely defined mixture of social welfare, educational or medical deficits that endangered the well-being of an individual or represented a danger for third parties. A range of variously severe provisions for the protection of minors made it possible, in cases of "endangerment" or "neglect", to infringe the custody rights of parents and to place children and adolescents in foster care (arts. 283–285). The Civil Code also included rules for placing adults under the care of a guardian. Responsibility for such a decision was delegated to the guardian and the guardianship office (arts. 406 and 421). The widening of the range of potential grounds for legal incapacitation resulted in a deliberate overlap with the cantonal administrative detention laws. In addition to mental illness and feeble-mindedness (art. 369), "profligacy", "drunkenness" and "licentious conduct" were potential grounds for legal incapacitation, where the person in question was at risk of being reduced to poverty, was in need of guidance and protection, or posed a threat to the safety of others (art. 370). Although the code attached greater weight to individual welfare and prevention, it nevertheless continued to use the moralising terminology that was characteristic of administrative detention law. Its purpose was to exercise control over the way people lived their lives and, to that end, granted the public authorities wide-ranging powers.

ADMINISTRATIVE DETENTION AS A MEANS OF PROTECTING SOCIETY

A need for regulative and preventive intervention measures is also reflected in the draft proposals for introducing a comprehensive criminal code at federal level. Discussions over the possibility of establishing a uni-

27 IEC, vol. 7, chap. 2.1, 52.

28 Gallati 2015; Hauss et al. 2012; Hauss, Ziegler 2010; Ramsauer 2000.

fied code of criminal law for all of Switzerland began in 1893 and were concluded only in 1937. They were strongly influenced by a reform movement that sought to replace the underlying motive of retribution with that of "social defence" and to transform penal correction into a probationary system. The notions of education, betterment and protection of society were understood in a genuinely progressive sense. The draft proposals for the criminal code added a series of protection and improvement measures to the traditional arsenal of punishments; their thrust and terminology reminiscent of those underlying administrative detention measures. They authorised the detention and compulsory treatment of "habitual criminals", "the dissolute and indolent" and "habitual drinkers" beyond the term to which they had been sentenced. Delinquent children and adolescents, as well, were not to be punished, but instead reformed. Criminal acts by minors, regardless of their severity, were considered as "symptoms" of developmental and adjustment problems that were to be corrected by means of – if necessary, drastic – educational measures.[29]

The draft criminal codes had strongly influenced a new generation of administrative detention laws. Some cantons even went so far as to include the provisions on administrative and criminal correctional measures in the same law.[30] Among them were the cantons of Bern (1912), St. Gallen (1924), Zurich (1925), Thurgau (1927), Glarus (1929), Zug (1930) and Aargau (1936). They were followed in 1939 by the French-speaking cantons of Vaud and Neuchâtel, which until that time had not had any "classic" administrative detention law on their statute books.[31] In contrast to those laws, whose stated motive was to combat crime and prostitution, the laws enacted by the cantons of Graubünden (1920) and Valais (1926) had relied far more heavily on the traditional police measures for the poor.[32] By the time of the Second World War, practically all cantons had administrative detention laws. Geneva, for constitutional reasons, had only a law for the detention of alcohol dependants (1927), the application of which fell to the jurisdiction of the guardianship court.[33]

29 IEC, vol. 3, chap. 4; Germann 2015.

30 Zbinden 1942, 5.

31 Rietmann 2013 (BE); Knecht 2015 (SG); Kälin 2015 (ZG); Christensen 2018 (ZH); Collaud et al. 2015 (VD); Collaud 2013 (VD); Lavoyer 2018 (NE); Lavoyer 2013 (NE); Mühlebach 1933 (ZH, TG, SG).

32 Rietmann 2017 (GR); Crettaz 2016 (VS).

33 Zbinden 1942; Bossart 1965.

An example of the new orientation is the Zurich Administrative Detention Act of 1925, which was considered to be highly progressive at the time of its entry into effect. The central focus of the new law was no longer on the risk of impoverishment, but on educational and security police objectives. The new measures took as their fundamental criterion the "capacity for betterment", which had also been adopted in the draft criminal codes. Juveniles and the "neglected capable of betterment" (*Besserungsfähige*) were to be re-educated, while the "incorrigible neglected" (*Unverbesserliche*) and "habitual drinkers" were placed in detention. Here again, the terms were broadly defined. Included among the "neglected capable of betterment", for example, were individuals between the ages of 18 and 30 who evidenced "criminal tendencies", were "dissolute or indolent" and could presumably be educated to work. The term of detention was sometimes longer than that of imprisonment under criminal law and could be as long as five years for "recidivists". The notions of prevention, welfare and protection of society were intertwined. On the one hand, provision was made for the creation of observation wards for juveniles and for the promotion of vocational training in correctional labour facilities for young adults. At the same time, however, the law also provided for the possibility of ordering long-term administrative detention.[34]

The new genre of administrative detention laws closed gaps within the expanding rule-of-law and welfare state. It was now possible to pigeonhole and discipline "system rejects" even if they had not fallen into poverty, been legally incapacitated or committed any crime. As a default option for taking coercive action, the new laws facilitated the taking of preventive measures to deal with social problems. In this way, they also relieved the burden on social welfare institutions in the areas of juvenile care, family protection, preventive healthcare and occupational safety.

A clear example of the way these laws served to fill legal gaps may be seen in the emergency law enacted by the canton of Vaud in 1939 in response to the war mobilisation effort. The purpose of the law was to assist the Lausanne police in their efforts to "cleanse the streets" (*nettoyer les basfonds*) of street prostitutes. In advance of the expected decriminalisation of prostitution under the new Criminal Code (1942), the objective was to create new means of control. Professional prostitutes and procurers who would no longer be subject to criminal penalties could now be detained for

34 IEC, vol. 3, chap. 4.2; IEC, vol. 7, chap. 2.1.4; Christensen 2018; Bollag-Winizki 1940.

ADMINISTRATIVE DETENTION: A SWISS SPECIALITY?

Was the use of administrative detention unique to Switzerland? Did other countries use similar measures? How did the rules in different countries compare? The differences between the respective legal and social systems, as well as the different historiographical traditions, make comparisons between countries difficult. This notwithstanding, even without a systematic review of the different legal regimes, there is sufficient research available for the IEC to consider the example of Switzerland within an international context. As a starting point for such a comparison may serve the problematic manner in which the so-called "unworthy" – as a rule, the poor capable of working – were dealt with, for which there is a long tradition in European history (and which remains still today, in modified form, a pressing social issue). Closely related thereto is the subject of forced labour and social marginalisation.

The internment of members of the marginalised population in workhouses was a common practice in many countries during the early modern era. In *Norway*, authority for ordering this form of detention was delegated to the police between 1845 to 1907. The measures used against the "dissolute and drunken" poor were comparable to those employed in Switzerland. A two-track legal order emerged, under which respectable citizens were protected against government interference with their civil rights, while members of the lower social echelons were abandoned to the discretion of the police authorities. In response to public criticism, the Norwegian parliament transferred the authority for ordering detention to the courts in 1907. The forced labour system, however, remained in effect until 1970. Forced labour regimes were also established towards the end of the 19th century in *Sweden* and *Denmark*, although jurisdiction in such cases lay with the judicial system.[1]

France had a long tradition of criminal repression. Under its criminal code, begging and vagrancy were punishable as crimes from 1810 until 1994. Upon completion of their criminal sentences, convicts could also be committed to a closed beggars' asylum (*dépot de mendicité*). From 1885 onwards, recidivists could be sentenced to forced labour in an overseas labour colony (penal colonies were not abolished until 1953).[2] The planned

1 Ulvund 2012.
2 Althammer 2016, 192–193; Kitts 2008; Sanchez 2015.

network of *dépots* remained incomplete, however. Until well after the Second World War, authorities held beggars in detention in multifunctional residential facilities (*établissements d'assistance*), for which the regional *départements* were responsible.[3] The French legal order was generally reluctant to allow the confusion of penal measures with preventive-curative measures (even in the criminal code it was only very recently that protective custody measures were first introduced).[4] Meanwhile, for the commitment of individuals to psychiatric institutions, responsibility was delegated to the administrative authorities. The applicable Lunacy Act of 1838 was amended in 1968 and repealed in 1990.[5] Prostitutes were also subject to coercive police measures, even after the abolition of publicly supervised brothels in 1946.[6] The 1954 Act on the Treatment of Alcoholics of Danger to Others authorised the involuntary detention of alcohol dependants (and served as a model for a similar law enacted by the canton of Lucerne that same year). Jurisdiction in such cases was delegated to the civil courts.[7] Measures for the deprivation of liberty that were expressly designated as *internement administratif* were applied in the 20th century primarily in circumstances of political emergency. This occurred, for example, during the German occupation in the Second World War or, again, during the Algerian War, when the police were authorised under a law enacted on 26 July 1957 to take freedom fighters into custody without court judgement.[8]

Belgium, as well, initially adopted the French model. In 1891, a law was passed that largely decriminalised street begging. Instead, provision was made for court-ordered detention for terms of many years. In 1930, the Social Defence Act *(Loi de défense sociale)* entered into effect, which, like the Criminal Code, included measures for dealing with "abnormal" individuals and "habitual criminals".[9]

Workhouses, which were used in *England* until well into the 20th century to deal with poverty, were not of a coercive nature. Beggars could be punished, but they could not be forced to work in the workhouses. New possibilities for detaining individuals – motivated by a mixture of welfare, criminal and psychiatric treatment considerations – were created in the

3 Cordier 2013.
4 Guitton 1994.
5 Castel 1988.
6 Blanchard 2011, 155–156.
7 IEC, vol. 3, chap. 2.3.
8 Fischer 2013; Blanchard 2011; Thénault 2012.
9 Althammer 2017, 606; Kerchove 2010; Prins 1899, 569–589.

early 20th century with the adoption, for example, of the 1913 Mental Deficiency Act. The individuals targeted included not only those with mental deficiencies, however, but also juveniles with whom the juvenile reform facilities were unable to cope. Commitment to a special facility could be ordered either by the holder of parental custody or by the courts. The act was repealed in 1959 in the wake of a protest movement that marched under the slogan "50,000 outside the law".[10]

Because of the number of research studies available, the country for which comparisons with Switzerland can best be made is *Germany*. The 1871 criminal code of the newly re-established German Empire adopted the measure of "extended detention" (*Nachhaft*) from the Prussian criminal code (which had been modelled, in turn, on Napoleonic law). Individuals who had been convicted of begging and other poverty offences could be handed over by the courts to the police authorities for detention in a workhouse. In addition, the German states also had provisions for compulsory detention under welfare law. There were, however, many overlaps in the way the two measures were enforced.[11] Detention in closed facilities by administrative order was introduced in the 1924 Imperial Ordinance on Social Welfare. Compared to the Swiss laws on administrative detention, the conditions imposed under German law were more restrictive, and use of the measure was limited to individuals receiving welfare assistance who refused to work. Under the Weimar Republic there was broad discussion over a Preventive Custody Act (*Bewahrungsgesetz*) that was intended to fill the gaps left by guardianship welfare and criminal law. The discussion continued also after the assumption of power by the National-Socialists and had an influence on the drafting of the Community Aliens Act (*Gemeinschaftsfremdengesetz*). Simultaneously, the Nazi government tightened the repression of social outsiders. As part of a "pre-emptive crime prevention" effort within the framework of the 1938 "Indolent within the Reich" campaign (*Aktion "Arbeitsscheu Reich"*), tens of thousands of so-called "antisocial elements" and "professional criminals" were deported to concentration camps, where many of them were later murdered. The fundamental orientation of the draft preventive custody laws under the Weimar Republic and in the early years of Nazi rule was comparable with that of the cantonal detention laws in Switzerland at the time. In part, the Swiss laws even

10 Althammer 2016, 191–192; Thomson 1998; Cox 1996.

11 Althammer 2017, 56–70; Ayass 1993. A similar workhouse tradition existed in Austria.

served as a model. This was also the case with the introduction of protective custody measures against "professional criminals" under criminal law. It is interesting to note that, until 1937, all draft versions of the proposed preventive custody law assigned jurisdiction exclusively to the courts.[12]

Representatives of the West German welfare system took up the debate again after the war and with great persistence. This despite the fact that the US military government had repealed the provisions on both administrative and criminal detention in workhouses. As early as 1956, workhouse detention in keeping with the provisions of the Imperial Ordinance on Social Welfare was reinstated, but was made subject to judicial control. The Federal Welfare Assistance Act of 1962 introduced an additional provision for the preventive custody of "endangered" individuals, whereby, here again, judicial control was imposed. Five years later, the German Federal Constitutional Court ruled that state-ordered rehabilitation measures beyond the scope of criminal law were fundamentally unconstitutional. The provisions on "preventive custody" – which had been applied only in a minimal number of cases – were repealed immediately. By 1974, those on all other forms of workhouse detentions had also been abrogated.[13]

In 1949, the tradition of workhouse punishment was also renewed in the *German Democratic Republic*. In 1968, "antisocial behaviour" was introduced as a criminal offence, subject to punishment of up to five years. Workhouses were abolished in 1979. The blanket provision that criminalised "antisocial" population groups remained in effect, however. In addition, the GDR maintained a system of "juvenile labour farms" to which minors could be committed. Detention in these facilities, which served a combination of penal and reform objectives, was characterised by an extremely strict disciplinary regimen under which high priority was given to the duty to work and to contribute to production.[14]

A systematic comparison of Swiss administrative detention law (and practice) with that of other countries is still outstanding in the academic literature. A study on the subject would be both useful and desirable. The brief overview above is sufficient, however, to demonstrate that "containment culture" (James M. Smith) outside the criminal justice system was a phenomenon found also in other countries, despite wide differences

12 Willing 2003; Wachsmann 2015.
13 Althammer 2017, 607–619; Willing 2003; Rudolph 1995.
14 Steer 2018; Sachse 2013; Korzilius 2005.

in the target groups against whom such measures were deployed and the forms in which they were promulgated.[15] Social marginalisation pressure, as such, was thus not a Swiss speciality. The way the respective institutional structures affected the practical application of the measures, and whether the extent to which they were applied was comparable, is something that would have to be investigated on a case-by-case basis. It is conspicuous that between 1960 and 1970 there was a turnaround and that the use of coercive measures fell into disrepute. The example of the Federal Republic of Germany is telling in this respect. As late as 1962, the Bundestag still accepted the notion that there was a need to re-educate "endangered" individuals in closed facilities. The law adopted to that effect was rarely applied and five years later was declared unconstitutional. There are parallels here to the discussions on legislative reform in the various cantons of Switzerland. The differences are more pronounced with regard to the right to due process. The deprivation of liberty without a court judgement – other than in cases of psychiatric hospitalisation – tended to be the exception throughout Western Europe. Norway switched to the use of judicial procedures in 1907 due to constitutional concerns. The draft versions of a preventive custody law and the re-introduction of workhouse detention in Germany also made such measures subject to judicial proceedings. Under the direct democratic system in Switzerland, by contrast, the understanding that the individuals concerned needed to be protected against government infringements took much longer to gain acceptance. In this respect, Switzerland truly was an exceptional case in the period after 1945.

15 See Smith 2004.

their "betterment" for up to three years without trial. It was similarly possible to take into custody notorious gamblers and individuals whose "way of life" endangered the safety or health of third parties.[35] Such attempts to fill gaps in the legal order by imposing administrative sanctions were not unique. Throughout the 1940s, the Federal Supreme Court repeatedly denied the right of the cantons to establish new criminal offences. It argued instead that "offences against public morality", such as prostitution, should

35 IEC, vol. 3, chap. 3.1; Collaud et al. 2015; Collaud 2013.

be dealt with by means of administrative detention. As late as 1961, the Federal Department of Justice and Police recommended to the cantons, as an alternative to criminal punishment, the "reform, betterment and, insofar as necessary, the detention of prostitutes" by administrative order.[36]

2.3 PROBLEMATIC LAW: UNDEFINED LEGAL TERMINOLOGY, WIDE DISCRETIONARY POWERS AND ABSENCE OF LEGAL REMEDIES

Social policymakers, lawyers and administrative authorities designed administrative detention law in a way that offered significantly less legal protection to the individual than in other areas of law. The justifications put forth varied between protection of public order, easing the burden on public budgets and the betterment and reform of the detainees themselves. Administrative detention measures made possible invasions of personal liberty and infringements of rights that were not permitted under the regular legal order. Paul Golay, a journalist from the canton of Vaud and socialist political leader, spoke in 1945 in this connection of a *régime d'exception* – that is, a separate legal regime. As a committed defender of the "defenceless" (*gens sans défense*), Golay regularly advocated on behalf of administrative detainees.[37] This is also point of the comparison drawn by Carl Albert Loosli, cited above, when he described the regime as a "monster", underscoring its ungainly nature as a hybrid between welfare law and criminal law. By the then prevailing standards of criminal and civil law, the cantonal laws on administrative detention were in Loosli's eyes an alien body within the Swiss legal order.[38] What were the elements of administrative detention law that rendered it so problematic? Why was the position of individuals against whom those laws were applied worse than that of those prosecuted under criminal law?

ACCOMMODATING LAW AND UNDEFINED LEGAL CONCEPTS

The liberal 19th century conception of (criminal) law saw it as defensive law, a form of law that served as a defence against invasions of per-

36 IEC, vol. 3, chaps. 3.1 and 3.2.
37 IEC, vol. 3, chap. 3.1, 224.
38 Loosli 2007, 196–197.

sonal liberty. In that conception a distinction was drawn between law and morality. The principle of *nulla poena sine lege* (no penalty without a law) is still today considered one of the fundamental doctrines of the modern notion of government by rule of law. For Loosli, criminal law was thus also the standard against which cantonal administrative detention law was to be measured. As he rightly noted, administrative detention law was accommodating law that, as branch of administrative law, was based on a hierarchical, unbalanced conception of the relationship between government and citizens.[39] Rather than limiting infringements, it rendered them possible. As demonstrated by the regulative conception of guardianship reflected in the Civil Code (1912) and the criminal justice reform (1942), the opening of the law to socio-political concerns and the expansion of the welfare state in the 20th century were mutually interdependent phenomena.

In actual fact, the ability of administrative detention law to accommodate itself to new demands was an important factor in its longevity. The political leadership and the administrative authorities repeatedly adapted the laws to changing circumstances, modifying the objectives and target groups as needed. As the legislative debates show, the provisions of the law had a strong class and gender-specific orientation so that they affected men and women with different degrees of severity and in different ways. The functions of admonishing and improving the duty-bound recipients of welfare assistance and beggars were complemented in the 20th century by the missions of treating alcoholics, disciplining "recalcitrant" wards, punishing extra-marital sexual activity by women, reforming "neglected" adolescents, and "cleansing" public spaces of women who engaged in prostitution. Demands that marginal groups and "enemies of society" be locked away were repeatedly endorsed both in local councils and at the ballot box. Administrative detention laws defined the conditions for applying such measures very broadly and left the authorities wide latitude. In 1942, the government of Fribourg asserted that the Administrative Detention Act established only "basis principles", and that the rest was left to the discretion of the administrative authorities.[40] The government of the canton of Vaud argued similarly: "This law [on the detention of alcoholics] must accommodate itself to very different situations. It cannot be compared with crim-

39 On the definition of administrative law as "unequal law", see Müller 2006, 11–14.
40 IEC, vol. 7, chap. 3.1, 168.

inal or civil procedures for which there are precise rules. It must be flexible and capable of application to each individual case […]."[41]

The broadly circumscribed powers of discretion were rationalised by the need to be able to react flexibly in individual cases. For this reason, the laws established the conditions for ordering administrative detention with the help of indeterminate legal terms such as "indolent", "dissolute" or "neglected", which were taken from the traditional language of police measures against the poor. In the current debate over rehabilitation, the arbitrary and stigmatising nature of such terms is rightly criticised as an element of the historical injustice. This is also the more so as such terms, through their use in official language and in the records, took on a life of their own and developed into fixed character attributes indelibly attached to the individuals concerned (see chap. 4.3). The use of indeterminate legal concepts was, at the time, admittedly quite common in administrative law, of which administrative detention law was a sub-branch. This became a problem, however, when they were used to impose measures that constituted an invasion of personal liberty similar to that of criminal measures. The reality was that imprecise statements of the grounds for administrative detention made it possible to impose them on individuals not because of any particular deeds, but simply for their way of life. "Use of the measure requires not the commission of a specific act, in the way penal measure does, but the presence of an antisocial and offensive manner of living," wrote criminal law expert Carl Stooss in 1892.[42] Terms such as "dissolute" or "neglected" were used to put a legal name on different ways of living and – in a next step – to legitimise the imposition of drastic measures. They served as a filter that interposed itself between real life and the sanctions of the law. They violated the legal imperative of sufficient specificity, extended the discretionary powers of the administrative authorities, and opened the gates for moralising attitudes and class and gender-specific behavioural expectations.

The nature of the problem can be well illustrated by considering the notion of "licentious conduct". According to a well-known commentary on the Civil Code, the term was to be understood as referring to "a manner of living that results from deficiencies of character or will, and grossly vio-

41 Proceedings of the Grand Council of the Canton Vaud, autumn 1949, 247, quoted in IEC, vol. 7, chap. 2.1, 52, note 77.

42 Stooss 1892/93, vol. 1, 330.

lates the expectations that the community must place on the individual, both for his own sake and for that of orderly co-existence".[43] The determination as to what was meant by "grossly", the nature of the "expectations" and what was needed for "orderly co-existence", was left to the discretion of the authorities and to the moral sensibilities of the official in charge of the case. Under these circumstances, it is hardly surprising that administrative detention laws could be made to apply in a wide range of situations where there was a demand for official intervention and the maintenance of order.

BROAD POWERS OF DISCRETION, LIMITED LEGAL REMEDIES

The goal of hindering the exercise of recognised, guaranteed rights by means of administrative law was a recurrent subject of legislative debate. The result was that individuals under threat of an administrative detention order did not possess the same rights as were normally assured in criminal proceedings of the period. Among those rights, according to the Federal Constitution of 1874, was the right to be judged in an ordinary court of law. Other than in a small number of exceptional cases, decisions on administrative detention were made by the municipal, guardianship, district or cantonal government authorities (see chap. 4.1). The use of the cantonal governments as a kind of "administrative court" was consistent with the standards of administrative procedure in the cantons at that time. In connection with the use of deprivation of liberty measures, it was inevitable, however, that the circumvention of (criminal) justice procedure would encourage comparisons with the *lettres de cachet* of the *Ancien Régime*. "'Administrative justice' does not judge; it orders arbitrarily at will and pleasure," criticised Loosli.[44]

It is true that the Federal Supreme Court defended the right of those concerned by the order to be heard before a decision was made. The absence of court proceedings nevertheless brought many disadvantages with it: limitation of the proceedings to a summary procedure, restriction of the right to consult the case records, lack of legal representation, no or only limited possibilities for appealing to a higher authority (see chapter 4.4).[45] Equally fragmentary was the legal protection provided in guardianship proceedings. The Civil Code regulated placement in a closed facility only

43 Egger 1948, 124.

44 Loosli 2007, 103; 137, 133 (quotation).

45 According to Zbinden 1942, 15, in 1942 there were six cantons (NW, GL, BS, BL, GR, AG) that made provision for judicial review in certain specific cases.

in a rudimentary manner, leaving the details to the cantons. The cantons, in turn, granted broad discretionary latitude to the guardianship authorities. Practitioners spoke of a "worryingly simple skeleton structure".[46] "The prevailing construction of Civil Code art. 406 opens the floodgates for a 'practice of arbitrary disappearances'" was the view of the author of a 1955 law dissertation.[47] Even the Bern Government Council noted in 1971 that once individuals had been placed under the authority of a guardian, they were "more or less without rights" and at the mercy of their guardian and the public authorities.[48]

DETENTION AS A FORM OF PROBATION

A factor that increased the susceptibility of the regime to arbitrariness was the fact that administrative detention was designed to serve as part of a probationary system. Probation meant that the application and duration of sanctions was made dependent on the conduct of the person in question. Prison and correctional facility reformers had begun in the 19th century to consider such probationary elements as an important means of betterment and instruction that appealed to the internees' own interests. What constituted cooperation or resistance, however, was defined unilaterally by those running the respective facilities. Cooperation was in most cases held to be synonymous with superficial observance of correct manners, obedience to instructions by the facility staff, and work discipline. What precisely was expected of them was difficult for the detainees to foresee. The *de facto* situation was that they lived with a sword of Damocles hanging over their heads, entirely dependent on the goodwill of their guardians, facility directors and parole officers. Detainees who had "proved themselves" in the eyes of the authorities, could expect to be treated more leniently. Those who failed to do so risked getting caught up in a spiral of escalation with unforeseeable consequences. Unpredictability was thus not a failure, but a core feature of the system, which was designed to render detainees compliant under the pretext of offering them a chance for betterment, education or therapy. The fact that this systematically undermined the human capacity for building confidence was not taken into consideration.

46 Egger 1948, 443.
47 Dubs 1955, 191.
48 Letter from the Bern Government Council to the Department of Economic Affairs, 14 July 1971, in: Schweizerisches Bundesarchiv, BAR#E7001C#1982/118#37*.

Compulsory detention was the final stage of a graduated series of probation measures. Initially, the possibility of detention in a closed facility was primarily an implicit threat. It was the final step following a series of warnings, prohibitions on visiting taverns, commitments to undergo treatment or accept supervision, and the like.[49] A number of cantons also had regimes that allowed for deferral of detention subject to probation, on the analogy of suspended criminal sentences with probation. The individuals in question were given an opportunity to "prove themselves" during a period of probation, during which they were under supervision or were required to follow certain instructions. If the experiment failed, the competent authority could revoke the deferral and order enforcement of the detention order. It was particularly during the post-war era that the authorities began to make more frequent use of this more subtle form of control.[50]

The probationary nature of the sanction affected its term. Criminal sentences were for a predetermined period of time, which was fixed by the court. The term of administrative detention, by contrast, was limited only by an upper bound or, especially in cases of "recidivism", was indeterminate. Depending on the circumstances, a shortening or prolongation of the detention term was possible, whereby, *de facto*, it was the administration of the respective detention facilities that made the decision (see chap. 5.3). The uncertainty as to how long the period of confinement would last and the impossibility of foreseeing when a decision on release would be made, placed the detainees under enormous stress and reinforced their sense of being at the mercy of arbitrary forces. "The uncertainty, the not knowing, that's what makes me so desperate, so without hope," wrote a detainee in 1960 to the director of Bellechasse.[51] Others had the feeling they were worse off than convicted criminals and even threatened to commit a crime so that the term of their incarceration could be foreseen.[52]

The idea of probation was not an isolated phenomenon. Quite to the contrary, it was symptomatic of the ambivalence of modern rule-of-law and welfare states. On the one hand, such states make use of subtle incentive systems that guide and moderate the use of individual freedom;

49 IEC, vol. 3, chap. 1.1; IEC, vol. 7, chap. 3.3 and 3.4; IEC, vol. 8, chap. 12; Bossart 1965, 66–70.

50 IEC, vol. 7, chap. 3.2 and 3.4; Rietmann 2013, 93, 125–126; Bossart 1965, 70.

51 Letter of a detainee to the director, 14 August 1960, Archives of the canton of Fribourg, Bellechasse A 340, quoted in IEC, vol. 4, chap. 1.3, 89.

52 IEC, vol. 7, chap. 3.6, 360.

they cushion existential risks and make it possible for individual autonomy and social participation to co-exist. At the same time, however, those same systems marginalise individuals who are not prepared or not able to play the game of self-restraint. The tendency to marginalise such individuals can sometimes become overwhelming. They are denied elementary rights as their room for manoeuvre and the options available to them become increasingly limited, until – being told that it is their own fault – they are ultimately abandoned as "hopeless". Historically, administrative detention law was an important test case for experimenting with such normalisation techniques.[53] This is particularly true with regard to the measures of security and treatment provided for under criminal law, the term of which is also contingent upon the success of resocialisation efforts. As early as 1889, the director of a prison in Lucerne described administrative detention law as "the shadow that criminal law casts on the future".[54] Still today, uncertainty over the date of their release is a major source of psychological stress for individuals sentenced to therapeutic measures or custody. The notion of probation also plays an important role in the activation paradigm for welfare assistance and unemployment and disability insurance. Here, as well, the aim is to create incentives by making benefits contingent on the fulfilment of specific expectations, while penalising any transgressions by a progressive withdrawal of benefits.

2.4 PERSISTENT, BUT MARGINAL: PUBLIC CRITICISM OF ADMINISTRATIVE DETENTION LAW

The legal problems inherent in the use of involuntary administrative detention were no secret. The measures used were also never uncontroversial. In April 1945, the head of the Justice Department of the canton of Zurich, Jakob Kägi, described administrative detention as the "problem child" of the cantonal governments. With the end of the war in sight, the subject took on new urgency. The war, said Social-Democrat Kägi, had made people "nervous". They reacted "more vehemently than before when they had the feeling the government was doing something wrong".[55]

53 Lippuner 2005, 198–206.
54 Germann 2015, 131.
55 IEC, vol. 7, chap. 2.1, 78–79.

Kägi was mistaken. Criticism of the use of administrative detention remained marginal and largely ineffective also after the war. Among the critical voices were those of former detainees themselves, such as Gotthard Haslimeier, who published a report on the "Hell of Bellechasse" (1955) and Arthur Honegger, author of the autobiographical novel *Die Fertigmacher* [The Spirit Crushers] (1974).[56] Criticism of the authorities' actions was also heard from members of the cantonal parliaments, lawyers, legal experts and the public advocacy magazine *Der Beobachter*. Occasional scandals at detention facilities sometimes gave rise to brief flares of publicity. The majority of the population probably knew or had at least an inkling that people in Switzerland were being "disappeared" into closed facilities because of the way they lived their lives. It would appear, however, that the entire subject vanished from public view as quickly as the individual themselves were taken into detention. The fact that criticism was never completely silenced, however, indicates that administrative detention did not truly reflect the *zeitgeist*. It was the result of political decisions that were also susceptible to criticism. Alternatives were conceivable, even if they did not find much resonance.

LEGISLATIVE DEBATES: RESERVATIONS BEFORE, ACCEPTANCE AFTERWARDS

Criticism of administrative detention dates back to as far as the first use of such measures. The establishment of correctional labour facilities and the introduction of administrative procedures for detaining individuals in closed facilities met with protests from the very beginning. The cantonal parliaments of both Zurich and Lucerne rejected initiatives for introducing such measures in the 1850s. In Zurich, it was not until after a popular referendum in 1874 that the parliament and the executive were compelled to begin with the construction of a correctional labour facility. In Lucerne, it was not until the 1880s that advocates of special police measures for the poor succeeded in carrying the day. The arguments raised by critics from various political camps focused, first, on the costs involved, and second, on the effectiveness of such facilities. At the same time, legal concerns were raised with regard to the powers delegated to "administrative authorities". Demands were made for replacing the administrative procedure with judicial proceedings. This, it was argued, would provide better legal protection,

56 Haslimeier 1955; Honegger 2018 [1974].

although it would also create new difficulties in distinguishing such detention measures from criminal penalties.[57] It was due to constitutional concerns that the parliament of the canton of Fribourg, for example, rejected proposals for a law on administrative detention. The general argument was that it was preferable to leave such matters to the judiciary rather than to the executive branch.[58] In Bern, by contrast, it was in vain that a member of the Grand Council argued the minority position that detention was a criminal correctional measure and could only be ordered by a court.[59]

The opposition to compulsory detention measures was a subject of political wrangling. In 1909, the referendum voters in the canton of Thurgau rejected a proposed law on alcoholics after the opposition had labelled it a "police law" that mainly targeted "miserable drunks". A similar law was rejected in the canton of Solothurn in 1934. It is noteworthy that opposition to the proposed introduction of administrative detention focused in both cantons only on compulsory detention in treatment facilities for alcoholics. The laws on detention of the "indolent" and the "dissolute", which had already been in effect for decades, were not challenged. In 1938, referendum voters in Solothurn accepted a less stringent version of the law. Three years later, voters in Thurgau passed a referendum on the enactment of a law that was largely the same as the one rejected in 1909.[60]

The voicing of reservations and opposition played an important role primarily at the earliest stages and could effectively delay the progress of legislative proposals. Once the constitutional dams had burst, however, and detention measures were introduced, the hurdles to any change of direction were high. A readiness to tolerate invasions of the rights of a relatively small group within the overall population prevailed. This is well illustrated by the example of the canton of Fribourg, which introduced administrative detention for alcohol dependants in 1919. In 1928, two members of the Grand Council, both lawyers, argued against a proposal to extend the authority of the prefects to allow them to administratively detain the destitute. They criticised, in particular, the delegation of "autocratic and absolute powers" to mid-level administrative officials. This time, contrary to the situation in 1899, critics of the proposal stood no chance, although they did at least manage to introduce a right of appeal into the new law. Efforts

57 Christensen 2018; Badran 2017; Lippuner 2005.
58 IEC, vol. 3, chaps. 1.1 and 2.1.
59 Rietmann 2013, 50.
60 IEC, vol. 3, chap. 2.2; Braun 2018, 333.

to put an end to "cabinet justice" by the prefects were again resisted by the government of the canton of Fribourg when the law was revised in 1951.[61]

Preventing the use of administrative detention also proved impossible in the canton of Vaud. Prominent women's rights activist Emilie Gourd, together with Paul Golay, criticised the 1941 Act on the Administrative Detention of Elements Dangerous to Society – and the emergency law that preceded it – as being biased against women who offered sex for sale and against the more vulnerable social echelons of society. In 1946, however, Golay did at least succeed with a motion for shortening the term of detention and for granting detainees the right to legal counsel.[62] Granting that right was a novelty in Switzerland at the time, as evidenced by the vigorous campaign waged by Gaudenz Canova, prominent lawyer and political activist from Graubünden. His efforts around that same time to convince the administrative authorities of the canton of Graubünden to allow adults in proceedings on their legal incapacitation to be represented by a lawyer proved fruitless.[63]

LOOSLI AND THE CONSEQUENCES: CRITICAL VOICES AFTER 1945

Credit for the fact that the problem of administrative detention attracted attention beyond the narrow circles of legal professionals is owed to Carl Albert Loosli. While still an adolescent, Loosli himself had been placed in the Trachselwald juvenile reform facility. From the 1920s onwards, he actively campaigned for reforms in the foster care and detention regimes. He was also active early on in the fight against anti-Semitism and in favour of women's rights. In newspaper articles and in the polemical pamphlet entitled *"Administrativjustiz" und Schweizerische Konzentrationslager* ["Administrative Justice" and Swiss Concentration Camps] (1939), Loosli attacked administrative detention law as being "arbitrary by design" and compared it in the provocative title of his essay to the methods then in use in Nazi Germany. There were three main thrusts to Loosli's criticism. First, he criticised administrative detention law as an "arbitrary and violent invasion of civil liberty", which was unconstitutional and destructive of trust between the citizens and their government. Second, he denounced "administrative justice" as a violent instrument for maintaining the rule of the middle-class es-

61 IEC, vol. 3, chaps. 1.1 and 2.1.
62 IEC, vol. 3, chap. 3.1.
63 Rietmann 2017, 74–77.

tablishment. Administrative detention, in Loosli's words, was a "weapon of battle and destruction" employed against the destitute, who were unable to defend themselves. And third, he criticised the use of forced labour, which was associated with administrative detention. Loosli accused the detention facilities of putting "financial profit considerations" ahead of resocialisation objectives and of exploiting detainees as "state slaves".[64] As radical as they were, Loosli's arguments were also highly nuanced. Thus, he did not fundamentally challenge the right of society to place individuals "incapable of living in freedom or in need of assistance" in confinement for their education and betterment. He insisted, however, that this should be done only through judicial proceedings with the full array of legal protection and legal remedies.[65] Loosli's stand was not without its blind spots. He underestimated, for example, the full ramifications of guardian-ordered detentions. He also praised the – from today's point of view highly problematic – juvenile detention practice of the canton of Bern as a model for the future.[66] Nevertheless, his commitment was based on a clear perception of the reality. His pointed criticism laid bare the arbitrary nature of administrative detention law and the potential for abuse inherent therein.

The immediate consequence of Loosli's efforts was the launching by the Social Democratic Party – in the Grand Council of the canton of Bern – of two initiatives designed to strengthen the procedural rights of administrative detainees. Both initiatives were put on the back burner by the cantonal government, however. Loosli also succeeded in establishing contacts with prominent lawyers in Switzerland. In 1951, a committee was created in Geneva for the purpose of adding an amendment to the Federal Constitution that would provide protection against arbitrary arrest. Unfortunately, as had already happened in the cantonal parliament of Bern, social democratic political leaders failed to provide the needed support for the initiatives at the decisive moment. For them, the integration of workers into the social order desired by the middle-class establishment had a higher priority than providing protection for socially marginalised portions of the population.[67] Loosli's advocacy also contributed to the gradual emergence of a hesitant, but substantively important discourse among legal and

64 Loosli 2007, 98–284, quotations 180, 227, 248, 253. On Loosli's active commitment, see Marti, Grunder 2018, 327–381; Rietmann 2013a.

65 Loosli 2007, 278.

66 Loosli 2007, 119.

67 Marti, Grunder 2018, 360–361, 378–379.

welfare practitioners following the entry into effect of the Criminal Code in 1942. Lawyers such as Karl Zbinden, Hans Dubs and Jean Graven began to publicly criticise the laws on administrative detention. They demanded that the rights of detainees be strengthened and that appeals to the courts be permitted. Criticism was also directed at the placement of detainees in unsuitable facilities or correctional facilities for criminals.[68]

The response elicited by the reform discussion was modest, and the results remained ambiguous. While some of the reform proposals did find their way into various cantonal amendments (see chap. 2.5), the legitimacy of administrative detention was not fundamentally questioned. On the contrary, the prospect of bringing administrative detention policies into conformity with rule-of-law standards made other types of intervention appear even more indispensable and legitimate. This was particularly the case with decisions by guardians to place their wards in closed facilities, as this issue was widely ignored by critics of administrative detention. Indeed some, such as Civil Code commentator August Egger, saw such guardianship decisions as a preferable alternative to administrative detention under the normal procedures of cantonal law.[69]

HEIGHTENED AWARENESS OF THE PROBLEM – TO LITTLE EFFECT

It was only in the run-up to the social upheavals of 1968 that more serious discussion over the scope and limitations of constitutional rights began to take hold in Switzerland. That discussion also helped heighten awareness for the problem of measures involving the deprivation of personal liberty. The focus of discussion now shifted away from the formal legal and procedural problems connected with such measures to the fundamental question of their constitutionality. Lawyers from the younger generation, such as Peter Bossart and Roland Bersier, criticised both the arbitrary nature of the grounds used for placing individuals in administrative detention and the lack of legal protection for the detainees. They likened administrative detention to a form of "disguised punishment" that – except in rare cases – represented a disproportionate infringement of personal liberty. "The notion of proper morals is too variable and too elastic, so that a measure which relies on such an undefined breach of public morality

68 IEC, vol. 3, chap. 5; IEC, vol. 7, chap. 2.2; Rietmann 2013, 248–253.
69 IEC, vol. 3, chap. 5.1; IEC, vol. 7, chap. 2.2.

will inevitably carry with it a major risk of being applied arbitrarily," noted Bersier in his criticism of the mixing of law with morality.[70]

Criticism of administrative detention developed in different directions in the early 1970s. For one thing, it became part of the debate over the ratification of Switzerland's accession to the European Convention on Human Rights (see chap. 2.5). In that context, it also became the subject of increasing media coverage. In 1969, lawyer and women's rights activist Gertrud Heinzelmann published in the Winterthur newspaper *Der Landboten* an article entitled "*Die Versorgten – unsere Schande*" ["The Detainees – Our Shame"]. One year later, the social-democratic newspaper *Volksrecht* published an article on the same subject under the title "*Verlochen unbequemer Mitmenschen*" ["Putting the Inconvenient in a Hole"]. In 1970, the public television network in French-speaking Switzerland broadcast a documentary by Guy Ackermann and Alain Tanner, *Les administratifs et l'article 42*, which also included interviews with administrative detainees. Two years later, critical reports in the public advocacy magazine *Der Beobachter* led to the dissolution of the so-called "benevolent association" for the assistance of gypsy children, the "Relief Organisation for Children of the Open Road".[71] Simultaneously, the 1968 protest movement drew public attention to the desolate living conditions in the homes and detention facilities used for the enforcement of administrative detention orders. Left-wing popular movements such as the *Groupe information Vennes* launched campaigns for improvements in juvenile care homes and correctional facilities within the larger framework of the struggle for emancipatory social policies.[72] In 1968, a protest march was held in the city of Bern against the canton's prevailing conditions of administrative detention. The monograph *Demokratie von Fall zu Fall* ["Democracy Case by Case"] (1976), a criticism of the social order from a left-wing point of view, also included a chapter on "Administrative justice".[73]

Together with the criticism of the detention regime by the 1968 protest movement, a realisation began to take hold in the social sciences that deviant behaviour was less a result of individual failure than a consequence of social exclusion processes. A working group on the reform of the criminal justice system formed around St. Gallen law professor Eduard Naegeli and

70 Bersier 1968, 182. See also IEC, vol. 7, chap. 2.2; Bossart 1965, 62, 64, 66.
71 IEC, vol. 3, chap. 5.1; IEC, vol. 7, chap. 4.3.2; Galle 2016, 96, 382.
72 IEC, vol. 3, chaps. 4.1 and 5.1.
73 Rietmann 2013, 291; Schmid 1976, 90–97.

drew attention to the repressive structures within society. A broad survey of Swiss prison facilities carried out in the 1970s showed that convicted criminals and administrative detainees were housed jointly in many of the facilities. A study on Bellechasse, for example, sharply criticised the medical treatment situation and the lack of proper care both inside and outside the facility.[74] Although some reform advocates such as Naegeli also provided assistance to individual detainees, the main focus of the movement of progressive lawyers was always on the criminal correctional system itself. This was also due to the fact that, by the mid-1970s, it had become clear that the repeal of existing administrative detention law was in the offing. A good example of the cautiousness with which criticism was expressed was a report by the 1978 Commission on Women's Issues on the detention regimen in the Hindelbank facilities. While the report was critical of the fact that administratively detained women were housed jointly with convicted criminals, it made barely any mention of the legal provisions and the circumstances under which administrative detention was ordered.[75] These examples illustrate that, at the end of the 1970s, even critics of the administrative detention regime still underestimated the full ramifications of what was involved. Although the problems had, by that time, become impossible to ignore, public interest in the fate of administrative detainees remained minimal.

2.5 NEW ALTERNATIVES: FROM ADMINISTRATIVE DETENTION TO INVOLUNTARY COMMITMENT

In the current discussion over the inquiry into the history of administrative detention, the introduction of the institution referred to as "involuntary commitment for welfare purposes" (*fürsorgerische Freiheitsentziehung* / *placement à des fins d'assistance*) in 1981 is generally equated with the abolishment of the administrative detention regime. As generally understood, the new regime made it possible for the standards established by the European Convention on Human Rights (ECHR) to prevail. In the current context, the claim that 1981 represents a watershed also serves to set bounds,

74 Kuster 2014; Aebersold, Blum 1975; Bernoulli 1980.

75 Lanfranconi, Keller 2010, 14–15, 14–15. Also with a focus on detention conditions, Leuthardt-Stoecklin 1979.

both on the reparation claims of former detainees and on the scope of the IEC's research and investigations. From a historical point of view, however, such ostensible watersheds are not unproblematic. Even when – as in the present case – there are good arguments in their favour, they nevertheless tend to obscure the existence of continuities with far-reaching implications. In reality, it is more useful to speak of involuntary commitment as a replacement for the administrative detention regime, as a substitute regime that has been redesigned for current purposes. Seen in this way, the fundamental question under investigation must be formulated differently: What were the factors that contributed to the loss of legitimacy of the former administrative detention regime and the need for a new system? What were the circumstances that allowed involuntary commitment to continue to be seen as politically acceptable?

In the scholarly literature on the subject, the primary emphasis has thus far been on the impetus that was provided by discussions that began in the mid-1960s over the ECHR. Those discussions, it is argued, led to an expansion of the constitutionally guaranteed fundamental rights.[76] Far less attention has been devoted to other factors: the declining numbers of administrative detention orders issued, the rise in detention costs, revisions of the cantonal administrative detention laws, and the growing importance of socio-medical and psychiatric approaches. Those factors must, for their part, be understood against the background of the social changes that have taken place since the end of the Second World War.

SWITZERLAND SINCE 1945: BRIGHT AND DARK SIDES OF THE BOOM YEARS

Like other Western countries, Switzerland underwent rapid social and economic changes in the post-war years. Those changes brought about a fundamental alteration in the conditions for infringements of personal liberty by the government. Economic growth, full employment and technological progress contributed to a hitherto unknown level of prosperity from which large sectors of the population were able to benefit. Despite convergences in consumer habits – with growing numbers of families able to afford an automobile, a refrigerator and a television set – social disparities remained significant, as evidenced by such indicators as access to higher education and the distribution of wealth. The recruitment of immigrants

76 Rietmann 2013.

from Southern Europe as unskilled labour led to a re-stratification of the domestic population, giving rise to a perceived need for new lines of social demarcation, as xenophobic resentments grew. Social pressure to conform remained high in the early post-war years. While a growing number of people began to develop individualistic consumer behaviours and lifestyles, this also provoked negative reactions. It was not until the 1960s that authoritarian educational methods and strict standards of sexual morality came under serious challenge. Growing numbers of working women, the rise in divorce rates, and new living and domestic arrangements (co-habitation, flat sharing) gave rise to a widespread reassessment of the traditional family model. In the larger cities, alternative sub-cultures began to develop. Politically, the change was reflected in the rise of social activism and a critical questioning of Switzerland's traditionally rustic self-image. The liberalisation of society also gave rise to defensive reactions. Rebellious young people and activists in the new women's, peace and environmental movements were considered suspect and came to be targeted by the overzealous state security apparatus. Conscientious objectors and drug users were subjected to even stronger reprisals.

Full employment and the expansion of welfare state transfer payments (Old-Age and Survivors' Insurance, 1948; Disability Insurance, 1960; Supplementary Benefits, 1966) led to a marked reduction in poverty from the 1950s onward. The main beneficiaries of such payments were orphans, the elderly and the handicapped, who had been considered worthy of assistance even before that time. In parallel, welfare assistance also served as a safety net for individuals who were unable to profit from the economic boom. These were welfare recipients who had been identified by the social services not as financially needy in the traditional sense, but as socially "incompetent" or "maladjusted". This included individuals with behavioural or substance addiction problems.[77] It is easily forgotten that – in addition to immigrant workers, who were legally discriminated against – there were also people in Switzerland who lost out in the boom years and who found little support from within the society. Among them were children born out of wedlock, children whose parents were divorced, and single parents with little education or occupational training or no permanent residence. Research has shown that it was these groups, in particular, that were disproportionately targeted by coercive administrative measures (see chap. 3).

77 Braun 2018, 337; Tabin et al. 2008, 124–125; Sutter 2007, 276.

The persistence of this tendency towards discrimination was exacerbated by the fact that post-war Switzerland fell behind other Western countries in its development as a rule-of-law state. Since the end of the 19th century, Switzerland had prided itself on being a haven of democracy and the guardian of international humanitarian law. At the end of the Second World War, however, it found itself in a difficult struggle with the dynamic developments that culminated in the establishment of universal standards for the protection of human rights. A long-standing tradition of seeing itself as an exception, together with a fear of being constrained to sacrifice its sovereignty, made Switzerland sceptical of multilateral international conventions – so much so that it declined to seek membership in the United Nations. It was also only after much hesitancy that Switzerland finally joined the Council of Europe in 1963, primarily for foreign and economic policy reasons.[78] In addition, the country's widely shared democratic self-image for many years inhibited efforts to strengthen the judiciary. Discussion over fundamental rights only began to gather momentum in the 1960s, as the discrepancy between Switzerland's own national laws and the legal standards demanded by the 1950 ECHR became increasingly difficult to ignore. During this period, the Federal Supreme Court abandoned some of the reluctance that characterised existing court precedents and recognised protection of personal liberty (1963) and the principle of proportionality (1968) as being constitutionally guaranteed. Extension of the list of unwritten fundamental rights created new obstacles to the use of deprivation of liberty measures and furnished critics of the administrative detention regime with new arguments.[79] Switzerland's ratification of the ECHR in 1974 further widened the scope of fundamental rights protection and made it necessary to adapt many of the country's existing laws. The public discourse on human rights also influenced the evolution of welfare law and social work. The primary emphasis was shifted to providing welfare assistance on a case-by-case basis and to working in cooperation with welfare recipients. Recognition of the dignity and independence of the individual and of the right to a social subsistence minimum took the place of surveillance and imposed discipline. It was not until the 1970s, however, that these new approaches were able to find broader application in actual practice.[80]

78 Fanzun 2005, 197–198.
79 IEC, vol. 7, chaps. 2.2 and 2.3.
80 IEC, vol. 7, chap. 3.4; Rietmann 2013, 258–259; Matter 2011, 327–330.

CANTONAL REFORMS: IMPROVEMENTS IN LEGAL PROTECTION

The cantons reacted to the social changes in different ways. Some cantons had already repealed their administrative detention laws – either fully (Aargau, Zug) or partially (Thurgau, Basel-Stadt, St. Gallen, Uri) – in 1942 with the entry into force of the Criminal Code.[81] The cantons of Vaud, St. Gallen and Schwyz repealed their administrative detention laws around 1970, whereby they were motivated not only by public pressure, but also by practical considerations, including the profitability of the detention facilities.[82] In all of these cantons, it still remained possible for guardians to order the detention of their wards in closed facilities. Other cantons, such as Fribourg and Zurich, left their outdated legislation intact up until 1981. A final group of cantons undertook comprehensive revisions of their administrative detention regimes. Among them were the cantons of Solothurn (1954), Bern (1965) and Lucerne (1954, 1966), where the use of administrative detention was a subject of controversial debate, and the influence of new groups of professional experts – doctors, lawyers and social workers – was pronounced. In Bern, the debate even drew explicit reference – if primarily for purposes of legitimisation – to the ECHR. In Zurich, by contrast, a similarly far-reaching revision of the administrative detention regime by the Government Council was prevented by the opposition of the executive branch.[83]

The objectives pursued by the legislative revisions included improvements in the legal position of detainees, provision of possibilities for appealing decisions before a higher (judicial) instance, and making administrative detention a measure of last resort, to be used only after less invasive "probationary measures" had been tried. Of particular importance was the possibility of appealing administrative detention orders before an (administrative) court (Solothurn 1954, Zurich 1960, Bern 1965, Lucerne 1971). The newly introduced legal remedies were part of a general movement to widen the jurisdiction of the administrative courts – in response to a growing failure of confidence in the administrative authorities, which had been steadily expanding the scope of their powers while escaping all external oversight. The creation of an administrative court system made it possible to subject decisions by the administrative authorities to independent re-

81 Zbinden 1942a, 30–32; Kälin 2015.
82 IEC, vol. 3, chap. 3.1; IEC, vol. 7, chap. 2.1.3.
83 Braun 2018, 343; Rietmann 2013, 264–293; IEC, vol. 3, chap. 5.1; IEC, vol. 7, chap. 2.1, 4.

view through an appeals process. At the same time, however, definitions of the grounds on which administrative detention could be ordered remained steadfastly resistant to change. The amended administrative detention laws continued to avail themselves of unclearly defined and stigmatising terms such as "indolent", "immoral" or "dissolute" to designate the categories of individuals targeted by the measures. The potential scope of application of the laws remained correspondingly broad.

A representative example of the cantons that sought to introduce reforms is Lucerne. The canton of Lucerne had an administrative detention law for alcohol dependants on its statute books since 1954. Because of the socio-medical approach of that law, it quickly gained repute as the most modern welfare law in Switzerland. In the mid-1950s, members of the cantonal parliament of Lucerne began to demand modifications of the so-called "Sedel law" of 1885, which took its name from the Sedel correctional labour facility. Under that law it was permitted to administratively detain "indolent" and "dissolute" individuals. Although the law was no longer barely applied, the Lucerne government initially continued to support an approach based on the repression of unwanted behaviour. A 1964 draft revision gave priority to the protection of the general public from "threats" and "harassment". A shift in emphasis to providing help to individuals in need took place only after welfare experts began to exert pressure. Under the amended law, administrative detention for a term of one to three years was now permitted only in cases where social assistance measures, coupled with directives and warnings, had proved unsuccessful. Another change was the introduction of suspended detention orders, where it could be expected that it would motivate the individual in question to abandon his or her "dissolute, indolent or immoral way of life". The law also made provision for a right to be heard and to consult the records; further, it established rules for appealing detention orders before the Government Council (or before the administrative court, following its establishment in 1971). It also distinguished clearly between its own scope of application and that of the Civil Code. Under the new Lucerne law, the detention of minors or persons under guardianship was to be ordered only in accordance with the terms of civil law, rather than administrative law.[84] This change was made in pursuit of a dual objective, which was also characteristic of the revised administrative detention laws in other cantons. It allowed for the possibil-

84 IEC, vol. 3, chap. 3.2; Badran 2017, 86–92; Marti 2015, 23–27.

ity of more subtle intervention – designated as assistance – into the lives of individuals in difficult circumstances and provided them with better legal protection. It did not, however, entirely remove the latent threat of closed detention at a later point in time. The new law largely achieved its objective. After 1966, there were hardly any cases of administrative detention under cantonal law. In lieu thereof, the local authorities made use of the new possibility for placing the individuals in question under surveillance.[85]

MEDICALISATION: TREATMENT INSTEAD OF DETENTION

A medical approach was already in evidence in the alcohol treatment laws of the first half of the 20th century. The advocates of such laws were critical of the use of correctional labour facilities, arguing that they were largely ineffective. The reality was that, even at that time, it was already known that the objective of betterment – the ostensible purpose that was used to justify administrative detention – was rarely if ever achieved. New medical treatment possibilities, it was hoped, would help remedy this ill.[86] Early efforts to medicalise detention policies quickly ran up against practical and financial limits, however. Psychiatric clinics proved unable to reliably distinguish between patients who were "capable of improvement", "curable" or "incurable". In the canton of Lucerne, local municipal governments refused to send alcoholics to costly treatment centres.[87] In the cantons of Fribourg and Vaud, all efforts to clearly differentiate between addiction withdrawal treatment and forced labour proved ineffective.[88]

The economic boom in the years following 1945 allowed for a major expansion of the healthcare system. Medical and socio-pedagogical approaches took on growing importance also in connection with coercive welfare measures. Administrative authorities increasingly took recourse to the use of observation stations and counselling offices, or availed themselves of psychiatric experts for dealing with juveniles. Medical approaches also offered new options for combating alcoholism. Drugs such as apomorphine and antabus made possible a shift in emphasis from inpatient to outpatient therapy.[89] Policy change in the individual cantons was nevertheless strongly dependent on the levels of medical care on offer (treat-

85 Badran 2017, 91.
86 Christensen 2018, 41; Badran 2017, 35; Lippuner 2005, 272–283.
87 IEC, vol. 3, chap. 2.3.
88 IEC, vol. 3, chap. 1.1; IEC, vol. 7, chap. 3.2.
89 IEC, vol. 4, chap. 2.1, 165–167.

ment centres, outpatient clinics, physician density) and on the financial resources available. The cantons of Vaud and Lucerne, for example, opted early on for the medicalisation of the detention regime and were resolute in implementing the new policy. Administrative detention policy in structurally weak cantons, such as Fribourg and Schwyz, continued to rely on repressive police measures initially intended for the poor until well into the 1960s and 1970s (see chap. 4).

In 1941, the canton of Vaud amended its alcohol legislation and transferred welfare responsibility in cases of alcoholism to the centrally administered Cantonal Office for Anti-Alcohol Surveillance (*Office cantonal de surveillance antialcoolique*, OCSA). The OCSA was responsible both for medical and police measures. The general approach was to give priority to medical care, but also authorised the imposition of sanctions. Under the new provisions, "curable" and "incurable" alcoholics were to be treated with different degrees of severity. In making its determinations, the OCSA was able to avail itself of the experts at the University of Lausanne Hospital's psychiatric clinic. A series of progressively strict measures was foreseen – from an obligation to pay regular visits to the doctor and an undertaking to abstain from drinking to warnings of varying degrees of sternness – prior to the ordering of administrative detention. Further revisions of the applicable legislation in 1941 and 1949 made administrative detention practice a matter of social medicine. The law adopted during the war years for combating prostitution and procurement fell largely into disuse. The authorities also made extensive use of the possibility of keeping alcoholics under surveillance on an outpatient basis. In 1968, there were more than 3,500 men and women living in the canton of Vaud under the surveillance of the OCSA. Although the new regime placed greater emphasis on a cooperative relationship with the individuals concerned, it was not entirely free of coercion. The possibility of anonymous denunciation, together with promises of abstinence given under pressure, and fear for a loss of reputation as a result of public surveillance, continued to have a disciplinary effect. In addition, the default option of placement in administrative detention still remained available to the authorities. As late as the mid-1960s, despite the downward trend, some 70 administrative detention orders were still being issued annually under the 1949 law – almost entirely against men.[90]

90 IEC, vol. 7, chap. 3.2; Collaud et al. 2015.

Developments in the canton of Lucerne took a similar direction with the entry into effect of a new law on the treatment of alcoholics in 1954. Here, too, the objective was to increase the options for ordering outpatient treatment with the cooperation of the individuals concerned. In this connection, the cantonal administration was able to avail itself of existing treatment centres, a special ward in the cantonal hospital and the assistance of psychiatric experts. Administrative detention and custody orders remained a default option under the 1954 law. Such measures continued to be available for use in cases of alcoholics who were resistant to therapy or who were considered a "menace to society", when less severe counselling and treatment measures had failed.

The debate over welfare assistance measures for alcoholics in Lucerne illustrates the changing attitudes toward the consumption of alcohol in the post-war years. On the one hand, much importance was attached to medical-psychiatric definitions of "drinker categories" and graded risk profiles. At the same time, however, the focus remained fixed exclusively on the drinking habits of members of the lower social echelons. The new phenomenon of alcoholism as a by-product of prosperity came under discussion only when atypical population groups, such as alcoholic housewives and juvenile "weekend drinkers", or drunk driving were involved. That discourse reveals the ambiguities inherent in the medicalisation model, which was made possible through the influence of professional experts (physicians, social workers). The low threshold of access to therapeutic possibilities was countered by the identification of new risk groups and more refined methods of social control. Within that operative model, exclusion pressures were directed in a much more targeted manner than before against those who had fallen through the social safety net. For them, the threat of being committed to a closed facility remained very real – perhaps even more so than ever.[91]

Socio-medical approaches served not only to provide new treatment alternatives. Much like the improvements in legal protection, they also gave a new type of legitimacy to deprivation of liberty measures. Invasions of liberty were now justified by a therapeutic logic and a medically grounded interest on the part of the individuals concerned. This ambivalence came clearly to the fore when the use of administrative detention was ended in the canton of Vaud in the early 1970s. The majority of the canton's

91 IEC, vol. 3, chap. 2.3.

legislators had come to see such legal measures for ordering the detention of prostitutes and "antisocial elements" as questionable and obsolete. The hospitalisation of alcoholics and the mentally disturbed, by contrast, did not provoke any constitutional misgivings. This continued to be viewed as being in the interest of the individuals concerned and their families, and as necessary for the protection of society.[92] This medically based logic remained intrinsic also to the new institution of involuntary commitment that was introduced in 1981 as a replacement for administrative detention.

FROM ADMINISTRATIVE DETENTION TO INVOLUNTARY COMMITMENT FOR WELFARE PURPOSES

Differences in the degrees of openness to legal reform and innovation led to increasing disparities between the administrative detention practices of the various cantons, particularly from the 1960s onwards. Persistent international pressure was required before the discussion shifted from cantonal to federal level and fundamental reforms were made possible. It was already clear to federal officials when Switzerland joined the Council of Europe in 1963 that the "coercive detention of the mentally ill and of individuals suffering from neglect", as was common practice, was not consistent with the terms of the ECHR.[93] The ECHR was one of the central achievements of the Council of Europe. It established a list of fundamental human rights and, through the creation of the European Court of Human Rights, established an effective means of enforcing those rights. Of particular relevance was article 5 of the ECHR, which guarantees the right to freedom and security and sets the conditions under which it is permitted to deprive an individual of his or her personal liberty. Explicitly mentioned among those conditions is the right to judicial proceedings. For Switzerland to maintain its credibility as a member of the Council of Europe, it had no choice but to find a way to ratify the ECHR. In 1968, the Federal Council announced the country's intention to accede to the ECHR. This, however, was to be subject to various reservations. In addition to the issue of administrative detention laws, these reservations concerned the absence of women's suffrage and the articles of the Swiss Federal Constitution limiting freedom of religion. It was not astonishing that special historical traditions

92 IEC, vol. 3, chap. 3.1.

93 On what follows IEC, vol. 3, chap. 5.1; Fanzun 2005, 194–256.

of this nature placed certain strains on Switzerland's relationship with different international organisations.

The Confederation's policy of taking reservations was designed to protect the sovereignty of the cantons. This also prevented them from getting – in the words of Social-Democratic member of the National Council Emil Schaffer – an "energetic nudge" towards modernising their administrative detention laws.[94] The passivity of the federal government also makes it clear that the question of administrative detention, as an element of cantonal administrative law, was a little noted side issue in the discussions surrounding the ECHR. At the centre of the domestic debate over Switzerland's accession to the Convention was the question of women's suffrage, the introduction of which had most recently been rejected by Swiss voters in a 1959 referendum. It was above all members of the women's movements that mobilised against the Federal Council's policy on reservations, and who used the ECHR as a means of exerting pressure for a second referendum. Administrative detainees, by contrast, had no lobby on their behalf to counter the government's stalling tactics.

The discussion was given a further boost through the intervention of the International Labour Organization (ILO), a factor that has thus far been largely ignored in the scholarly literature.[95] Switzerland had signed the ILO Convention No. 29 Concerning Forced or Compulsory Labour in 1940. The Convention had originally been drafted with the European colonies in mind. It prohibited the use of human beings for forced labour without a court judgement or in non-emergency situations. Since the 1940s, the ILO had regularly demanded explanations from Switzerland concerning the cantonal laws on administrative detention. In the context of the ECHR discussion, it took a sharper tone and demanded the repeal of those laws. That demand clearly put Switzerland in an awkward position. The very notion of forced labour was incompatible with the country's own self-image. It now suddenly saw itself being addressed in the same manner as countries of the Eastern Bloc and Africa, on which the ILO had particularly fixed its sights at the time.[96]

94 Protokoll der Bundesversammlung Wintersession 1969, Nationalrat, 89, Schweizerisches Bundesarchiv, BAR#E1301#1960/51#494*.

95 Dissler 2017.

96 Daughton 2013. According to Maul 2007, 362–375, the ILO's investigations in the 1960 were directed, above all, against youth labour services which were widespread in many African countries that had recently gained independence. Also targeted by the US-dominated ILO were the countries of the Warsaw Pact in Eastern Europe.

Switzerland's initial reflex reaction was defensive. In a response to the ILO, the Federal Council argued that the purpose of the 1930 Convention had been solely to "combat against forced labour in the form found at the time in colonial territories". It then repeated the same rationalisation that had served as a narrative for many years: Labour in closed facilities, the Federal Council argued, was "labour performed for therapeutic or reform purposes, which was ordered solely in the interest of the detainee and without which it would not be possible for detention to achieve its objective of social reintegration".[97] The charges by the ILO were taken up, in particular, by centrist and left-leaning media, creating a threat of embarrassing damage to Switzerland's public image. This was compounded by an emerging conflict with the cantonal governments, into whose court the federal government was again attempting to put the ball. The government of the canton of Bern, together with the Conference of Cantonal Justice and Police Department Heads, protested attempts to unilaterally assign all blame to the cantonal laws. They laid stress on the fact that the more recently enacted administrative detention laws made provision for adequate legal protection. For the first time openly criticising the detention provisions of the Civil Code, they countered that it was those provisions that in fact failed to provide any real legal certainty for the individuals concerned.

The ILO's intervention proved to be even more decisive than the public discussion surrounding the ECHR – finally ratified by Switzerland in 1974 – in helping to place the smouldering debate over administrative detention law on the federal government's policy agenda. In 1971, the Federal Council instructed that the problem be regulated as part of the reform of family law, which was then in progress. After a number of false starts, a solution under federal law emerged, which also included, for the first time, provisions on the detention of persons above the age of majority and extended the scope of procedural guarantees. A fundamental discussion over the legitimacy of administrative measures entailing the deprivation of liberty did not take place, however. Rather, following the intervention of professional psychiatric associations, a draft proposal was presented that relied heavily on hospitalisation and provided the cantons with the possibility of delegating to physicians the authority for institutionalisation in closed facilities. The deprivation of liberty outside the criminal justice system was thereby

97 Report to the ILO, 16 November 1971, Swiss Federal Archives, BAR#E7001C#1982/11#37*; Swiss Federal Council 1977, 55–56.

transformed from a police measure for use by the guardianship authorities to a psychiatric measure for use by those same authorities.[98]

The institution of involuntary commitment for welfare purposes, which was enacted into law by Parliament in 1978 and entered into effect in 1981, followed the lead of the ECHR and limited the grounds on which such commitment could be ordered to cases of "mental illness", "mental disability", "alcoholism" and "other addictions", or "severe neglect".[99] Commitment to a closed facility was authorised in cases where an individual could not be provided with the "necessary personal care" in any other way. In addition to the aspect of self-preservation, consideration was also to be given to the degree to which the individual in question constituted a "burden" on his or her surroundings. The law also fixed minimum standards for legal protection, such as the right to due process and the availability of legal remedies by appeal to a court of law. Those rules also applied to minors and incapacitated adults, as well as to adults with legal capacity. Responsibility for such cases lay, in principle, with the guardianship authorities. Lastly, the law accorded the individuals in question a right to recover damages in cases where they had been deprived of their liberty in an unlawful manner.[100]

Although the new regime represented a formal turning point, a certain degree of continuity with earlier administrative detention laws is unmistakably discernible. The introduction of involuntary commitment built on the existing trend towards expanding the scope of legal protection. At the same time, however, the procedural guarantees went no further than the minimum standard provided for in the ECHR; more generous proposals for such things as a right to "detention counsel" stood no chance in the legislative process. The signs of a fundamental reorientation with regard to the possible grounds for detention are also less than clear. It is true that the Federal Council, when preparing the draft version of the law, dropped "indolence" as potential grounds for ordering detention. In the final version of the law, however, involuntary commitment on grounds of "severe neglect" (*schwere Verwahrlosung*) remained a possibility. This was so despite the term's having been vehemently criticised during the consultation process as having been chosen at random. The term "severe neglect" was

98 Swiss Federal Council 1977, 31; IEC, vol. 3, chap. 5.1; Ferreira, Maugé, Maulini 2017.

99 Article 5 of the ECHR allows for detention on the following grounds: educational supervision of minors, prevention of the spreading of infectious diseases, mental illness, alcohol and drug addiction, and vagrancy.

100 Swiss Civil Code (Involuntary Commitment). Amendment of 6 October 1978 (AS 1980 31).

based on a uniquely Swiss construction of the notion of vagrancy, which had been left on the list of admissible grounds for detention in article 5 of the ECHR (despite the fact that vagrancy was not considered a criminal offence). According to the Federal Council's Message to Parliament on the draft proposal, "severe neglect" could also encompass breach of family duties or destitution resulting from a stubborn refusal to accept employment – in application of criteria that clearly descended from the tradition of police measures against the poor.[101] In addition, the revised regime left the stigmatising terminology of guardianship law fully intact. That terminology was not to be modified until the introduction of adult protection law in 2013. The continuity can best be seen in the fact that the federal government maintained the delegation of authority for regulating procedure – with the exception of certain fundamental principles – to the cantons. This included such things as the assignment of the power to order involuntary commitment, and to choose the respective facility, to family physicians. In some cases, it took until the 1990s before the cantons amended their legislation. Under these circumstances, it is impossible to claim that detention practice in Switzerland had become uniform.

2.6 INTERIM CONCLUSION: SPECIAL LAWS AS GAP FILLERS

Administrative detention measures served as a means of locking people up because of the way they lived their lives. Responsibility lay with administrative authorities, who were subject to no or only limited oversight by the courts. Such repressive measures were inaugurated in the 19th century as a hybrid between poor laws and criminal law. They made it possible to infringe personal rights in a manner that went far beyond the traditional prosecution of infractions by the poor, such as begging or welfare assistance abuse. In the early 20th century, these measures developed into versatile instruments for exerting social control. Until the institution of involuntary commitment was introduced in 1981, the laws on administrative detention resembled a barely comprehensible patchwork of cantonal enactments in combination with the Civil Code provisions on guardianship. The justification given for the invasions of personal liberty was the need to preserve public order, save costs and educate the individuals concerned to become

101 Swiss Federal Council 1977, 25.

"useful and productive individuals". The measures were extremely broadly applied. While initially intended as a means of disciplining welfare-dependent individuals, the list of target groups gradually grew to include alcoholics, prostitutes, former convicts, procurers and "neglected" adolescents and young adults. The use of administrative detention as a means of solving social problems was only marginal. For the most part, its use was symptomatic of the problematic tendency of modern societies to simply remove social misfits from their midst when other incentive, assistance or control methods fail to produce the desired result. It marked the point where failures of social integration were transformed into institutional violence against lone individuals. Endowed with a mandate to serve as a kind of moral police, administrative detention law functioned in parallel with the criminal justice system, but without providing comparable means of legal protection. It made possible invasions of personal liberty that were not permitted within the regular legal order. It was a legal regime that targeted socially marginalised groups with a reduced level of legal protection and legal certainty. Imprecise legal provisions facilitated enforcement practices that were easily prone to the arbitrary violation of individual rights and integrity. Despite the legitimacy of having been enacted by democratic means, the relevant legislation violated elementary principles – also recognised at the time – of equality and justice before the law.

The problems associated with the use of administrative detention in terms of the rule of law were recognised early on. This did not, however, prevent it from gaining widespread acceptance, and its legitimacy was not fundamentally questioned until the 1970s. This was a result of several different factors. First, both the laws and the practical application thereof proved to be so flexible that they could be constantly adapted to deal with changing perceptions of threats and demands for order. Once this instrument had been introduced, political leaders and administrative authorities were reluctant to give it up. Its use as a disciplinary measure against welfare recipients diminished in the post-war years. Instead, the authorities began to use compulsory detention measures for dealing with new problem groups such as "recalcitrant" juveniles, reform school pupils, addicts and street prostitutes. It was not until the gradual liberalisation of society, which began in the 1960s, together with a broader understanding of the notion of fundamental rights, that the practice of administrative detention was progressively stripped of the narrow moral corset from which it drew its legitimacy.

Second, the expansion of welfare state structures and of the sources of social assistance in no way rendered detention in closed facilities unnecessary in the eyes of the competent authorities. Administrative detention continued to be seen as the measure of last resort for use against individuals who fell through the meshes of the social safety net or when other institutional alternatives failed. The declining numbers of administrative detainees, the growing importance of socio-medical approaches and improvements in legal protection worked together to ensure that the remaining cases in which such interventions took place continued to be seen as socially acceptable (if not particularly admirable) until the 1970s. The institution of involuntary commitment, which replaced administrative detention in 1981, was a continuation of this trend, with certain changes in emphasis, particularly with regard to legal protection. The notion that 1981 represented a major turning point must thus be re-examined.

Third, the use of administrative detention was never uncontroversial. Public criticism nevertheless remained strongly fragmented and found only limited resonance in the general population. A narrow understanding of social conformity and the duties of citizens, based on gender and class stereotypes, was exacerbated by a stubborn loyalty to Swiss legal traditions – both cantonal and federal – and a reflex aversion to foreign legal standards. Together these tendencies prevented the emergence of any fundamental discussion until well into the 1960s. In this, Switzerland differed markedly from other Western European countries, which had adapted their legal regimes to the new standards that had gained wide acceptance after 1945. Even after 1970, the issue of administrative detention never occupied a central place in the debates over the ECHR or the reform of the criminal justice and enforcement systems. Unlike women in Switzerland, who had numbers behind them in their demands for the right to vote and stand for election, administrative detainees were a relatively small group and had no lobby to plead their cause.

Fourth, and finally, is the fact that the Swiss government only became involved in the discussion after it came under pressure from the ILO. It was this, combined with the urgency to achieve conformity with the terms of the ECHR, that led to a revision of the family law provisions of the Civil Code. The change in the administrative detention regime was thus primarily a product of foreign policy and image considerations. It did not result from a recognition of the injustice inherent therein.

SOURCE 1:

MAINTAINING SOCIAL ORDER

By order dated 23 December 1949, the guardianship authority of Samnaun (Graubünden), committed 26-year-old H.C. to detention in the Bellechasse facilities (Fribourg). The term of detention is not indicated on the order. It was determined at a later date, which was not an uncommon practice. This document illustrates the degree of power that was held by the guardianship authorities when making such decisions on administrative detention. Its purpose was to inform all of the involved actors as to the circumstances of the detention order. These included, in addition to the subject of the order, the facility administration, the local police, the municipal council, the official guardian, and another public authority entered later manually (in illegible handwriting).

The grounds for detention as stated by the ordering authority were H.C.'s "dissolute way of life" and the fact that he had become a "public menace". For this reason, the order states, his "immediate detention in a correctional labour facility, such as that of Bellechasse, [is] nothing short of imperative" for the maintenance of public order. This opinion was shared by the person who served as H.C.'s guardian, both as a minor and as an adult. It is not entirely clear from the document precisely what the young man had done wrong in the view of the cantonal authorities or how the terms "dissolute way of life" or "public menace" were to be understood. A central issue is the charge that H.C. had "disregarded [and] subverted" the instructions of the guardianship authority and of his guardian, and that he had "failed to keep all of his promises to reform his behaviour".

The charges against H.C. had been the subject of a meeting of the guardianship authority on 13 January 1950. From the minutes of that meeting we learn why H.C.'s way of life so irritated the authorities that they reached the conclusion that society needed to be protected from him. Apparently, he had repeatedly managed to escape the watchful eye of his guardian. "C. entirely declined to accept the public welfare assistance provided to him and lived and acted as a completely free man," the minutes note. H.C., it is explained, terminated his employment with a vegetable farmer after a period of only five weeks – and without first discussing the move with his guardian. This example is typical. Leaving a job without first seeking permission was very often construed by the authorities as a sign of

Vormundschaftsbehörde
V Dörfer Untervaz.

erledigt am 28.12.49.

Verfügung.

Im Sinne vorsorglicher, dringlicher Massnahmen wird verfügt:

[redacted], geb. [redacted], Sohn des [redacted] und der [redacted], geb. [redacted], von Untervaz,

in die Arbeitserziehungsanstalt Bellechasse/Fbg. einzuweisen.
[redacted] ist am 23. Dezember 1949 durch den Präs. der V. Behörde V Dörfer einvernommen worden. [redacted] hat, nachdem er sich wieder in die Freiheit begeben konnte, alle seine Versprechungen zu einer guten Lebensführung nicht gehalten, – alle Anordnungen der V. Behörde und des Beistandes, welche nach [redacted] Begehren und Wünschen auf Zusehen hin errichtet worden sind, missachtet, sabotiert, – sich ganz und gar einem liederlichen Lebenswandel hingegeben. Wegen seiner Gemeingefährlichkeit sind vorsorgliche und sichernde Massnahmen dringend.
In der Sitzung vom 15. Dezember 1949 konnte die V. Behörde V Dörfer über [redacted] Leben und Treiben ausführlich Kenntnis nehmen, wobei befunden wurde, dass sich eine sofortige Einweisung in eine Arbeitserziehungs-anstalt, -wie beispielsw. Bellechasse, zur Wahrung der öffentlichen Sicherheit geradezu aufdränge. Ueber diese Einweisungsverfügung wird die V. Behörde nochmals befinden, ganz besonders aber auch über die Dauer der Versorgung, wovon [redacted] und Anstalt Bellechasse mittelst Auszügen aus dem Protokoll Kenntnis erhalten wird. Diese Einweisung wird auch vom frühern Vormund und anschliessend ernannten Beistand Herrn Lehrer [redacted] als sehr dringliche Massnahme beantragt.
Bis weitere Beschlüsse von der V. Behörde V Dörfer eingehen, bleibt diese Verfügung in Kraft.
[redacted] hat seine Schriften auf der Gemeindekanzlei Untervaz deponiert weshalb die Zuständigkeit gegeben ist.
Die Verfügung soll [redacted] zur Kenntnis gegeben werden, mit der Rechtsbelehrung, dass dagegen innert 20 Tagen nach Erhalt an den Kleinen Rat des Kantons Graubünden rekurriert werden kann.

Untervaz, den 23. Dezember 1949

VORMUNDSCHAFTSBEHOERDE
V DOERFER:
[signature]

Vormundschaftsbehörde V'DORFER Kt. Graubünden

Geht an: Herrn [redacted], 23
: Erziehungsanstalt Bellechasse/Frg.
: Polizeiposten Trimmis
: Gemeindevorstand Untervaz
: Herrn Lehrer [redacted], Untervaz.
: Bezirksamt u. Landjäger Herr Tri [illegible]

"indolence" or of a "dissolute" way of life. In addition, H.C. had attempted to seek favour with the women of the village and had tried to impress them with misinformation about his professional activities. He is alleged to have told the women that he was a wealthy businessman from Arosa, a hotel manager, and the owner of a beauty salon. In this way, he attempted to pass himself off as holding a social status that he did not – and was not considered entitled to – possess. He was thus a source of unrest in a community where traditional norms of work, family and sexuality still held sway. That, in essence, was the reason that H.C. was considered by the authorities to be a "public menace". The "menace" he represented was not one of a physical threat to the welfare of the population (as the term would narrowly be defined today). It was a threat to the existing social structures. The detention of this young man was ordered not so much for his own welfare and protection as for the true purpose of relieving the community of an individual whose presence was felt to be disquieting, to preserve harmony in the community and, of course, to send a signal to others.

Sources: Archives de l'État de Fribourg, Bellechasse A 121.
For further informations: IEC, vol. 3, chap. 3.

SOURCE 2:

SUCCESS AGAINST THE ARBITRARINESS OF OFFICE

By the judgement here cited, dated 13 March 1947, the Federal Supreme Court granted the appeal submitted by the barely 21-year-old L.Z. and reversed the administrative order for his detention in the Uitikon correctional labour facility. In the statement of its grounds for the decision, Switzerland's highest court rebuked the Zurich authorities for having applied the 1925 Administrative Detention Act in an arbitrary manner. The high court denied that the young man had evidenced "criminal tendencies" and that his conduct had been "dissolute" or "indolent" – the conditions for a detention order under the provisions of the law. A judgement of this kind, in favour of a detainee, was a rare exception. In most cases, the appellate authorities upheld the decisions of the lower authorities. Nevertheless, the judgement cited here does provide evidence that there did exist a possibility of defending oneself against the arbitrariness of office. Unlike many other administrative detainees, L.Z. could afford to hire a lawyer, whose commitment to the case brought it before the high court.

Another thing that certainly worked in L.Z.'s favour was the fact that he had completed secondary school and a hotel management school, and was enrolled in basic training for the army at the time he was taken into custody. In addition, he provided the court with positive references from school authorities and employers. This enabled him to refute the allegation that he had repeatedly changed jobs due to a "lack of perseverance". L.Z. argued that the job changes had been the result of health issues and the general state of the economy. He also asserted that his guardian had shown him little understanding and had undermined his efforts to find work. These arguments illustrate how high the obstacles were in obtaining a reversal of an administrative detention order once it had been issued. For men like L.Z., it was of decisive importance that they be able to convey to the Court a positive picture of their willingness to work and of their past work experience.

The success of L.Z.'s appeal is all the more noteworthy if one considers that the Zurich authorities had voluminous records at their disposal – and also made use of them in attempting to discredit L.Z. before the Court. In its written pleading, the Government Council listed numerous file references allegedly attesting to L.Z.'s "recklessness" and the futility of his

P 730/AG

S T A A T S R E C H T L I C H E K A M M E R .

Sitzung vom 13. März 1947.

Anwesend die Herren Bundesgerichtsvizepräsident Blocher, Präsident der staatsrechtlichen Kammer, Bundesrichter Steiner, Python, Petitmermet, Häberlin, Abrecht und Düby.

---oOo---

In Sachen

[redacted], Arbeitserziehungsanstalt Uitikon a.A., vertreten durch Rechtsanwalt Leo Viktor Bühlmann, Pelikanstr. 3, Zürich 1, Beschwerdeführer,

gegen

Regierungsrat des Kantons Zürich,

betreffend Art. 4 BV und Art. 2 Ueb.Best.z.BV (Zwangsversorgung),

---oOo---

hat sich ergeben:

A.- Der am 15. April 1926 geborene Beschwerdeführer verlor 1934 den Vater und 1942 die Mutter. Nach Besuch der Primar- und der Sekundarschule trat er Anfang 1942 in eine kaufmännische Lehre in ein Waschmaschinengeschäft. Im Februar des folgenden Jahres verliess er diese Stelle um 2 Kurse der Hotelfachschule in Luzern zu besuchen. Vom 21. Juni bis 10. August 1943 war er Kellner im Kurhaus Tarasp. Im September und Oktober 1943 unterzog er sich einer Operation und im November und Dezember nahm er in Luzern einen Kochkurs. Anfang 1944 musste er sich erneut operieren lassen. In der Folge bekleidete er nach 4 Wochen Landdienst verschiedene Stellen. So war er vom 22. April bis 30. Juni 1944 Kellner im Hotel Suisse & Majestic in Montreux, vom 15. Juli 1944 bis 30. Juni 1945 Sekretär-Volontär im Elite Hotel Storchen in Basel, vom 16. Juli 1945 bis 28. August 1945 Verkäufer-Volontär in einem Konfektionshaus in Basel und vom 25. September bis 28. September 1945 Restaurant-Kassier im Hotel Baur au Lac in Zürich. Für den wiederholten Wechsel des Arbeitsplatzes gab der Beschwerdeführer die verschiedensten Gründe an, wie homosexuelle Angriffe, gesundheitliche Störungen, fehlende Möglichkeit etwas zu lernen, zu kleiner Lohn usw.

B.- Am 26. Oktober 1945 beschloss der Bezirksrat Zürich den nach Art. 368 ZGB entmündigten Beschwerdeführer gemäss § 5-7 des zürcherischen Versorgungsgesetzes vom 24. Mai 1925 für die Dauer von 3 Jahren in eine Arbeitserziehungsanstalt einzuweisen. Als dieser an die Justizdirektion rekurrierte, holte der Bezirksrat ein psychiatrisches Gutachten des Adjunkten des Bezirksarztes ein. Dieser stellte in einem Bericht vom 6. März 1946 fest, dass der Beschwerdeführer keine Anzeichen einer Geisteskrankheit oder

Das Bundesgericht als Staatsgerichtshof kann nun allerdings nur eingreifen, wenn der Regierungsrat des Kantons Zürich § 5 des zürcherischen Versorgungsgesetzes will-

kürlich anwendete. Das ist aber nach dem Gesagten offensichtlich der Fall. Die angefochtene Verfügung lässt sich nicht vertreten. Sie erscheint insbesondere auch unhaltbar, weil eine administrative Versorgung wie eine Freiheitsstrafe die höchsten Güter des Menschen trifft und daher nur beschlossen werden darf, wenn die gesetzlichen Voraussetzungen eindeutig vorliegen. Der angefochtene Entscheid, der die Einweisung des Beschwerdeführers in eine Arbeitserziehungsanstalt verfügt, ist daher wegen Verletzung von Art. 4 BV aufzuheben.

Demnach erkennt das Bundesgericht:

1.- Die Beschwerde gegen die Einweisung in eine Arbeitserziehungsanstalt wird gutgeheissen; auf die Beschwerde gegen die Beiratschaft wird nicht eingetreten.

2.- Kosten werden keine erhoben.

3.- Dieses Urteil ist dem Beschwerdeführer und dem Regierungsrat des Kantons Zürich schriftlich mitzuteilen.

---oOo---

Lausanne, den 13. März 1947.

Im Namen der staatsrechtlichen Kammer des
SCHWEIZERISCHEN BUNDESGERICHTS,
Der Präsident:

Der Sekretär:

guardian's efforts. This is a good illustration of the way in which the records kept by the authorities could be used to assert their power when they were called on to ground an administrative detention order. It was thus not by chance that the Zurich authorities denied L.Z.'s lawyer the right to consult the documents. They argued that even without consulting the file, L.Z. was sufficiently informed as to the allegations against him. A final factor that worked to L.Z.'s advantage was the fact that the Zurich Government Council, despite taking reference to the records in its possession, failed to state the grounds for detention with sufficient precision.

The Federal Supreme Court judgement of 13 March 1947 is also of interest for another reason. The Court granted L.Z.'s appeal, in fact, only in one point: that the decision by the Zurich Government Council had been arbitrary. Another point asserted in the appeal was rejected by the Court. L.Z.'s lawyer had questioned the validity of the cantonal laws on administrative detention on the grounds that they violated the doctrine that federal law takes precedence over cantonal law. He argued that the matter of administrative detention had been conclusively regulated by the Civil Code, and that provision had been made there only for the administrative detention of persons under guardianship. At the time of the judgement, however, L.Z. was no longer under guardianship.

The Federal Supreme Court, affirming the sovereignty of the cantons in police matters, nevertheless allowed their authority to impose measures involving the deprivation of liberty not only under the provisions of guardianship or criminal law, but also administratively "for the maintenance of public order and safety, in particular for the prevention of crimes". Other points of criticism were passed over in silence by the Court, which could easily be done as they had not been expressly submitted as counts of the appeal. The Zurich Government Council had argued that both the deprivation of liberty without a court judgement and the joint accommodation of convicted criminals and administrative detainees were constitutionally permitted. The Federal Supreme Court declared that its judgement had established a principle and its ruling served as the guiding precedent in all case law until the repeal of the laws on administrative detention in 1981.

The significance of the Federal Supreme Court judgement of 13 March 1947 was ultimately ambiguous. On the one hand, it is true that the Court found that the authorities had acted in an arbitrary manner and thus released L.Z. from detention. At the same time, however, it baulked at expressing any fundamental criticism of administrative detention laws,

as such. This stance was typical of the then prevailing attitude of official Switzerland. Despite the fact that individuals were being arbitrarily interned, as in the case of L.Z., the authorities and the courts continued to seek legal arguments for allowing the system of coercive detention measures to continue in effect. Viewed from this perspective, it may be said that the Federal Supreme Court in 1947 forfeited an opportunity to put an end to the use of administrative detention in Switzerland.

Sources: Archives of the Federal Supreme Court, Judgement P 730/AG, 13 March 1947 / BGE 73 I 42.
For further informations: IEC, vol. 7, chaps. 3.4 and 4.2.

3 THE "DEFENCELESS": THE INDIVIDUALS TARGETED BY ADMINISTRATIVE DETENTION

> "Certain people who did not fit the norm, or what the government considered to be the norm at that time. […]. In general, it was families who didn't […] for example, there were no married couples with children, who lived according to the norms: went to work, etc."[1]

It is estimated that, in Switzerland, in the period from 1930 to 1981, between 20,000 and 40,000 individuals above the age of 16 were deprived of their liberty by an administrative authority without having committed any criminal offence. For the whole of the 20th century, the number of administrative detainees was at least 60,000, the great majority of whom were men from the social echelons most severely touched by poverty. Because nearly half of the individuals concerned were held in detention multiple times, it is assumed that the number of administrative detention orders issued and executed in closed facilities over that same period was much higher.[2]

The authorities did not always take recourse to administrative detention measures with the same frequency, or in respect of the same categories of individuals, over the course of the century. Taking general statistical trends as its starting point, the present chapter describes the ways in which the use of those measures varied over the period under consideration. It also identifies the different factors that could put an individual at risk of being administratively detained. It will also be seen that gender played an important role in whether or not administrative detention measures were ordered. Finally, based on close-up views of specific individuals, the chapter concludes with four personal portraits that illustrate the human complexities that underlie the overall trends revealed by the statistics. The chapter that follows will present a more detailed analysis of the legal procedures and of the local social mechanisms and circumstances that led the authorities to issue an administrative detention order.

1 CIE, video interview with Marianne Steiner, 8 June 2017.
2 IEC, vol. 6, chap. 3.

3.1 TEMPORAL AND CANTONAL VARIATIONS IN THE USE OF ADMINISTRATIVE DETENTION

As was already indicated by earlier studies on variations in the number of detentions in individual cantons,[3] IEC estimates (see box "Difficulties in determining the number of administrative detainees") show that recourse to administrative detention measures was by far most frequent during the period of the economic crisis that preceded the Second World War. The IEC estimates that, between 1930 and 1940, averaged over ten years, some 1,550 individuals were being held in detention at the end of each year. This means that, each day, between 4 and 5 individuals in Switzerland were deprived of their liberty by an administrative authority without having committed any criminal offence. In the 1940s, averaged again over a period of ten years, some 1,230 individuals were being held in detention at the end of each year. This indicates that there was a steep decrease in the number of detainees at the beginning of the decade. During the 1950s, an average of some 900 individuals were being held in administrative detention at each year-end. During the 1960s, there were still nearly 650 individuals in detention, and some 250 in the 1970s. While the number of individuals in detention in 1936 represented some 0.15 percent of the total population, by 1970, that figure had declined to 0.01 percent.[4]

In comparison with other deprivation of liberty measures that were also used in Switzerland during the same period of time (compulsory hospitalisation or criminal sentences), the number of individuals who were detained administratively was relatively low. For example, in 1945, some 1,000 individuals were being held in detainment at year-end by order of an administrative authority, and some 30,000 individuals were hospitalised in psychiatric asylums during the same year – of which the great majority may be assumed to have been committed by a judicial or medical decision without the patient's consent. In addition, in 1946, some 6,000 adults convicted of a criminal offence received unconditional prison sentences. In 1960, the disparity was even greater: the number of administrative detainees stood at 650, as opposed to 38,000 hospitalisations and 7,300 penal sentences.[5] In

3 Braun 2018 (SO); Lavoyer 2018 (NE); Badran 2017 (LU); Rietmann 2017 (GR); Crettaz 2016 (VS); Collaud et al. (2015 (VD); Knecht 2015 (LU); Rietmann 2013 (BE); Badran 2012 (NW).

4 IEC, vol. 6, chap. 3.

5 Source for the number of hospitalisations: Federal Statistical Office, Krankenhäuser und Kliniken [2019]; for criminal sentences (not including non-custodial criminal measures

Diagram 1: Extrapolation of the number of persons in administrative detention at the end of the year in Switzerland (lower limit)

Source: IEC, vol. 6, chap. 3, 88, diagram 26.

comparison with the overall population, and due to its long continuation over time, it is clear, however, that administrative detention was a significant and nationwide phenomenon.

or penalties imposed on minors): Federal Statistical Office, Statistique de la criminalité en Suisse, 1950 (4–5, 28, 30), 1960 (6–7). It should be noted that a single adult could be sentenced more that once in the course of a single year and that the terms of criminal sentences varied. In 1960, only 20 percent of the terms of imprisonment exceeded six months. In addition, the number of involuntary hospitalisations also includes a significant portion of multiple commitments. The number of individuals hospitalised annually was thus lower than the number of involuntary hospitalisation orders and the figures of 30,000 (1945) and 38,000 (1960) should be used with caution. Based on an analysis of the procedures for hospitalisation in psychiatric facilities between 1900 and 1970 in the cantons of Vaud and Geneva, Gasser and Heller have pointed out the difficulties in determining the extent to which patients were systematically subjected to constraint. Although the great majority of the requests were submitted by physicians, they nevertheless estimate that during the years 1920–1930, the proportion of involuntary hospitalisations without medical authorisation and ordered by a judicial authority was far higher than that of voluntary requests, which were virtually non-existent. Their number rose steeply beginning in the 1950s, at which time the terms of hospitalisation were also shortened. Even at that time, however, the number of voluntary hospitalisations remained much smaller than that of the involuntary cases (Gasser, Heller 2003).

DIFFICULTIES IN DETERMINING THE NUMBER OF ADMINISTRATIVE DETAINEES

How many administrative detention orders were issued and executed in Switzerland? How many individuals were held in detention?

These seemingly banal questions are indispensable for an appreciation of the extent to which administrative detention was used in Switzerland and the number of individuals who were affected by the special laws that were enacted by the cantons to permit the use of administrative detention. There are, however, two major difficulties in providing a response.

The first results from a shortage of reliable sources. To this day, no systematic count or record of all administrative detention cases has been made on a national scale.[1] A complete inventory of such cases can thus be taken only by searching the archives of each of Switzerland's 26 cantons. In addition, because such measures were sometimes ordered by the local municipalities or by the guardianship authorities, it is possible that, in some cantons, the traces of those detention orders will be found only in municipal archives; it is also possible that the relevant documents were not preserved at all.

A second major difficulty results from the complexity of the legal regime that governed administrative detention. There is, indeed, no fixed definition of the term administrative detention. Because of the large number of cantonal laws that authorised administrative detention and the existence of simultaneously applicable federal and cantonal laws (see chap. 2), each cantonal and municipal administration had its own administrative detention policies and its own system for maintaining records on such measures. Moreover, because of the interrelationship between the statutory provisions of criminal, civil and administrative law, it is sometimes difficult to distinguish which deprivation of liberty measures fell within the scope of which authority. There are thus no criteria common to all of the cantons for establishing the precise figures. As a result, it is necessary to conduct an empirical analysis of each of the laws and of the ways in which they were implemented in order to identify and define the cases in which a deprivation of liberty measure constituted a form of administrative detention.

In order to arrive at a reasonable estimate of the figures, the IEC made a number of choices.

1 The absence of a data base was already criticised by Carl Albert Loosli: Marti, Grunder 2018, 338.

The first was to define which practices would be counted as constituting administrative detention. Based on a legal definition of the term administrative detention, the IEC has estimated the number of persons aged 16 or over who were detained in a closed facility by order of an administrative authority – that is, without the intervention of a criminal court – in reliance upon provisions of either cantonal law or federal civil law. In order to counterbalance the unreliability of cantonal records on detention, the IEC consulted various other sources (annual reports of individual facilities, cantonal financial reports, etc.) as a basis for estimating and extrapolating the figures. Based on these data, it is possible to provide an approximate estimate of the number of persons held in administrative detention between the years 1930 and 1981. No conclusions may be drawn, however, concerning the gender or age of the individuals concerned. It was also not possible to categorise the data based on the officially stated grounds for detention.

Further, the IEC's calculations were carried out on the basis of different sets of data and hypotheses.[2] In some cases, the results obtained differ significantly from one another, signalling the presence of incongruities and distortions in the sources selected. The calculations carried out on the basis of a sampling of reference figures from 20 detention facilities has been found to be the most reliable and was used as the foundation for establishing an estimation scale. The latter takes into account the fact that it was possible for individuals to be placed in detention numerous times over the course of their lives and that the facilities investigated are only a subset of the total number of such facilities that were actually in operation.

The final estimate shows that, between 1930 and 1981, no fewer than 20,000 to 40,000 Swiss men and women were held in administrative detention. For the entire 20th century, the minimum number of individuals concerned was presumably around 60,000, which agrees with estimates found in the scholarly literature. This is a fairly prudent estimate, which nevertheless takes into account the methodological problems involved in collecting the data and defining the measures included in the count. The estimate is of the number of individuals who were held in detention. Because those individuals may have been detained numerous times over the course of their lives, the number of detention orders is significantly higher (up to 200,000 for the period from 1930 to 1981).

2 For a detailed description of the underlying data and hypotheses used for the analysis, see IEC, vol. 6, chap. 3. For ease of reading, the data presented in this volume have been rounded.

While the number of detentions rose again after the Second World War, it is interesting to note that the economic crisis of the 1970s had, unlike the crisis of the inter-war period, practically no impact on the use of administrative detention measures. Evidently, the development of alternatives provided the authorities with other means of keeping watch over persons whose conduct was considered a menace to the social order (see chap. 2). It should also be mentioned that although social inequalities and poverty continued to exist, they were less marked and generated less social tension than in the 1930s. The economic boom of the 1950s made it possible to better integrate a large portion of the workforce into society. It also brought with it higher salaries and an improvement in the standard of living of a large section of the population. Real salaries, that is the portion of earnings available for daily consumption, rose by 20 percent between 1950 and 1960. In addition, the creation of various types of social insurance (Old-Age and Survivors' Insurance, 1948; Disability Insurance, 1960; Supplementary Benefits, 1966; Unemployment Insurance, 1977) also made possible a reduction of poverty risk. During the economic crisis of the 1970s, non-renewal of foreign workers' visas also made it possible for the Swiss economy to export its unemployment and contain the effects of the slowdown on its own territory.

This notwithstanding, the continued presence of a persistent number of administrative detainees suggests that the economic upturn and the development of the welfare state did not benefit everyone and did not make the use of administrative detention entirely obsolete. Similarly, the rise in the number of administrative detainees observed at the end of the 1960s in a number of cantons indicates that detention was once again perceived as a viable solution in certain situations. The frequency with which recourse to administrative detention was taken depended on local circumstances and regional particularities, so that it did not increase or decrease at the same rate in all places. In the canton of Schwyz, for example, while the frequency with which administrative detention was used fluctuated, there was nevertheless a progressive downward trend between the early 1950s and the mid-1960s. Contrary to what is found in the national averages for the decade, however, the use of administrative detention in the canton of Schwyz began to rise again in the second half of the 1960s.[6] In the cantons of Fribourg and Vaud, a renewed rise in the number of administrative de-

6 IEC, vol. 7, chap. 3.3.

tainees emerged already in the early 1960s.[7] In the city of Zurich, a similar downward trend in the use of administrative detention under cantonal law is found, but it was stronger and began at an earlier date than in the other cantons studied.[8]

It is interesting to note that where the number of administrative detainees rises, the average age of the detainees is lower and there is also an increase in the proportion of young women placed in detention. Although observed on a low level, the decline in average age and the rise in the number of young female detainees in the 1960s and 1970s appears to be a relatively recurrent phenomenon and could possibly even explain the sudden increases in the use of administrative detention in a number of cantons during the 1960s. Although women under the age of 25 still represented a minority of the detainee population in the Hindelbank facilities in the 1960s, by 1970 they were largely in the majority.[9] Similarly, the overall number of young women targeted by administrative detention orders also rose in a number of cantons, including, in particular, the cantons of Bern[10] and Schwyz.[11]

3.2 THE RISK FACTORS OF ADMINISTRATIVE DETENTION

Although the frequency with which administrative detention measures were used was subject to variation, they were targeted at all times against individuals from social backgrounds where poverty featured prominently.[12] In this sense, poverty was a factor that increased the risk of detainment.

It is not the case, however, that all individuals who fell into poverty, or who were likely to request public assistance, were placed in administrative detention. By way of example: a study of the situation in Graubünden during the 1930s shows that some 50 individuals were administratively detained each year in the detention facility or work colony of Realta. This figure represents approximately 0.06 percent of the population of the canton; at the same time (1931), some 2.4 percent of the adult population was

7 IEC, vol. 7, chap. 3.1 and 3.2.
8 IEC, vol. 7, chap. 3.4.
9 Based on the annual statistics collected every ten years. IEC, vol. 8, chap. 4.2.1.
10 Germann 2018.
11 IEC, vol. 7, chap. 3.3.
12 IEC, vol. 8, chaps. 3 and 4.

receiving welfare assistance.[13] It was thus only a small fraction of people suffering from a lack of financial resources to be placed in detention. Similarly, during the period following the Second World War, detention measures were also not ordered for all members of the population that had fallen into destitution.

Throughout the entire period studied, certain forms of poverty appear to have been stigmatised more than others and thus increased the risk that the individuals concerned would be targeted for detention. Who were these persons? Analysis of the life stories of the individuals interviewed by the IEC shows that a process of social exclusion and stigmatisation often preceded the ordering of such measures (see chap. 4). In addition, a survey of all the cantonal studies provides a basis for proposing certain hypotheses as to the social conditions that exposed individuals to a particularly high risk of being administratively detained. Specifically, it appears that the authorities were less tolerant when dealing with persons excluded from the various societal institutions designed for ensuring reproduction and preservation of the social order, particularly family and work.

EMPLOYMENT PRECARITY

A perusal of the occupations and trades of detainees, as recorded in the entry registers of the detention facilities consulted by the IEC,[14] or in the reports of decision-making bodies that issued detention orders, suggests that being listed as a member of a trade in which job insecurity was high constituted a risk factor for administrative detention. Those documents show that the trades concerned were those in which wages were generally low and few special skills were required.[15] Most importantly, however, was the fact that employment in such trades was irregular, often required travelling around the country, and that the income earned was highly unstable.[16] Travelling around the country in search of a job appears to have put men at a high risk of being placed in administrative detention.

Among the male occupations recorded, the number of "agricultural workers", "labourers" and "unskilled workers" is disproportionately high. By way of example, in the entry register for male detainees from the canton

13 Rietmann 2017, 14–15.

14 See IEC, vol. 8 – The prison facilities of Bellechasse and Hindelbank, the Uitikon juvenile reform facility, the Valletta alcohol treatment centre.

15 IEC, vol. 8, chap. 4.2.2; IEC, vol. 4, chap. 2.2, 203–205; IEC, vol. 7, chap. 3.3.

16 IEC, vol. 8, chap. 4.2.2.

Table 1: Occupations of male detainees from the canton of Fribourg at Bellechasse, 1920–1979

Occupation	*1920–1949*	*1950–1979*
Day-laborer	30%	17%
Laborer	25%	34%
Skilled worker	8%	12%
Artisan	7%	6%
Recipient of public assistance	6%	3%
Domestic	5%	1%
Farmer	5%	2%
Craftsman – employee	4%	4%
Migrant worker	4%	4%
Worker	1%	6%
Without information	5%	11%
	n = 1451	n = 883

Source: Archives de l'État de Fribourg, Bellechasse, EB DET REG1, Entry register for detainees from the canton of Fribourg at the Sapinière and the correctional labour facility 1920–1983.

of Fribourg at the Bellechasse facilities for the period from 1920 to 1949, three-quarters of the men are recorded as "agricultural workers", "labourers", "domestic servants", "itinerants" or "tradesmen".[17] Only 8 percent of the new detainees can be assumed to have had stable employment: "farm owners", "skilled labourers" or "salaried employees" (table 1). The remainder are recorded as "welfare recipients" or "no occupation". Similar ratios are found for the period from 1950 to 1979, though it is noticeable that there was a rise in the proportion of "labourers", while that of "agricultural workers" declined.[18] Agriculture and construction jobs are normally for limited periods of time – sometimes a single day – and demand a high degree of mobility. In addition, job availability is subject to major seasonal fluctuations and is highly sensitive to changes in the overall economic situation. It should be noted that the register only contains records on citizens of the canton of Fribourg; however, examination of the files of detainees from other cantons or municipalities who were also held in detention at

17 IEC, vol. 4, chap. 2.2, 203–205, detainee register, Bellechasse (age, gender, profession).
18 IEC, vol. 8, chap. 4.

Bellechasse confirms that the great majority were individuals of similar social standing.

The occupations recorded for the female detainees lead to a similar conclusion, although interpretation of the data is somewhat more complex due to the non-recognition of salaried positions for women prior to the 1960s and the limited vocational training opportunities available to them. Here, again, entries such as "domestic servant", "without occupation" and "housekeeper" predominate throughout the entire period.[19] The female occupations recorded suggest that a problem even more serious than job and income instability was the precarity created by a heavy financial dependence on third parties. Employment as a domestic servant entailed, in reality, not only very long working hours but also a very reduced private sphere and, in many cases, social isolation. In addition, "domestic servant" positions normally included room and board, so that the loss of such a position resulted in the loss of a fixed abode. In the same way, women who were employed as "housekeepers" or who were "without occupation" were frequently also financially dependent on third parties.

UNEMPLOYMENT

A second factor that appears to have increased the risk of detention was unemployment, particularly for men, during the economic crisis that preceded the Second World War, when the lack of jobs for unskilled workers was a major preoccupation for the authorities.[20] Among the country's elite there was a genuine fear that poverty could become a mass phenomenon, and they demonstrated a very marked intolerance for any forms of conduct that threatened the established social order.[21]

An initial indicator of the presence of this risk factor may be seen in the parallel between the curve showing the number of detainees and that for unemployment rates during the 1930s. The occupancy rates at detention facilities rose by more than 25 percent over a period of only five years for the whole of Switzerland simultaneously with the increase in the number of individuals receiving unemployment benefits.[22] As the unemployment crisis peaked in the winter of 1936 – when some 7 percent of the

19 IEC, vol. 7, chap. 3.3.
20 Togni 2015.
21 Tanner 2007; Hauss, Ziegler 2007; Rietmann 2013, 131–132.
22 IEC, vol. 6, chap. 3.

population was registered as unemployed – the number of administrative detainees also reached record levels.[23]

Other evidence confirms that the fact of being without work was an important risk factor during the 1930s. Such evidence may be found, for example, in the interrogation transcripts of men who were held in detention in the Sedel facility in the canton of Lucerne during this period. In defending themselves against being labelled as idlers, all of those interrogated speak of their difficulties in finding a paid job during that crisis period, from which it may be deduced that a good number of them were unemployed at the time of their being placed in detention.[24]

BACHELORHOOD AND DIVORCE

The disproportionate number of unmarried detainees and of detainees who had been institutionalised as children suggests that, in addition to insecure employment circumstances, other risk factors also played a role.

Analysis of the data on the civil status of administrative detainees confirms that the majority of them – indeed, the overwhelming majority – were individuals who lived alone. This was the case in the canton of Schwyz throughout the entire period under investigation, where the majority of the individuals held in administrative detention are recorded as being "unmarried", "separated", "divorced" or "widowed".[25] At the Hindelbank facility, between 1924 and 1980, slightly more than one-quarter of the women are recorded as being married, nearly two-thirds as unmarried or divorced, and the remaining not quite 10 percent as widowed.[26] In terms of the proportion of unmarried or divorced women as a proportion of the total population in Switzerland,[27] these groups are clearly over-represented among the administrative detainees. This also applies to the proportion

23 Caution is nevertheless called for before drawing conclusions from this parallel, as the unemployment figures to not truly reflect the actual number of persons in Switzerland who were out of work. Before the Second World War and up to the 1970s, unemployment insurance was not compulsory, and only a minority of workers had joined the government or trade union insurance plans. Because of this, the registered unemployment statistics cover only a small portion of the population that was without work. They do, however, provide some indication of the severity of job shortages on the labour market and of the increase in the number of unemployed (see Tabin, Togni 2013; Togni 2015; "Arbeitslosigkeit" 2016).

24 IEC, vol. 4, chap. 1.2.

25 IEC, vol. 7, chap. 3.3.

26 IEC, vol. 8, chap. 4, 189–190.

27 Perrenoud 2005; Reusser 2006.

Table 2: Civil status of men from the canton of Fribourg in Bellechasse, 1920–1979

Civil status	*1920–1949*	*1950–1979*
Single	56%	56%
Married	26%	20%
Widowed	10%	5%
Divorced	5%	11%
No information	3%	8%
	n = 1451	n = 883

Source: Archives de l'État de Fribourg, Bellechasse, EB DET REG1, Entry register for detainees from the canton of Fribourg at the Sapinière and the correctional labour facility 1920–1983.

of single or divorced men. Among the men from the canton of Fribourg detained in Bellechasse between 1920 and 1979, more than half were unmarried, one-fifth were divorced or separated, and just barely one-quarter were married (table 2). The fact of being unmarried or divorced would thus appear to have been a further factor that increased the risk of detention for both men and women throughout the period under investigation, despite the fact that only the marital status of women was recorded in the decision reports (see chap. 3.3).

FOSTER CARE

Research conducted by the IEC also suggests that the fact of having been placed in foster care as a child constituted another risk factor, which appears to have played an even greater role in the post-war period. Although no precise statistics are available for determining the number of children who were placed in foster care in Switzerland, various studies make it possible to estimate that over the first third of the 20th century some 4–5 percent of children under the age of 14 were placed in care, either in an institution or with a foster family.[28] By contrast, among the women held in detention in the Hindelbank facility between 1930 and 1980, some 29 percent had grown up outside the care of their own families.[29] This link would appear to be even stronger among individuals who were detained upon reaching majority in

28 Lengwiler et al. 2013, 14.
29 IEC, vol. 8, chap. 4, 189–190.

the years between 1950 and 1970. Nearly all the individuals interviewed by the IEC who were held in detention during that period had been placed in foster care, either with a family or in an institution, when they were children. All of them had experienced social isolation and felt that they had been put into a world where there was no place for them.[30] Because the standard paradigm of an average middle-class family is one of the mainstays of individual social self-protection mechanisms in Switzerland, people who find themselves without a place in that paradigm are all the more vulnerable to the risk of facing administrative detention at some point in their lives.

DOMESTIC VIOLENCE

The large number of accounts involving domestic violence suggest that this, too, was possibly a risk factor. All of those interviewed spoke of having experienced violence in the home, often extreme violence, during their childhood.[31] In addition, the fact that many of the complaints recorded in the personal files of detainees were filed by close relatives (parents, spouses) further suggests that they were often involved in domestic conflicts and that the institution of the family was not a source of protection for them.[32]

SOCIAL MARGINALISATION

In the Swiss context, where collective forms of social protection were late to develop, the family and social networks played an important role in the socialisation of the individual over much of the 20th century. A disconnection with salaried employment and the family led to a process known in sociology as disaffiliation,[33] which is a process of severing relations with the social institutions that play a major role in determining how social life is reproduced and renewed. During this period, stable employment was the main means of access to income and, in many cases, also to the main forms of collective protection: the family and social networks that provide support and assistance for close friends and relatives. Exclusion from those protective systems thus increased the likelihood of marginalisation; this, in turn, augmented the risk of coming into conflict with the public authorities and being targeted by arbitrary decisions on the part of those authorities (see

30 IEC, vol. 5, chap. 2.
31 IEC, vol. 5, chap. 4.
32 IEC, vol. 4, chap. 1.1, 51–53.
33 Castel 2003.

chap. 4). As expressed in 1940 by Paul Golay, a political leader active in efforts to end administrative detention in the canton of Vaud: "The necessities of modern life have given rise to a multitude of organisations for defending the interests of collectives, trade unions and associations. And that is a good thing. At the same time, however, the rights of isolated individuals are becoming more and more vulnerable and uncertain. […] Resistance to the arbitrary acts of public officials is thus becoming increasingly difficult, and though it may sometimes succeed when there are highly organised interests involved, it is very often ineffective for groups of people on whom suffering is inflicted as mere human beings […]. Up against the strongholds of power, government agencies and offices, committees and police forces, prefectures and inquiries, reports and investigations, an entire segment of the population remains both 'defenceless' and without any means of protection."[34]

Non-belonging to a family or social network also means that fewer sources of support are available when an individual is going through a period of personal crisis. For example, a large proportion of the individuals interviewed by the IEC were detained just at the time when they were entering legal majority after a long history of institutionalisation while they were still minors. In many cases, they had been victims of violence and had no family or social network to turn to. The authorities had responded by placing them in administrative detention, also due to the lack of alternatives.[35] Similarly, the IEC's analysis of the defence strategies deployed by administrative detainees showed that those who were able to rely on the support of near ones considered as trustworthy by the authorities had a better chance of receiving a hearing and, accordingly, of avoiding detention.[36]

While the fact of being without steady employment was a more important factor in augmenting the risk of being placed in detention in the 1930s, insecure family and social relations tended to play a greater role in the 1960s, when administrative detention measures were used more frequently to target young people. Information available on the living conditions of administrative detainees show that people who belonged to the most vulnerable and, with regard to the social institutions, less protected groups ran the highest risk of being stigmatised and targeted by the authorities' intolerance.

34 Golay 17 February 1940, quoted in IEC, vol. 3, 9.
35 IEC, vol. 5, chap. 2.4.
36 IEC, vol. 4, chap. 1.1.

3.3 AN INSTRUMENT FOR IMPOSING SANCTIONS ON MEN

The IEC's research confirms the findings of earlier studies, according to which the use of administrative detention was not only socially discriminatory, but also strongly gender-biased.[37] The vast majority of those administratively detained under cantonal laws were men. From the total of all individuals held in detention throughout the entire period under investigation, some 80 percent were men and some 20 percent women, based on cantonal estimates.[38] How is this asymmetry to be interpreted? In principle, there are two possible approaches to finding a historical explanation. Either one attempts to explain why men were more often targeted by administrative detention measures, or one seeks the reasons why women were less frequently detained. While there is still a need for more thorough and detailed research on the subject, the findings of the IEC suggest a number of possibilities that would be worth pursuing.

To begin, the hypothesis that women were better protected than men against poverty or disaffiliation – which were two of the main factors that increased the risk of being administratively detained – may be dismissed out of hand. Various studies have shown that there were more women than men in need of welfare assistance, both in the early 20th century and after the Second World War.[39] Similarly, the number of unmarried or divorced men was not higher than that of women. It is also possible to discard the hypothesis that men were more likely to violate the social norms that administrative detention was designed to protect. Such a hypothesis would ignore the pretextual nature of the forms of social nonconformity that were targeted by administrative detention measures and the process of stigmatisation associated therewith (see chap. 4).

A quantitative gender gap in the use of administrative detention appears to have been created at the juncture where the authorities decided on which administrative measure was to be ordered in a given case. There are a number of different hypotheses that can be proposed in this regard.

One possibility for explaining the disproportion is the strongly gender-based nature of the grounds on which administrative detention was

37 Lippuner 2005; Rietmann 2013; Lavoyer 2013; Germann 2018; Badran 2017; Rietmann 2017; Crettaz 2016.

38 IEC, vol. 7, chaps. 3.1 and 3.2.

39 Lippuner 2005; Togni 2015; Tabin et al. 2008.

ordered.[40] Detention was, in most cases, intended to impose sanctions on individuals who were considered to be themselves to blame for having descended into poverty. According to the gender roles that gradually imposed themselves in middle-class society from the end of the 18th century onwards, the division of labour was such that primary responsibility for providing for their own financial needs and those of their families by means of paid employment was assigned to men. Within this normative framework, poverty was considered more of a social failing for men than for women. The gender role assigned to women called for them to keep house and bear children. For them, paid employment was considered to be only a last resort when it was necessary to find a substitute for, or a complement to, income from their spouses or fathers. By that logic, women were considered to be less to blame for their poverty than men. This middle-class conception of gender roles is also reflected in the grounds stated as justification for the imposition of administrative detention measures. In all of the cantons studied, it is clearly evident that the vast majority of those accused of "indolence" were men. Although the cause most frequently cited by the authorities in this context is alcohol consumption, it is most often referred to as a factor that jeopardises the individual's ability to pursue regular employment. The arguments used for justifying the detention of women tend, by contrast, to focus more heavily on issues of morality and, more precisely, on failure to restrict sexual activity to the bounds of marriage.[41]

A second hypothesis could be based on the fact that the social controls imposed on women not held in closed institutions were more constrictive than those on men. From the end of the 19th century onwards, women's bodies and sexuality increasingly became a subject of new political concern, in Switzerland as in other Western countries.[42] Women became the target of interventions by various public and private institutions that sought to reduce the occurrence of out-of-wedlock births, which engendered costs to the public treasury. Many of the measures imposed were designed specifically for eugenic purposes, that is, for promoting reproduction by "healthy elements" of the population and preventing it among "degenerate" members of the population.[43] In this same connection, it should be noted that the forms of female social nonconformity targeted by admin-

40 Rietmann 2013.
41 IEC, vol. 7, chap. 3; IEC, vol. 8, chap. 4.1.1.
42 Wecker et al. 2013; Mottier 2000; Gerodetti 2005; Heller et al. 2002.
43 Niget 2012, 307.

istrative detention were subject to coercive and involuntary measures imposed not only by public authorities. From the end of the 19th century onwards, a number of charitable associations were also involved. Guided by the motive of reforming and providing assistance for girls and young woman that they considered as "in moral peril" or "fallen", these private associations played a particularly important role by establishing and running shelters.[44] In addition to closed reform facilities where young women could be held in detention,[45] in urban centres there were also different types of open institutions that provided shelter, for example, to young women from the country who came to the city to work or study, for unmarried mothers who had been rejected by their families, or for women who supported themselves through prostitution. In such shelters, which were committed to preserving the "morality" of the young women in their care, the dividing line between "assistance" and "coercion" was often blurred. At the same time, however, the young women residents were not there as a result of an administrative decision; they stayed there voluntarily, either because they came from far away or because they had been rejected by their families.[46] What is more, at the turn of the 20th century, there were various legislative regimes in place that relegated women to the domestic space. In addition to the laws designed to exclude them from paid employment,[47] the marriage and family model propagated by the Civil Code (1912) entrenched the economic dependence of women on their husbands or male ascendants. Confined to a life of domesticity, women had much less room for manoeuvre at their disposal than men and were subject to regular surveillance. IEC research has shown, for example, that in the canton of Schwyz, the degree of control that could be exercised over women by their surroundings or by their husbands appears indeed to have weighed in the balance when deciding whether or not to place them in administrative detention. Not surprisingly, single women were more readily placed in detention than those who were married.[48]

44 Rietmann 2013, 99.

45 Jenzer 2014.

46 Ammann 2019 provides an illustration of one such home for "girl mothers" in the works of Dora Staudinger. On the history of such mother and baby associations and homes, see Naegele, Storz, Ihle 2004.

47 Wecker, Studer, Sutter 2001.

48 IEC, vol. 7, chap. 3.3.

The rise in the number of young women held in administrative detention in the 1960s and 1970s (see chap. 3.1), at a time when the middle-class family model had come into question and new modes of life and consumption were emerging, can possibly be understood as a conservative reaction by the authorities endeavouring to substitute themselves for a social and familial setting whose control over the sexuality of the young women had become less confining.[49]

A third hypothesis for explaining the disparity in the numbers of men and women placed in administrative detention is that their respective deviations from social norms were interpreted differently. Echoing the findings of a large body of literature on the subject,[50] research by the IEC shows that the manner in which minor offences (petty theft, for example) by young people were interpreted differed largely depending on their gender.[51] It may be shown, for example, that in the canton of Vaud during the post-war period, delinquency among young women was perceived as a consequence of emotional difficulties, while the same types of behaviour by boys was more likely to be seen as a product of rebelliousness and disobedience. Based on that assessment, different measures were recommended and imposed in accordance with the gender of the delinquent. In a work published in 1963, Maurice Veillard, president of the Juvenile Criminal Chamber, and his wife, juvenile court judge Henryka Veillard-Cybulska write that the best means for preventing recidivism among male adolescents is re-education, the main pillar of which should be vocational training. By contrast, for female adolescents struggling with emotional difficulties, they argue, "marriage and especially motherhood are often the 'path to salvation'".[52] In dealing with adolescent girls and women, who were thus seen as being less dangerous to society and, in particular, less responsible for their acts than men, the authorities tended to favour paternalist preventive measures or more strict surveillance within a domestic framework.

49 Germann 2018.
50 Cardi, Pruvost 2012; Jacquier, Vuille 2017.
51 IEC, vol. 3, chap. 4.1.
52 Quoted in IEC, vol. 3, chap. 4.1.

3.4 SURVIVAL ARTISTS

In identifying the social characteristics common to those targeted by administrative detention measures, the IEC also took pains to see them as individuals, with their own individual faces and life stories. To this end, it retraced the biographies and the individual life paths of a number of former detainees to create a series of photographic and textual portraits. According to Jos Schmid, the photographer who met and photographed each of the individuals who shared their stories, common to all of them was a life energy, a love of freedom and a rare capacity to acknowledge the right of all individuals to be themselves.[53] Through the photographs, all taken against the same white backdrop, Jos Schmid shows us individuals whose faces and bodies bear the traces of the years and experiences they have traversed. Through his lens he has immortalised the expressiveness and authenticity with which they related to him their life's journeys from institution to institution, from foster care to detention. As they speak, each in his or her own unique and distinctive style, these men and women give expression to the human contradictions inherent in a life marked by suffering. Alternatingly smiling or shy, angry or composed, proud or pensive, they have a depth of expression which simultaneously conveys both extraordinary strength and infinite fragility.

According to the terms of the Federal Act of 30 September 2016 on Investigation of the Use of Coercive Welfare Measures and Custody Arrangements prior to 1981, all of those individuals were "victims" of injustice.[54] They should not, however, be seen only as "victims of administrative detention". Their lives were marked by many other events that have made them unique individuals who cannot be reduced to simple categories. The four accounts below retrace some of those experiences and those struggles, describing in concrete terms the forms of isolation that could heighten the risk of being targeted by administrative detention measures.[55]

53 IEC, vol. 1, 10.

54 That is, persons who have suffered a direct and serious harm to their physical, mental or sexual integrity or to their psychological development, in particular, as a result of being subjected to any of the following: physical or psychological violence; sexual abuse; forced separation from a child and the placement of that child for adoption; medication or medical tests under coercion or without their knowledge; sterilisation or abortion under coercion or without their knowledge; economic exploitation through excessive use of their labour capacity or due to lack of appropriate remuneration; deliberate impairment of their personal development and self-fulfilment; social stigmatisation.

55 The accounts are based on the portraits in IEC, vol. 1.

Helena Gerber, gazing straight into the camera with a resolute and knowing look on her face, recounts her fight for freedom, but has no false illusions as to the outcome: "On the outside, you may still be able to maintain a façade, but inside you, a lot has been broken forever […]. Of course, I always tried to make the best of it somehow. But whether I really managed it or not, that I don't know."[56]

Born in 1955 into a working-class family in the Lucerne region, Helena Gerber was placed in care by the authorities at a very young age. As a young girl, she liked going for walks, imagining that the horse from the fountain in front of the village church belonged to her. In her adolescence, she was forced to face the discrimination that came with the stigmatisation of children in foster care. Compelled against her will to learn the craft of seamstress, when what she really wanted to be was a nurse, Helena Gerber tried to resist having her future decided by others. After yet another refusal by the authorities to learn the profession she had chosen for herself, she decided to run away from the Burgdorf residential home to which she had been sent as the last station in a long career of deprivation of liberty in various institutions (foster homes, psychiatric clinics, the Hindelbank correctional facility). She was caught in Biel and sent back to Hindelbank, where she was placed for three days in solitary confinement – the ultimate reprisal. That ordeal, the most violent she had thus far endured in her life, triggered her instinct for survival and resistance. "Solitary confinement wasn't something that you just had respect for, it was something that truly frightened you. And then, yes, I also survived those three worst days of my life. That's when I swore to myself: 'That's it.'"[57] Pushing the guards and the director of the facility to their outer limits, Helena Gerber went on hunger strike, refusing to leave her cell or to obey the orders of the facility authorities unless she received from them a promise that she would be released. For five days she kept up her struggle – not only against the authorities, but also against herself – until she finally won. She was just 18 years old, and a new life began for her.

Hans Albrecht, born in 1938, had to struggle from the time he entered the world. It was his own screams that led to his being found, as an infant, in a forest on the outskirts of a small village. The man who discovered him took him to the nearest orphanage. His childhood passed relatively calmly, eased

56 Quoted in IEC, vol. 1, 40.
57 Quoted in IEC, vol. 1, 38–39.

by the opportunity to work in the garden of the orphanage under the watchful eye of Sister G., who nurtured him and taught him many things. It was after the completion of his compulsory schooling that the real battles began: to choose his own profession, to earn a living, and to obtain recognition for the work he performed. Despite his own wish to continue his education and complete high school, Hans Albrecht was sent to live on a farm in the canton of Aargau, where he worked for six years under harsh conditions. At the age of 18, he was finally permitted to attend the agricultural school in Pfäffikon. After repeated applications to the municipal, district and cantonal governments, the authorities agree to pay his tuition. Upon finishing school, he took a job as a farm hand and completed basic training for the army. With that behind him, he expressed the wish to become the master of his own fate and choose for himself where he would work. It was then that he came up against the opposition of his guardian, who did not want to let him move away from Lucerne. Ignoring the guardian's objections, Hans Albrecht found a new job on his own, again as a farm hand. Falling into financial difficulties after an accident at work, he was caught committing theft, for which he was arrested and sent to the Witzwil correctional facility in the canton of Bern. After he had served out a one-year sentence, conflicts once again flared up with his guardian, who still wished to choose for Hans Albrecht where he would work. As he explained to a member of the IEC research team, Hans Albrecht had wanted to find a job on his own. He refused to accept the condescending treatment of his guardian. Unable to tolerate Hans Albrecht's attitude, the guardian ordered that he be placed in detention at the Witzwil facility. This same scenario repeated itself four times – each time on the grounds of his refusal to work and his purported indolence. Over the course of those detention terms, it was at the Witzwil facility that he was finally given a chance to do the work he enjoyed and also to gain recognition for it. A relationship of trust developed between Hans Albrecht and the director of the facility. He was permitted, already during his first stay there, to operate the tractors and take care of the vegetable farm. At the end of his fourth term of detention, now over 50 years old, he found a steady job at a company with which he remained to the end of his working life. Nearly 80 years old as he recounts these events, Hans Albrecht is still filled with anger towards his guardian and the many others who tried to control his life. He speaks jokingly of his plans for the future, noting among other things the pleasure he gets from taking care of an elderly woman of 90, who enjoys his company and appreciates all he does for her.

Christian Mehr has struggled for many years to break out of a vicious cycle that has continued for generations and whose full dimensions are still unknown to him. Born into a family that was subject to years of constant surveillance and repeated intervention by the authorities, Christian Mehr has had to cope since birth with the consequences of that long history of institutionalisation and broken lives. His mother, Mariella Mehr, was placed in foster care shortly after her birth in 1947 by Alfred Siegfried, one of the founders of the "Relief Organisation for Children of the Open Road" that was operated by Pro Juventute to deal with Switzerland's itinerant Yenish community.[58] She grew up in various foster homes, alternating with stays in psychiatric facilities, which was where she experienced physical, mental and sexual violence, while her own mother – just as her grandparents and great-grandparents before her – was repeatedly placed in administrative detention. Upon becoming pregnant at the age of 17, Mariella Mehr was sent to the Hindelbank correctional facility, where she gave birth to Christian, in 1966. After being permitted to stay with her for one year, Christian was then placed with a foster family and grew up far away from his mother, with whom he nevertheless remained in contact. He, too, became a victim of violence at the hands of his foster family and later in a foster home, from which he struggled to free himself. When he was 15, his mother published her first autobiographical novel, in which she told her own story and that of her parents and grandparents. It was from that book that Christian Mehr learned for the first time of his family's past and the violence and injustice by which it was marked. His mother had taken up writing in order to tell her story. She now tirelessly denounced the abuses committed by Pro Juventute and worked to defend the rights of the Yenish people. For Christian Mehr, it was difficult to understand why she was unable do anything to defend him from the abuse he suffered in the foster home where he had been placed.

> "Yeah, fuck! 'Your mother abandoned you, too! She, who went through the exact same thing […] she just turned you right over to your fate. So, I must care for myself.' […] So there's really nobody left. […] It's my story, too. Not just Pro Juventute's. It's the story of our family."[59]

His relationship with his mother deteriorated, but the discovery of punk rock music provided him with an outlet to express himself and to keep going.

58 Huonker 1987; Galle 2016.
59 Quoted in IEC, vol. 1, 148.

> "I didn't know how to sing at all. Just yelling was to make music, but it was great, and very political. […] I always knew that I wanted to go on stage. I wanted to yell and get into people's heads, so they know what's really going on."[60]

After getting caught up in the drug scene, Christian Mehr decided to free himself from his addiction and began to look back on his life. He attempted various treatment methods and sought to learn more about the history of his family by studying the records on his own case and that of his parents and the preceding generations. In this way, he was able to retrace the decisions taken by the authorities about him and to follow the course of his mother's life as well. He also discovered that there were people – including his own father, whom he never knew – who had fought on his behalf.

> "That's when I understood what abuse really means, you know, and stigmatisation, and 'we have to try to be good Swiss citizens and not to become vagabonds like all the others – or whatever! Because your mother, and your father, and your grandmother, and so on, that's what happened to them' I mean, that's really they what they thought. And that's what made me slowly come to realise in the past few years: 'Fuck it, they just simply robbed us of our right to be a family.'"[61]

Having informed himself and collected documentation on the history of his own family and on the abuses committed against the Yenish minority, Christian Mehr is today following in the footsteps of his mother to help focus public awareness on the wrongs that were committed and to prevent such suffering and injustice from perpetuating itself from generation to generation.

Ursula Biondi, a woman of determination, clear-sightedness and creativity, has fought a long battle to overcome the traumas of her detention, to gain recognition of the injustice that was done, and to force the Confederation to apologise and pay reparations for all use of administrative detention measures in Switzerland. Born into a family of Italian immigrants, Ursula Biondi came to adolescence in the mid-1960s. She dreamt of discovering the world, of pursuing her love of fashion and the new music of the 60s – in a nutshell, of a living a life different and freer than that of her parents. Despite the experience of physical and sexual violence at the hands of different men, she did not give up and managed to escape. While

60 Quoted in IEC, vol. 1, 148.
61 Quoted in IEC, vol. 1, 149.

still a minor, she left for Italy to follow her dream. Troubled by health problems she seeks help at a hospital, where the decision is made to transfer her to Zurich. There the medical examination reveals that she is pregnant. Her parents, worried and fearful of what others will say, seek the assistance of the child protection services and accept their recommendation to send their daughter to a closed rehabilitation centre. When she is caught attempting to escape, her parents can do nothing to prevent her being sent to administrative detention in Hindelbank. She is held there for one year and five days. And it is there that she gives birth to a son. Despite the strong pressure exerted on her to give him up for adoption, she finds the resources necessary to resist. She manages to overcome the despondency of life in detention, continues to fight, and ultimately wins the right to keep her son with her and to leave Hindelbank with him. Upon her release, Ursula Biondi leaves Zurich for Geneva, where she launches herself into a new life. She realises her dream of exploring all kinds of new music, sports, and party life – but, above all, she also learns a profession and builds a successful career for herself.

At the age of 40, Ursula Biondi decided to write and publish the story of her life. The publicity attracted by the tale of her detention in Hindelbank brought her to a new phase in her life, and to a new combat. Her fighting spirit and perseverance have won her broad recognition and numerous prizes and have been instrumental in bringing the federal government to officially recognise the injustice that was done with the passing of the Federal Act on the Rehabilitation of Administrative Detainees on 21 March 2014 (see chap. 6.5).

3.5 INTERIM CONCLUSION: ADMINISTRATIVE DETENTION MEASURES ALWAYS TARGETED THE DISAFFILIATED

As these portraits show, it is not just the laws on administrative detention that differed widely – both in their content and in the frequency with which they are applied. The individuals targeted by those laws differed widely, too, and each had his or her own unique life story.

The quantitative estimates by the IEC, while admittedly uncertain, nevertheless tend to show that administrative detention was not a massive phenomenon, and that such measures targeted only a limited proportion of the population affected by poverty. That proportion was nevertheless

sizeable and significant, and the consequences of those measures for the individuals concerned were severe. The estimates are significant because they reveal, like the tip of an iceberg, the existence of surveillance and marginalisation practices that were deeply entrenched in 20th century Swiss society. At the same time, they also suggest that the use of administrative detention could function as a threat to certain segments of the population. Despite the fact that only a limited proportion of the population was actually placed in detention, the use of such measures was not something their families, associates and neighbours could be unaware of, particularly in rural areas. Because of that, those measures had a far wider impact. Among other things, they served as an implicit threat to all those who became ensnared in the structures of surveillance.

In addition, the estimates have a symbolic importance because they give tangible reality to those practices and make it possible for former detainees to situate their own experience within a larger context. Many former detainees have underscored how important it was for them in the course of their later lives to learn that others had gone through many of the same things as they had.

The social attributes recorded in the detainee registers of the different detention facilities also provide insight into the factors that increased the risk of an individual's being targeted by the repressive and often arbitrary practices of the public authorities. It can thus be observed that people who were isolated, who had entered a process of detachment from social structures capable of protecting the individual, were as a rule more vulnerable to the threat of administrative detention. Actually, these kinds of measures were targeted at persons who, by their mode of living, challenged the accepted social structures and institutions. If we try to sketch a portrait of the categories of men and women who were placed in detention by administrative decision, it is possible to identify various paradigms. In the 1930s, the typical male profile was that of an adult man of working age, unmarried, from a rural or working-class background, and obliged to travel around the country in order to earn a subsistence living. The typical female detainee of the time was also an adult, unmarried, and from a background characterised by poverty. In addition, she either preferred or was compelled by circumstances to earn her living on her own, despite the limited opportunities available for finding salaried employment. During the post-war period a somewhat greater diversity of profiles is found. In addition to adult men and women, one also finds young men and women who are either socially

isolated or from troubled family backgrounds. Often, the younger detainees had grown up in institutions or foster families and refused to accept the conditions that had been imposed on them.

4 THE PATHWAYS TO DETENTION ARE MANY: SOCIAL STIGMATISATION AND OFFICIAL INTERVENTION

> "[…] I was placed in detention at the Hindelbank correctional facility. It was all done without them notifying me of any decision, or of any kind of official act whatsoever […]."[1]

The state of uncertainty created by an administrative detention order was a formative ordeal for those affected by it. The letter of protest written in 1951 by a detainee from the canton of Valais was not an exception. The lack of transparency and the unpredictability of detention procedures are consistently recurring elements in the accounts of contemporary eyewitnesses. Former detainees describe how they were taken from their homes by welfare assistants or by the police without being given any information. Others were simply stopped on the street, taken into custody and transported to a closed facility. Some were not even told until months later which authority had ordered their detention and for how long they were to remain there.

The paths that led to detention were many and convoluted. An analysis of the risk factors (see chap. 3) provides a useful indicator for identifying the population groups that were most affected by administrative detention measures. They do not, however, provide an explanation as to why it was decided, in any given case, that a specific individual was to be placed in detention. There was a prior history to each administrative detention order issued, in which different actors were involved. The authorities were vested by law with very broad powers of discretion. They could wield those powers in various ways. The experience of powerlessness and of being treated arbitrarily was ultimately contingent upon many factors. In the present chapter, we ask which actors were responsible for issuing administrative detention orders (chap. 4.1), what procedures, mechanisms and grounds led to the issuance of an administrative detention order (chaps. 4.2 and 4.3), and what possibilities for responding to such an order were available to those against whom it was issued (chap. 4.4).

1 Letter to the Department of Justice and Police of the canton of Valais, 20 April 1951, Archive de l'État du Valais (AEV), 5060-4 Box 31, Dossier 19/50, quoted in IEC, vol. 4, 41.

4.1 ADMINISTRATIVE DETENTION PROCEDURE: NUMEROUS ACTORS AND MANY IMPONDERABILITIES

Who was responsible for issuing administrative detention orders? Were the authorities who decided lay officials or professionals? Was the decision made by a single individual or were a number of public officials involved? Was consultation with professional experts prescribed by law? Like the various cantonal laws themselves, the different ways in which authority was delegated and the diverse procedures followed clearly reflect the federalist nature of the Swiss legal order.

DIVERSITY WITHIN TWO BASIC PARADIGMS: DELEGATION OF AUTHORITY AND PROCEDURAL RULES

The diversity of the cantonal regimes and the ways in which they delegated decision-making authority makes it difficult to provide simple answers to the questions at issue here. Some cantons had administrative detention laws that included only rudimentary provisions on the division of responsibilities. Others had very complex enactments that combined a number of different procedural regimes. Still other cantons had several different laws, each designed to deal with a specific population group and under which various authorities or even private actors (charitable associations) were involved. Those cases of detention that fell to the responsibility of the guardianship authorities and which were governed by the Civil Code belong to a distinct category; often there were also special laws applicable for the commitment of individuals to a psychiatric institution. Equally variable from one canton to the next were the provisions on the legal remedies available to those whose administrative detention had been ordered. (see chap. 4.4).

Depending on the canton and the procedural regime in effect there, different authorities could be responsible for the issuing of administrative detention orders. One thing that was common to all, however, was that the authorities in question belonged to the executive or administrative branch of government – in keeping with the principle of "administrative justice" – and were subject to no, or only limited, judicial oversight. Responsibility for administrative detention orders under cantonal law lay either with the cantonal government or, depending on the canton, with middle or lower level administrative authorities, such as prefects, district officials or municipal councillors. These were authorities that were also responsible for

other matters. Only in the canton of Vaud was the decision on some administrative detention orders delegated to special expert commissions, which enjoyed a certain degree of independence from the government administration. Responsibility for detentions ordered under the provisions of the Civil Code was delegated by that law to the local guardianship authorities. The composition of those authorities depended to a very large degree on the size of the respective municipality. In some cantons, there were district guardianship authorities who were responsible for several municipalities at once. Cantonal differences also existed in the procedures for declaring an individual to be legally incapacitated. In the German-speaking part of Switzerland, responsibility was normally delegated to the administrative authorities; in the French-speaking part of the country, to the judicial branch.

It is not easy to give a unified picture of these widely differing procedural rules and regimes for the assignment of authority without getting lost in legalistic distinctions or largely fruitless comparisons based on linguistic or denominational groupings. In order to identify the main elements, it is necessary to reduce the diversity to a small number of underlying paradigms. For this, comparisons between the cantons investigated by the IEC (Fribourg, Schwyz, Zurich, Vaud) and between the case studies dealt with in the scholarly literature provide a useful starting point. Based on these comparisons, it is possible to identify two rough paradigms that reflected the respective prevailing political and social conditions. The two paradigms differ from one another – as do the applicable laws – primarily with regard to the regulatory density of the procedures they prescribe, and the degree of professionalism required of the competent authorities. They also represent the opposite ends of the spectrum within which Swiss administrative detention practice fell: from barely regulated, highly personalised procedures for ad hoc decision-making on one side, to heavily bureaucratic, standardised administrative practice on the other.

CASE BY CASE: FEW RULES AND LITTLE OVERSIGHT

The first paradigm is found primarily in rural cantons, where the administration was not very centralised and lower level administrative units and individual officials enjoyed a high degree of autonomy. Other distinguishing features of these regimes were the low level of detail with which the applicable legislative provisions were formulated and the large amount of power that was delegated to lay officials in local municipalities. The sys-

tem of using lay officials at municipal level was a means of compensating personnel shortages and often meant that the same person occupied several functions simultaneously. Cantons in which this phenomenon was common included Fribourg, Schwyz, Graubünden and Valais. It is no coincidence that these were also the structurally weaker cantons, which, up to the 1970s, were among the poorest regions of Switzerland. Politically they were distinguished by a relatively closed, conservative (largely Catholic) establishment. The use of administrative detention in these cantons remained, well into the post-war era, closely linked with welfare assistance measures for the poor.

Characteristic of such administrative detention procedures was the low level of regulatory and oversight density, which left local decision-makers with a high degree of independent authority and frequently led to conflicts of authority between the various officials involved. In the canton of Fribourg, for example, the legislative rules applicable to administrative detention were found in a number of different enactments, each of which dealt with a specific target group, such as the mentally ill, alcoholics, persons in need of welfare assistance and "public menaces". Responsibility for all of the prescribed procedures was delegated to the district prefects, who not only decided on whether or not to issue a detention order, but also conducted the preliminary investigations and hearings. The power of those officials – who until 1977 were appointed by the cantonal government and, as members of the political elite, had its full backing (and often even sat in the cantonal parliament themselves) – was correspondingly great. The district prefects saw themselves as guarantors of the public order and applied the laws as they saw fit. Thus, for example, they sometimes modified punishments retroactively or subsequently reformulated the stated grounds for measures taken; in some cases, they coordinated measures with judicial authorities for the handover of suspects. Although it was theoretically possible to appeal prefects' decisions, the Government Council normally upheld those decisions without reservation.[2]

In other cantons, by contrast, the local municipal administration played a key role, even if authority in certain matters remained in the hands of the cantonal authorities. In the canton of Schwyz there were different procedures in use, but they were not adequately demarcated from one another. Municipal councillors were able to order on their own authority

2 IEC, vol. 7, chaps. 2.1.1, 3.1, 4.1.1 and 4.2.1.

the transfer of detainees from one facility to another. For compulsory detention ordered under the enactments of 1892 and 1896, decision-making authority was delegated to the Government Council, which also fixed the term of detention (whereby, under the Compulsory Detention Facility Act of 1896, the district office played the role of intermediary).[3] In the canton of Valais, municipal governments were empowered under the poor laws of 1926 and 1955 to order administrative detention measures on their own authority, but were required to obtain confirmation thereof from the cantonal authorities.[4] In the canton of Graubünden, decision-making authority was delegated to the districts, which could then issue orders under the provisions of the poor laws, the welfare assistance law of 1920, or the Civil Code, depending on the circumstances.[5] Insufficiently precise rules, underpaid lay officials, conflicts of interest between local municipalities and the absence or the complexity of legal remedies increased the risk of procedural violations and the infringement of rights in these cantons. Contemporary eyewitnesses report that administrative detention procedures were carried out in a disorganised manner and were difficult for the individuals concerned to comprehend. Often, no written grounds for a detention order would be provided, and, in some cases, the measure was only legalised retroactively (see "Arbitrary orders: Law abuse by officials and systemic injustice", p. 153). Insufficient administrative structures and inadequate oversight only compounded the sense of uncertainty.

TRYING TO CREATE BUREAUCRATIC ORDER: JURIDIFICATION AND PROFESSIONALISATION

The second paradigm is found in cantons that modernised their administrative detention regimes over the course of the 20th century, standardising procedures and placing greater reliance on outside experts (physicians, lawyers, social workers). These were mainly the financially stronger cantons with urban centres and university connections, and where the laws on administrative detention were a subject of political debate. Legal and political oversight made it necessary for the authorities to put greater effort into providing legitimate grounds for the measures they imposed. After the Second World War, this had a deterrent effect on detention policies, which became

3 IEC, vol. 7, chaps. 2.1.3, 3.3, 4.1.3 and 4.2.3.
4 Crettaz 2016.
5 Rietmann 2017.

oriented more strongly towards socio-medical considerations. It also led to improvements in the available legal remedies. This paradigm is found in the cantons of Vaud and Zurich. Similar developments took place in the cantons of Bern, Lucerne and Solothurn, which began in the 1950s to amend their administrative detention laws in accordance with new standards.

The legislation on administrative detention in the canton of Vaud, like that of Fribourg, was organised on the basis of target groups. Vaud was an exception, in the sense that decisions on administration or proposals on measures for approval by the government were made by special bodies such as the Cantonal Commission for Administrative Detention (*Commission cantonale de l'internement administratif)* and the Cantonal Office for Anti-Alcohol Surveillance. In addition to this division of decision-making powers between several actors, the regime also called for the involvement of medical experts, particularly in cases where detention was ordered under the laws on alcoholism.[6] In Zurich, too, the proximity of a university facilitated consultation with legal and medical or psychiatric experts. The administrative detention law of 1925 joined together different procedural paths. Under that regime, the guardianship authorities played a decisive role. In some cases, they were authorised to decide independently on (guardianship) detention measures, in others they applied (under the terms of cantonal law) to the district councillors who, for their part, acted as the appellate instance in guardianship matters. In the canton of Vaud, the Government Council was the highest appellate instance. The character of the guardianship authorities in rural and urban regions differed greatly from one another. Cities like Zurich and Winterthur had lawyers and welfare workers on their staffs and also had their own information services. Smaller municipal governments made do with part-time officials working in cramped quarters. The highly personalised administrative structures were comparable in such places to those of the smaller, rural cantons.[7]

For the individuals against whom administrative detention orders were issued, the effects of the juridification and bureaucratisation of the procedures were decidedly not always positive. It is true that this process created certain barriers to the imposition of administrative detention measures and reduced the unpredictability of the regime. At the same time, however, more efficient administrative procedures and improved infor-

6 IEC, vol. 7, chaps. 2.1.2, 3.2, 4.1.2 and 4.2.2; Collaud 2013.
7 IEC, vol. 7, chaps. 2.1.4, 3.4, 4.1.4 and 4.2.4.

mation-gathering and record-keeping methods, combined with more frequent recourse to experts, had the effect of extending and refining the scope of interventions by the authorities. After 1945, both in the canton of Vaud and in the canton of Zurich, the number of orders imposing less severe measures (warnings, surveillance, outpatient treatment) gradually increased, while the number of administrative detention orders declined. Although the severity of the invasions of personal liberty decreased, efforts to extend the availability of legal remedies – such as the introduction of public legal assistance in the canton of Vaud (1946) and of a right of appeal before the administrative court in the canton of Zurich (1960) – could barely keep pace with the expansion of administrative authority. Individual case studies make it clear that the cantonal authorities in Vaud and Zurich were in no way exempt from bureaucratic arbitrariness and legal misinterpretation. The increased reliance on expert opinions was another new and particularly unpredictable factor in the procedure, against which it was difficult for those concerned to offer opposition.

CONCURRENCE OF CANTONAL AND FEDERAL LAW

The heterogeneity of detention policies was further augmented by the concurrence of provisions on administrative and guardianship detention measures. The existence of parallel detention regimes under federal and cantonal law was both deliberate and politically widely accepted; in practice, however, it frequently resulted in a confusion of the two regimes. In 1947, the Federal Supreme Court ruled that guardianship measures were obliged to give highest priority to the protection of the "personal interests" of those concerned, while cantonal administrative detention laws had the additional purpose of "protecting public safety and order".[8] In practice, however, the notion could not be sustained that federal guardianship law was intended to primarily serve welfare objectives, while cantonal law, by contrast, was designed for the protection of public order. While it is true that the theoretical distinction did find isolated mention in the case law and in the text of the laws, the authorities that executed those laws continued to apply both regimes concurrently, drawing no discernible distinctions based on any clear and superordinate logic.[9]

8 IEC, vol. 7, chap. 2.3, with reference to BGE 73 I 42.

9 Badran 2017, 48–53 (LU); Rietmann 2017, 110–111 (GR); Kälin 2015, 29 (ZG); Knecht 2015, 92, 119 (SG); Rietmann 2013, 181–182 (BE). See also Swiss Federal Council 1977, 12–14.

After the Second World War there was a general shift towards more frequent use of federal detention procedures, as set forth in the Civil Code. For this, however, it was required in the case of adults that they be declared legally incapacitated before being committed to a closed facility. After 1945, the Zurich authorities relied increasingly on the Civil Code. This was also the case in Schwyz somewhat later. Both Zurich and Schwyz were among the cantons that, instead of attempting to modernise their own outdated administrative detention laws, chose to rely more heavily on the equally imprecise provisions of the Civil Code.[10] In the French-speaking part of Switzerland, a discernible shift in favour of the Civil Code did not take place until the 1970s. One reason for the delay was the French legal tradition, under which a declaration of legal incapacitation required a court decision. The authorities in the canton of Fribourg were particularly steadfast in their loyalty to the traditional understanding of the purpose of guardianship, where primacy was given to the protection of property and not to the right to control one's own life. In keeping with that attitude, the cantonal legislation long remained predominant.[11]

It is difficult to say what consequences this shift had for the individuals who were placed in administrative detention. The guardianship measures imposed under federal law were just as coercive as the cantonal measures and were also designed to simultaneously serve the often opposing interests of individual welfare and public safety. Nor were the legal remedies available under guardianship law any more extensive than those under cantonal administrative law. The obligation to first obtain a declaration of legal incapacitation was admittedly something of an obstacle. At the same time, however, the high degree to which a ward was dependent on the official appointed as guardian was a clear disadvantage. As a general rule, the legal instruments applied were presumably seen as largely interchangeable by the individuals against whom the measures were ordered.

Overlaps also existed between the administrative regime and provisions of criminal law. Following the entry into effect of the Criminal Code in 1942, legal experts discussed the issue of whether convicted criminals could be placed in administrative detention after having served out their criminal sentences, in cases where the conditions for imposing other mea-

10 IEC, vol. 7, chaps. 3.3, 3.4 and 4.2.4.
11 IEC, vol. 7, chaps. 2.1.1 and 3.2.

sures under criminal law were not satisfied.[12] Such cases, in which a criminal sentence was extended by means of administrative detention did, in fact, occur. In the canton of Schwyz, well into the 1940s, it was, indeed, quite common for individuals who had completed a term of criminal imprisonment to be retained in custody under an administrative detention order.[13] In other cantons, the enforcement authorities continued undeterred to execute custody measures ordered under provisions of cantonal criminal law even after they had been superseded by the entry into effect of the Criminal Code. In the canton of Fribourg, prefects attempted to simply incarcerate suspects administratively, without any verdict by a court, rather than going to the trouble of instigating criminal proceedings.[14] Similarly permeable were the boundaries between administrative procedures and juvenile criminal law, which – like guardianship law – gave priority to rehabilitation measures. Interviews with former detainees reveal that it was particularly in the 1960s that minors were frequently placed in detention by the juvenile criminal prosecutors or the courts for purposes of "reformatory education" (*Nacherziehung*). Despite the fact that those authorities acted within the framework of criminal proceedings, in practice they conducted themselves in the manner of a guardianship authority. In the canton of Bern, juvenile prosecutors actually applied criminal and administrative provisions concurrently to order detention.[15] For the individuals thus detained, it was virtually impossible – as it is, in part, even today – to correctly distinguish between the criminal and the juvenile welfare components of the hybrid function performed by the juvenile prosecutors and courts.[16] What mattered most for the detainees was the invasion of their personal liberty, regardless of which authority was responsible for it.

BETWEEN AD HOC DECISIONS AND OVERPOWERING BUREAUCRACY

The two paradigms offer a disparate picture: depending on the canton, we find, at one end of the spectrum, highly personalised administrative structures, staffed by lay officials applying largely informal procedures to make what are frequently ad hoc decisions; at the other extreme, we see

12 Waiblinger 1945.
13 IEC, vol. 7, chap. 3.3.
14 IEC, vol. 7, chap. 4.2.1; IEC, vol. 1, 94–103, 246–253.
15 IEC, vol. 3, chap. 3.1; Germann 2018.
16 IEC, vol. 1, 38, 53, 202.

highly bureaucratised proceedings subject to detailed legal provisions, and for which the opinions of professional experts are solicited. It goes without saying that the two paradigms were sometimes combined. In such cases, neither linguistic differences nor specific legal traditions played a decisive role. As a general rule it may be said that repressive detention policies descended from the laws on the treatment of the poor were able to survive longer in the rural, structurally and financially weaker Catholic regions of Switzerland. Institutional and political factors that played a more significant role included such things as cantonal legislative traditions, the relationship between central and local authorities, the development of cantonal administrative structures, urban-rural contrasts, the knowledge exchange with academic institutions and the involvement of professionals, political openness to reforms, and willingness to invest public funds in social welfare and health services. Ultimately, it was a conglomeration of these various factors that led to the simultaneous emergence of so many different cantonal regimes and the resultant disparities in administrative detention practice in Switzerland.

The significance of these factors for determining the options available to the individuals against whom detention orders were issued is less clear. It was not necessarily the case that stricter regulation and bureaucratisation worked to their advantage. The result was rather that new imponderabilities and dependencies were created. The procedures remained complex and difficult to comprehend even in the "progressive" cantons. They one-sidedly extended the degree of latitude available to the authorities for achieving their objectives, even if the (coercive) means they employed were somewhat more subtle. The establishment of information services and consultations with professional experts provided no relief of any kind to the detainees. On the contrary, the power imbalance against them was only further exacerbated and the risk of their being stigmatised and excluded from society only took on new forms. This was all the more so as there were no correctives in place, and provision for legal remedies was made – if at all – only beginning in the 1960s (see chap. 4.4). Throughout the period investigated, procedural inscrutability and susceptibility to arbitrariness remained the hallmarks of Swiss administrative detention policies.

4.2 PUSHED TO THE MARGINS: SOCIAL EXCLUSION AND STIGMATISATION AS PRELUDES TO OFFICIAL INTERVENTIONS

Although the orders for administrative detention were issued by officials, the impulse for such action did not always originate with the public authorities. As revealed in the IEC's interviews with former detainees, the issuance of an order for their detention in a closed facility often came as a surprise to them. At the same time, they also make it clear that deprivation of liberty was in most cases only the last step in a longer process of social exclusion and stigmatisation. A historical re-examination of the past can thus not focus exclusively on the acts of the public authorities. In small, landlocked Switzerland, where anonymity is difficult, social control was exercised not only from "above", but also from "below". Pressure to conform was also exerted by societal actors and structures. Families, neighbours, village and community organisations, schools, workplaces and associations played an important role in promoting social integration and stabilising prevailing conditions. They served as venues for the transmission of social conventions and for penalising "outsiders" up to the point of physically excluding them from membership in the community. Economic power, political influence and social standing remained unequally distributed. Differences also existed in the expectations on men and women in their professional and family lives, in their relations with neighbours, and in terms of involvement in community and political affairs.

THE DEMAND FOR SOCIAL ORDER AND CITIZEN DENUNCIATIONS

A narrow corset of petty-bourgeois social norms combined with a sceptical attitude towards all atypical living situations were widespread features of Swiss society until well into the 1960s. It is thus not surprising that the initiative for opening administrative detention proceedings often came from the close social surroundings of those targeted, or even from within their own families. In some cases, the authorities actively encouraged citizen denunciations with promises of anonymity.[17] Parents sometimes approached guardianship officials when they were having difficulties in coping with their sons or daughters. Women who were unable to deal

17 IEC, vol. 7, chap. 3.2.

with their alcoholic or violent husbands turned to local officials or persons of authority, such as clergymen or teachers, for help with their marital and family problems.[18] A woman from the municipality of Dürnten, in the canton of Zurich, for example, wrote in 1960 to the authorities that her husband was leading a "dissolute" life: "I would be grateful to you if you could at least summon him once to appear before you. It would be good if I did not have him around here anymore."[19] Obviously overwhelmed by the situation, the woman had turned to the municipal authorities asking them to act as mediator and counsellor and had hoped to find support in a difficult situation.

In other cases, calls for intervention from the authorities were the expression of a general consensus within the community. Social proximity and acquaintanceships played an important role in such cases. "The sparrows are whistling from the rooftops that Mr. P. is a drunkard," writes a neighbour in a complaint filed in Dürnten in 1968.[20] In some cases, such complaints were filed collectively. In 1974, in that same place, a group of 15 neighbours demanded that a fellow citizen of the municipality be placed in detention.[21] Single women whose husbands or fathers were absent or deceased were regularly objects of social surveillance, in particular in conservative, rural areas. They were made to share the blame if their husbands lost their jobs or got themselves into debt.[22] Gender-specific expectations played an important role when suspicions were voiced or complaints were filed. Men were marginalised for their working or drinking habits or because they failed to fulfil their role as proper fathers in caring for their families. Women, by contrast, attracted suspicion when questions arose as to their ability to perform the role of housewife and mother, or as a result of purported premarital or extra-marital sexual relations.

Within the tightly knit web of social control, persons of authority, such as teachers and clergymen, police officials and counselling offices, performed an important relay function. They acted as intermediaries between the demands for assistance or punishment from "below" and the

18 See the examples in IEC, vol. 7, chaps. 3.3, 3.4 and 4.3; IEC, vol. 4, chap. 1.1, 51–53; Germann 2018; Rietmann 2013, 162–163; Lippuner 2005, 174–175.

19 Dürnten Guardianship Authority, transcript dated 4 November 1960, 72–73, Gemeindearchiv Dürnten, IV.B 4.3, quoted in IEC, vol. 7, chap. 3.4, 296, note 758.

20 Dürnten Guardianship Authority, transcript dated 16 December 1968, 353, Gemeindearchiv Dürnten, IV.B 4.5, quoted in IEC, vol. 7, chap. 3.4, 289.

21 IEC, vol. 7, chap. 3.4, 295, note 753.

22 IEC, vol. 7, chap. 3.3.

public interest in maintaining order. In the canton of Fribourg, up until the 1960s, it was primarily the village police who sought to have administrative detention proceedings opened. In their reports to the prefects, they argued on the basis of their own observations and of complaints that they had received from third parties.[23] In the industrialised south-east of the canton of Zurich, known as *Zürcher Oberland*, the counselling offices of companies performed a similar informer function. Their job was to look after employees who found themselves in difficulties or who had otherwise made themselves conspicuous. When they reached the limits of their ability to help, or when an employee's conduct could no longer be tolerated due to excessive drinking or unreliability, they filed a complaint with the municipal authorities requesting intervention.[24] From the 1960s onward, an increasing number of complaints began to be filed by specialised counselling services. During this period, in Fribourg, socio-medical services replaced the police as the most prolific informant.[25]

Unlike institutional informants, relatives and neighbours were often unable to foresee the full ramifications of their requests for assistance or their complaints. Many are likely to have only sought some relief from a trying situation (marital or upbringing problems, financial hardship, domestic violence) without deliberately wishing to send a relative or neighbour away for years to a detention facility. This can be seen from examples where relatives first filed a complaint against a member of the family and then – after he or she had been placed in detention – tried to secure their release. It is not possible to simply argue away the ambivalence and shared responsibility of the detainees' social environment, however. There is no doubt that family and friends acting in solidarity could also protect their near ones from being taken away. There are many cases in which relatives, guardians, employers or former colleagues successfully stood up for individuals who had been targeted by the authorities. Decisive in such cases was that the individuals in question were able to mobilise advocates on their behalf and shift the balance of power in their own favour.

23 IEC, vol. 7, chap. 3.1.
24 IEC, vol. 7, chap. 3.4.
25 IEC, vol. 7, chap. 3.1.

STIGMATISATION AND SOCIAL EXCLUSION

Complaints filed with the authorities often concerned individuals who were already subject to a certain degree of social scrutiny or had already been stigmatised prior to the occurrence of some critical event (see "Stigma and stigmatisation", p. 31). Interviews with former detainees provide even more detailed insight than the written sources into the process by which negative traits and attributes were ascribed to individuals.[26] Those interviewed by the IEC were men and women who had come into the sights of the authorities as adolescents in the 1950s and 1960s. Although the findings gathered from the interviews cannot be transposed one-to-one onto other groups of former detainees (e.g. elderly men who were placed in detention because of alcoholism), the analysis nevertheless reveals important social mechanisms by which individuals were pushed to the margins of society – even to the point of being locked away in a closed facility.

It is clear from the interviews that those most likely to be subject to stigmatisation were individuals living in precarious financial or family circumstances, who were socially isolated and, in many cases, had already been separated from their families as children (see chap. 3). Some people – such as members of the Yenish minority – were socially excluded and considered "failures" simply because of their ethnic or family origins. In other cases, a stigma was gradually reinforced over the years. Social exclusion was a particularly common fate for children born out of wedlock. Because of the social discrimination against unmarried mothers, such children often grew up in financially difficult circumstances, which, until well into the 1970s, automatically earned them the contempt of their social surroundings. If something at school was found to be missing, for example, these children (rather than the children of better situated families) were the easiest and most frequent scapegoats.

Women who had been born out of wedlock were particularly subject to prejudice, as the stigma of "sexual promiscuity" attaching to their unmarried mothers was carried over to them. "You'll grow up to be just like your mother," was something Marianne Steiner heard over and over again in the 1960s. Her family environment was virtually obsessive in ascribing to her sexual interests, which was certainly a significant contributing factor in her falling victim to repeated sexual assaults at a young age, while

26 Unless otherwise indicated, the following remarks are based on IEC, vol. 5, chap. 2.

still largely uninformed in such matters.[27] Traditional gender stereotypes effectively precluded any uninhibited discussion of female sexuality before the 1960s. As in the above example, the prevailing attitudes of intolerance alternated between an insistence on the maintenance of taboos and an indulgence in sexually loaded insinuation. It was above all women living in unconventional family constellations that were held to be a potential threat to their male surroundings and society as a whole. Especially made to feel this were victims of abuse, who were routinely accused of living a "dissolute" life and thus of being indirectly to blame for what had been done to them. It was not rare for adolescent girls and women to end up in a psychiatric facility or a home, while perpetrators from respectable social circles remained untouched.

ESCAPE ATTEMPTS AND REPRESSIVE REACTIONS

Stigmatisation resulted in inequality in the distribution of life's opportunities. It solidified the perception of a group of individuals as belonging at the lowest level of the social pyramid, incapable of meeting the moral and ethical standards of the social majority. Whenever the victims of such stigmatisation attempted to defend themselves against affronts and insinuations, the chances were great that this would only set in motion the spiral of complaints, denunciations and official interventions described above.

Individuals who had been stigmatised by their environment were often deprived, for example, of opportunities to obtain an education or learn a profession. Interviewees described how, because they had been in foster care, teachers would refuse to allow them to go on to secondary school. Instead, they were compelled to accept poorly paid jobs as unskilled labourers. This, in turn, increased the likelihood of their having to accept uncertain working conditions and frequent job changes, which only further fuelled the distrust of their guardians and parents. The impossibility of advancement not only obstructed the path to social advancement for the individuals concerned, but also exposed them to the accusation of being "failures" or "indolent". The situation was further exacerbated if they attempted to resist the working conditions that were being imposed on them. Likewise, they were also deprived of the chance to prove what they were truly capable of achieving. Together, these factors combined to in-

27 IEC, vol. 1, 228–335.

crease the risk that such individuals would at some point find themselves in administrative detention.[28]

Another typical pattern was for teachers, guardians or public officials to deny the credibility of individuals who reported incidents of abuse, violence or poor working or living conditions to them. "They never believed what I said. They always believed I had somehow flirted with somebody," says contemporary eyewitness Marianne Steiner.[29] The stigma attached to such individuals served to prevent their fears and concerns from being taken seriously. An objective investigation of the facts would have revealed that the young woman had been unable to tolerate life in two different homes because she had been subjected to beatings there and had been refused all recognition. Instead, the competent authority had interpreted her conduct as "recalcitrant" and ordered her detention in the Hindelbank correctional facility for purposes of "reformatory education".[30] Administrative detention in this case was used as a means of disciplining a young woman for attempting to resist the unreasonable demands imposed on her by her social surroundings.

Such spirals of repression were particularly typical in connection with the detention of juveniles. Absence of recognition, social isolation, the experience of lovelessness, and violence and abuse in foster homes and welfare institutions drove adolescents to seek an escape from their situation. They became runaways, dropped out of training programmes or quit their jobs. This pattern became more pronounced in the 1960s. In the years leading up to the protest movement of 1968, the boundaries between escape from difficult living circumstances and youthful strivings for independence began to become blurred. New forms of leisure time consumption and the subculture scene in cities also exercised an attraction on young people looking for a way out of difficult living circumstances. In the more conservative parts of Switzerland, wearing a miniskirt or having long hair was enough to be considered provocative. Rather than taking seriously the personal difficulties of young people and the changing social values, parents, guardians and the directors of foster homes reacted by taking reprisals for supposed acts of insubordination. Disciplinary measures for juveniles

28 IEC, vol. 1, 35, 137.
29 Quoted in IEC, vol. 1, 230.
30 IEC, vol. 1, 232.

could be graduated in severity, ranging from formal rebukes to placement in foster care before reaching the stage of administrative detention.

As case studies show, the combinations of circumstances that could culminate in detention proceedings were diverse and complex. The initial impetus was a need to protect the public order and to impose sanctions against non-compliant conduct, which doubtlessly grew out of genuine problems and conflicts. The spectrum ranged from requests for assistance from family members to complaints by neighbours and the inability of parents, guardians or home directors to assert their authority. It would be a mistake, however, to assume that this process was automatic. Whether or not an individual got caught in the spiral of an administrative detention procedure depended to a large degree on his or her social status. The latter was contingent not only on the individual's financial circumstances. The main factor was rather the recognition and the backing he or she received from society. The imputation of negative attributes and characteristics heightened the risk of being excluded from the solidarity of the social or family environment and helped to cement status distinctions. By being assigned to a stereotyped role, the targeted individual could be compelled to adopt a defensive attitude that only further escalated existing conflicts and, in turn, provoked corresponding counterreactions.

4.3 THE AUTHORITIES INTERVENE: RATIONALES AND RATIONALISATIONS

What was the rationale behind decisions by the authorities to order administrative detention measures and how did they explain those decisions? Decisions by the authorities were influenced by many factors that are often difficult to identify in retrospect.[31] The recorded grounds were primarily intended to legitimise decisions that had already been taken. They were supported by documents and expert opinions that could be formulated one-sidedly to the detriment of the targeted individual. While such sources provide some indication of the way the authorities tended to interpret the facts and of the scope of their discretionary powers, they are only an incomplete reflection of the true rationales and motivations behind their actions. "If that's how they were to treat all of the girls here, they'd have to send

31 See Rietmann 2013, 147.

half the city to reform school," responded one father trenchantly in 1954 to the inconsistency of a decision by the authorities to institutionalise his daughter.[32] In many cases, it is indeed difficult to comprehend why some individuals were placed in detention, while others in similar situations were able to escape institutionalisation. An understanding of the stigmatisation process that tended to foreshadow the imposition of administrative detention measures is certainly important, but it is not sufficient to fully explain the actions of the authorities. For a historic reconstruction of what happened, it is important to also identify the foundations and dynamics of the decision-making process, the available alternatives and the financial considerations that may have come into play in the decision to order administrative detention measures. The interrelationship between these different factors must be analysed in detail if the complexity of the various constellations of circumstances is to be properly understood.

DECISIONS GROUNDED ON DOCUMENTS AND EXPERT OPINIONS

Written documents played a central role in administrative detention procedures.[33] Set against the documented "truth" of written records, the oral statements of targeted individuals stood little chance of prevailing. In many instances, the case files were already complete before the individuals concerned were even heard. When cantonal governments were responsible for issuing detention orders, they decided on the basis of written applications that had been prepared by lower-level administrative units. The balance of forces was all the more unequal as the authorities steadfastly defended their monopoly over maintaining the written record. Individual authorities sometimes collected data over periods of years, to which the individuals concerned had no access whatsoever. Their right to consult the files on them could also be denied on the argument that the identity of informants needed to be protected.

Detention policies are also reflected in the different systems that were developed for maintaining written records. Large guardianship offices, such as that of the city of Zurich or the Cantonal Office for Anti-Alcohol Surveillance in the canton of Vaud, disposed of systems for maintaining in-

32 Appeal to the Office of the Judiciary, 18 August 1954, Staatsarchiv Zürich, P 430, IX, 1444, quoted in IEC, vol. 7, chap. 4.2, 435.

33 Unless otherwise indicated, the following remarks are based on IEC, vol. 7, chap. 3.6; see Kaufmann, Leimgruber 2008; Meier, Galle 2008.

dividual personal files. In smaller cantons, such as Schwyz, decisions were taken on the basis of oral deliberations of which no records were kept. In many places, the only documents retained in connection with individual detention orders were the initial application and the final decision. Some cantons recorded administrative detention decisions in the cantonal criminal register in order to make certain that information on previous terms in closed facilities was publicly available.[34]

The records that were kept were anything but neutral administrative tools. Police transcripts and witness testimony were collected and recorded for the deliberate purpose of justifying an administrative detention order. Guardianship authorities sometimes collected incriminating evidence against individuals over periods of years. As a compilation of one-sided information culled from various unreliable sources, those records could be used to paint a picture of an individual, whose life was nothing but a series of "failures". The documents could be produced as ostensibly objective evidence of the "dissolute" or "indolent" conduct of the individual in question, proving the necessity of the measure ordered. The maintenance of written records also made it possible for different administrative authorities to exchange information. Before issuing an order, officials would request from other authorities character references or reports from employers. Guardianship records were often forwarded from one authority to the next when the individuals under care moved to a new address. In this way, their records sometimes accompanied them throughout their entire lives. Defamatory statements about them could thus be used against them over and again.

The problem can be clearly illustrated by the example of a 39-year-old man against whom the prefect of Lausanne opened an administrative detention procedure in 1949. Prior thereto, the man had lost his job with Swiss Federal Railways, after the latter had learned of his previous convictions by consulting his record in the criminal register. The police investigators charged with the case had found in their archives indications that the man had frequented the "milieu" more than ten years earlier. Although the man was not accused of having committed any offence, his unverified history led to his being sent for 18 months to detention in a correctional labour facility. In this way, the man was a two-fold victim of the documentary memory of the public authorities: as if it were not enough for him to

34 IEC, vol. 7, chaps. 3.3 and 3.6; IEC, vol. 4, chap. 3.3.

have lost his job on account of his criminal record, he was also deprived of his freedom on the sole basis of earlier allegations against him.[35] In this case, the written record took on an active role: bringing together multiple reported "incidents", it presented a one-sided, negative portrait of the individual. That image was then seen as a legitimate reason for public intervention. The man in this example was no exception. Frequently, the mere existence of a certain number of compromising documents on record were sufficient for characterising an individual as a "burden" on or a "menace" to the community.

Medical and psychiatric opinions could also give rise to stigmatisation of the individuals in question.[36] The significance of such opinions constantly grew as the medicalisation of detention policies steadily progressed after 1950 (see chap. 2.5 and "Expert opinions with far-reaching consequences", p. 175). Here again, canton-specific patterns can be identified. Cantons such as Schwyz, which did not have their own psychiatric facilities and continued until well into the 20th century to accommodate the mentally ill in poorhouses, tended to consult with psychiatric experts only at a relatively late stage and, even then, primarily in matters of legal incapacitation. In cantons like Zurich or Vaud, cooperation between the authorities and psychiatric facilities had long ago become routine, or was intensified during the post-war era, as in the canton of Fribourg. The rules on when expert opinions were to be commissioned also varied widely. In cases of legal incapacitation due to mental illness or mental disability as well as in some cantonal laws on administrative detention, medical opinions were required by statute. In other cases, the officials acted on their own authority to establish whether an individual was capable of working or in sound mental health.

The function of psychiatric opinions was to make recommendations to the authorities and to provide the requisite objective and scientific basis for grounding their decisions. In 1961, for example, a prefect from the canton of Fribourg sent a man for observation to Marsens, acting on the recommendation of the man's official guardian. Prior thereto, the man's employer and a medical specialist had reported that the man was a "sexual pervert" and a menace for children. The psychiatric opinion prepared by the clinic subsequently confirmed that assessment and recommended, as

35 IEC, vol. 7, chap. 3.6, 362–363.

36 Unless otherwise indicated, the following remarks are based on IEC, vol. 7, chap. 3.5.

an alternative to hospitalisation, that the man be placed in administrative detention in Bellechasse.[37] As the example shows, psychiatrists expressed themselves not only with regard to the health of the persons examined, but also as to the need for guardianship or medical measures. Such measures could include involuntary abortions, sterilisation or castration.

The medical opinions were included in the official records of the authorities. Those in charge of a given case took the documents supplied to them by the authorities as the basis. Often, they accepted the statements and value judgements contained therein without any attempt to verify their accuracy. In a manner similar to the assessments made by the authorities, psychiatric opinions individualised social problems. Where the authorities spoke of "moral failure", the psychiatrists saw symptoms of psychological abnormality. Up to the 1980s, psychiatric opinions were filled mainly with diagnoses such as psychopathy, mental deficiency or schizophrenia, reflecting an assumption that the persons examined had an immutable predisposition to mental illness, and denying thereby any possibility of further personal development. Expressions of empathy and understanding for the difficult circumstances of the subjects' lives, by contrast, were rare. A 1960 psychiatric opinion concerning a 28-year-old woman provides a good example of the way in which such opinions served not to protect the individuals concerned but, quite to the contrary, to buttress decisions by the authorities to intervene. The mother of two children was summoned by the guardianship office because of an extra-marital affair. The authority – against the will of her husband, it should be noted – was considering placing the woman in detention and ordered a psychiatric examination. Although the psychiatrists from Münsterlingen found no symptoms of mental illness, they described the woman as having a "primitive personality" with excessive "sexual compulsions". Because she was pregnant, they recommended that she be "only" threatened with administrative detention.[38]

Such medical opinions often had a stigmatising effect that went beyond the simple statement of a professional evaluation. The distinguishing feature of psychiatric opinions was that they combined negative value judgements with a prejudicial medical diagnosis. The use of technical terminology with a pejorative connotation also led to a brutalisation of the language. There was no way for individuals who had once been diagnosed

37 IEC, vol. 7, chap. 3.5, 309–310.
38 IEC, vol. 7, chap. 3.5, 342–343.

as psychopathic to ever free themselves of that stigma. This situation was made even worse by the fact that the authorities tended to refer to the same medical opinion for many years (thus saving the costs of a new examination). In Dürnten, for example, in the case of one man, the guardianship authorities repeatedly took reference throughout the post-war era to a psychiatric opinion from the year 1947. There he was described as a "torpid, apathetic, weak-willed imbecile". As late as 1975, the municipal authorities ordered his detention in the St. Johannsen correctional labour facility using nearly the exact same words to ground their decision.[39]

GENDER-SPECIFIC FORMULATIONS OF GROUNDS

Catchwords such as "dissolute", "indolent" and "ungoverned" performed a dual function. On the one hand, they structured both the perceptions of the authorities and the way in which they went about gathering and recording information; on the other, as technical legal terms they could serve as a convenient, and not infrequently arbitrary, ground for depriving an individual of his or her liberty. An extreme example was the use made in several cantons of pre-printed forms for the issuance of decisions. With the help of those forms, it was possible to state the legal grounds for a detention order in a given case by simply filling in the pertinent legal terms.[40] The specific conduct that was imputed to an individual was masked by the categorical attributions prescribed by the law. Once they had been brought into circulation, the negatively connotative terms gave the false impression of presenting an accurate characterisation of the person in question. It is true that, starting in the 1950s, the authorities were required to put greater effort into grounding their decisions, and the considerations noted in the records and in the written orders issued were more detailed. The use of such terms as "indolent" or "neglected" nevertheless continued to serve as acceptable grounds. In order to reconstruct the manner in which the authorities went about their work, it is thus important to examine in greater detail the actual circumstances that were so often obscured by the official, formulaic statements of grounds.

Important evidence is provided by the gender-dependency of the imputed attributes. As already noted, men and women came into the sights of the authorities for different reasons, even if the attributes imputed to

39 IEC, vol. 7, chap. 3.5, 319.
40 IEC, vol. 7, chap. 3.3; Crettaz 2016, 169.

them were designated using the same terms. In practice, there was a dominant gender bias that also informed the legislative debates. The decisions pronounced by the authorities reproduced the gender-specific stereotypes that were deeply entrenched in Swiss society until well into the 1970s, and which had a formative influence in determining the life choices and means of livelihood available to men and women. By taking its orientation from prevailing social expectations, administrative detention policies reinforced the accepted norms of behaviour on which they were based. It was not until the 1960s that traditional gender stereotypes began to break down. The introduction of women's suffrage (1971), the dispositions on gender equality in the Federal Constitution (1981) and the amendment of the Civil Code provisions on marriage (1985) helped to advance the cause of gender equality, even if discrimination continues even today in certain areas, particularly at the workplace.

Overall, men were more frequently targeted by administrative detention measures than women. As discussed above in chapter 3.3, different explanations can be offered for that phenomenon. One important reason was that, under the prevailing gender model, men were responsible for providing the (future) revenue of the family.[41] In actual fact, work ethic and earning capacity were very often the central issue in decisions on the administrative detention of men. Another issue that played a prominent role – and whose importance has been underestimated in the scholarly literature – was alcohol consumption. In many cantons, alcohol abuse was by far the most commonly named ground for the ordering of administrative detention. Alcohol consumption habits were regularly brought into connection by the authorities with work habits, frequent job changes, neglect of family duties or homelessness. The lack of a fixed abode, however, could also stand alone as grounds for detention. Regardless of the ways in which they were combined with one another, the official grounds given for detention orders offered a reverse image of the status-oriented male ideal of a successful breadwinner and caring father.

Alcohol consumption was considered a "problem" and as a reason for filing a complaint with the authorities primarily when it occurred in public or when it threatened make a family dependent on welfare assistance.[42] In a 1957 case, for example, a prefect in the canton of Fribourg grounded the

41 See Rietmann 2013, 98; Lippuner 2005, 159.
42 IEC, vol. 7, chaps. 3.1, 3.3 and 3.4.

administrative detention of a local man on the fact that he had caused a "public scandal" while inebriated and that he was already known to the police.[43] Although alcohol consumption was an apparently objective criterion, the authorities did not in fact take action against all consumers of spirits. Even in the post-war era, the authorities occupied themselves with the drinking habits only of members of the working and rural lower classes. "Social drinkers" from the more well-to-do classes, who had one too many drinks while at home or in a fancy restaurant were generally not taken to task for it by the authorities.[44] Complaints of excessive alcohol consumption could also be used, however, as a simple means of dispensing with undesirable individuals. Thus, for example, in 1941, a public health physician criticised the Lausanne authorities for arbitrarily using the pretext of alcohol treatment for bringing charges against "vagabonds", "elderly unemployed" and "prostitutes" in cases where there could be no question of alcoholism within the meaning of the law.[45] Instructive also is the case of a lawyer from the canton of Vaud who, in the 1940s, was denounced to the authorities by relatives on grounds of alcohol abuse and was ordered into detention for a six-month alcohol treatment programme. Despite repeated appeals, the man was unable to obtain the right to consult the records in order to learn what specific charges had been made against him.[46]

Among the grounds named for the administrative detention of women, the most common was "moral lapse".[47] Underlying that notion was the aim of controlling women's sexuality and limiting its expression to the confines of marriage. Another purpose was to prevent the occurrence of pregnancies that were considered as undesirable for either social or eugenic reasons – and which could thus potentially place an added burden on the welfare system. As far as the authorities were concerned, the primary role of women was to be good housewives and mothers or, if they were not married, earn their living within the supervised setting of factory work or in one of the traditional women's professions. Exceptions to the rule on how women were to earn their livelihood were tolerated, if at all, only in the working class. Decisions by the authorities conformed in this respect to the same moral standards that also came to expression in complaints filed by citizens. In the canton

43 IEC, vol. 7, chap. 3.1, 157.
44 IEC, vol. 3, chap. 2.
45 IEC, vol. 7, chap. 3.2, 203.
46 IEC, vol. 7, chap. 4.3.3.
47 IEC, vol. 7, chaps. 3.1 and 3.3.

of Vaud (and to a more limited extent in the canton of Neuchâtel), administrative detention measures in the 1940s were targeted specifically against women who engaged in prostitution in the canton's capital city of Lausanne. Also singled out for opprobrium, however, were women who were suspected of involvement in extra-marital relationships or who in some other way succeeded in escaping surveillance by their families or village neighbours. In the largely Catholic canton of Fribourg, for example, a woman was denounced by her neighbours in 1955 on grounds of cohabitation. An attempt by the woman's appointed guardian to compel her to put an end to the relationship had previously failed. It is indicative that the intervention of the public authorities in this case was directed only against the woman; the man with whom she cohabited, by contrast, was not imposed upon at all.[48]

The pressure on women to conform remained high well into the 1960s and began to diminish only gradually, initially in the more urban and progressive cantons. With the boom of consumer society, charges of "dissolute" conduct and "neglect" were increasingly directed at young people who changed jobs frequently, spent more money than normal on cigarettes or in bars, or rejected the life paths prescribed for them by society. As numerous examples from this period illustrate, young women from precarious backgrounds were affected to a disproportionate degree by the changing behavioural expectations. As before, suspicion of prostitution and the risk of extra-marital pregnancy were frequent grounds for intervention by the public authorities. Fashionable clothing and hairstyles, an affinity for the new youth culture, and contact with foreign labourers from Southern Europe were also potential pretexts for such intervention.

ESCALATING CONFLICTS AND SOCIAL BLINDNESS

Behind the moralising rationalisations for the use of administrative detention were often conflicts and crises to which the authorities responded by attempting to rigorously enforce their conceptions of order. We have already noted that individuals who tried to resist stigmatisation and other forms of discrimination exposed themselves to a significant risk of finding themselves in a situation where the threat of detention loomed large. Often such individuals were already under close surveillance by their surroundings or had attracted public opprobrium, as in cases of excessive alcohol consumption, for example. In such situations, complaints by rela-

48 IEC, vol. 7, chap. 3.1, 150–151. On the canton of Vaud: IEC, vol. 3, chap. 3.1; Collaud 2013.

tives or neighbours, or interventions by the police, could serve as a catalyst to their being permanently labelled as "dissolute" or "indolent". In some cases, however, administrative detention measures were simply stopgap solutions, deployed as a means of avoiding having to satisfy demands for a "tough crackdown" or for more strenuous (or costly) alternatives. In this respect, too, the scope of the authorities' discretion was wide.

Officials used administrative detention measures as a means of avoiding conflicts, of asserting their authority, or of dispatching with headstrong individuals as expediently as possible. A case in point is that of Hans Albrecht, which has already been mentioned on several occasions above. From 1960 onwards, he was repeatedly placed by his guardian in detention at the Witzwil correctional facility. The reason for the first detention order was Hans Albrecht's refusal to accept the jobs that his guardian had chosen for him. After he was prevented from completing high school, he had first been compelled to earn his living as a contract labourer. Still a young man, he now wanted to look for a job on his own. It was for this that his guardian and the local authorities decided to place Hans Albrecht in detention, labelling him as "indolent". The unfairness of this characterisation can be clearly seen from the fact that at Witzwil, Hans Albrecht quickly gained recognition as a skilled tractor driver.[49] The reaction of the authorities was similar when elderly individuals complained of the substandard living conditions in poorhouses or asylums, or when minors like Marianne Steiner attempted to flee the culture of violence that prevailed in juvenile detention centres.[50] The common denominator in all of these cases was that the individuals concerned stood up to representatives of the public authorities and insisted on their right to live their own lives as they chose, without official interference. For this, they were quickly regarded as "insolent" or "recalcitrant" and, before long, labelled as "ungoverned" or "dissolute". Closed detention served in such situations to stabilise the authority and power relationships that had been called into question from "below", and to put those who dared to do so back in their place.

Another common feature of decisions by the authorities was that they barely took into account the circumstances in which the individual concerned was living. They were socially blind, as it were.[51] Statements

49 IEC, vol. 1, 140–141. The name has been changed at the request of the person in question.
50 IEC, vol. 7, chap. 3.3.
51 See the examples in IEC, vol. 7, chaps. 3.3, 3.4 and 3.6; IEC, vol. 4, chap. 1.1.

ARBITRARY ORDERS: LAW ABUSE BY OFFICIALS AND SYSTEMIC INJUSTICE

In what way were the acts of officials arbitrary, or contrary to the law, when they decided to impose administrative detention measures? Were such legal abuses sufficient to merit description as a historical injustice? In many cantons, the laws contained only rudimentary provisions on administrative detention procedure. The result of this was that the law effectively granted the authorities broad powers of discretion and that the individuals subject to administrative detention were less well protected than defendants in criminal proceedings. What is more, many officials did not even respect the minimum procedural requirements. There are numerous examples of officials manifestly and arbitrarily violating the existing procedural rules.

In many cases, the officials did not even give the individuals concerned a hearing before ordering their detention. Sometimes they were given a hearing only once detention had already begun or when an appeal appeared imminent. This was a violation of existing law, even at the time.[1] There were also incidents of individuals being taken into custody by the police without any statement of grounds, with the formal detention order being issued by the competent authorities only weeks later. "I don't know who sentenced me or how long I'll have to stay in this prison," complained a young man in detainment at the prison of Sion in 1961.[2] In 1964, the administration of the Bellechasse facilities even sent a complaint to the Department of Justice and Police in Sion over the fact that many detainees from the canton of Valais were sent to Bellechasse without production of a detention order issued by the competent authority (see "Disregard of procedure", p. 172). Although the cantonal government had in 1950 established detailed rules of procedure for administrative detention, local municipalities in Valais continued to execute detention orders directly, without seeking approval from the cantonal authorities. Similar violations are found also in other cantons, such as Schwyz and Fribourg.[3]

The prefects of Fribourg also applied the provisions of the law however they chose. There were cases in which the stated grounds for a deten-

1 IEC, vol. 7, chap. 4, 416–417.
2 Testament, 25 February 1961, AEV, 5060-4, box 34, file 5/1961, quoted in IEC, vol. 4, chap. 1.1, 46.
3 IEC, vol. 4, chap. 1.1; Crettaz 2016, 176–178. On the canton of Schwyz: IEC, vol. 7, chap. 3.3. On the canton of Fribourg: vol. 7, chap. 3.2.

tion order were modified retroactively. In 1962, the administration of the Bellechasse facilities sent a request to the prefect of the Sarine district for permission to transfer an "abnormal and undisciplined" detainee from the Tannenhof alcohol rehabilitation ward to the correctional facility. In order to justify granting such a request for the imposition of harsher detainment conditions, the prefect simply altered the grounds set forth in the original order and imposed detention under the terms of the Administrative Detention Act of 1942 (in lieu of the Alcohol Treatment Act of 1955, under which the original order had been issued).[4] The cantonal government of Schwyz also showed little respect for the rights of detainees. Although the cantonal laws provided for a maximum detention term of two years, the Government Council repeatedly issued orders for closed detention "in perpetuity" or for an indefinite period of time. In 1941, this practice was criticised by the Federal Supreme Court, but the canton was not formally ordered to change its policies. It was not until the 1960s that the cantonal government altered its practice and began to issue orders only for fixed terms of detention.[5]

Such abuses of the law were facilitated by the absence of detailed statutory rules and by lax oversight over lower-level government bodies. Violations were not limited to the structurally weak cantons like Fribourg, Schwyz and Valais, however. Thus, for example, a 1947 decision by the Zurich Government Council was censured by the Federal Supreme Court as being arbitrary. The Government Council had decided in an appeal to uphold a detention order without having conducted any review of whether the statutory conditions for such an order were satisfied. As there was also no evidence on record that the man in question had manifested any "criminal inclinations" or conducted himself in a "dissolute" manner, the high court vacated the order.[6] Such a judgement in favour of an administrative detainee remained, however, a rare exception (see "Success against the arbitrariness of office", p. 94).

Violations of procedure had sometimes drastic consequences for the individuals concerned. Nevertheless, the tendency of public authorities to disregard procedural rules tells us little about the true injustice inherent in official policies of the time. The misapplication of laws is part of the legal reality even today and is a matter that is commonly dealt with by the

4 IEC, vol. 7, chap. 3.1, 162.
5 IEC, vol. 7, chap. 4.1.3; IEC, vol. 1, 99.
6 Judgement P 730/AG of 13 March 1947, at 6, Archive of the Federal Supreme Court.

courts. It would thus be precipitate to conclude that the historical injustice committed was merely a matter of procedural violations and the denial of due process – not least because such a conclusion could be understood as suggesting that those administrative detention orders which were issued in a procedurally correct manner would today have to considered as legitimate. The question of historical injustice is more complex than that. To what extent did applicable law at the time satisfy the most basic demands of justice (equal treatment, legal certainty), on which the modern notion of the rule of law rests? Here, however, it is necessary to differentiate between the standards deemed valid at the time and today's standards. Another question that must be considered is the extent to which were abuses of the law facilitated by the law itself, and what mechanisms were in place for correcting procedural errors.

A central factor in the historical appraisal of administrative detention law is the fact that it was qualified as a distinct and exceptional legal regime that reduced the level of legal certainty and procedural justice for certain population groups, while simultaneously enlarging the margin of discretion at the disposal of administrative authorities (see chap. 2). In this sense, procedural breaches must be seen as only the tip of the iceberg. It is manifest that the concurrence of different laws, the ambiguity of legal terminology, the probationary nature of the punishments and the absence of procedural guarantees combined to foster an attitude of "anything goes". In actual practice, this encouraged officials to assume ever more extensive powers. This tendency was further aggravated by the fact that the law offered only very weak protection for the victims of arbitrary decisions by public authorities. In addition, the motivation of higher instances to exercise adequate oversight over the lower instances was minimal. To the extent that legal remedies for the correction of erroneous decisions had actually been provided for, various obstacles rendered them largely inaccessible (see chapter 4.4). The objectives pursued by both federal and cantonal lawmakers through the institution of administrative detention were social in nature and were thus seen as being justified by an overriding public interest. It was knowingly accepted that this could give rise to arbitrary acts by public authorities and that – contrary to the situation in criminal proceedings – the rights of the individuals concerned would not be adequately protected. A potential for systemic injustice was thus inherent in the historical legal regime.

concerning the poor state of the economy or descriptions of unsuccessful attempts to find work were ignored as completely as references to health or other existential problems, domestic violence or abuse, conflicts at the workplace, or the dangerous and inhuman conditions in asylums and other public institutions. Irrespective of the terms used in each individual case, central to the arguments used by the authorities was always the personal "failure" of the individual concerned. The only thing considered was his or her character or personality. The social and economic environment and its influence on the conduct of the individual in question was totally ignored. It is entirely true there were sometimes situations and conditions preceding a detention order that – even from today's perspective – would be considered problematic, and which justified intervention by the public authorities. However, by placing the blame wholly on the individual concerned, the authorities discharged society – and themselves – from all responsibility. Characteristic of this process was the brutalisation of the language, which – as imprecise as it was defamatory – was intended to suggest the ostensible menace that emanated from those against whom detention measures were ordered. The decisions on detention used terms such as "social parasite" and "undesirable elements" to characterise the individuals in question; sometimes the emphasis was on their "anti-social attitude".[52] Psychiatric opinions, with their pathologising vocabulary, only reinforced the effect of such stigmatisations.

CLOSED DETENTION: A MATTER OF AVAILABLE ALTERNATIVES

Detention in a closed facility was often only the last stage in a series of progressively more severe measures. It was ordered when, in the view of the competent authorities, all other "solutions" had either failed or were thought to be either too complicated or too expensive. The availability or absence of alternatives had a significant influence on whether or not an individual would be committed to a closed facility. This, in turn, meant that the use of administrative detention was also always in a contingent relationship with other welfare assistance systems and institutions. Because of this, it is necessary to consider the decisions on social and financial policies that played a role in the creation and configuration of such alternatives: what financial and personnel resources were political leaders and society prepared to expend for the assistance of individuals living in precarious

52 IEC, vol. 7, chap. 1.3, 26; chap. 3.1, 160.

circumstances? In this connection, it is necessary to consider what realistic options were actually available, or could be deemed feasible, at a given point in time – and which alternatives were beyond the imaginative horizons and practical capabilities of society at that stage in its development.

Most administrative detention laws provided that the individual concerned was to be given a warning before being committed to a closed facility, as well as an opportunity to submit to a "code of discipline". Only after such disciplinary measures had failed were more stringent measures – that is, detention in a closed facility – to be imposed. Even in such cases, the authorities regularly attempted to persuade the individuals in question to "voluntarily" accept commitment to detention. This was intended not only to maintain the appearance of an interest in the welfare of the individual, but also to provide an incentive for cooperation.[53] No clear picture can be formed as to what the actual practice was in this regard. On the one hand, former detainees report that they were taken into custody without prior warning. On the other hand, from the documentation available on the city of Zurich, it appears that the number of warnings issued was always significantly higher than that of enforceable detention orders. The threat of being deprived of one's personal liberty thus played a more dominant role than actual detention. Beginning in the 1960s, the trend towards less invasive measures and a more cooperative attitude on the part of the authorities became increasingly pronounced. This tendency was furthered not only by new methods of social work, but also by a growing awareness by the authorities of the stigmatising and counterproductive effects of intervention.[54]

The shift to less severe surveillance and outpatient treatment measures was largely dependent on the willingness of the cantonal and municipal governments to create alternatives to closed detention and to allocate the requisite financial resources. An early example was a network of waystations for the "wandering poor", which remained in operation until the 1960s. It was established to provide food and shelter for wage labourers in search of work who had no fixed abode, thereby reducing the risk of their being placed in detention for "vagabondage".[55] With the expansion of the welfare and healthcare systems after the Second World War, disparities in the manner in which the various cantons evolved became even greater. The

53 IEC, vol. 7, chaps. 3.1, 3.2 and 3.3.
54 IEC, vol. 4, chap. 1.1; IEC, vol. 7, chap. 3.4.
55 IEC, vol. 3, chap. 3.2.

more prosperous cantons, such as Vaud, Zurich, Bern and Lucerne, with well-developed infrastructures, began to rely increasingly on conditional detention orders or non-custodial supervision and assistance measures (see chap. 2.5). The intent was to foster the social integration and continued presence of the individuals in question on the regular employment market. Detention in a closed facility increasingly came to be seen as a measure of last resort, to be applied only in exceptional cases. The option of threatening detention remained available, however. The trend towards less invasive measures was particularly in evidence where the treatment of alcoholism was concerned. In this area, a system of progressively more stringent "preliminary measures" was established in the 1950s. It included such things as formal promises of abstinence, regular outpatient monitoring tests and prohibitions on visiting taverns. Over the medium and long term, the system contributed to a reduction in the number of administrative detention orders issued.[56] It was with a similar objective in mind that drop-in centres and communal housing groups for juveniles were established in the 1970s, which provided an alternative to accommodation in a closed setting and helped alleviate the chronic shortage of suitable facilities.[57]

A counterexample is provided by the canton of Fribourg, where a defensive attitude towards welfare-state innovations contributed to the perpetuation of a repressive administrative detention regime. In Fribourg, the Catholic-conservative establishment baulked at investing additional funds in the canton's welfare and healthcare infrastructure until well into the 1970s. It preferred instead to continue delegating tasks in those areas to Church charities, while simultaneously suppressing criticism of the repressive measures still in use. It is typical of this policy that although the canton had proposed to introduce new welfare methods for dealing with alcoholism in the 1960s, the funds needed for establishing the requisite structures were not made available until ten years later.[58] By contrast, the Bellechasse detention facilities provided a convenient, low-cost alternative. District prefects thus had a simple means at their disposal for assisting local municipalities in ridding themselves of unwanted fellow citizens: by ordering their detention in Bellechasse. Bellechasse had gained a reputation early on as the "municipal dumping grounds" (*dépotoir des communes)*. In 1958,

56 IEC, vol. 7, chaps. 3.1, 3.2 and 3.4.
57 IEC, vol. 8, chap. 2.3; Lengwiler 2019.
58 IEC, vol. 3, chap. 2.1.

the facility administration had acknowledged that detention was the only means of "protecting society from elements that are a source of disorder".[59] Well into the 1970s, Bellechasse was still being used to accommodate elderly detainees who were either unemployed, in poor health, disabled or mentally handicapped, and who – even by the then prevailing standards – ought in many cases to have been placed in old-age, medical or nursing homes.[60]

The availability of socio-medical or educational alternatives was an important factor in making it possible to avoid the use of detention measures in certain situations. The willingness of political leaders and taxpayers to allocate funding had a major impact on whether primary emphasis was laid on individual assistance or on merely "administering" social problems. That willingness was strengthened both by the economic upswing and by the professionalisation of social professions, together with the liberalisation of society that began in the 1960s. As can be seen from many examples, however, the trend towards less invasive measures continued to be marked by numerous asynchronicities.

Less unambiguous is the extent to which this trend was influenced by the progressive expansion of social welfare institutions after the Second World War. Like the laws on administrative detention, social insurance tended to be structured in a way that reinforced traditional gender stereotypes and the significance of (male) earning capacity for social participation. Social security insurance did, however, by means of transfer payments, provide needed assistance for such social problems as destitution among the elderly. At the same time, only a minority of those who had been placed in administrative detention were entitled to benefits under the public Old-Age and Survivors' Insurance or Disability Insurance programmes (or, after 1966, under the Supplementary Benefits system). The impact of those social services was ultimately more indirect in nature: for the elderly and minors, social insurance now served as a source of income that helped to enlarge the array of welfare services available as an alternative to detention. Thus, beginning in the 1950s, the payment of Old-Age and Survivors' Insurance benefits made it possible to accommodate elderly women and men in old-age homes; similarly, Disability Insurance benefits made it possible to finance special education measures for juveniles. Despite these de-

59 IEC, vol. 3, chap. 1.1, 75; IEC, vol. 7, chap. 3.1, 174, note 185.
60 IEC, vol. 4, chap. 2.1; IEC, vol. 8, chap. 13.

velopments, however, even as late as the 1970s, a large number of men and women above the age of 60 were still being held in detention in facilities such as Bellechasse and Hindelbank.[61]

CLOSED DETENTION: A (MORE) INEXPENSIVE FORM OF WELFARE ASSISTANCE?

There is no easy response to the question of the extent to which financial considerations and interests influenced the decisions of the public authorities. Were administrative detention measures primarily designed to reduce the burden on the public treasury, as suggested by lawyer François Clerc in the 1970 documentary by Guy Ackermann and Alain Turner?[62] Although this argument may at first glance appear plausible, a more detailed examination of the question is needed. On the one hand, the cost argument should not be understood in too narrow a sense; on the other, one should also beware of falling into the trap of economic determinism.

The interrelationship of the various cost factors in connection with administrative detention is complex. In addition, the various actors involved certainly did not always share the same perspectives or interests. Short-term savings on one side of the equation could sometimes give rise to increased expenditures over the long term, on the other side. Financial arguments ultimately also served as rationalisations and were not always purely objective statements of costs and benefits. From the point of view of those responsible for enforcing detention orders, the main consideration was direct costs. A part of those costs could sometimes be shifted to the detainees and their families or set-off under a cost indemnification system (see "Boarding fees: Shifting detention costs to the detainees", p. 196). At the same time, the expenditures were offset by certain savings: unpaid welfare benefits, lower costs to the municipal administration in complex welfare or guardianship cases, and elimination of the need for expanding alternative welfare services. The current state of research on these questions does not permit any final conclusions as to the weighting of the various factors or the precise figures involved. The IEC's investigation of the financial aspects of administrative detention practice has nevertheless provided important insights that can pave the way for further research.

61 IEC, vol. 7, chap. 3.3 and 3.4; IEC, vol. 8, chaps. 4.2 and 13.
62 IEC, vol. 3, chap. 1, 30.

One thing that is certain is that it was predominantly individuals living in precarious circumstances who were most likely to be placed in administrative detention. Despite changes in the typical social profile of administrative detainees during the post-war era, a certain correlation with welfare assistance for the poor remained (see chap. 3). There are many examples to show that administrative detention offered municipal governments a convenient and low-cost option for dealing with various types of problems and conflicts. Indigent families and individuals living in difficult circumstances were perceived as potential cost factors for the municipality. In addition, placement in administrative detention could, under certain circumstances, prevent protracted disputes and eliminate the need to seek alternative solutions.[63] Moreover, it was often possible to pass on the detention costs to the detainees themselves or to their families. Depending on the circumstances of the case, it was also possible that the cantonal government would cover the costs. This notwithstanding, based on the case studies examined, it is not possible to draw a precise picture of the situation. While it is possible to find isolated pieces of evidence to support the thesis that administrative detention measures were ordered primarily or exclusively based on cost considerations, as a general rule, however, it seems more likely that decisions to order administrative detention were motivated by a combination of disciplinary, practical and financial factors that came together as conflict escalated.[64] In this regard, there are significant differences between the cantons. While cost considerations played a major role, even during the post-war era, in the economically weaker cantons such as Fribourg and Schwyz, disputes over the distribution of costs in the cantons of Vaud and Zurich tended to be the exception.[65]

It would, therefore, be an overgeneralisation to simply characterise administrative detention measures as merely a (more) inexpensive variant of welfare assistance for the poor (just as the placement of children in foster care was, for many years, a less expensive alternative to providing assistance to needy families. Such a reading would not take sufficient account

63 IEC, vol. 3, chap. 1.1; IEC, vol. 7, chap. 3.2.

64 See Lippuner 2005, 150–151, 155, 160, 171, 173, 184, who discusses in detail the ease with which cost considerations could be adjusted to fit with other motives by the authority ordering detention. Research findings on the subject remain disparate. The rare examples where it is possible to unambiguously demonstrate the elasticity of the costs stated by the authority ordering detention date primarily to the late 19th century. Rietmann 2013, 95; Badran 2017, 72.

65 IEC, vol. 7, chap. 3.7; IEC, vol. 3, chap. 1.2; IEC, vol. 4, chap. 3.1.

of the exceptional nature and gap-filling function of the measures or of the selectively disciplinary role they played. In actual fact, the number of people living in poverty and of individuals receiving welfare assistance in the 20th century was always significantly higher than the number of administrative detainees. Moreover, a large proportion of the individuals and families living in poverty received assistance where they resided, either in the form of food rations, clothing, rent subsidies or cash. In addition, the financial motives were not always clearly identifiable. Thus, for example, there are cases known in which the municipal authorities named cost considerations as grounds both for commitment to and for release from closed detention. Where the authorities decided to commit a parent to closed detention, a possible consequence was that the rest of the family would become an even greater burden on the welfare budget and that it would then be necessary, for example, to place the children in foster care. It was also not infrequent for families to seek the release of relatives from detention for the simple reason that they needed additional hands to help with the work at home.[66]

A clearer picture emerges with regard to the selection of detention facilities. There is much evidence demonstrating that the authorities chose the facility for enforcement of a detention order based on financial considerations. The fact that placement in an unsuitable or insecure environment would bring with it disadvantages for the individuals concerned, was something the authorities were willing to accept.[67] For one thing, cantons that operated their own detention facilities were interested in achieving an optimal occupancy rate and therefore attempted to regulate demand by adjusting boarding costs and keeping expenses low. The Bellechasse facilities, which were referred to even by the authorities as the "cheapest resort hotel"[68] in the Catholic cantons, were particularly notorious in this regard. For another, once an authority had decided to issue an administrative detention order, every effort was made to pay the lowest possible boarding costs. This was one of the reasons that implementation of the 1910 Alcohol Treatment Act in the canton of Lucerne failed – due to the resistance of municipal governments that would be required to foot the bill. It was not until lower-cost, outpatient treatment programmes were established in the 1950s that welfare services for alcoholics got off to a fresh start once again.[69]

66 IEC, vol. 7, chaps. 3.3 and 3.7; IEC, vol. 8, chap. 12.1.
67 IEC, vol. 8, chap. 3.3, 153–159; Crettaz 2016, 149; Knecht 2016, 34, 38, 59, 119.
68 IEC, vol. 8, chap. 12.1, 573, note 75.
69 IEC, vol. 3, chap. 2.2.

Economising on expenses was also frequently the reason behind decisions to detain mentally disturbed individuals in poorhouses or correctional labour facilities, rather than in more costly psychiatric clinics or socio-educational institutions.

4.4 LIVING WITH DETENTION: BETWEEN IMPOTENCE AND RESISTANCE

What options were available to the individuals concerned for defending themselves when facing a detention order? The written records provide evidence of a broad spectrum of possible reactions ranging from determined resistance to complete resignation. They also bear witness both to the powerlessness of the targeted individuals and to their ability nevertheless to preserve their dignity when confronted by the sheer hopelessness of their situation. It must be recalled, however, that it was not possible for all of those who were subject to detention measures to put their thoughts into writing or, if they did, to avoid censorship. The records that have been preserved thus also provide testimony on behalf of a far larger number of former detainees whose voices were silenced.

TALKING TO THE DEAF: PERSONAL HEARINGS AND PROTEST LETTERS

As affirmed in the case law of the Federal Supreme Court, the right of individuals to be heard by the authorities before an order is issued in their regard has been a recognised fundamental right in Switzerland since the beginning of the 20th century.[70] Despite the fact that said right was routinely violated (see "Arbitrary orders: Law abuse by officials and systemic injustice", p. 153), it was, as a rule, expressly provided for in most administrative detention laws. When such hearings did take place, the authorities normally preserved a transcript. Those records attest to the ways in which the individuals concerned attempted to defend themselves against allegations and the threat of detention. Some of them also wrote letters to the authorities, though sometimes only after they had already been placed in detention. These were people who had been denied their right to be heard and who did not know why or for how long they would be held in closed

70 IEC, vol. 7, chap. 2.3.

detention. The letters are evidence of the ways in which these people coped in situations of extreme uncertainty.[71]

The individuals concerned deployed various strategies to counter the allegations of the authorities. Some refused to accept the stigma of being labelled as "indolent" or "dissolute", objecting that their difficulties were a consequence of general economic conditions, personal emergencies or domestic crises such as illness or death in the family. Others argued that the way they conducted their lives was entirely normal and that their drinking habits were harmless. Such denials and excuses were often simply a desperate attempt to defend the right to judge one's own life by one's own standards. In broken French, a female detainee from Valais defended her respectability before the authorities in 1958: "I didn't kill anybody, didn't steal anything, didn't make a scandal of myself. I always behaved respectably. […] I worked hard, bought land in the country, since in my heart I'm a country person. Recently, I bought this house for my son and me." In her own defence, she explained that there had been a dispute over an inheritance with her daughter, whom she apparently deeply mistrusted.[72]

Other administrative detainees admitted having made mistakes, but appealed to the understanding and compassion of the authorities and promised to "better" themselves in future. Still others attempted to obtain a postponement of their detention or to gain advantages by influencing the choice of the detention facility. "[…] I promise to lead a normal and industrious life," writes one woman in a 1940 letter to the Cantonal Commission for Administrative Detention of the canton of Vaud.[73] Some protested expressly against being held in detention in a penal correctional facility or claimed that detention was an unjust punishment. Others raised legal arguments in objection to the arbitrary manner in which the authorities had proceeded.[74] One women attempted in 1969 to avoid being placed in detention with the following words: "I would politely like to request that I be allowed, no matter what, to defend myself […], since I feel that every person has a right to defend themselves, because I would like to be convicted by a court[,] in other words, I would like a chance to justify myself

71 IEC, vol. 4, chaps. 1.1 and 1.3.

72 Letter to the Commander of the Gendarmerie, 5 March 1958, Archives de l'État du Valais, 5060-4, box 33, file 16/1959, quoted in IEC, vol. 4, chap. 1.1, 47 (minor orthographical corrections by the authors).

73 IEC, vol. 4, chap. 1.1, 37.

74 IEC, vol. 7, chap. 4.3, 2 and chap. 4.3.4; IEC, vol. 4, chaps. 1.1, 1.2 and 1.3.

and be detained by the normal procedure[,] since everybody has the right to defend themselves."[75] Some of those against whom a detention order had been issued succeeded in mobilising family members, friends or employers to intercede on their behalf. Parents or relatives promised to take them in or to help them find employment. In this way, they also guaranteed that there would be a certain degree of control.[76]

Even in cases where the individuals concerned were given a hearing, officials did not generally give serious consideration to their excuses or explanations. Transcripts of hearings – often referred to as "interrogations" in the older sources – show that they were almost never conducted in a manner that was intended to have any consequences. It is obvious that it made no difference to the officer conducting the investigation whether or not the accused defended themselves or what arguments they put forward. The explanations of the individuals concerned were consistently ignored and alternative interpretations of the facts were dismissed as excuses; officials preferred instead to simply uphold their preconceived bias and the attribution of such qualities as "indolence" or "dissoluteness".[77] Erna Eugster was targeted in a detention proceeding around 1970. She describes how, after being berated by the juvenile prosecutor, she admitted to having sexual relations with several men – men she had simply invented out of the blue, in order to protect the identity of people who had helped her to escape the last time.[78]

Those who tried to defend themselves were often penalised additionally. Officials took any attempt at contradiction as an attack on their authority and as a sign of a "lack of remorse" or of "defiance". They even took such conduct as a reason for submitting the individual in question to a psychiatric examination. The psychiatrists, for their part, tended to interpret uncooperative behaviour as a symptom of mental disturbance. Rebelliousness in any form was used as an excuse to take "harsher" measures and to launch an escalating spiral of reprisals. This was also true for those who tried to defend themselves against a detention order by taking legal steps.[79] Particularly favourable circumstances were required in order

75 Undated letter [1969], Archives de l'État de Fribourg, EB Det DI 1–565, quoted in IEC, vol. 4, chap. 1.3, 103 (minor orthographical corrections by the authors).
76 IEC, vol. 4, chap. 1.1.
77 IEC, vol. 4, chaps. 1.1 and 1.2; IEC, vol. 7, chap. 4.
78 Eugster 2014, 60–61.
79 IEC, vol. 7, chap. 4.2.

for resistance to achieve the desired result. Thus, for example, Erna Eugster succeeded with the help of a social worker in avoiding being sent to the Hindelbank correctional facility. Before that, she had refused to agree to "voluntary" detention.[80]

LEGAL REMEDIES WITH HIGH HURDLES

In some cases, there was a possibility for the individuals concerned to take legal steps to defend themselves against decisions of the authorities. Here, too, however, the disparateness of the statutory provisions made it difficult to obtain effective legal protection.[81] In cases where the authority to order administrative detention had been delegated to lower-level administrative bodies, there was often a way of appealing such orders before a superior authority or government council. Once the local government had reached a final decision, however, there were no further legal remedies available.[82] It was not until the 1960s that various cantons created a possibility for appeals before an administrative court (see chap. 2.5). Decisions by guardianship authorities were subject to appeals before several bodies all the way to the Federal Supreme Court. The individuals concerned could also file constitutional appeals against administrative detention orders issued under cantonal law, after all other legal remedies had been exhausted. In such cases, the Federal Supreme Court reviewed, on the appellant's motion, only whether the lower authority had violated the constitutional rights of the citizens concerned, in particular, the prohibition on arbitrariness and the right to a fair hearing. The scope of review was thus extremely limited.[83]

Even where the individuals concerned wanted to exercise the few rights that they had been granted, there were numerous hurdles and impediments to be overcome. Due process was thus severely impaired. The legal terminology itself was already a major hurdle from the beginning. By far not all of those affected had the linguistic and legal capability to even understand the decisions issued by the authorities. Information on the available legal remedies was often extremely scant. Sometimes it did not even reach the individuals concerned within the prescribed time limit. Even when such information was provided, however, it was difficult to for-

80 Eugster 2014, 54.
81 See the collection of laws published by the IEC: Gönitzer, Gumy 2019; Bossart 1965, 73–78.
82 IEC, vol. 7, chaps. 4.1 and 4.2.
83 IEC, vol. 7, chap. 2.3.

mulate legally arguable objections to the formulaic statements of grounds supplied by the authorities.

Without legal representation, there was little prospect of bringing an appeal before higher authorities or of getting to the Federal Supreme Court. Very few of those who received an administrative detention order had the financial means or contacts needed to obtain a lawyer to represent them. A right to public legal assistance was introduced in the canton of Vaud in 1946 (albeit only for a part of the procedure), and in the canton of Bern in 1966, subject to certain conditions. In the canton of Zurich, the Government Council discussed the question of obligatory legal representation towards the end of the 1960s, but did not resolve upon any amendment to the law.[84] It should be kept in mind, however, that such a right was still far from being considered self-evident, even in connection with criminal proceedings, until well into the 1970s.[85] The canton of Vaud provides a good example of the fact that legal support could definitely be effective. In two-thirds of the cases in which lawyers were involved, they were able to achieve an improvement in their clients' situation. At the same time, however, even those who were represented by a lawyer faced various obstacles. Appeals did not normally have suspensive effect. Once the individual concerned had been placed in detention, however, contact with the outside world was subject to strict controls. In addition, the authorities refused to allow detainees and their lawyers access to the records, arguing that the identity of their sources had to be protected. It was thus practically impossible to refute accusations that were frequently based only on rumours and denunciations.[86]

Despite the weakness of their stand, the individuals concerned surprisingly often made use of the available legal remedies. The number of detention orders that were appealed in the cantons studied varied from between 10 and 40 percent, depending on the period. In this connection, the extension of access to the administrative courts starting in the 1960 played an important role. In Zurich, women who had been accused of engaging in prostitution successfully defended themselves in appeals against application of administrative detention law. In the canton of Bern, too, the pos-

84 IEC, vol. 3, chaps. 3.1 and 4.2; IEC, vol. 7, chap. 4.2; Rietmann 2013, 268–269. The right to public legal assistance applied in the canton of Vaud for proceedings before the Cantonal Commission for Administrative Detention, but not proceedings under the laws for curbing alcoholism.

85 Schubarth 1973, 218–228.

86 IEC, vol. 7, chap. 4.2; IEC, vol. 4, chaps. 1.1 and 1.2.

sibility of bringing appeals before the administrative court, newly introduced in 1966, also had a moderating effect. Overall, however, the chances of succeeding before the courts were low. Depending on the context, the percentage of fully or partially granted appeals remained within the one-digit to low two-digit range. For the Federal Supreme Court to overturn a decision by a lower authority – for reasons other than denial of due process – remained a rare exception (see "Success against the arbitrariness of office", p. 94). As a rule, the appellate authorities, both administrative and judicial, upheld the decisions of lower authorities.[87] For administrative detainees, legal remedies, insofar as they were available at all, were thus usually only another source of false hope.

IMPOTENT RESISTANCE: CHANGE OF ADDRESS, FLIGHT AND SUICIDE

In view of the meagre chances of obtaining a fair hearing, many of those targeted by an administrative detention order attempted to physically remove themselves from the grasp of the authorities. Some moved to a new village or city, or to a different canton, when they saw there was a risk of being placed in detention. The success of such attempts, however, was limited: the arm of the authorities often reached beyond the bounds of their own municipality or canton. The records on the individuals concerned were forwarded to the authorities in their new place of residence, who then intervened again. Until the 1970s, individuals in need of welfare assistance could be sent back to their canton of origin, where there was a risk that they would once again be placed in detention. Other alternatives, to which, however, there were both linguistic and financial obstacles, included flight to another country or, as a final resort, at least for men, joining the French Foreign Legion.[88]

Sometimes those facing an administrative detention order ran away while the proceedings were still under way – when summoned for interrogation, for example. Others fled after they had already been committed to an institution. Escape attempts were particularly common in facilities for the detention of juveniles. For the detainees, individual or collective escape attempts were often the only means available for freeing themselves from the isolation, the insecurity and the daily discipline and violence of a "to-

87 IEC, vol. 7, chaps. 4.1 and 4.2; Rietmann 2013, 276–277.
88 IEC, vol. 7, chap. 4.3; Huber 2017, 16, 78, 195.

tal institution". "[…] I'm a healthy man and I don't want to go mad in this damned place that's supposedly a hospital," explained a former detainee in 1959 the reasons for his flight from the La Valletta alcohol treatment centre.[89] In most cases, escape offered only a short-term respite. The escapees were usually caught within just a few days by the police or the search squads of the facility in question and were returned to detention. There they could expect reprisals in the form of disciplinary measures (confinement, deprivation of food or even beatings) or an extension of their term of detention. Escape attempts could also negatively influence their chances for early release from detention. In the case of juveniles who attempted to escape, it was common to transfer them to a facility with stricter security, or even to a correctional facility for adults (see chap. 5).[90] There were also detainees, who, rather than attempting to escape, went on hunger strikes in reaction to being places in closed detention.[91]

An extreme form of impotent resistance was suicide. Although the source material does not allow for any conclusions concerning the number of such cases, various examples are known of detainees who, in a moment of desperation or hopelessness, committed or attempted to commit suicide. In the canton of Vaud, the matter was even discussed at a 1949 meeting of the Grand Council, after a number of individuals under the surveillance of the Cantonal Office of Alcohol Control had taken their own lives. Among them was also the lawyer from the canton of Vaud mentioned above, whose attempts in the 1940s to regain control over his life remained without success. In the end, he decided that his physical death was preferable to a social death.[92]

4.5 INTERIM CONCLUSION: UNPREDICTABILITY AS STRUCTURAL VIOLENCE

Which actors, administrative procedures, social exclusion and stigmatisation processes played a decisive role in the use of administrative detention measures? A consequence of the fragmentation of the legal regimes was

89 Letter from M.B., 9 February 1947, Archivio di Stato del Cantone Ticino, La Valletta 68.3.3, quoted in IEC, vol. 4, chap. 3.2, 318.
90 IEC, vol. 4, chaps. 1.3 and 3.2; IEC, vol. 7, chap. 4.3; IEC, vol. 8, chap. 9.
91 IEC, vol. 4, chap. 1.3.
92 IEC, vol. 4, chap. 3.1, 297–299; IEC, vol. 7, chap. 4.3, 3.

that detention practice was governed by an overwhelming range of diverse actors and rules. This notwithstanding, it is possible to identify two distinct paradigms that informed the detention policies of the individual cantons. The first was a more or less repressive-punitive type of regime that relied on weak governmental structures and, even after 1945, closely followed the traditional regimes for dealing with the destitute. The second was a detention regime subject to much more detailed statutory regulations and a highly structured bureaucracy, and which was designed to promote social normalisation.

The variety of applicable regimes resulting from Switzerland's federalist system of government doubtless contributed to the lack of transparency and to the unpredictability of the procedures. It would nevertheless be mistaken to attribute the problems of arbitrariness on the part of the authorities to this heterogeneity. The fact that various procedural regimes existed side by side was not necessarily to blame for the arbitrary decisions taken by administrative officials. Far more important in this regard was that detention procedures were marked by substantial power asymmetries and were in fact designed to perpetuate social inequalities. Here, class and gender-specific factors were interlinked. Men from the lower echelons of society were particularly exposed to the risk of official interventions. Women, by contrast, could be made subject to stricter discipline by means of informal control mechanisms. Throughout the entire period of the present inquiry, there was a blatant power imbalance between the authorities and those affected by their decisions. The former had at their disposal very wide margins of discretion, subject to almost no oversight. Even more progressive trends – such as improvements in record-keeping, consultation with medical-psychiatric experts, or the introduction of therapeutic approaches to replace exclusively repressive measures – did not necessarily work to the advantage of those concerned. In some cases, the result was that they found themselves trapped more tightly in the "bureaucratic mill". One reason for this was that the introduction of legal remedies lagged behind those developments, so that there were still few means available to the individuals concerned for defending their rights. In most cases, the various authorities mutually supported each other. It was not until the 1960s that it became possible to have administrative detention orders reviewed by an independent body.

Administrative detention measures were the last stage in a series of progressively more severe control and disciplinary measures. The processes

involved were complex and dynamic. Stigmatisation and other forms of social exclusion, as a prelude to official intervention, played an essential role. Determining which individuals were potential candidates for administrative detention was the result of processes involving the whole of society, and in which many actors – and not just the public authorities – played a part. From the point of view of the authorities, administrative detention measures were not a first choice. They were ordered only after the individuals concerned had been stigmatised, when other assistance options were lacking, or when public officials or persons of authority saw themselves challenged by demands from "below". They were a default option for the authorities, a means of responding to problems and conflicts that could not otherwise be resolved or only at much greater financial expense. Administrative detention constituted both an implicit, ever-present threat, by means of which it was possible to compel cooperation and submission, and a genuine option for removing disruptive or undesirable individuals from society or for avoiding costly foster care measures. The gap-filling function was particularly pronounced in cases involving the detention of juveniles who had broken out of the vicious circle of placement in harsh foster care environments.

For those who received an administrative detention order, the procedure was unpredictable and impenetrable. Various mechanisms were in place to prevent them from asserting their rights and from being taken seriously by the decision-making authorities. The arbitrary manner in which the authorities conducted themselves was also, but not exclusively, a result of procedural violations. Such violations were of a systemic nature inherent in the laws themselves and the regimes for implementing them. The unpredictability of decisions was not a by-product of the system; it was intrinsic to the logic thereof. The political leadership and public authorities accepted legal uncertainty and human suffering as the price for maintaining their own freedom of action and discretionary powers. Administrative detention policies reinforced existing stigmatisations and discrimination, rather than compensating for them. Despite the fact that many of the individuals concerned put up resistance and that some of them even succeeded thereby, they remained largely at the mercy of the authorities. This combination of social marginalisation and *de facto* disenfranchisement offers a striking example of structural violence.

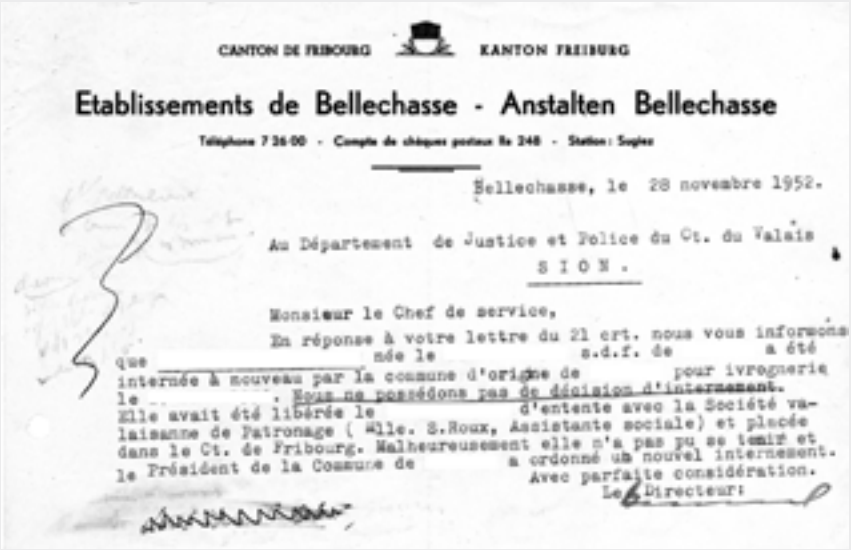
SOURCE 3:

DISREGARD OF PROCEDURE

On 28 November 1952, the director of the Bellechasse facilities in the canton of Fribourg informed the Department of Justice and Police of the canton of Valais that R.S. was being held in detention in those facilities. The 41-year-old woman had been there since 27 March. This was also not the first time she had been detained in Bellechasse. Her detention had been ordered by the head of the municipality of which she was a native, in the French-speaking part of the canton of Valais. The stated reason for the measure was her alleged habitual "drunkenness".

The manner in which the municipality proceeded in this case was clearly in violation of the applicable procedural rules. While the municipality was permitted under the 1950 Administrative Detention Ordinance to order such detention, decisions of that kind required confirmation by the cantonal Department of Justice and Police before being enforced. In the case at hand, despite the fact that no such confirmation had been obtained, the woman in question had already been consigned to Bellechasse for some eight months. In other words, because the municipality had bypassed the competent cantonal authority, the woman's detention was unlawful. This case also illustrates another point – namely, that it was apparently common practice for the Bellechasse administration to agree to detain individuals on sight – in the expectation that the competent authorities would deliver a proper detention order at some point in the future. This was by no means an isolated case. Similar violations of legal procedure routinely occurred in other cantons, too. The tendency of local officials to act on their own authority was further encouraged by the failure of higher authorities to exercise strict oversight.

The case attracted notice only because R.S. had resisted. The letter dated 28 November 1952 was actually a response to an inquiry. Prior thereto, the Department of Justice and Police of the canton of Valais had received a complaint from R.S., in which she claimed that she had been unlawfully placed in detention. She had neither been given a hearing, she explained, nor had she been given a copy of the order setting out the grounds for her detention. In response to that complaint, the Department of Justice and Police had sent an inquiry to Bellechasse with regard to the detention order, in answer to which the director sent the letter here cited.



CANTON DE FRIBOURG KANTON FREIBURG

Etablissements de Bellechasse - Anstalten Bellechasse

Téléphone 7 26 00 - Compte de chèques postaux IIa 248 - Station: Sugiez

Bellechasse, le 28 novembre 1952.

Au Département de Justice et Police du Ct. du Valais

S I O N .

Monsieur le Chef de service,

En réponse à votre lettre du 21 crt. nous vous informons que nde le s.d.f. de a été interné à nouveau par la commune d'orig ne de pour ivrognerie le . Nous ne possédons pas de décision d'internement. Elle avait été libérée le d'entente avec la Société vaudoise de Patronage (Mlle. S.Roux, Assistante sociale) et placée dans le Ct. de Fribourg. Malheureusement elle n'a pas pu se tenir et le Président de la Commune de a ordonné un nouvel internement.

Avec parfaite considération.

Le Directeur:

Under the 1950 Administrative Detention Ordinance of the canton of Valais, before being placed in detention, R.S. should have been given a hearing and informed of her right to appeal the order against her. The cantonal Department of Justice and Police was thus quite firm in the inquiry it addressed to the municipal authorities. The latter were given ten days to furnish a grounded detention order for R.S., in the absence of which they would be required to release her. This did not occur, however. It appears that an agreement was reached between the municipal and the cantonal authorities. Shortly thereafter, the canton informed R.S. that the decision to return her to custody was not considered to be a new administrative order, but only the resumption of an interrupted term of detention under a prior order. That being the case, the cantonal authorities saw no reason to reverse the municipality's most recent decision to place her in detention. The conduct of the cantonal government in this case was typical of the manner in which the rights of detainees were dealt with. As in numerous other cases, the higher authorities preferred to offer their protection to the lower authorities, rather than to the individuals appealing against the latter.

The correspondence in this case did not remain entirely without consequences, however. In the follow-up, the Department of Justice and Police requested of the Bellechasse administration that, in future, they refuse to accept any new detainees from the canton of Valais unless a legally valid

detention order was produced. This provides further evidence that R.S. was not an isolated case. The canton's efforts to put an end to the arbitrary conduct of the municipalities do not, however, appear to have been very successful. This can clearly be inferred from another letter from the Bellechasse administration written in 1964 – that is, a full twelve years after the correspondence discussed above. In that later letter, the director of Bellechasse warns the Valais authorities that, in future, he will refuse to accept any further detainees from the canton of Valais unless a legally valid detention order is produced.

Sources: Archives de l'État du Valais, 5060 4, box 32, file 5/56.
For further informations: IEC, vol. 4, chap. 1.1; IEC, vol. 7, chap. 3.

SOURCE 4:

EXPERT OPINION WITH FAR-REACHING CONSEQUENCES

The medical opinion concerning J.G., prepared by the Cery Psychiatric Clinic, near Lausanne, on 17 August 1945, is barely ten pages long. It was authored and signed by a psychiatrist, some six weeks after J.G. had been committed to the clinic for observation. The authorities were in need of an expert medical opinion in order to decide on further steps to be taken with regard to the then 52-year-old unskilled labourer. Under the canton of Vaud's alcohol legislation, adopted in 1941, a medical assessment of an individual's chances of recovery was mandatory. Other cantons also had similar laws at this time, although the degree of importance attributed to such medical opinions varied. The canton of Vaud relied particularly heavily on the opinions of psychiatrists, and less on those of general practitioners.

The Lausanne opinion provides an example of the way in which such documents were structured. It begins with a description of the subject's background, his family circumstances and the social environment of his childhood and adolescence. This is followed by a portrayal of his conduct in the military and a review of his employment history. The opinion also discusses J.G.'s relations with the opposite sex and the relationship he is currently in. The author of the opinion consistently names the sources of his information: relatives, friends, the municipal authorities of his home city, or other government offices involved. A separate section is devoted to the psychiatrist's clinical findings. The opinion ends with a set of conclusions, which includes both a diagnosis and recommendations for the future.

The psychiatric opinion is remarkably detailed and goes far beyond a simple diagnosis of alcoholism. Although the psychiatrist claims that his diagnosis is based on his clinical findings, he attaches at least as much significance to the fact that J.G.'s father and grandfather had already had a reputation for their abnormal drinking behaviour. The author of the opinion takes the subject's life history not only as confirmation of his diagnosis, but also examines it for indicators and evidence that support his findings. The notion of inherited illness – the idea that non-conformist behaviour is genetic – was a widely held view in forensic psychiatry up to the 1970s.

J.G.'s own statements were not taken seriously by the psychiatrist. Instead, J.G. is accused of trying to rationalise his situation and of always putting the blame on others. According to the opinion, J.G. is an "inveter-

ASILE CANTONAL
DES ALIÉNÉS
ET
MAISON DE SANTÉ
DU
BOIS DE CERY
près LAUSANNE (Suisse)

CLINIQUE PSYCHIATRIQUE
UNIVERSITAIRE

Téléphone 3 77 74

Cery, le 17 août 1945

Office cantonal de Surveillance
et de Thérapeutique anti-alcoolique
Caroline 4
Lausanne

Au/J.

Le 30 juin 1945, vous avez envoyé dans notre établissement M. [redacted], célibataire, né le 6.8.93, originaire de Bex, où il est domicilié. Nous vous adressons le présent rapport à son sujet.

Antécédents héréditaires et personnels.

[redacted] n'est pas le premier buveur de sa famille. Son père, deux oncles paternels et, dans une certaine mesure, son grand-père maternel, buvaient trop. Il a été suivi dans cette voie par son jeune frère, connu de l'office. La mère du patient était un peu drôle, mais nous ne savons pas exactement jusqu'à quel point. [redacted] lui-même estime qu'elle n'était "pas très vive, pas très intelligente", mais très bonne personne. La soeur du malade doit être oligophrène.

[redacted] est né à Bex où son père était jardinier. Sa mère avait des vignes. Son père aurait été très bon et l'objet de la jalousie de ses voisins. Le patient s'entendait bien avec sa famille, dit-il. A l'école, il était dans la bonne moyenne. Il fit ensuite une saison dans un hôtel de Menton (France) mais, n'étant pas apte à ce travail pour lequel il aurait fallu savoir plusieurs langues, il s'engagea dans une pension où il faisait des travaux plus simples, puis rentra en Suisse parce qu'il avait le mal du pays. Il travailla à la campagne, soit en place, soit sur le rural paternel. Il travailla aussi à la vigne,

Conclusions.

Les antécédents et nos examens nous permettent de conclure que M. [redacted] est atteint d'alcoolisme grave, manifesté par des troubles physiques, intellectuels et affectifs. L'échec des mesures préliminaires et l'impénitence du patient imposent un internement. L'alcoolisme de [redacted] compromet sérieusement sa santé, sa situation et la tranquillité de sa famille. Nous osons toutefois espérer que le malade est curable par un internement prolongé. Nous proposons donc un internement d'un an dans un établissement pour buveurs.

Au bas

d'accord avec le présent rapport et la conclusion

Dr. G. Schneider

ate drinker" with poor powers of discernment. "The failure of prior measures and the patient's lack of remorse render detention imperative." This notwithstanding, in the psychiatrist's view, there is hope that the subject examined could be "curable" – by means of prolonged detention in a so-called sanatorium for alcoholics. This observation proved to be of crucial importance for J.G.'s future. Under the 1941 canton of Vaud law, the distinction between the "curable" and the "incurable" could have a considerable impact on the term of detention and on the choice of detention facility.

Based on the psychiatrist's recommendation, J.G. was initially committed to a sanatorium for alcoholics. The Department of Justice and Police that was responsible for issuing the order took reference to the diagnosis, according to which the subject of the order was "suffering from severe alcoholism manifested by physical, intellectual and emotional disturbances". The opinion remained in J.G.'s file permanently and was transmitted to the various offices that were involved in his case. The latter were then able to take the psychiatric evaluation as the basis and justification for their decisions.

The records on J.G. provide a good illustration of the impact that psychiatric opinions could have. Research has revealed how selective psychiatrists could be in choosing what information they considered relevant and how often they described assumptions as actual facts. Without any possibility for the individual concerned to respond to the allegations or to the diagnosis, such statements were entered permanently into the record. As documented "facts" they had a determinant influence on the way the authorities dealt with the individual concerned.

Sources: Archives cantonales vaudoises, KVIII f 185, dossier 1744.
For further informations: IEC, vol. 9; IEC, vol. 7, chaps. 2.1.1 and 3.5; IEC, vol. 3, chap. 2.3.

5 LOCKED AWAY: THEORY AND REALITY IN THE ENFORCEMENT OF ADMINISTRATIVE DETENTION MEASURES

> "It's the greatest mistake and a big lie to claim that they wanted to turn us into better, more helpful people, fit for living. The opposite is true: they took every opportunity to show us what kind of useless, deceitful, indolent and dissolute creatures we were."[1]

The political leadership and the administrative authorities consistently justified administrative detention measures as a means of providing welfare care, reformatory education and therapy. By means of temporary incarceration, individuals living in precarious circumstances were to be bettered, educated to become useful and industrious citizens, so that they could be reintegrated into normal social and working life. The official attitude suggested that administrative detention measures were ordered also in the interest of those concerned. Former detainees, such as Erna Eugster, paint a different picture: they speak of uncertainty, isolation and helplessness, of violence and abuse, of humiliation and exploitation. For them, closed detention was a traumatic experience that weighed on them and handicapped them for the rest of their lives. This all the more so because many of them had been placed in penal correctional facilities without having ever committed any crime. The feeling of injustice that came with the loss of their personal liberty was compounded by the actual ordeal of being compelled to live in a closed facility.

The discrepancies between the officially propounded theoretical arguments and the profound effects of the experience on the individuals concerned are glaring. The deprivation of personal liberty, which was justified as a means of assistance and education, had the *de facto* effect of socially marginalising the individuals concerned. The humiliation and discrimination of which former detainees like Erna Eugster render account, were experienced not only while they were in detention; the effects continued to be felt throughout their entire lives. How can this discrepancy be explained historically? What factors were responsible for the fact that

1 Eugster 2014, 133.

life in a detention facility meant only suffering and discrimination? The present chapter focuses on three main issues. First, there is the question of the structures and evolution of the institutions to which responsibility for these contradictions can be attributed. This makes it possible to consider, in their historical context, the detention facilities that the IEC has studied in greater detail: Bellechasse (Fribourg), Hindelbank (Bern), Uitikon (Zurich), Richterswil (Zurich) and La Valletta (Ticino) (chap. 5.1). Second, we will provide a closer look at daily life in the detention facilities and observe the ways in which detainees came to terms with the experience of isolation, repression and violence (chap. 5.2). Third, we will describe the conditions under which detainees were able to regain their freedom and the control mechanisms that continued to operate even after their release (chap. 5.3).

5.1 THE SWISS INSTITUTIONAL LANDSCAPE: STRUCTURES AND EVOLUTION

The glaring discrepancy between the justifications put forth for administrative detention and the reality of its execution can only be properly understood by considering the structures and evolution of the Swiss detention system. What types of institutions were the facilities to which the authorities sent individuals whose administrative detention they had ordered? Why were administrative detainees also housed in penal correctional facilities and juveniles in facilities for adults? Who was responsible for the funding and supervision of these facilities? The purpose of this sub-chapter is to describe the structures that contributed to the discrepancies between detention theory and detention practice.

HETEROGENEOUS INSTITUTIONAL LANDSCAPE: 648 DETENTION FACILITIES

Administrative detention orders were enforced in various types of facilities. The IEC identified 648 institutions for adults and juveniles that served between 1930 and 1980 in some capacity in the enforcement of such orders.[2] This number does not include homes for children, which did not belong to the subject matter of the present inquiry. The institutions in question were dispersed throughout the whole of Switzerland. Like the

2 IEC, vol. 6, chap. 2.

laws under which administrative detention was ordered, they are a reflection of Switzerland's federalist system of government. In the literature on the subject, it has become common usage to refer to this network of detention facilities as the "institutional landscape". The term is fully intended to have a critical connotation. It is suggestive of the fact that the picturesque landscape that plays such an important part in Switzerland's own self-image was always also a topography of confinement and exclusion – and remains so to this day.

The Swiss institutional landscape evolved over time and remains today extremely heterogeneous in nature.[3] Its history can be traced back to hospitals dating to the Middle Ages and workhouses and gaols from the 17th century. As in other countries, over the course of the 19th and 20th centuries, a growing number of institutions were established in Switzerland that were specially designated for dealing with specific target groups and which also served for the enforcement of administrative detention measures. These institutions, which were sometimes entirely closed and sometimes partially open, were often located far from the country's urban centres. Included among them were correctional labour facilities and penal correctional facilities for adults, reform schools for juveniles, treatment facilities for alcoholics, homes for unwed mothers, and psychiatric clinics. Common to all of these institutions was their mission to solve social problems by means of the temporary confinement of "endangered" or "dangerous" individuals. Exclusion from the community was often accompanied by a duty to work, in the expectation that this would primarily have either an educational-therapeutic or a disciplinary-punitive effect, as the case may be. The idea was to take advantage of the manpower of the detainees, while at the same time habituating them, through discipline and labour, to conducting themselves in conformity with social norms.

Responsibility for constructing and operating the facilities lay with the cantonal, district and municipal governments, or with privately run organisations. This gave rise to a multiplicity of actors with a formative influence on the Swiss institutional landscape. Among the privately run organisations were also charitable and professional associations that worked in close cooperation with the government offices. Equally diverse were the mechanisms for the funding, direction and oversight of the institutions, which differed from canton to canton and gradually grew in complexity.

3 Wolfensberger 2010; Tanner 1998; Schoch, Tuggener, Wehrli 1989.

Between the public and private – often religiously affiliated – institutions, a kind of division of labour gradually took shape, although the dividing line was never precisely marked. Publicly run institutions, such as penal correctional facilities or correctional labour facilities, were more intended to fulfil a punitive-security function. Those that were privately run, such as reform schools or alcohol treatment centres, on the other hand, had a more educational-therapeutic function. Another important structural feature was the segregation of detainees by age and gender. It was an accepted rule that minors and adults, and men and women, should be housed in different facilities or at least in separate areas.

The heterogeneity of the institutional landscape and the absence of a comprehensive structure or unified development make it difficult to provide a general overview. A further difficulty derives from the fact that the manner in which the different institutions were designated was not systematic. The designations reflect more the stated objective of the operators than the actual reality. Institutions with a similar profile were sometimes designated differently, while institutions that, by name, belonged to the same category often had widely discrepant regimes. The introduction of the Criminal Code in 1942, which described in some detail different categories of enforcement facilities (juvenile reform facilities, correctional labour facilities, etc.), did bring some degree of order into the terminology. The way detention facilities were defined on paper, however, did not necessarily correspond to the physical features of the institutions in question. According to the law, a designated area of an institution could also take on the function of a "detention facility". Each institution could thus comprehend several "detention facilities" in legal terms (and such complexes were often referred to in the plural as "facilities").

Despite these difficulties, it is possible to divide the various institutions that served for the enforcement of administrative detention measures into three roughly defined groups.[4] To the first group belong forced labour facilities (*Zwangsarbeitsanstalten* / *établissements de travail forcé*), that is, facilities that were designed from the outset to "educate for work" individuals placed in detention by non-judicial order. Among such institutions were those of Kalchrain (Thurgau, 1849), Bitzi (St. Gallen, 1871), St. Johannsen (Bern, 1884), Sedel (Lucerne, 1885) and Kaltbach (Schwyz,

4 On what follows: IEC, vol. 6, chap. 2. The more detailed classification found there is presented here in simplified form.

1896). There was a total of just under two dozen such institutions. Some of them changed or extended their function in the 20th century, housing, for example, also convicted criminals or suspects in pre-trial detention.

The second group of institutions includes multifunctional facilities, which housed, in addition to administrative detainees, also other groups of individuals. This group comprises between 400 and 500 institutions. Among them are some 300 facilities for the destitute, which were converted into welfare assistance or old-age homes in the post-war era. The number of institutions belonging to this group is, in itself, a clear indication that the accommodation of administrative detainees together with other categories of people was more the rule than the exception. The institutions themselves, whose functions fell within the broad spectrum that lies between welfare care and penal correction, had diverse profiles. Poorhouses were institutions for "closed welfare assistance", which housed people in need or were used for the detention of "troublesome" welfare recipients. Also considered as welfare institutions were labour colonies, which provided shelter for unemployed men. Juvenile reform facilities and correctional (labour) facilities (*Erziehungs- und Arbeitserziehungsanstalten* / *maisons d'éducation et établissements d'éducation au travail*) were designed for the "reform" of delinquent or "neglected" juveniles and young adults. Alcohol treatment centres provided treatment for alcoholism, either on a voluntary basis or by order of the public authorities.

This group includes facilities that were also used for purposes of penal correction. Many cantons committed administrative detainees to facilities that were also used for the enforcement of gaol and prison sentences. These institutions cannot, however, be designated across the board as penal correctional facilities or as prisons, even if they were thought of as such by the general population. Frequently, they were multifunctional institutions which, sometimes from the outset, sometimes at a later point in time, provided custody for diverse groups of individuals. The facilities were sometimes divided into different sections. In many of them, however, a rigorous segregation of the different categories of occupants never occurred (see "Stigmatised once more: Administrative detainees in penal correctional facilities", p. 185). In the 1960s, the Hindelbank facilities (Bern), for example, performed the function of a juvenile and an adult correctional labour facility, an alcohol treatment centre, a prison, a gaol, an asylum and a detention centre. In reality, the women held in Hindelbank were never, or only exceptionally, housed separately based on the grounds for their detention.

The third group comprises institutions that were not specifically designed for purposes of administrative detention, but which were nevertheless often the cause of particularly traumatic experiences for the individuals concerned. Among them were some 140 local prisons where administrative detainees were held temporarily after being taken into custody or captured after an attempted escape, and psychiatric clinics where the individuals concerned were hospitalised for purposes of observation or to temporarily "relieve" other institutions.[5]

The various facilities differed from one another also in terms of size: privately operated institutions for juveniles or alcohol dependants tended to have fewer places, while combined correctional facilities (sometimes with labour colonies and alcohol treatment centres attached) and psychiatric clinics normally had a large capacity for detainees. Between the two extremes there were many gradations. Excluding poorhouses, local prisons and psychiatric clinics, the total capacity of detention facilities available in Switzerland during the period under inquiry was between 8,400 and 12,000 places, of which the number occupied by administrative detainees varied over time, ranging from 50 percent in 1935 to 4 percent in 1980.[6]

The institutional landscape was also geographically heterogeneous. Far from all of the cantons had at their disposal a sufficient and varied range of alternatives. The cantons attempted to compensate these disparities through more intense cooperation. For that reason, after the Second World War, more network-like structures began to develop. A driving force behind this trend was the placement of administrative detainees (and convicts) in facilities operated by other cantons. Cantons that maintained a large number of institutions were interested in fully exploiting their capacities by accommodating detainees from other cantons. Conversely, for the smaller cantons, it was less costly to place their own detainees in facilities not on their own territory. In 1954, the authorities in Aargau were working in cooperation with 37 extra-cantonal institutions; by 1965, that number had risen to as many as 42. The city and canton of Geneva availed itself in those same years of eight and ten extra-cantonal facilities respectively. Facilities such as Bellechasse and Witzwil, which deliberately sought to fully exploit their capacities by means of "extra-cantonals" developed into miniature replicas

5 See IEC, vol. 1, 37–38, 54, 195–196, 203.
6 IEC, vol. 6, chap. 3.2, table 10.

STIGMATISED ONCE MORE: ADMINISTRATIVE DETAINEES IN PENAL CORRECTIONAL FACILITIES

It was not unusual for the authorities to commit administrative detainees to facilities that were also used for the enforcement of penal sentences or other criminal correctional measures.[1] Among such detainees were also minors who were sometimes placed in an adult penal correctional facility after they had run away from a home for juveniles. Rigorous segregation of the different groups of inmates did not occur in most facilities – and was not even formally required in some places. The provisions on the segregation of inmates contained in the Criminal Code – which were also not rigorously adhered to – applied only to individuals who had been convicted of a crime.[2] In many facilities, segregation applied only with regard to sleeping quarters and confinement periods; during the day, labour was performed jointly. The lack of possibilities for segregating inmates was particularly acute in institutions and facility quarters for women (Bellechasse women's block, Hindelbank). Because priority was given to gender segregation, and only a small number of institutions were available for women, it was more common for them to be housed jointly. In Hindelbank, the status of the women inmates was clearly signalled by the colour of their uniforms – blue for convicts, brown for non-judicially detained women. In local prisons with single-occupancy cells, there was often no gender segregation at all.

Because they were housed together, administrative detainees came to feel that they were being treated as criminals, even though they had not committed any crime. The injustice they suffered was compounded by stigmatisation. In the general population, multifunctional institutions such as Hindelbank, Bellechasse and Regensdorf were known as prisons. All those who were released from them bore the stigma of being a "jailbird" and, out of shame, avoided speaking of their time in the facility. "The 'administratives' had to live with the stain of having spent time in prison," remarked former Thorberg inmate Hans Vonmaur in 1954.[3] Joint housing also meant

1 Placements in penal correctional facilities were sometimes based on statutory provisions, sometimes on policies that had become customary practice; see Knecht 2015, 22–24. Individuals committed to a facility under the provisions of criminal law were there to serve a sentence or for the enforcement of (criminal) measures of security or treatment.

2 These included, in particular, convicts sentenced to a prison or gaol term, individuals who had been committed to a correctional labour or alcohol treatment facility, or juveniles who had been sent to an adult correctional facility.

3 Vonmaur 1954, 72. See also IEC, vol. 9, source no. 29.

that administrative detainees, including juveniles, were in regular contact with convicted criminals. This experience could be very disquieting. Ursula Biondi recalls how, when she was in Hindelbank, at the age of 17, an older woman took pleasure in recounting to her the details of a brutal crime.[4]

Joint accommodation of different groups of detainees was only one – if also the most pronounced – example of how administrative detention came to be associated with criminal punishment. There were also overlaps and parallels in the detention procedures, the use of protective custody, release procedures and parole conditions. The consequence of all these similarities was that the opprobrium that society reserves for criminal offenders was also shifted onto those who had been non-judicially detained. From today's perspective, it is important, however, not to fall into the trap of a black and white portrayal of the situation. The injustice that was done to some cannot be set off against the wrongs committed by others. The stigmatisation and social exclusion of men and women who were sentenced to criminal punishment is no less in need of explanation than the treatment to which administrative detainees were subjected. It would thus be wrong to exclude the enforcement of criminal sentences and correctional measures from a critical inquiry into past detention practices.

What historical explanation can be found for the joint accommodation of individuals held in detention under an administrative order with those who had been convicted by a court of law? One reason for this was the similarity between the conceptions of enforcement that were applied in both cases. This was a precondition for the emergence of multifunctional institutions. The slogan "education through work" was central not only to the rationalisations given for administrative detention, but also for criminal correction. In keeping with the spirit of the draft proposals for a Criminal Code, officials responsible for criminal correction saw themselves as having a mission to "educate" prisoners so as to prepare them for "re-entry into normal middle-class life". Little thought was given to the circumstances that the system of having separate types of detention facilities and the punitive-disciplinary regime that prevailed in the institutions actually contributed to the process of social exclusion. The overlap between the different forms of enforcement was particularly pronounced where minors were involved. The juvenile rights movement of the early 20th century marched under the banner "education not punishment" and helped

4 Biondi 2003, 128.

to erase the distinction between delinquent and "neglected" minors. Juveniles, it was argued, should, where necessary, be reformed during their stay in a reformatory or correctional facility, regardless of the legal reason for which they had been placed there.[5] There was thus little controversy over the joint accommodation in correctional (labour) facilities, such as Uitikon or Richterswil, of juveniles who had been sentenced by the criminal authorities with adolescents and young adults placed in detention by guardianship or other administrative officials.

A second reason was of a purely practical and financial nature. As noted in the main text, many cantons decided not to maintain a more fully differentiated network of detention facilities due to cost considerations. Priority was given instead to exploiting the capacities of existing institutions to the fullest possible extent. In reality, the failure to separate the different categories of detainees from one another was often the result of situational policy decisions. The prejudicial effects of this on the individuals concerned was something that was accepted without demur. Thus, for example, in the canton of Fribourg, it was hoped that the centralisation of criminal correction in Bellechasse would ease the burden on the public treasury. In the following years, the existing penal colony was enlarged almost immediately and further buildings were later constructed for other categories of detainees (the women's block in 1916; the correctional facility for the treatment of alcohol abuse, La Sapinière, in 1919; the labour colony, Les Vernes, in 1928, a workhouse and the transformation of Les Vernes into a juvenile block in 1940). Bellechasse also housed "voluntary" detainees. Up until the 1960s, the number of non-judicial detainees was always significantly higher than that of inmates who had been convicted of a crime. Despite construction that was undertaken, the separation between the two groups, particularly where detainee labour was concerned, was never complete. In the women's block, no separation was made whatsoever.[6]

Hindelbank was the largest detention facility for women and, as such, has been the main focus of discussions over the present historical inquiry. It began as a labour facility for administratively detained women. In 1911, following a fire, the canton of Bern transferred the women's prison, St. Johannsen, to Hindelbank. This solution was initially intended to be only provisional, but gradually turned out to be permanent. In anticipation of

5 IEC, vol. 3, chap. 4.1.
6 IEC, vol. 8, chap. 2.2; Heiniger 2018, 336.

the new Criminal Code, the cantonal government decided against making any further investments in this area. Thus, from 1942 on, Hindelbank was operated as an institution capable of performing all enforcement functions provided for in the Criminal Code, while still continuing to serve as a labour facility for administrative detainees. Even after the remodelling of the facilities in 1962, in anticipation of a planned move, it was decided not to house administrative detainees separately from the others. As occupancy rates at Hindelbank declined and the consolidation of women's detention facilities throughout Switzerland appeared to be in the offing, the provisional solution once again became a permanent one.[7] A special case is the sanatorium for the treatment of alcoholism, La Valletta (Ticino). As an annex to the cantonal psychiatric clinic, it was originally intended to serve as an administrative detention facility. After 1942, however, it took on the additional function of a facility for the enforcement of correctional measures ordered under provisions of the Criminal Code. Here, again, different categories of detainees were housed jointly.[8]

A third reason relates to the transfer of minors to institutions for adults. In most cases, this resulted from a decision to impose harsher measures after the escalation of a conflict – following an escape attempt, for example, or increasing resistance to authoritarian educational practices. Juveniles who had been sent to a reform school by the authorities could later be transferred to a facility for adults. This practice was also a consequence of the lack of alternatives. For many years, there were no facilities available for older juveniles, with whom the juvenile reform facilities were no longer able to cope. There was a particularly glaring lack of options for female juveniles; in some places, it was not until the 1980s that this problem was resolved.[9]

During the 1930s, Parliament had decided for financial reasons not to oblige the cantons to establish specialised facilities. For this reason, under the terms of the Criminal Code, it was permitted, if necessary, to place minors in correctional facilities for adults, where they were to be housed separately, however (art. 93). The creation of alternatives was thwarted by a lack of will on the part of the cantons. The placement of minors in adult

7 IEC, vol. 8, chap. 2.2.
8 IEC, vol. 8, chap. 2.2.
9 Schürmann 1982.

detention facilities remained possible up to the 1980s.[10] Administrative and guardianship authorities proceeded in a similar fashion, even when they could not rely directly on provisions of the Criminal Code.[11] Particularly during the 1960s, the number of young women placed in detention in Hindelbank began to rise. Here, supply also had an influence on demand. In 1962, the facility administration had decided to set up a section for women with infants. As many homes refused to accept pregnant women, there was an increasing tendency to transfer them to Hindelbank, where they were subject to a more rigorous detention regime. A similar phenomenon occurred with the opening in 1973 of special a section for women who had not completed their compulsory schooling, for whom alternatives were lacking elsewhere.[12] While this did constitute an improvement with regard to the segregation of different categories of detainees, the young women in question were still compelled to contend with the stigma of having been inmates in the "Hindelbank Women's Prison".

10 Ordinances (1) concerning the Criminal Code, 13 November 1973 and 16 November 1983, art. 7, AS 1973, 1841, and AS 1983, 1616.

11 Hauss, Gabriel, Lengwiler 2018, 85–86; Germann 2018.

12 IEC, vol. 8, chap. 8.3, 387–388; Schürmann 1978, 138–143.

of Switzerland.[7] Bellechasse provides a good illustration of the way in which the repressive detention regime of a conservative canton was able to extend its influence to large portions of Switzerland. Intercantonal cooperation began to be institutionalised in the 1950s with the signing of three regional conventions on criminal correction (Eastern Switzerland, Northwest and Central Switzerland, and Western Switzerland). Those conventions established which functions were to be performed by the various institutions and which institutions would be used to house administrative detainees.[8] The consequence of the intercantonal agreements on detention practice for the individuals against whom a detention order was issued was that they could be placed in a facility remote from their homes or in a region with a different language. Contact with their families and a return to their professional and family lives following their release was thereby rendered more difficult.

Decisions on where to place detainees were not just a matter of compensating shortages of space or improving occupancy rates. Transfers from one facility to another – both intercantonally and within the same canton – also had a disciplinary function. As the institutional landscape became more differentiated, a graduated hierarchy between the various institutions emerged. It was now possible to transfer men and women from a (half-)open to a more stringent regime (or, at the least, to threaten them with such a transfer). Officials in the canton of Schwyz, for example, sent occupants of homes for the destitute (*Bürgerheime*) who refused to obey the house rules to the cantonal correctional labour facilities or – as a second step – to Bellechasse (Fribourg), Witzwil (Berne) or Lenzburg (Aargau). The progression could also move in the opposite direction. Administrative detainees who, in the view of the facility directors, conducted themselves well, or whose health had deteriorated, could be transferred to a nursing facility or labour colony with a less stringent regime.[9] Use of this graduated model played a particularly important role where juveniles were concerned. Here the progression moved from privately operated homes, where the emphasis was more on education, such as Richterswil (Zurich) or Erlenhof (Basel-Landschaft), to closed, state-run juvenile reform facilities, such as Vennes (Vaud) or Tessenberg (Bern) for young men, or Loryheim (Bern) for young women; thereafter came transfer to a penal correctional

7 IEC, vol. 6, chap. 2.4; Rietmann 2013, 79.
8 Fink, Troxler 2015, 170–172; Bossart 1965, 100–101.
9 IEC, vol. 8, chap. 14; IEC, vol. 1, 251–252; Lengwiler 2018, 187.

facility for adults. The possibility of transferring detainees provided the facility administration and the authorities an instrument for demonstrating authority and imposing discipline. Detainees who put up resistance or tried to escape would be transferred; those who cooperated could expect to be rewarded. For the individuals concerned, such "detention careers" were enervating and they brought with them only further stigmatisation: being transferred to a facility with harsher conditions brought home to them their own impotence and was seen by others as a sign of their "recalcitrance".

RESISTANCE TO CHANGE AND BELATED REFORMS IN THE POST-WAR ERA

Many of the institutions where, prior to 1981, administrative detention orders were executed dated back to the 19th and early 20th centuries. Often the buildings were former monasteries, manor houses or temporary purpose-built structures. Regardless of the type of facility concerned, the living conditions were bleak, and daily life was dictated by house rules and a work schedule that left little room for independence and self-development. The authoritarian attitude and chronic shortages of resources that had traditionally been the trademark of poorhouses and workhouses persisted well into the post-war era. While occasional reforms and the trend towards greater openness helped to alleviate these problems somewhat, in general, they continued to shape daily life in detention until well into the 1970s. The findings of the IEC confirm assertions in the scholarly literature to the effect that the rising prosperity and rapid shift in values that characterised the post-war era were tangibly felt within the institutions of the detention system only after a protracted delay (see chap. 5.2). As will be shown in this and the following section, this was primarily the result of three closely interrelated factors: resistance to change within the institutional structures, sustained underfunding, and inadequate oversight over the detention facilities.

The picture that emerges from a study of the evolution of the institutional landscape following the Second World War is highly inconsistent. Contrary to what is often maintained in the scholarly literature, it is only with major reservations that the institutional evolution that continued into the 1970s can be described as a process of growing specialisation and of putting new social and educational reform concepts into application.[10]

10 Lengwiler 2018, 187–188; Tanner 1998; Schoch, Tuggener, Wehrli 1989, 134–150.

This picture is accurate, at best, with regard to a small number of homes for foster children or specialised facilities, but can hardly be said to describe the situation at the majority of institutions where adults were held in administrative detention. Such facilities remained largely unreceptive to new concepts until well into the 1950s. Exceptions were dependent on single individuals or specific constellations of circumstances. While it is true that, after 1960, the trend to reform and greater openness became stronger, the changes that occurred were largely limited to infrastructure improvements and the relaxation of individual enforcement procedures. Poorhouses, for instance, repositioned themselves as asylums for the poor or welfare assistance homes, and discontinued the use of coercive means. Workers' hostels and male dormitories expanded their employment offers. Reform schools renovated buildings, introduced group systems, and improved their vocational training programmes. In the cities, juvenile observation and transition homes with a more strongly socio-educational orientation were established. In psychiatric clinics, many wards were opened and bars removed. In other institutions, there was some relaxation at least of the internal regimens: a larger spectrum of recreational activities was proposed, detainees were permitted to keep personal items in their cells or rooms, and visiting times were extended.[11]

Despite such reforms, the authoritarian attitude towards detention enforcement and reform education remained, for the most part, highly resistant to change. The emergence of low-threshold assistance alternatives for such things as the treatment of alcoholism only tended to reinforce this intransigence. Where alternatives to closed detention did arise and the number of administrative detainees began to decline, political leaders and the general population shifted their attention to non-custodial measures. Detention facilities continued to operate as a socio-political default option, but their status steadily declined. A good example is provided by Ticino: here plans drafted in the 1960s for giving the *Casa per intemperanti* in La Valletta a new orientation did not come to fruition. Subsequently, new methods of curing alcohol dependence, in particular, on an outpatient basis, came into use. Although La Valletta remained in operation until the 1970s, it was used only as a detention facility for the most severely addict-

11 Lengwiler 2019; Bähler 2017; Luchsinger 2016, 137–138; Hafner 2014; Jenzer 2014, 349–378; Huonker, Niederhäuser 2008; Huonker, Schuppli, Biasio 2003; Schoch, Tuggener, Wehrli 1989.

ed.[12] As this example shows, it was possible for the trend towards greater openness and liberalisation in one area to exist side by side with the continued use of repressive practices in another.

The tendency to intransigence was very pronounced in facilities intended primarily for adult criminal correction. This was particularly the case in rural correctional complexes such as St. Johannsen-Witzwil and Bellechasse. The admission of administrative detainees in these institutions – whose existence was statutorily required – was motivated, until well into the post-war era, by the wish to ensure maximum workforce occupancy, and to lower enforcement costs.[13] The joint accommodation of administrative detainees together with convicted criminals under the same roof remained a constant in the reality of the Swiss detention system (see "Stigmatised once more: Administrative detainees in penal correctional facilities", p. 185). Stagnation of the system was further exacerbated by the dilution and delay of institutional reforms that had been planned under the Criminal Code (1942). For budgetary reasons, Parliament had declined to mandatorily impose the strict segregation of inmate categories and granted the cantons prolonged transition periods for adapting their largely superannuated detention facilities.[14] While the new Criminal Code did not contain any provisions on administrative detainees, it was they who were the prime victims of the delay in institutional reform. On the one hand, the punitive character of the facilities became more pronounced as heavier emphasis was laid on criminal correction.[15] At the same time, the pressure to take action in the domain of criminal correction meant that consideration of the situation of administrative detainees was postponed for decades. Thus, for example, in the canton of St. Gallen, the remodelling of the Bitzi correctional labour facility was put off until the 1970s to allow for the construction of a new criminal correctional facility.[16] Similarly, although the plans for renovation of the Hindelbank facilities (1962) did make provision for the segregation of "first-timers" from "recidivists", no such segregation between "administratives" and convicts was foreseen.[17]

12 IEC, vol. 3, chap. 2.2; IEC, vol. 8, chaps. 2.2 and 2.3.
13 IEC, vol. 8, chap. 6.2; Rietmann 2013, 64–89; Heiniger 2018.
14 Germann 2015.
15 In many institutions that were originally used for the enforcement of administrative detention measures, the proportion of criminal detainees began to rise in the 1950s; see IEC, vol. 8, chap. 4.1; Rietmann 2017, 67; Knecht 2015, 93.
16 Knecht 2015, 89.
17 IEC, vol. 8, chap. 2.2.

More extensive reforms to the system of detention facilities were not undertaken until the 1960s. In actual practice, however, the effects thereof often did not become tangible until the 1970s – or even later. Changes in the treatment of juveniles, which took the centre of political attention following the introduction of Disability Insurance in 1960, served as a precursor to other reforms. Pressure for change was given added force by the criticism of reformatories by the 1968 protest movement and by the revision of juvenile criminal law in 1971. The principle of segregating detainees was now fundamentally questioned and new forms of providing care (group living, extended families) were developed. At the same time, new special facilities were created that made it possible to provide socio-educational counselling for "difficult" juveniles.[18] In (correctional) facilities for adults, even more time was needed before awareness for the rights of inmates, as defined in the UN Minimum Standards for the Treatment of Prisoners (1957), could take hold. Here, priority was given to infrastructure improvements and expanding the range of work and recreational activities on offer. As a broad-based survey of correctional facilities has demonstrated, a traditional view of discipline and the nature of correctional labour still prevailed in the mid-1970s. A more individually oriented understanding of resocialisation and counselling, combined with a political will to modernise enforcement of correctional measures did not gain the upper hand until the close of the period considered in this inquiry.[19]

CHRONIC UNDERFUNDING

The resistance to fundamental reforms was to a large degree a result of the chronic underfunding from which the facilities used for administrative detention suffered. The shortage of financial resources had a direct effect on the living conditions of the detainees. When compared to the public funds that were budgeted for other areas (education, military, road construction), the funds allocated for administrative detainees may be seen as a reflection of the low priority that was assigned to their situation by the political leadership and society as a whole. It is also difficult to provide precise estimates of facility budgets. Based on the data collected by the IEC, however, it is nevertheless possible to draw certain conclusions with regard

18 IEC, vol. 8, chap. 2.3; Germann 2016; Heiniger 2016, 270–271.
19 Albertin 2014; Stratenwerth, Bernoulli 1983.

to the five facilities studied. Taken together, they provide an overall picture of the situation.

Welfare facilities and homes were long the "stepchildren" of the Swiss welfare state. This was also the case for institutions where administrative detention measures were executed.[20] The funding sources comprised a mixture of revenues from forced labour, boarding fees and public allocations, varying both over time and from facility to facility. The case studies examined show that the financial situation of such institutions remained precarious until well into the 1970s. Until the cantons and the federal government began to increase subsidies, they generally operated on the traditional model used by welfare institutions for the poor. In keeping with the policy of "less eligibility", which was long considered one of the fundamental principles of assistance for the poor, the living conditions of people receiving public support were not better than those of the poorest echelons of society. This also meant that administrative detainees were expected to make a substantial contribution to the funding of facility through their labour. While the "self-financing ratio" varied from institution to institution, it remained high in many places until well into the post-war era. In the juvenile reform facility of Uitikon, for example, two-thirds of the total budget in 1950 was covered by revenues from the labour of detainees. In Bellechasse, revenues from forced labour still paid for some 70 percent of the budget even as late as 1975.[21] In both facilities, boarding fees, which were also borne by the individuals concerned or their families (see "Boarding fees: Shifting detention costs to the detainees", p. 196), represented another important source of revenue.

Before the middle of the 20th century, only the smallest number of detention facilities could reckon with substantial financial support from the government. This was true both for publicly and privately financed facilities, which were often partially funded by donations. It was the declared intent of the political and social elite to keep the costs for such facilities at a minimum. Thus, for example, the canton of Fribourg decided in favour of an agricultural labour colony in order to relieve taxpayers of an additional financial burden. This was taken as a model by the financially well-off Witzwil facility in the canton of Bern. On the other hand, the Bellechasse facilities were not able to match this success, with the result that it

20 On the following, unless otherwise noted, IEC, vol. 8, chap. 3.1.
21 Heiniger 2018, 337.

BOARDING FEES: SHIFTING DETENTION COSTS TO THE DETAINEES

Many contemporary eyewitnesses report that their families – in addition to the suffering and injustice already inflicted on them – were also compelled to cover their boarding costs while they were in detention. Ursula Biondi recounts how her mother was obliged to come up with more than 6,000 Swiss francs for the accommodation of her daughter and grandson in Hindelbank.[1] So-called boarding fees represented a substantial source of revenue for detention facilities. They were demanded as a contribution to costs for food, clothing and medical care. They had a long history, if in a variety of forms, in welfare care and still play a role in yet another form today (e.g. in the form of cost-sharing for guardianship protection of children and adults).[2]

Both the administrative authorities and the courts defined detention measures ordered by administrative or guardianship authorities as "social welfare measures".[3] Seen in that way, it was considered as legitimate, as with other welfare contributions, to shift responsibility for boarding fees to the individuals concerned or relatives liable for their welfare. Conversely, it was the responsibility of the cantonal governments to carry the costs of maintaining individuals who were serving criminal sentences.[4] This gave rise to incongruous situations: in Hindelbank, the "administratives" were required to pay boarding fees, while the "criminals" were supported out of the public treasury. Where the individuals concerned, or their relatives, were unable to pay the boarding fees, their (home) municipalities were required to fill in for them. The latter were authorised, however, to seek recovery of their expenditures from the individuals. In practice, what often happened was that the municipalities or other parties ordering detention (juvenile prosecutors, official guardians) gave the respective facilities a guaranty for the boarding fees. In the case of detained juveniles, the boarding fees could also be deducted from their wages. It was also required that social insurance benefits received by detainees be used to cover their boarding fees.

1 Biondi 2003, 113.
2 On what follows: IEC, vol. 8, chap. 3.2; Heiniger, Leimgruber, Buchli 2018, 176–184.
3 IEC, vol. 8, chap. 3.2, 148, with reference to BGE 76 104, 5 July 1950.
4 Also required to carry their own costs, in most cantons, were individuals in detention for the execution of measures of security or treatment.

A sampling of cases suggests that in most instances the boarding fees were settled by the municipal governments. This is an indication that the majority of individuals were living in straitened financial circumstances. It is difficult to say, on the basis of the source material, how often the municipal governments sought to recover their expenditures from the individuals concerned or their families. Cases like that of Ursula Biondi show, in any case, that demands for the recovery of boarding fees could be a hard blow for families with little income. Ursula Biondi's mother, who earned her living as a cleaning woman, was compelled to take on a second job in a grocery store. She got up at four in the morning, helped stock shelves for three hours, and then began work at her regular job.[5]

Boarding fees were the price paid by the authorities who issued a detention order (unless those costs could be passed to the individuals concerned). The amount of the boarding fees sometimes had an influence on the readiness of the authorities to order administrative detention measures and the choice of the facility for execution thereof. In the cantons of Fribourg (until 1935) and Ticino (from 1944 on), the cantonal governments assumed the costs of detention in their own labour or alcohol treatment facilities. This increased the willingness of municipal governments to order the administrative detention of individuals for whose welfare they were responsible. Other cantons fixed the amount of the boarding fees on a case-by-case basis, depending on the gender and working capacity of the individual in question.

5 Biondi 2003, 114.

soon found itself under cost pressure. Financial considerations also played an important role in Ticino. The establishment of the La Valletta sanatorium for alcoholics was intended to render expensive detention measures in psychiatric clinics or in other cantons unnecessary. Institutions such as Uitikon and Hindelbank were also subject to a policy of austerity and sought to maximise revenues from forced labour and to minimise maintenance costs.[22]

22 IEC, vol. 8, chaps. 2.1 and 2.2.

The shortage of financial means had an effect on the living and working conditions in the detention facilities. Food supplies, sanitary conditions and medical care were extremely precarious in many places until well into the 1950s (see chap. 5.2). Government spending policies were based on a logic similar to that underlying the foster care system for children.[23] In both cases, the responsible authorities and government offices were not prepared to support individuals who had been socially excluded and stigmatised beyond what was needed to maintain a minimum standard of living. There was also no interest in furthering their personal development. To the extent possible, all costs were to be recovered from the individuals concerned, either through the performance of labour or the payment of boarding fees. The political leadership and society in general were willing to accept the fact that this would lead to a further deterioration in the circumstances of the individuals in question. The underfunding of the institutions and the low social standing of the administrative detainees were mutually dependent.

A change in this trend began to emerge in the post-war era in response to increases in public budgets and the expansion of the social welfare and healthcare systems. On the one hand, welfare costs declined sharply during the years of the economic boom; on the other hand, expenditures began to rise for social insurance and social assistance alternatives in such areas as addiction treatment and psychological counselling. For institutions that were used for the execution of administrative detention measures, the change in economic conditions resulted in an increase in public subsidies.[24] In the Uitikon and Richterswil juvenile reform facilities, public financing gradually began to rise after the end of the Second World War, amounting to up to 60 percent of their revenues by the 1970s. Starting in the mid-1960s, both facilities also began to benefit from subsidies under the 1966 Federal Act on Criminal Correctional and Reformatory Education Facilities. Government allocations for the La Valletta sanatorium for alcoholics also began to rise after 1950. A similar pattern can be seen at Hindelbank, where the canton of Bern invested public means in the construction of a new building towards the end of the 1950s.[25] This increase in government funding at least made it possible to avoid the most serious disasters.

23 Leuenberger, Seglias 2015, 196–214.
24 Heiniger, Leimgruber, Buchli 2018, 154–155; Germann 2016, 71; Guex 2012, 1079, 1083.
25 IEC, vol. 8, chap. 3.1.

A willingness to dip into the public treasury was not found to the same degree in all places. Differences existed both between the cantons and from once facility to another. Bellechasse, for example, still operated in the 1970s on the model of facilities for the poor. The share of the budget covered by revenues from inmate labour remained high, while the government of the canton of Fribourg demonstrated financial restraint. Gender bias also played a role. Institutions for women, such as Hindelbank and Richterswil consistently remained more poorly equipped than comparable facilities for men throughout the period under inquiry. Compliance with the regulations on the segregation of detainees was also less strict in women's facilities and blocks. The specialised reformatories that were established in the 1970s, in order to make the transfer of juveniles to penal correctional facilities unnecessary (Tessenberg, Uitikon), were initially intended primarily for young men. For young women there were only a small number of such alternatives available (Loryheim, Sonnegg) before the 1980s. Some of them were, even then, still attached to correctional facilities (Hindelbank).[26] The allocation of resources was a result not only of differences in the number of cases involved, but also a reflection of hierarchical ranking by gender. Women who resisted rigid moral attitudes and gender stereotyping, or who committed criminal offences, found themselves subjected to a greater degree of stigmatisation than men in comparable situations.[27] At the same time, for the middle class establishment that the government represented, the "endangerment" of the public order by (young) men was a matter of higher priority. It thus invested more in keeping that segment of the population under control. Even the 1968 protesters adopted this same perspective in their criticism of the reformatory system: it was primarily on detention conditions for young men that the movement focused its attention.

The main reason for this steady rise in public involvement was the increase in the cost of staffing detention facilities. The general rise in wage levels after 1945, improvements in support services and the increased employment of socio-educational specialists (including educators and psychologists) led to a significant increase in personnel costs in all of the institutions studied. A comprehensive effort towards full professionalisation of facility and home personnel did not occur until after 1970, however, due not least to a lack of candidates with adequate training in the new approaches.

26 IEC, vol. 8, chap. 2.3; Schürmann 1982.
27 Jenzer 2014; Suter 2008.

This frequently led to generational conflicts among the staff, as new and traditional ideas on education and professional obligations began to clash. Prior thereto, job conditions (working hours, salaries, residence requirements) in many facilities were unattractive and many staff members were poorly qualified. Guards in Bellechasse were generally former farmers or craftsmen. Even the La Valletta sanatorium relied for many years on poorly qualified, low-paid personnel. In facilities for women, the staff was made up partly of nuns, who, even if they had received pedagogical training, did not receive a salary.[28]

As a result of the rising personnel costs, the expense of placing individuals in closed detention began to increase significantly from the mid-1960s on. Since revenues from forced labour also began to decline simultaneously, many institutions saw themselves compelled to raise boarding fees.[29] Because only a part of those fees could be passed on to the authorities that had ordered detention or to the detainees themselves, it was ultimately the public treasury that bore the brunt of the jump in costs. These developments took place during a period when public authorities were less and less inclined to take recourse to (unconditional) closed detention measures, and public acceptance of such invasive measures was declining. The available data do not permit a clear response to the question as to the extent to which cost increases were responsible for the decline in the use of administrative detention measures.

Interviews with former detainees offer a sobering picture of the effects of the personnel changes. Prior to the 1970s, facility and home staffs do not appear to have ever possessed the skills to properly perform their tasks. Interviewees who were placed in administrative detention in the 1960s and 1970s do occasionally speak of encounters with staff members that were marked by respect, understanding and sympathy. Overall, however, it is accounts of abuse, humiliation, beatings and sexual assault by staff members that predominate. Only a very small fraction of the detainees found any genuine support they could rely on.[30] Contemporary eyewitnesses confirm the impression that improvements in the quality of facility personnel only brought tangible improvements towards the end of the period with which this study is concerned.

28 IEC, vol. 8, chap. 11; see Stratenwerth, Bernoulli 1983, 49–52.
29 IEC, vol. 8, chap. 3.2 and 3.3.
30 IEC, vol. 5, chap. 3.2.

OVERSIGHT STRUCTURES: DELIBERATE BLINDNESS AND AN INABILITY TO LEARN

Institutions where administrative detention measures were executed were subject to public or private oversight. There is much evidence to suggest that the oversight bodies often failed to effectively perform their duties. State-run facilities, because they relied more heavily on coercion, were subject to stricter oversight than private institutions. Oversight was exercised by an oversight or administrative commission, which was presided over by a member of the cantonal government and reported to the executive and legislative branches of the government. It was the legislature that decided on the budget for the detention institutions. Private facilities, such as Richterswil, which were also authorised to use coercive measures, were subject to oversight bodies composed of representatives of non-profit organisations and public officials. Depending on the circumstances, it was also possible for cantonal authorities (juvenile welfare office, directorate of education) to intervene directly.[31] Institutions used for the execution of criminal sentences and criminal correctional measures were also subject to federal oversight.

There are many examples that bear witness to the laxity of the oversight that was exercised over detention facilities. What is revealed can only be termed deliberate blindness, a mentality based on pretending not to see. For the victims of abuse or other irregularities there was often no possibility to contact the responsible authorities. Control over mail correspondence in the detention facilities prevented complaints from leaving the premises. "There were sometimes pupils who wanted to send letters to their lawyers. The letters were simply not dispatched," reported in 1953 a young man being held in detention in Uitikon.[32] The suppression of mail correspondence increased the dependency of the detainees and shielded those responsible from all criticism or oversight. Even when complaints did manage to find their way to the outside, there was little willingness on the part of oversight officials to believe what the detainees alleged. The result was often only further stigmatisation. In 1966, the Schwyz Government Council rejected a complaint over conditions in the Kaltbach correctional labour facilities by discrediting the complainant, referring to her as a "psychopath" who "lacked the energy to lead an irreproachable life".[33]

31 IEC, vol. 8, chap. 5.1; Jenzer 2014, 297–348.

32 Interrogation transcript B.R., November 1953, 473–474, Staatsarchiv des Kantons Zürich, P 428.53, quoted in IEC, vol. 8, chap. 9.2, 417–418.

33 IEC, vol. 7, chap. 4.1, 402.

A widely used tactic was to settle complaints over irregularities internally, so as to protect the facility administration (see "Violence in closed facilities", p. 242). The oversight bodies tended to take action primarily when information came to public attention or when the reputation of the institution in question was in danger of being compromised. In Bellechasse, the authorities reacted to numerous crises that threw a dubious light on the facility administration. All of the investigations that were conducted (1950/1951, 1974/1975) were opened only because reports from detainees had reached the media or because other cantonal governments had intervened. In all of the cases, the oversight authorities, as if by reflex, voiced their support for the directors of the facility Camille Grêt (in office 1918–1951) and Max Rentsch (1951–1981) and attempted to counter criticism by introducing isolated reforms.[34] The Zurich authorities reacted in a similar fashion in the 1950s when a conflict arose between the director of the Uitikon correctional labour facility for juvenile and young adults, Fritz Gerber (1926–1957), and the village and facility pastor Hans Freimüller. Although a commission of inquiry had criticised the facility's authoritarian regime, the cantonal government kept the report confidential and expressed its confidence in Gerber.[35] There were even cases in which facility directors went to court in order to silence their critics. In 1956, the court of Lausanne convicted journalist Louis Plomb of slander. In an article in the newspaper *Le Bonjour*, Plomb had accused the director of the Tessenberg juvenile reform facility, Georges Luterbacher, of using methods reminiscent of a "Hitler camp". Luterbacher, who had been involved in the Uitikon investigation, emerged unscathed from the affair.[36]

The indifferent manner in which oversight was exercised is well illustrated by an incident of abuse that occurred in Bellechasse in the 1950s. The affair began when pupils in the juvenile block complained that they had been victims of sexual assault by one of the guards. The head guard refused at first to believe them and ordered instead that they be punished with beatings and confinement in dark cells. As the adolescent detainees persisted in the accusations, the director of the institution, Camille Grêt, commissioned the facility chaplains with an investigation, by which the allegations were confirmed. The investigation report was nevertheless

34 IEC, vol. 8, chaps. 5.1 and 9.4.
35 Furger 2008, 40–45; IEC, vol. 8, chaps. 5.3 and 10.1.
36 IEC, vol. 3, chap. 4.1, 309–310.

kept confidential until a former detainee, together with a staff trainee, contacted the Office of the Attorney General of Switzerland. The administrative commission now had no choice but to open an investigation and to transfer the case to the judicial authorities. At the trial, the accused succeeded, with the support of former director Grêt, in convincing the court of his version of the facts. The adolescent witnesses, by contrast, were not listened to and – following the now standard pattern – were labelled by the court as "morally perverted".[37] This is not an isolated example. In 1967, a female detainee in Hindelbank accused the facility's laundry superintendent of having sexually assaulted her. The investigation ended with the woman's being punished for slander. Eleven years later, after a series of further complaints against him, the laundry superintendent was indicted and sentenced to prison.[38]

These examples bear witness to the fact that administrative detainees could expect to pay a high price for complaints about irregularities to the oversight authorities. They were often confronted by a conspiracy of silence and ended up being discredited themselves. All this followed the same pattern that we have already seen in connection with foster children and the home system. More than this, however, it is also a phenomenon that is found in society as a whole. The fact is that, before the 1960s, victims of (sexual) violence generally met with little sympathy. Being a victim was widely seen as a sign of weakness. Because of this, victims of violence stood little chance of winning solidarity and support.[39] This defensive attitude, that only began to change with the emergence of victim support services in the 1980s, was all the more pronounced when the individuals concerned, like the individuals detained in closed facilities, enjoyed little social recognition. In most cases, the oversight authorities stepped in only when it could no longer be avoided. Even then, remedial measures were ordered in confidence or only after the alleged wrongdoers had retired. On the whole, the oversight authorities did little to control the actions of facility directors within their own "small realms". They thus willingly accepted that detainees remained completely at the mercy of their tormentors. The attitude of turning a blind eye had the further effect of aborting learning processes that might have led to improved living conditions.

37 IEC, vol. 8, chap. 5.2.
38 IEC, vol. 8, chap. 5.3, 247–248.
39 Matter 2019; Goltermann 2017, 178–196.

5.2 DAILY LIFE IN CLOSED DETENTION: ISOLATION, DISCIPLINE AND FORCED LABOUR

The institutions in which administrative detainees were held under lock and key were to a greater or lesser extent "total institutions" – a term coined in the 1960s by American sociologist Erving Goffman to characterise correctional facilities, psychiatric clinics and other welfare care facilities. Goffman was interested in the way inmates came to terms with the restrictions on their freedom of movement, with controls over their contacts with the outside world, and with the regulation of their daily lives in a closed institution.[40] The regimens in the institutions investigated by the IEC were not uniform, however: there were gradations in how strictly the different facilities were operated and how closed they were. The character of the respective facilities also evolved over time. Daily life in reform and correctional facilities for juveniles and young adults such as Uitikon and Richterswil was not the same as in adult correctional or detention facilities like Bellechasse and Hindelbank, or in sanatoriums for alcoholics such as La Valletta. Conditions were also different in local prisons and psychiatric facilities. Prevailing political conditions and the attitude of the facility directors had a major impact on the character of an organisation and its ability to learn. This notwithstanding, the written testimony of contemporary eyewitnesses and interviews with former detainees leave no doubt that a similar logic of restriction was common to all such facilities until well into the 1970s.

HOUSE RULES: ISOLATION, DISCIPLINARY PUNISHMENTS AND VIOLENCE

Many former detainees describe their entry into a detention facility as a moment of crisis and trauma. Entry into the facility began with an admissions procedure, which was experienced by the detainees as demeaning and as an attack on their personal identity. "I had to get undressed. Then they took us to the showers […]. After we'd been given [house]uniforms, they took away all my clothes" – thus a former female detainee describes her entry into a detention facility.[41] In Hindelbank, up until the 1970s, the "administratives" were given brown uniforms, while women who had

40 Goffman 1961; IEC, vol. 8, chap. 1.
41 Quoted in IEC, vol. 5, chap. 3.1, 85.

been convicted of a crime received blue uniforms. All detainees were given a number. In other facilities, newly admitted young men had their heads shaved. The prescribed rules of hygiene, body searches and institutional uniforms branded the new admissions as subjects to be corrected and punished. Compounded with this was the entry into a community of forced coexistence, which functioned in accordance with a brutal pecking order. Former detainees report that when they first arrived they were the defenceless victims of beatings and sexual violence not only at the hands of the facility staff, but also by fellow detainees.[42] The gravity of these attacks on their personal integrity was amplified by an oppressive state of uncertainty: the frequent lack of any knowledge as to the conditions and the term of their detention. For those who were detained in criminal facilities, the sense of shame over the place where they were being held made matters even worse. "[…] contrary to what the [authority that issued the detention order] claimed, there are no living quarters other than the criminal facility; I am in what is properly a prison," complained a woman who had been transferred in 1946 from a psychiatric clinic to the women's block in Bellechasse.[43] Others, like Carl Albert Loosli in his 1939 pamphlet, went even further, drawing comparisons with the Nazi concentration camps or the Soviet gulags.[44]

The individuals concerned dealt with admission to a closed facility and the conditions of their detention in different ways. There is no uniformity of experience or recall. It was not only the circumstances that led to detention, but also each individual's ability to tolerate adversity that played a role. Interviews with former detainees make it clear that only for very few was their time in detention a positive experience. There are those, however, who do in fact recall the period of closed detention – even in a criminal facility – as a phase of regeneration, a time when they were able to rebuild their confidence. Most of the individuals concerned, by contrast, saw themselves compelled to resort to coping and survival strategies in order to protect their sense of identity. Some reacted to the state of uncertainty by writing letters to the facility administration, the public authorities or their families. Others simply resigned themselves to the situation or withdrew into themselves. Some found refuge by passing their time in detention with

42 IEC, vol. 5, chap. 3.1; Frioud 2014, 107–117.

43 Letter from the detainee to his sister, 25 September 1946, Archives de l'État de Fribourg, EB Det DI 1-390, quoted in IEC, vol. 4, chap. 1.3, 90–91.

44 See the statements made in the interviews: IEC, vol. 5, chap. 3.2; Frioud 2014.

knitting or reading. One woman recounts how she gave herself a new name in the detention facility, as an instinctive defence against the "horror" of it all.[45] Others refused to eat or to leave their cells. Some made a demonstrative attempt to demarcate themselves from the "criminals", while others let themselves be drawn into illegal schemes. Still others contemplated escape or, in their desperation, attempted suicide. Regardless of the ways in which they tried to cope, the experience of being incarcerated demanded a tremendous act of adaptation on their part if they hoped to withstand their internment.

The ordeal of hopelessness, and of being completely at the mercy of others, often mentioned in the interviews, was partly simply a consequence of being entirely isolated from the outside world. It is correct that during the period under investigation only a very small number of the facilities in question were hermetically sealed. In many of them, the detainees worked outdoors under supervision. Detainees were occasionally even permitted to perform errands in nearby localities or to take supervised outdoor walks on Sundays. For many of the detainees, however, long hours of confinement in their cells were a routine part of their daily life. Others were compelled to sleep in large dormitories with no chance to be alone. Also inherent in the experience of confinement was the suppression and tabooing of sexuality.

An important factor contributing to their isolation was the censorship of incoming and outgoing mail, which was common practice in all of the facilities investigated.[46] Restrictions on correspondence, including the monitoring and withholding of letters, were a means of maintaining surveillance over the inmates and preventing criticism from leaking out. Not only was contact with lawyers or oversight authorities prevented, but also with family members. This was particularly so where juveniles were concerned, when it was suspected that contact with their prior surroundings could have a "bad influence" on them. In the case of women, withholding letters was a means of preventing contact with domestic partners or children who had been placed in foster care. Many detainees waited months for answers to their letters, only to discover that they had never even been dispatched. "When the office clerk put my file on the desk, I saw a whole pile of letters that I myself had written. So now I knew why my letters hadn't

45 IEC, vol. 5, chap. 3.1, 89.
46 IEC, vol. 4, chap. 2.3; IEC, vol. 8, chap. 9.2.

gotten any response," recalls Peter Paul Moser in describing a visit to the office of the Bellechasse administration.[47] One way out of the conundrum was to smuggle letters out, which occurred in many facilities. Some individual detainees managed in this way to mobilise support from the outside (see "Freedom through abstinence", p. 239). Even visits from family members were only rarely permitted, if at all. A relaxation of the rules came only in the 1970s.

The repressive atmosphere was tangible in all aspects of life inside the detention facilities. A rigid routine was enforced in all of the institutions studied. The schedule for each day was meticulously drawn up with set times for meals, work, religious devotions and sleep; any violations of discipline were subject to punishment. "They truly broke my spirit there. You simply had no freedom. In the morning, you either go to church or you peel [potatoes?], […] the day you spend either ironing or doing whatever else they told you to do. The whole day you were absolutely forbidden to talk to anybody," recalls one woman, describing the tightly regimented daily life in detention, which left virtually no room for individual needs.[48] During the 1950s, some individual facilities began to expand the range of recreational activities available (reading, music, sports and handicrafts), or granted short periods of leave for family visits. It was primarily in institutions for young men that this was done. It was only with some delay that facilities for women followed suit. Such relaxation of detention conditions occurred only in isolated instances, however. Up to the very end of the period considered in this inquiry, the encouragement of meaningful leisure time activities was not considered a priority in reformatory education.[49]

The power relationships in detention facilities rested on an arcane system of privileges and punishments designed to ensure discipline and submission. Because the detainees had no rights whatsoever, any improvement in their situation – in terms of work assignments, food, or leisure activities – was inevitably viewed as a privilege, which the facility administration could cancel at any time, as it saw fit.[50] The use of this carrot-and-stick policy played a particularly important role in the promotion – or group status – system for which the Uitikon juvenile reform facility was notorious. The "Gerber system", named after the facility director Fritz Gerber (in of-

47 IEC, vol. 1, 243.
48 IEC, vol. 5, chap. 3.2, 91 (with minor orthographical corrections by the authors).
49 IEC, vol. 8, chap. 7.2.
50 Stratenwerth, Bernoulli 1983, 119.

fice 1926–1957), was designed such that pupils who conducted themselves properly could be "promoted" to the next higher group, where they could benefit from such privileges as Sunday holidays. The highest position was held by the leader of the "core group", who received instructions from the facility administration and passed them on to the other boys. What was initially conceived as an educational instrument based on the incentive principle served in reality primarily to promote obsequiousness and, as noted by the 1953 inquiry commission mentioned previously, to foster distrust and encourage the juvenile inmates to inform on one another.[51]

Men and women who disobeyed the house rules or directives could be given a disciplinary punishment. A canton of Bern ordinance from 1971 lists the following potential offences: attempted escape, refusal to work, insubordination towards staff members or incitement thereto, unauthorised contacts inside or outside the facility, and unjustified complaints against the facility administration. Like the institutional landscape as a whole, the list of punishments followed a progression: warnings, fines, withdrawal of privileges, confinement, food deprivation, extension of detention terms, refusal of early release, and transfer to a facility with a harsher regimen. Punishments such as "reduction of food", which involved physical suffering, were not discontinued until the 1970s.[52] Disciplinary powers were a kind of miniature judicial system, which was only loosely regulated and which left a large margin of discretion to the facility staff.[53] Like the censorship practices, the punishment system was experienced by the individuals concerned as random and arbitrary, in terms of both the grounds and the forms of punishment used.[54]

Formal disciplinary punishments seamlessly escalated in many instances into uncontrolled – and thus, even by the then prevailing standards, unlawful – acts of violence. Former detainees recount incidents of senseless and capricious punishment. One detainee was obliged to clean stairs with a toothbrush. Particularly dreaded was punishment by confinement in an unlit cell, which was imposed especially in cases of attempted escape. One of the individuals concerned, who had helped a fellow inmate to escape, recalls his confinement in the infamous "dungeon": "After that came a few days in solitary confinement. In a dark room. A board on the

51 IEC, vol. 8, chap. 5.3.
52 IEC, vol. 8, chap. 9.1.
53 See Foucault 1991, 181.
54 IEC, vol. 8, chap. 9.1; IEC, vol. 5, chap. 3.2.

floor, wool blanket full dust and holes, and a bucket for the needs of nature. […] Meals consisted of bread and water in the morning, bread and soup for lunch, and bread and water again for dinner." Having served out the term of solitary confinement in the dark, he was returned to his cell and, after receiving a vitamin injection from the doctor, sent back to work.[55] Punishments such as forced showers or being wrapped in wool blankets, which were carried out in Bellechasse and Witzwil up to the 1940s, crossed the line to physical torture. This was also the case with methods known as "the grate" or "the pipes", which continued to be used in Bern despite the prohibition on physical punishment. The individual being punished was required to stand for hours or days, without being able to move, in a narrow cage of metal bars or concrete.[56]

An atmosphere of sadistic violence could sometimes permeate an institution. In many detention facilities, insults, punching, kicking or beating with rubber hoses by the guards were a routine part of everyday life. As the examples taken from Bellechasse and Hindelbank illustrate, sexual violence was not rare. In this respect, the facilities studied differed only by degree from the homes for children, where sexual abuse was widespread. The majority of the guards who assaulted female detainees and sometimes (younger) men, or who accepted involuntary sex as bribes in exchange for privileges, were men. Yenish women were particularly at risk of being abused. Violence was also widespread among the inmates themselves, whereby it is not always easy to distinguish clearly between the victim and perpetrator roles. The facility administration often turned a blind eye to such acts of violence or made its own use of the violent pecking order among the inmates for disciplinary purposes.[57] Detainees were also compelled to be spectators to acts of violence, for example when weaker fellow inmates were assaulted; many also witnessed suicide attempts.[58] The omnipresent physical and mental violence was not only an assault on their physical and emotional integrity, it also created an atmosphere of insecurity, which only further exacerbated the anxieties and health problems of the individuals concerned.

55 IEC, vol. 5, chap. 3.2, 94.
56 IEC, vol. 8, chap. 9.4; IEC, vol. 9, source nos. 28, 29, 32; Marti, Grunder 2018, 377.
57 IEC, vol. 4, chap. 2.3, 235–239; IEC, vol. 5, chap. 3.2.
58 Frioud 2014, 141, 144–145, 209, 239; Biondi 2003, 128.

PRECARIOUS LIVING CONDITIONS: FOOD, HYGIENE AND MEDICAL CARE

Detention regimes based on the assertion of authority, of subordination and on violence proved to be – like the administrative procedures that preceded detention – extremely susceptible to arbitrariness. The fact that those placed in detention were largely without rights and at the mercy of others was considered justifiable. It was seen as integral to the probationary system, the intent of which was to discipline and normalise. The *de facto* result, however, was that it destroyed the trust of the individuals concerned. The climate of repression was reinforced by the austerity of the living conditions. While the situation in detention facilities did improve during the post-war era, when the cantons began to assume more fully their financial responsibilities (see chap. 5.1), pressure to economise continued to dominate the conduct of the competent authorities. Beginning in the 1950s, another factor was that, with the country's increasing prosperity, there was also a change in general expectations with regard to food, hygiene and medical care. Because of this, administrative detainees were all the more sensitive to the inequality of the treatment they received as compared to those "on the outside".

Up to the 1950s, the quality of the food in detention facilities and homes was poor, even by the standards that prevailed during the Second World War. The menu was dominated by bread, potatoes and vegetables. This was supplemented by small amounts of milk, weak coffee and apple juice. Only in the following decades were butter, cheese and meat served more frequently. For many years, meals were served on tin plates. The possibility of reducing or increasing food rations was a means for the facility administration to assert their authority and inflict punishment in order to coerce detainees into obedience. Complaints of undernourishment, of insufficient or poor-quality food were widespread. This was not just an expression of hunger and deprivation. Such complaints also had a symbolic meaning. The demand for sufficient and proper nourishment was an act of self-assertion, a challenge to the authority of those responsible. Even when the quality of the food improved, complaints did not stop. One of the men interviewed by the IEC recalls that he had been regularly served "spoiled meat products". According to his account, fodder normally intended for pigs was also processed and served to detainees. Another in-

terviewee reports that the plates set before the detainees were always half empty.[59]

For a long time, sanitary conditions in the detention facilities were also unsound. In this regard there were large differences between the various institutions. This suggests that it was entirely within the power of those in charge of the facilities to improve the quality of life there. In Uitikon, which housed young men and where the sanitary facilities were good, a cult of hygiene reigned during the "Gerber era", under which showers and teeth brushing were mandatory. In the Bellechasse and Hindelbank correctional facilities, by contrast, the standard of hygiene remained deplorable until well into the 1960s. In Bellechasse, there was a clothing shortage, while in Hindelbank, there was not enough soap. Both facilities had overcrowded and poorly heated dormitories, some of which were below ground. Particularly miserable were the conditions at Hindelbank, where only women were housed.[60]

Detainees also suffered from inadequate medical care. Individuals held in Bellechasse wrote letters to the facility administration requesting that they be permitted to see a doctor or be transferred to a hospital in order to receive treatment for their ailments. Medical care arrangements in that facility remained largely unchanged throughout the period from 1935 to 1975: two local doctors made visits on an alternating basis. There was also a guard who served as a nurse and had controlled access to the doctors. The latter saw their duty as consisting in preventing suspected imposters from shirking work.[61] The writer and journalist Arthur Honegger tells in his autobiographical novel of an incident in the 1940s when he contracted blood poisoning as a result of a wound on his foot. Rather than summoning the doctor, the guards placed him for the night in solitary confinement in an unlit cell.[62] Conversely, in La Valletta, the standard of medical care began to improve in the 1950s. As a general rule, however, the attitude towards health complaints remained callous. "We never saw a doctor or anything like that. […] If you got sick and had a fever, they gave you tea and zwieback, maybe some pills," reports a woman who was detained in Hindelbank during the 1960s. She recalls that shortly before she gave birth she

59 IEC, vol. 8, chap. 8.1; IEC, vol. 4, chap. 2.1; IEC, vol. 5, chap. 3.2, 99.
60 IEC, vol. 8, chap. 8.3; IEC, vol. 4, chap. 2.2.
61 IEC, vol. 8, chap. 8.2.
62 Honegger 2018 [1974].

was still required to perform heavy work. Other former detainees also tell of being compelled to do heavy or even health-endangering physical labour.[63]

With the exception of some isolated, specialised institutions, psychiatric-psychological care for detainees remained rudimentary. In Uitikon, where a conflict over the psychotherapeutic activities of the facility chaplain led to a scandal in 1953, psychiatric consultations were not introduced until 1974. At Hindelbank, psychiatric services first became available in the 1940s. They were provided by the Münsingen Hospital (and, periodically, by the psychiatrist Benedict Fontana, who wrote his doctoral dissertation on the treatment of Yenish children in Switzerland). It was not until the 1970s that individual therapy was offered, as the number of women placed in detention for drug infractions began to rise. The reverse side of psychiatrisation was the use of tranquillisers and psychotropic drugs. The sedation of "agitated" inmates was also a means of maintaining discipline in facilities where understaffing was a problem.[64]

For many of those concerned, the time spent in detention was marked by privations that affected their health and physical well-being. This was, in part, a consequence of the chronic underfunding from which the facilities suffered. Despite material improvements, the disparity with the rising living standards that came with the economic upswing widened. The substandard living conditions were also a consequence of an underlying punitive attitude that called for inflicting palpable suffering on discredited individuals. It was also in this sense that the proximity to penal correctional measures worked to the detriment of administrative detainees. It is thus not surprising that many of them perceived detention as a form of physical punishment, a notion that was in blatant contradiction with Switzerland's own self-image.

DETENTION LABOUR: CAUGHT BETWEEN THE DEMANDS OF REFORMATORY EDUCATION AND PROFITABILITY

A central component of the closed detention regime was forced labour.[65] From the time of the introduction of poorhouses and gaols in the 17th century, the motives for compulsory labour in closed institutions covered a spectrum reaching from educational-disciplinary objectives to

63 IEC, vol. 5, chap. 3.2, 97.
64 IEC, vol. 8, chap. 10.2; Stratenwerth, Bernoulli 1983, 125–126.
65 On what follows: IEC, vol. 8, chaps. 6 and 7.1.

economic exploitation. As already noted, many facilities were able to cover a large part of their costs through revenues from labour until well into the 20th century. Because of this, it was important for them to have a sufficiently large workforce. At the same time, political leaders and the administrative authorities justified the use of compulsory labour as a means of educating detainees to become productive and economically independent members of society. Underlying this attitude may be recognised an ideal of work and achievement that is central to Switzerland even today. Particularly for men – but to a certain extent also for unmarried women – working for a living developed over the course of the 19th and 20th centuries into an important medium of social integration and recognition. In keeping with this attitude, it was believed that the poor and those convicted of crimes should be compelled to work and be taught to become "independent and useful citizens". Regular work came to be seen as a precaution against poverty and criminality and as a contribution to the wealth of society. "The goal of detention is to accustom detainees to an orderly, active life by educating them to perform work that is suited to their capabilities and enables them to earn a livelihood," stated the canton of Zurich's 1925 Administrative Detention Act.[66]

The introduction of a work duty during the Second World War and the creation of social insurance systems after 1945 gave added impetus to the notion of working for a living (and, for women, the unpaid equivalent of keeping a home) as a social duty. Social security services provided insurance against loss of income due to age, illness or accident; a substantial portion of their funding came from the contributions of wage earners. "We live under a social security regime […], everyone must work for a minimum of social security […]. To leave someone to his own fate and let him live on his indolence is a form of unequal treatment vis-à-vis those who are obliged to respect the social order," said the Fribourg prefect, Rémy Brodard, explaining in 1970 the rationale behind administrative detention.[67]

The ideology of achievement that typified Switzerland had repercussions also on the labour in detention facilities. Labour was seen not simply as a means of generating revenues and structuring the day. Willingness

66 Act of 24 May 1925 on the Detention of Juveniles, Derelicts and the Habitual Drinkers, art. 6, in: Offizielle Sammlung der Gesetze, Beschlüsse und Verordnungen des Eidgenössischen Standes Zürich, 33, 1925, 136–144.

67 Tanner Alain, Ackermann Guy, "Les administratifs et l'article 42", *Temps présent*, Radio Télévision Suisse, 9 January 1970, quoted in IEC, vol. 3, chap. 1.1, 29.

to work was also taken as a measuring stick for determining the degree of "betterment" that had been achieved and deciding on possible release. This work ethic was not only propagated in correctional labour facilities and penal correctional facilities, but also had a determinant influence on the educational methods used in juvenile facilities (and in part also in foster homes for children). There the intent was to prepare young people for working life and to supply the economy with a disciplined workforce. For lack of a better alternative, until well into the 1950s, facilities for the treatment of alcoholism and psychiatric facilities also relied heavily on work and occupational therapies. Here, again, there were symbolic-moral, therapeutic and economic dimensions to the role of institutional labour.

Labour in a detention facility, which was rationalised as an education and training measure, was largely unpaid labour. The applicable legal provisions did not call for any form of wage representing adequate compensation of the work performed. This was in keeping with the policy applied in penal correctional facilities, where no wages were paid either. To this day, labour in a penal correctional facility is not considered wage labour. Administrative detainees regularly reacted to the obligation to perform unpaid labour with incomprehension and resistance. A male detainee in Bellechasse expressed himself clearly and succinctly in an (undelivered) 1960 letter to the Human Rights League in Geneva: "The Administrative Detention Act is the exploitation of human beings through labour."[68] Another detainee argued that all labour had to be compensated and that the inmates in the Bochuz prison in the canton of Vaud were better paid (see "Work for no wage?", p. 234). The political leadership and the administrative authorities continued to insist, however, that labour in a detention facility was intended to cover board and lodging costs – and thus to relieve the burden on taxpayers. The rationale given was the well-worn argument that administrative detention measures were welfare measures, which were ordered in the own interest of the individuals concerned. Seen in this way, compulsory labour was not just an educational-disciplinary tool, but also a legitimate form of cost-sharing.

In many institutions, detainees received a so-called "peculium", that is, a partial wage that was credited to an account for them. This could then be used to purchase toiletries, tobacco or sweets. A portion of the money

68 Letter, 5 June 1960, Archives de l'État de Fribourg, Bellechasse A 7972, quoted in IEC, vol. 4, chap. 2.2, 187.

was withheld until the time of their release. It was presumably to this compensation that the man in Bellechasse was referring when he complained that the inmates in Bochuz were better off. The idea of a partial wage dates back to the prison reform movement of the 19th century. The peculium was conceived as an incentive and was contingent on good behaviour and work performance. It was also intended to encourage the accumulation of savings. The amount of the peculium varied in actual practice from one facility to the next, and payments out of it – like other privileges – were subject to the discretion of the facility administration. Beginning in the 1960s, there are isolated indications that social insurance contributions were deducted. This was not done systematically, however. The amount of the peculium was always far lower than what would have been an adequate wage for the work performed. In La Valletta, the amount credited to detainee accounts in the 1960s was between 15 and 25 Swiss francs per month, while a regular worker at that time normally earned 25 francs per day. In addition, gender discrimination also played a role. The wage rates for men were significantly higher than those for women.[69]

Even after lengthier periods of detention, the amount paid out to detainees upon their release were too low to realistically permit them to make a new start. Detainees were released with rarely more than a few hundred francs in their pockets. The middle-class ideal of maintaining a savings account, which was the inspiration for the peculium, was thus carried to the absurd. For this reason, many of the detainees saw the peculium as a kind of "alibi wage", intended to serve a fig leaf to cover up the exploitative nature of forced labour in detention. A young woman who was detained in Hindelbank in the 1960s tells of the disappointment she felt when she learned that only 80 centimes a day had been credited to her account, and that she was also required to pay for her toiletries, such as toothpaste and sanitary napkins. "When I heard that, I felt within me a great sense of hopelessness and despondency; all the hopes I had of saving up a little money in prison just flew away. Realising that, at the time, was a terrible moment for me."[70]

The types of work to which detainees were assigned fell within a very narrow range, limited mainly to agricultural labour and manual crafts. In facilities such as Bellechasse, which had large fields at their disposal, agricultural work was the primary form of labour. Smaller institutions of-

69 IEC, vol. 8, chap. 6.3; see Stratenwerth, Bernoulli 1983, 93–97.

70 E-mail from V.A. to the IEC, 24 September 2016, quoted in IEC, vol. 8, chap. 6.3, 325.

ten had vegetable gardens and adjoining farms for supplying their own needs. In La Valletta, detainees were assigned garden or repair work for the nearby psychiatric clinic. Richterswil, which was originally established as an industrial facility, began operating a sewing factory and a laundry in the 1920s. Work assignments reflected the rigid gender-specific division of labour that predominated in Switzerland up to the 1960s. While men were used for heavier farm work or as craftsmen, women were primarily (if not exclusively) occupied with domestic tasks (cooking, laundry, sewing) or garden work. The gender bias was particularly blatant in the women's facilities of Richterswil and Hindelbank, where detainees were mainly required to work in the laundry or to perform sewing or ironing tasks. There was also a difference in the importance attached to work performance for evaluating detainee behaviour. For men, work performance was considered the decisive factor in determining whether the desired "betterment" had been achieved. For women, work performance was just one factor in a more comprehensive evaluation of their moral improvement.[71]

In reaction to structural changes in the economy and the decline in revenues from detention labour, many institutions began in the 1950s to propose a more diverse range of occupational activities. Bellechasse director Max Rentsch pushed for the mechanisation of the facility's agricultural operations and for increased cooperation with the regional farming industry. In this way, the facility began to open up to the outside world. Businesses, such as the Fribourg railway company (*Chemins de fer fribourgeois*), Micarna (a subsidiary of the supermarket giant Migros), and the Selecta vending machines company, began to hire detainees who were permitted to work extramurally. Their salaries were paid directly to the facility. In Hindelbank, too, efforts were made in the post-war era to obtain work assignments from outside sources. The laundry took on assignments from the University Hospital of Bern, *Inselspital*, and from the Bern Women's Hospital. In 1964, the Lenco company hired the facility for the assembly of musical instruments. Sometimes, the women detained in Hindelbank were employed to type up dissertations on behalf of the University of Bern. There is not sufficient source material for a full reconstruction of the cooperation that developed with private businesses. It is therefore unclear to what extent the companies involved benefited from the labour of administrative detainees. What is certain is that the working conditions were harsh.

71 IEC, vol. 8, chaps. 6.1 and 7.3; IEC, vol. 4, chap. 2.2; IEC, vol. 5, chap. 3.2.

On the one hand, the detention facilities were compelled to seek new areas of occupational activity. In this sense, it was much to their advantage that the overall demand for cheap labour (as replacements for migrant workers from Southern Europe, for example) was high. On the other hand, the activities of the facilities were under close scrutiny by the open labour market, where they were seen as a source of unwanted competition.[72]

Detention facilities were not subject to the provisions of the Federal Employment Act, and were largely permitted to dictate working conditions themselves, based on the "special powers" they held over the detainees. Even during the post-war era, the working day could be up to ten hours long and, particularly for agricultural workers, was physically exhausting. In multifunctional institutions, convicts and administrative detainees often worked side-by-side, even if they were housed separately.[73] Contemporary eyewitnesses report that the work was performed under strict orders, was tightly organised, and both monotonous and exhausting. "Out of bed at six in the morning, breakfast at seven, work from eight to twelve – somewhere, in the sewing shop or the laundry – then an hour to walk in the yard, from two to six back to work, dinner, and then back to the cell," thus describes one woman the monotony of daily life in detention.[74]

The social-conservative aspect of detention labour is also recognisable in the fact that – contrary to what was asserted – it did not provide any form of professional training. A distinction must be drawn here, however, between facilities for adults and those for juveniles. The latter, as will be discussed below, did offer some limited vocational training, whereby it was predominantly men who benefited therefrom. In institutions designed for adults and, in particular, in the large agricultural complexes of facilities, the work performed by detainees served only the short-term exploitation of available labour as well as purposes of organisational discipline and subordination. Strengthening of the individual capabilities and know-how of the inmates, who for the most part were poorly qualified professionally, played no role here or was, at most, considered to be an additional cost factor. Bellechasse produced "human wrecks" (*épaves*), complained a male detainee in 1958 in a letter to the Grand Council of the canton of Fribourg.[75]

72 IEC, vol. 8, chap. 6.1.
73 IEC, vol. 8, chaps. 6.1 and 7.1.
74 IEC, vol. 5, chap. 3.2, 103.
75 Letter from G.M. to the Grand Council of the canton of Fribourg, 10 July 1958, Privatarchiv Max Rentsch; see also IEC, vol. 4, chap. 2.2, 193.

Numerous complaints over poor working conditions, wasted capabilities and the absence of training opportunities are clear evidence of the willingness of the facility administrations to accept a worsening of the prospects of detainees for earning a living upon their release.[76]

The poor working conditions manifested in low productivity levels. The reality was that the profitability of detention facility activities was consistently lower than that of regular business enterprises. Despite the supply of cheap labour, production methods remained inefficient up until the 1960s. The reason for this was the refusal of those in positions of responsibility to invest in more modern means of production and improvements in operational procedures. They preferred instead to see the low productivity of facility industries as a moral problem – for which they assigned blame to the detainees who provided the forced labour. The director of Bellechasse complained on repeated occasions of the poor work ethic and poor work performance of administrative detainees. Beginning in the 1950s, older and physically impaired detainees were deliberately transferred to other facilities.[77] The picture of highly productive detention facilities that exploited the labour of administrative detainees to the fullest, as depicted by Carl Albert Loosli and other critics (often taking Witzwil as an example), would appear to bear only a very loose resemblance to the reality. The operations of most institutions were merely an exercise in futility, putting modest resources to use under disastrous conditions in order to earn sufficient revenues to cover costs. For the individuals concerned, this translated into working conditions that were demoralising, physically draining and which, by the standards of the time, made little economic sense.

Although penal correctional and administrative detention facilities like Bellechasse and Hindelbank offered few educational opportunities, juvenile labour and reform facilities such as Uitikon and Richterswil began in the period between the World Wars to offer a limited number of apprenticeship positions. The canton of Zurich's 1925 Administrative Detention Act expressly provided that vocational training was to be promoted. The Criminal Code (1942) also imposed on the cantons an obligation to provide juveniles in reform facilities with an opportunity for vocational training (whereby the rule was binding only with regard to those placed in the facility under the provisions of the Criminal Code). With the educational expansion of

76 IEC, vol. 4, chap. 2.2; see Stratenwerth, Bernoulli 1982, 83–97.
77 Heiniger 2018, 341; IEC, vol. 8, chap. 7.1.

the 1960s, vocational training once again began to play a more important role. Reform and correctional facilities for juveniles and young adults like Uitikon, Aarburg and Vennes set up apprenticeship shops and expanded access to training programmes and vocational schools. The availability of training opportunities also reflected traditional gender stereotypes and solidified the gender-specific division of labour, which left women with significantly fewer prospects for building a career. Young women could learn to become professional seamstresses or ironing women, or take a one-year course in home economics, while male adolescents were given an opportunity to receive training in a manual trade. In general, young men benefited more, and at an earlier age, from the expansion of vocational training opportunities.[78]

Overall, the chances for juveniles in detention to receive vocational training or a better education were far fewer than the average for their contemporaries on the outside. Their opportunities were limited to manual crafts or unskilled labour, for which the demand on the labour market was declining and which were poorly paid. Training opportunities in service industries were practically non-existent, not to mention access to higher education (which, until the 1960s, was in any case the exclusive preserve of the upper-middle and upper classes in Switzerland). Interviews with former detainees show that only very few were able to complete a regular apprenticeship inside the institutions.[79] For many, the path to poorly paid jobs with little or no job security was marked out in advance. Even in cases where they were able to earn enough to keep their heads above water, they were poorly prepared for structural changes on the employment market and were unable to benefit from the general rise in levels of education (see chap. 6).

The case studies examined make it clear that education and welfare were mainly convenient euphemisms for describing the purpose of detention labour. The emphasis in facilities for adults, throughout the period of this inquiry, was on regimenting detainees for the performance of monotonous, repetitive labour and on the exploitation of manpower. Through their labour, the detainees paid for a part of the facility's operating costs and reduced the need for funding from the public treasury. The state made further savings by eliminating the costs that would have been incurred if it

78 IEC, vol. 8, chap. 7.3; Heiniger 2016; Heller 2012.
79 IEC, vol. 5, chap. 3.2.

had invested in providing adequate vocational training. Overall, compulsory labour led to the deterioration of the detainee's health and of their financial situation. A slightly less uniform situation was found in reform schools, which began in the 1950s to expand the available options – primarily for young men – for vocational training. This notwithstanding, the long-term prospects for being able to live independently and earn a livelihood were improved only to a very limited degree also for juveniles placed in these institutions.

In the early 1970s, the labour regime in Swiss detention facilities began to come under pressure from the International Labour Organization (ILO). Intervention by the ILO ultimately contributed to the discontinuation of the administrative detention regime and its replacement by the involuntary commitment regime, introduced in 1981 (see chap. 2.5). The 1930 ILO Convention No. 29 Concerning Forced or Compulsory Labour defines forced labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".[80] Exempted therefrom is compulsory labour exacted from any person as a consequence of a conviction in a court of law, provided that it is carried out under the supervision and control of a public authority and not for the benefit of private third parties. Switzerland's official stance vis-a-vis the ILO was to stress the Convention's intended purpose as an instrument for dealing with colonial practices and to deny that labour performed by administrative detainees was compulsory in nature. In view of the fact that the labour of the detainees was ordered as a non-judicial punishment, was not subject to the general provisions of employment law, and did not offer them any other personal benefit, the aptness of the definition on which Convention No. 29 is based is, nevertheless, striking.

5.3 RELEASE AND SURVEILLANCE: THE PATH TO FREEDOM?

When and how did the period of incarceration come to an end for the individuals concerned? Under what circumstances were they permitted to leave the detention facilities? The interviews and the written sources do

80 Forced Labour Convention, 1930 (No. 29), SR 0.822.713.9, www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029, consulted on 6 May 2019].

not present a unified picture. In general, it may be said that the procedure for release from detention was, for most detainees, as incomprehensible as the procedure that led to detention in the first place. Some report that they were released without any advance notice, possibly because they had reached the age of 20, or because some authority had ordered their release for reasons unknown. "[…] I was just somewhere doing my [job,] as usual. […] And then, sometime around ten o'clock in the morning they told me: […] go to the Director's office! And the [Director] told me I'd been released. I had no idea it was coming," an interviewee recalls.[81] The individuals who found themselves in such a situation were suddenly called on to adjust to new circumstances, for which they had been only very poorly prepared. Others made prolonged efforts to obtain their release, attempting to convince the responsible authorities that they had "bettered" themselves and making preparations for life after detention. In such cases, as well, the chances of success were difficult to gauge. Petitions for release could be blocked when the letters passed through censorship or could simply be denied by the authorities on specious grounds. There were also cases in which detainees were permitted to leave the detention facility, but remained under the supervision of a guardian or subject to parole after their release.

DETENTION TERMS: LONG, BUT USUALLY FINITE

Release from detention was subject to many unknowns. This was a further consequence of the fact that administrative detention measures were more consistently designed as probationary measures than punishments under criminal law (see chap. 2.3). In most cases, there was only an upper limit to the term of detention, and the actual term depended on the "good behaviour" of the detainee. Under cantonal detention laws, the maximum term was normally fixed at between six months and two years. In cases of recidivism, the detention term could be prolonged to a maximum of five years or even indefinitely. Detention ordered by guardianship authorities, which in most cases concerned juveniles, was for an indefinite term, or until the age of 20. Reformatory measures ordered under the provisions of juvenile criminal law could be extended for a term lasting until the individual concerned had reached the age of 25. There are many examples of detainees who did not know for how long they would be held. Either

81 IEC, vol. 5, chap. 3.3, 116 (with minor orthographical corrections by the authors).

they had not been properly informed, or the authorities that ordered their detention did not adhere to the prescribed limits (see chap. 4).

How long did administrative detention last in actual practice? There are two different aspects to this question that must be considered: the first is the term of each individual detention measure ordered; the second, the total length of time a single individual could be held in detention, under separate orders, over the course of his or her lifetime. In this connection, there are three basic patterns found. Some of the individuals concerned were detained only once in their lives for a relatively short period of time. Others were targeted by administrative detention measures on multiple occasions over the course of their lives, whereby the individual measures could form a "chain" reaching from childhood and adolescence to a very advanced age. The detainee registers of Bellechasse, for example, show that one man was ordered into detention there 15 times between 1935 and 1975. Lastly, there were also "long-term detainees" who were held in detention in one facility over a period of years or even decades. The available source material does not allow for any conclusions as to the frequency with which these patterns repeated themselves. It is known that the proportion of individuals who were detained more than once in the same facility was between 30 and 50 percent, depending on the facility, whereby that share began to decline after the Second World War. It is virtually impossible, however, to give a figure for the number of persons who were detained in different facilities over the course of their lives. For that, it would be necessary to collate the detainee registers of all of the different facilities. In the case of Hindelbank, it is known that many of the women who were detained there had previously been held in detention in another facility. Despite the fragmentary nature of the data, it may be assumed, however, that the proportion of individuals who were ordered into administrative detention on multiple occasions was high, but gradually declined after 1945.[82]

More precise data is available concerning the length of detention terms. Analysis of the admissions and release registers of the institutions examined shows that, in the majority of cases, the term of detention did not exceed twelve months. In the Bellechasse and La Valletta facilities, the proportion of detainees held for up to one year ranged from 60 to 75 percent. In Hindelbank, the proportion of detainees held for up to one year was 50 percent; of those held for up to two years it was 86 percent. Women sent

82 IEC, vol. 8, chap. 4.1. For the example of a long-term detention, see IEC, vol. 1, 94–103.

to detention in Hindelbank could thus, on average, anticipate being held for a lengthier period of time. Detention terms in the Uitikon correctional labour facility for juveniles were significantly longer. One- third of the detainees there were held for terms of between 25 and 36 months, which accorded with the terms of the canton of Zurich's 1925 Administrative Detention Act. Prolongation of the detention term was a potential side-effect of choosing the option of completing an occupational apprenticeship. Other than in the exceptional case of Uitikon, the proportion of detention terms that exceeded two years ranged from 2 percent (Hindelbank) to 13 percent (La Valletta).[83]

Overall, detention terms of between six months and one year predominated, whereby a downward tendency began in the post-war era. Long-term confinement over periods of many years did occur, but was not the rule. Both the dominant tendency to order detention measures for relatively short terms – as compared to the possibilities offered by the law – and the high frequency of repeated detention orders suggest that, in practice, the use of administrative detention measures constituted a probationary system under which disciplinary and trial periods alternated with one another. For many men and women, the effect of this was that they were repeatedly subjected throughout their lives to a continuous series of official surveillance and disciplinary measures, from which it was nearly impossible to extricate themselves. At the same time, the high proportion of those who were repeatedly returned to detention indicates that the disciplinary efforts undertaken by the facilities – not to speak of the human and social costs involved – rarely achieved their stated objectives. Rather than promoting social integration, they merely perpetuated the marginalisation process. Administrative detention measures, seen in terms of their ostensible welfare and education objectives, were not particularly effective in the end.

PETITIONS FOR RELEASE: PROMISES OF BETTERMENT WITH NO WARRANTY OF SUCCESS

Closely associated with the concept of probation was the use of early or conditional release. Many administrative detention laws included provisions for the release of detainees upon completion of one half or two-thirds of the detention term.[84] The canton of Fribourg's 1942 Administrative De-

83 IEC, vol. 8, chap. 4.1.
84 Bossart 1965, 103.

tention Act provided, for example, that detainees could be released upon request on condition that they had earned the "privilege" and that their release would not constitute a – not further defined – "risk".

The possibility of early release provides a further parallel between the administrative detention regime and that of criminal correction. In point of fact, this practice was already widespread in connection with administrative detention when, in the late 19th century, the cantonal governments began to introduce a graduated punishment system into their criminal justice regimes as well. In 1942, conditional release was also included as a possible measure in the Criminal Code.[85] Conditional release was seen as another instrument for betterment and discipline that was designed to create incentives during detention. Early release was made subject to the proviso that released detainees adhered to the conditions imposed and "proved themselves". In many cases, they were subject to parole conditions, which will be dealt with in the next section. Where early release was not possible, or where the responsible officials denied a petition for release, the individuals concerned remained in detention until the maximum term of detention had expired. In cases of detention under the terms of the Civil Code, there was no provision for conditional release; it was, however, possible for detainees to submit a petition for release to their guardians.

The Bellechasse facilities provide an example of how early release functioned in actual practice.[86] The possibility of granting early release was introduced in Bellechasse in the 1920s. A decisive role in such cases was assigned to the director of the facilities. As a rule, the responsible authorities – for detainees from the canton of Fribourg, the Government Council, for those from other cantons, the respective ordering authority – followed the recommendations of the facility director. The director thus functioned, until the 1950s, as a sort of "gatekeeper", who could effectively decide at his own discretion on freedom or imprisonment. During the crisis that befell the facility in 1950, complaints were also publicly voiced with regard to arbitrary release decisions. "[In] Bellechasse the director has sovereign decision-making powers as to whether a petition […] will be forwarded or not. The inmate lives in agonising uncertainty," wrote *Der Beobachter*, criticising the circumstance that so much power was concentrated in the hands

85 Lippuner 2005, 200–201.

86 On the following, unless otherwise noted, see IEC, vol. 8, chap. 12.

of a single individual.[87] In the mid-1950s, a commission under the direction of the Office of Public Health was appointed to decide on petitions for release from the alcohol treatment division, La Sapinière. This was intended to put limits on the powers of the director. The fundamental problem of dependency and of the "agonising uncertainty" under which the detainees suffered remained, however.

Up until the 1950s, the impression created by the sources is that early release policies were schematic. Petitions for release could be submitted in writing, with the assistance of the facility administration, using a preprinted form. The director's recommendations on early release were also of a perfunctory nature, as may be seen from this example: "The petitioner conducts herself well and works diligently."[88] Decisive for such recommendations were the detainee's adherence to the facility's disciplinary regime, willingness to work, and prospects of finding employment following release. The focus on detainees' prospects for the future took on an even greater role after the Second World War. At the same time, however, it is not always possible to identify from the sources the specific factors that proved decisive in any given instance. In the case of A.W., who had been sent to detention in Bellechasse from another canton in 1951, the Schwyz Government Council approved her early release on condition "that a suitable place of employment is found for the party to be conditionally released, where she can be kept under constant surveillance by the cantonal parole office […]. She is to be returned to the detention facility at any such time as just cause for complaint against her may arise."[89] Prior to issuance of the decision, consultations had been held with the cantonal parole officer, who had relied on a psychiatric opinion and the statements of a facility guard. Such coordination became more common in the post-war era, but was far from being the rule.[90] The assurance of a place of employment also played an significant role in a 1972 decision by the detention release commission of the canton of Fribourg to allow the detainee S.M. to leave Bellechasse; of importance as well was the detainee's willingness to obey summonses by

87 "Erziehungsanstalt oder Verbrecherschule?", *Der Beobachter*, 15 December 1950, quoted in IEC, vol. 8, chap. 12.1, 573.

88 File bundle B.D., Archives de l'État de Fribourg, Dpd 2004, quoted in IEC, vol. 8, chap. 12.1, 565.

89 Decision of the Executive Council 552/1951, Staatsarchiv Schwyz, quoted in IEC, vol. 8, chap. 14.3, 649.

90 See Rietmann 2013, 168–169.

the canton's Office of Psycho-Social Affairs (*Centre psycho-social*).[91] A high price was exacted from the detainee S.G. for her release: she was placed before the alternative of giving up her child to foster care and leaving detention, or accepting detention for a term of three years with uncertain prospects for her child's future. Out of fear that she would not be able to survive detention, she finally gave in to the pressure to allow her child to be placed in foster care.[92] The weight attached to the factors of employment, family and child care was often contingent on public finance considerations (see "Coerced into adoption", p. 289). The authorities involved sought to make certain that release from detention would not result in the imposition of a further burden on the welfare state.[93]

In many cases, the individuals concerned petitioned for their release on their own. Sometimes, it was family members or the local municipality that requested their release, arguing, respectively, that they were in need of additional hands at home or that the costs of continued detention were too high. For the detainees, petitioning for release could be a double-edged sword. On the one hand, of course, it opened the prospect of a shorter term of detention. Often the fight for early release also helped restore at least a minimal sense of autonomy. At the same time, however, seeking release compelled the petitioners to subordinate themselves once again to the normative expectations of the authorities in order to argue credibly that they had earned their freedom. "Detention in Bellechasse did me good; I had time to think about my past, and my future. I always did my best at work, and my conduct has been exemplary," wrote a female detainee in 1943 in an – intercepted – letter to the competent Department of Justice and Police, informing them of her "reformation".[94]

In order to demonstrate that they were worthy of being released, the individuals concerned used various strategies. As letters from Bellechasse detainees illustrate, the petitioners' promises to better themselves were formulated in a way that anticipated the expectations of the addressees. Here, again, the expectations created by gender stereotypes played an important role. Men stressed their desire to support their families, or their prospects

91 IEC, vol. 8, chap. 12.3, 586–587.
92 IEC, vol. 5, chap. 3.3, 119.
93 IEC, vol. 8, chap. 12.3; see Rietmann 2013, 167–168.
94 Letter from the detainee to the head of the Department of Police and Justice of the canton of Vaud, 16 May 1943, Archives de l'État de Fribourg, Bellechasse A 622, quoted in IEC, vol. 4, chap. 3.1, 269.

of finding a job or continuing their occupational training after their release. Until the 1950s, requests for assistance in finding employment were also common. Men in alcohol treatment centres promised to remain abstinent or to participate in an alcohol abuse treatment programme. Women, by contrast, emphasised their readiness to conform to prevailing family and sexual norms. They promised to accept their role as a dutiful housewife or to get married. There were also women who sought to find a marriage partner while still in detention. This was intended to signal their willingness to submit to marital and family control mechanisms. Those strategies were a reflection of the methods by which, up to the 1950s, women in Switzerland were assigned a place within a social framework and subjected to control. In the eyes of the competent authorities, marriage was, in many cases, genuinely considered as a viable alternative to administrative detention.[95] Thus, in a 1957 decision by a municipal government, one reads: "Should I.L. in fact marry T.G., and all formalities required by the civil registration office be completed, it would be possible to approve an early release."[96] Under that logic, the husband assumed the "oversight" role that was previously incumbent on the detention facility. This was entirely consistent with the spirit of the applicable laws on marriage in Switzerland prior to 1985. Those laws provided, for example, that married women required the consent of their husbands for such things as having access to social security benefits or when entering into a contract or accepting employment.

AFTER DETENTION HAS ENDED: SURVEILLANCE AND RETURN TO DETENTION

All former detainees continued to be subject to surveillance even after their release. Legally incapacitated individuals were required to obey the instructions of their guardians. Detainees who had been conditionally released were normally subject to parole. The task of the parole officer was to assist the released detainees by "word and deed" and to support their efforts to find employment and living accommodations. Depending on the canton, the parole office could be a government agency or a privately operated association. After the Second World War, it was often the socio-medical services that assumed responsibility for follow-up care in

95 IEC, vol. 4, chap. 3.1; IEC, vol. 5, chap. 3.3; Hauss, Gabriel, Lengwiler 2018, 276.

96 Decision of the communal authorities, 22 June 1957, Archives de l'État de Fribourg, EB Det DI 1-1020, quoted in IEC, vol. 4, chap. 3.1, 286.

alcohol treatment cases. Depending on how things were organised in the different cantons, those in charge of keeping watch over the former detainees could be parole officers, juvenile prosecutors or social workers, or again private "mentors", such as employers, teachers or clergymen. In so doing, they found themselves on slippery ground, manoeuvring between the conflicting tasks of providing assistance and maintaining surveillance. Some oversight officials served both as social workers and as legal guardians in the same person.[97]

The parole office was another juncture where administrative detention and criminal correction intersected. In many cantons, the same office that was responsible both for criminal convicts on conditional release, or under a suspended sentence, and for former administrative detainees. For the latter, being released on parole brought with it the risk of further stigmatisation. "Parole is otherwise intended for outright criminals. [Administrative detainees] belong to an entirely different category of people. If we make them subject to parole as well, the conclusion drawn by the general population is that the individual in question is a criminal, that he has served time in prison," observed a Bern social worker in 1954. What she neglected to mention, on the other hand, was that in many cases, it was actually true that an administrative detainee had been held in prisons.[98]

The term of probation, during which released detainees were still subject to controls, differed from case to case. In the canton of Schwyz, it was often the same as the portion of the detention term that had been suspended. In particular cases, it could also be indefinite. Frequently, the period of parole was followed by a further phase of informal supervision, during which the parole officer or a social worker continued to maintain contact with the individuals concerned. This function could also be performed by the placement of persons "at risk" with their employers or with a family; for women, marriage could also serve this purpose. Parole enlarged not only the temporal scope of control, it also impinged on the way in which individuals conducted their lives and planned for the future. It affected their domestic and employment arrangements, as well as their health behaviour and sexual relations. Some "patrons" continued to place their "clients" in halfway houses or worker hostels. In the canton of Va-

97 IEC, vol. 8, chap. 14; Studer, Matter 2011.

98 Proceedings of the Commission for the preparation of the Correctional and Detention Act, 3 June 1954, Staatsarchiv Bern, BB 13.1.195, quoted in Rietmann 2011, 95.

lais, social workers were required in the 1950s to fill out a standardised questionnaire on a monthly basis concerning the subjects' work performance, conduct towards their employers, drinking habits, general conduct, and their financial and family circumstances. The questions were highly normative in nature and mirrored the criteria that could be used to justify a (repeated) administrative detention measure. In the canton of Bern, juvenile prosecutors, who were responsible for the supervision of released juvenile detainees, kept meticulous records of the job changes, recreational activities and romantic involvements of their young charges. The overall picture that emerges is disparate: on the one hand, released detainees were subject to a degree of oversight that far exceeded that of the social control to which non-detainees were compelled to tolerate. At the same time, however, there were some former detainees who were able to build up a trusting relationship with their social workers. It is difficult to say to what extent such positive experiences were the product of a general change in social work methods that placed greater emphasis on individual case work.[99]

The power of parole officers to interfere in the lives of the former detainees brought with it an increased risk of conflict between the oversight authority and the individuals concerned – and thus also the threat of a return to detention (see "Freedom under surveillance", p. 285). The restrictions imposed on the freedom of former detainees to live as they chose and the intense surveillance to which they were subjected increased the risk that any unconventional or idiosyncratic behaviour on their part would be recorded – and result in new sanctions. Of particularly critical importance were their behaviour at work and their interpersonal relations. This can be illustrated by the example of A.W., referred to above, who was conditionally released from Bellechasse in 1951. Some months later, the parole office of the canton of Schwyz requested that she be detained again, in the Lenzburg correctional facility, on the grounds that she had repeatedly changed jobs, had disappeared to "whereabouts unknown" and had committed a theft. A letter from an acquaintance reveals, however, that the young woman's social worker had opposed her career aspirations and her wish to marry out of love. Discouraged by the foiling of the plans she had made for her life, she had in the end gotten "sick and tired" of her job.[100] Her story is

99 IEC, vol. 4, chap. 3.3; Germann 2018, 34–35.
100 IEC, vol. 8, chap. 14.3, 650–652.

exemplary of how the vicious circle of surveillance, attempts to gain more freedom, and more sanctions could trap detainees once again in a downward spiral of events leading to renewed detention.

5.4 INTERIM CONCLUSION: INSUFFICIENT FUNDS AND LACK OF SOCIAL RECOGNITION

For most of the individuals concerned, the consequences of being detained in a closed facility were highly detrimental. Although administrative detention measures were officially described and held to be justified as serving educational and reformatory objectives, their effect was to contribute to the social marginalisation of the detainees. The nature of the institutions where administrative detention measures were enforced was far from uniform. The regime in some facilities was decidedly punitive in character, while other institutions gradually moved, over time, to greater openness. Overall, the picture that emerges, as portrayed by contemporary eyewitnesses, is one of great asperity, of a life dominated by constraints and discrimination. For many of the individuals, detention was experienced as deliberately inflicted suffering and, as such, as a punishment. That experience comprised both psychological and physical elements. Incarceration aroused, first of all, a strong feeling of insecurity and isolation. Administrative detainees were entirely at the mercy of the facility administration and staff; they had no rights and were frequently the victims of physical and sexual violence or other injuries to their personal integrity. They were compelled to tolerate material deprivations and suffered from an absence of adequate sanitation and healthcare. They were compelled to perform labour that was neither fairly compensated nor – with very few exceptions – suitable for providing them with vocational qualifications. Particularly detention in institutions that were also used for criminal correctional measures had a stigmatising effect, which hindered advancement in both their professional and their private lives. The lack of sufficient preparedness for life after their release and the continuing constraints and controls over their conduct increased the risk of their being returned to detention. The proportion of former detainees who were placed in detention on multiple occasions is high (although with a downward tendency over time). Ultimately, administrative detention only aggravated the very problems and hardships that it was supposed to be combating.

What factors were responsible for these contradictions? First, the desolate conditions of detention were, to a large degree, the result of a chronic funding shortage. As a result of the financial priorities adopted by the cantons, enforcement facilities had neither the requisite infrastructure nor sufficient personnel for the conduct of a humane and socially integrative enforcement policy. Although the situation in the institutions used for administrative detention improved in the 1960s, efforts to achieve social integration and respect for the individuals held in detention continued to take a back seat to financial and practical considerations concerning the enforcement of detention measures. In perpetuation of the logic underlying traditional welfare measures for the poor, detention costs were shifted onto the detainees themselves in the form of compulsory labour and boarding fees. A more heterogeneous picture is found in institutions for juvenile detainees, where a greater effort was made to encourage vocational training and to incorporate socio-pedagogical approaches. This notwithstanding, the available choices and the chances for upward social mobility remained severely limited here, too. The scarcity of resources was, at the same time, a reflection of the prevailing gender hierarchy. While it is true that the frequency with which administrative detention measures were ordered for women was lower, the living conditions for women inside the institutions were often much harsher than in comparable facilities for men. Women in detention received lower wages for their labour and benefited less and later from opportunities to obtain vocational training. Similarly, the number of facilities to which young women could be sent as an alternative to institutions for adults was far smaller than that available for young men.

Second, during the post-war era, the public funds invested in the social welfare system were allocated primarily to enlarging the range of non-custodial and less invasive measures. This gave rise to a paradoxical situation: while there was definitely a decline in the number of administrative detention measures ordered, there was also a change in the nature of those detention measures that were enforced, such that they came to be seen as socio-political default options. This meant that there was less pressure to improve conditions in detention facilities or to invest in alternatives (e.g. specialised reformatories). Particularly affected by this development were institutions that were also used for the execution of criminal sentences and criminal correctional measures. The inconsistent manner in which the institutional reforms called for by the Criminal Code were implemented was, to a large extent, responsible for the continued use of such

facilities also for the enforcement of administrative detention measures. Things began to move in a somewhat different direction in the 1960s, as the cantons, with the support of the federal government, commenced efforts to improve the infrastructure of detention facilities. As may be seen from the example of Hindelbank, however, investments in new construction did not necessarily lead to more liberal enforcement policies. It was not until the 1970s that – propelled by the adoption of intercantonal conventions on criminal correction, the granting of federal incentive subsidies, and the institutional criticism of the 1968 protest movement – more large-scale reforms were undertaken. Their effects were initially felt in reform schools for juveniles and spread later also to criminal correctional facilities. Until that time, the shortage of material resources – combined with an authoritarian-repressive understanding of enforcement and halting reform efforts – remained a fundamental constant of the Swiss institutional landscape.

Third, neglect of the physical conditions in the detention facilities was closely descended from an underlying socio-political attitude that had a similarly formative influence on the foster care system and the treatment of contract children: a fundamental lack of social recognition expressed through the sustained stigmatisation of individuals detained in those institutions. The majority of those individuals belonged to the lower echelons of society. Placement in administrative detention, even when it was ostensibly ordered for purposes of reform education and social integration, had a strongly punitive component to it. The individuals concerned were blamed by the authorities for the personal or family problems and economic distress into which they had fallen. Because of this, the authorities had no compunctions with regard to the depredations and suffering that were inflicted on those individuals by the loss of their freedom; it was believed that these were side-effects capable of serving either as a part of their "reformatory education" or as a deterrent. Typical of the low degree of social recognition with which administrative detainees could expect to be treated was the attitude of turning a blind eye to irregularities and complaints. This was embodied in the demeaning, often violent or even sadistic treatment of detainees by facility administration and staff, and a systematic disregard for the particular needs and future prospects of the individuals concerned. Particularly disastrous in its consequences for the detainees was the proximity of many detention facilities to institutions of the criminal correctional system – in perpetuation of a tradition that began with early police measures for dealing with the destitute. Because they

were often housed in the same facilities, or even in the same buildings or dormitories, as convicted criminals, the stigma that Swiss society attached to the latter was also transferred to administrative detainees, even though they had not been deprived of their liberty because of any criminal act. All of these factors contributed to a situation in which the individuals concerned could not experience the deprivation of their liberty and the attendant deprivations as anything but a cruelly unjust punishment.

SOURCE 5:

WORK FOR NO WAGE?

This two-page letter by a man detained administratively in the Bellechasse facilities (Fribourg) is undated, but may be presumed to have been written in 1965. The stationary bears the letterhead of "La Sapinière", that is, of the corrective labour facility for alcoholics in Bellechasse. The author was therefore a man who was held in that facility, which had been established specifically for individuals with a drinking problem. The letter is one of the many letters that were written by both male and female detainees and addressed to the director of the Bellechasse complex. The main thrust of the letter is a clear demand: the detainee insists that he is entitled to reasonable compensation for the labour he has performed while in detention: "It is a general rule in life that all labour deserves a wage, and this should also be so in our establishment, La Sapinière."

We learn from the letter that the now 60-year-old mason had already presented his case in a personal conversation with the director. The letter was prompted by the detainee's discovery that his "peculium" had been reduced. The peculium was a symbolic wage for labour performed in the facility. Depending on the facility and the circumstances, it was paid out either in the course of the detention term or upon the detainee's release. In the latter case, it was intended to give the detainee a small head start for beginning life in freedom. The facility administration saw the peculium as an incentive that would improve the work ethic of the detainees and encourage them to be on their best behaviour. In view of the low rate that was paid, it would be misleading to describe the peculium as a wage; it was in no way comparable with the price of labour on the open employment market.

The author of the letter also takes issue with the rate that was paid for labour at the facility. He finds it extremely unfair that he received only a fraction of the salary paid to a mason plying his craft in any of the neighbouring towns. As evidence of this, he enclosed with the letter a list of projects he had carried out in the months of February and March in the canton of Fribourg, where he lived, and for which he had received a fair wage. He does not understand, the detainee writes, why his peculium has been reduced. He is also particularly disappointed that his personal conversation

with the director had not prevented the reduction. In this regard, he writes: "You said you had taken note of the matter, but in my logbook I see that nothing was either noted or changed." In other words, he had checked his personal "logbook" where credits and debits to the detainees' accounts were recorded. In view of the amounts credited to his account, the author of the letter had no illusions that the money would provide him with any appreciable help in setting himself up again after his release. In order for him to accumulate "a certain sum for my release", he would have had to have been paid a decent wage for the work he did.

The Bellechasse facilities at that time (and even today) ran a sizeable agricultural operation. Detainees of different categories worked together on the farm and were expected to contribute to its profitability. The working conditions were harsh. In addition, work was compulsory, and nobody was excused. The detainees normally also had no influence over the nature of the work assignments they were given. In this, Bellechasse was no exception. Many detention facilities functioned in the same way. Work assignments varied in accordance with the reason for detention, the gender and the age of the detainees. Men detained in La Sapinière were mostly put to work on the vegetable farm.

In his letter, the Fribourg detainee did not complain about the fact that he was obliged to work, or that the tasks he was assigned were physically exhausting. What he did object to was the fact that his work was not valued. Other detainees, he complains, were better compensated than he: "I do not see why I should be paid less than a carter, a baker or a cook […]." The only possible explanation he sees is that his advanced age had made the facility administration decide that he was less productive than the others, and that it was for this reason he did not receive the same wage. As a skilled mason, he complains that his work was also not appreciated. He repeats on several occasions in the letter that "everyone is happy to work" if their work is properly appreciated. And such appreciation, he argues, must necessarily be expressed by fair compensation. In his view, the peculium is not only insufficient remuneration, but is also symptomatic of the exploitative system that reigns in the correctional labour facility. This sense of injustice was an expression of the discrepancy between the expectations of the letter writer, who based himself on conditions on the free employment market, and the significance that the facility administration ascribed to the peculium. This notwithstanding, the man still has hope that the director

Maison de travail pour alcooliques
LA SAPINIÈRE
Arbeitsanstalt für Trinker
Poste: Sugiez

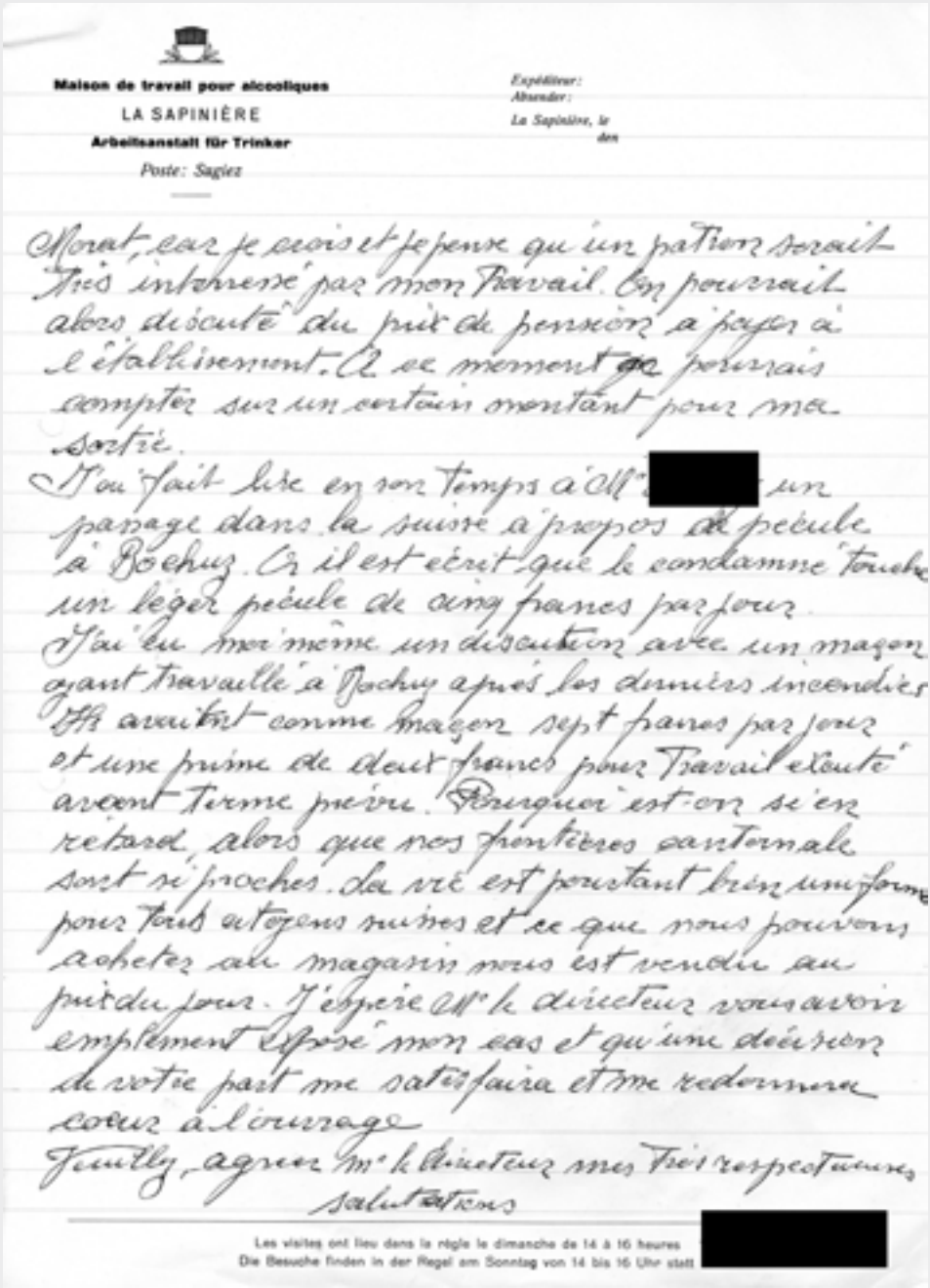
Expéditeur: [redacted]
Absender:

La Sapinière, le
den

Monsieur le directeur,

Travailler, prendre de la peine, c'est le fond qui manque le moins. Cela on se le rapelle encore de l'école. Mais dans la vie tout travail mérite salaire et il devrait en être de même dans notre établissement de la sapinière. Je vous avais exposé lors d'une séance d'audience que mon pécule au lieu d'augmenter allait en diminuant. Vous avez noté la chose, mais je constate que sur mon carnet rien n'a été noté, ni modifier. Je vous ai fait parvenir les rapports de travail de février et mars, avec détail de mon travail or rien n'a été pris en considération. Au mois de février et mars j'ai fait du travail spécial de carrelage, simili pour escalier et ravallement de façade. Je ne pense pas que ces différents travaux peuvent être éfectués par n'importe qui. Je pense que chacun a plaisir de travailler quand on s'est reconnaître le travail. Or tout travail mérite salaire et je ne vois pas pourquoi je serais moins rétribué qu'un charretier, boulanger ou cuisinier, valet de chambre etc etc. Si mon métier n'est pas de rapport pour l'établissement, vous pourriez alors me trouver une place de maçon à Sugiez ou

Les visites ont lieu dans la règle le dimanche de 14 à 16 heures
Die Besuche finden in der Regel am Sonntag von 14 bis 16 Uhr statt



Maison de travail pour alcooliques
LA SAPINIÈRE
Arbeitsanstalt für Trinker
Poste: Sagiez

Expédition:
Absender:
La Sapinière, le
den

Monat, car je crois et je pense qu'un patron serait très intéressé par mon travail. On pourrait alors discuté du prix de pension à payer à l'établissement. Et ce moment-là je pourrais compter sur un certain montant pour ma sortie.
J'ai fait lire en son temps à M[illegible] un passage dans la suisse à propos de pécule à Bochuz. Où il est écrit que le condamné touche un léger pécule de cinq francs par jour.
J'ai eu moi-même un discussion avec un maçon ayant travaillé à Bochuz après les derniers incendies. Il avaient comme maçon sept francs par jour et une prime de deux francs pour travail écouté avaient Ferme prévu. Pourquoi est-on si en retard, alors que nos frontières cantonale sont si proches. La vie est pourtant bien uniforme pour tous citoyens suisses et ce que nous pouvons acheter au magasin nous est vendu au prix du jour. J'espère M[illegible] le directeur vous avoir emplement exposé mon cas et qu'une décision de votre part me satisfaira et me redonnera coeur à l'ouvrage
Feuilly, agréer M[illegible] le Directeur mes très respectueuses salutations

[redacted]

Les visites ont lieu dans la règle le dimanche de 14 à 16 heures
Die Besuche finden in der Regel am Sonntag von 14 bis 16 Uhr statt

will use his powers to assign a fair value to his labour. It is in this sense that the 60-year-old mason closes his letter: “a decision on your part […] would revive my enthusiasm at work”.

Sources: Archives de l’État de Fribourg, Bellechasse A 7972.
For further informations: IEC, vol. 8, chaps. 3 and 7; IEC, vol. 4, chap. 2.2.

SOURCE 6:

FREEDOM THROUGH ABSTINENCE

With release requests such as what is reproduced here, individuals held in administrative detention wrote to the authorities seeking to obtain their early release. A letter to the Department of Justice and Police of the canton of Geneva, dated 29 August 1944, was written by N.C., a 39-year-old Geneva citizen, who was placed in detention in Nusshof, an affiliate of the Witzwil facilities in the canton of Bern. In his request to the Geneva authorities, N.C. petitions that the final two months of his detention term be suspended. To ground his request, he offers various arguments. To begin, he underscores his willingness to work and to properly perform his part as his family's breadwinner. He is married and the father of a three-year-old son, he argues. Since the time of his detention, 13 months ago, he claims his wife has been obliged to work in a café at a low wage. If he is granted an early release, he continues, he has hopes that he would be able to find a job before the winter comes and thus be in a position to help support his family. As a second argument, N.C. points out that he has demonstrated good conduct during his time in the facility: "While here, I have done everything in my power to satisfy the facility administration." To demonstrate his good faith, he recalls the promise he has signed to abstain from drinking for a period of five years.

The mention of his efforts to keep the facility administration satisfied is an indication of the central role this played in decisions on early release. Requests to the authorities that had issued the detention order were normally accompanied by a recommendation from the director of the facility. The ordering authorities attached great weight to the assessments of facility directors. The main factors in those assessments were usually the work performance by the detainees in question and their adaptation and subordination to the hierarchical structure of the facility's regime. Both of these factors, it was believed, were indicators of the individual's ability to lead a "successful" life after leaving closed detention.

N.C. makes the same arguments as are found in many other petitions for release. The petitioners were more or less informed as to what kinds of statements would make the authorities happy and thereby improve their chances of receiving a positive response. They also knew what things should not be mentioned in a formal petition for release. Thus, for exam-

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Nüsshof 29-8-44

Messieurs

Lors de votre visite le 29-8-44 au Nüsshof, un de vos membres ma dit de vous écrire le même jour, pour vous demander ma libération conditionnel. c'est pourquoi je m'empresse de le faire pour les motifs suivant: Je suis marié j'ai un petit garçon de 3 ans, depuis mon internement soit a Bel-air soit au Nüsshof ce qui fera 13 mois fin août ma femme travaille dans un café et gagne très peu.

Si je vous demande la grâce des 2 mois qu'il me reste a faire c'est pour pouvoir travailler avant l'hiver et ainsi acheter l'argent pour une famille dans le besoin.

Ma conduite a été très bonne a Bel-air, et ici j'ai fait tout mon possible pour donner satisfaction a la direction.

J'ai signé la tempérance pour 5 ans auprès de Mr Brocker et Maître Charles Blanc 5 rue du Rhône pourra vous renseigner sur les besoins de ma famille.

En attendant une bonne réponse et ainsi vous prouves mes bonnes résolutions agréez Messieurs mes salutations bien distinguées

[redacted]

J.K. [redacted] Nüsshof

Witzwil. Berne.

ple, it was not advisable to include any complaints about conditions in the detention facility. The Geneva citizen, N.C., wished not only to submit an official petition for his release, however, but also to draw the attention of his home canton to irregularities in the facility to which he had been sent. To that end, he wrote a second letter, which he succeeded in getting smuggled out of the facility. In that second letter, he complains that his placement there had been wrongful, and that it had caused him physical and mental suffering. He points out that the detention regime in Nusshof is like that of a penal correctional facility and that he had not been sent, as originally planned, to an alcohol treatment centre. It is accurate that Nusshof was not a sanatorium for alcoholics, such as those that were operated by various private organisations. Rather, it had a special section for "drinkers" that was part of a larger, multifunctional detention complex. The detainees in that section were subject to the same regime as all other inmates, including those convicted of criminal offences. The daily routine centred around work in the facility's agricultural operations, performed jointly by all inmates. It is impossible to speak of any kind of care or treatment provided to detainees there that could be described as being designed to alleviate or cure alcohol dependency.

N.C. attempted in his letter to convince the canton of Geneva's Department of Justice and Police that he did not belong in Witzwil. A letter of this kind could only leave the facility if it was smuggled out. All correspondence, both incoming and outgoing was monitored by the facility administration. It was not infrequent for letters to be censored entirely, whereby neither the sender nor the addressee was informed thereof.

Sources: Archives d'État de Genève, CHAEG, 2010va038, dossier 162.
For further informations: IEC, vol. 8, chap. 12; IEC, vol. 4, chap. 3.1.

SOURCE 7:

VIOLENCE IN CLOSED FACILITIES

The letter from the director of the Mendrisio psychiatric hospital, Ospedale neuropsichiatrico cantonale, to the Ticino Government Council is dated 29 September 1969. A copy was sent to the authorities and other actors involved with the case: the public prosecutor's office, the juvenile prosecutor's office, the surgeon general of the canton, and the chairman of the hospital's administrative investigations committee. The letter is one of many concerning the violent assault of the young woman O.L. What had happened?

The 15-year-old O.L. had been the victim of a rape, committed in broad daylight at the psychiatric hospital. The perpetrator could subsequently not be identified – it remained unresolved whether he was a patient or a member of the hospital staff. Because the hospital administration suspected – wrongly, as it later turned out – that O.L. had been made pregnant by the perpetrator, it applied for permission from the cantonal surgeon general's office to have an abortion performed. The latter denied the application and ordered instead that an investigation be conducted. The letter of 29 September 1969 was written by the hospital director in response to the investigation. The tone is defensive, resolute, angry, occasionally remonstrative and, at the same time, apologetic. The director defends himself against the allegations and, concomitantly, takes advantage of the occasion to lobby on behalf of his institution.

Already in the opening passage of the three-page letter, the director describes the investigation as superfluous. The assault on O.L., he claims, had already been the subject of an internal investigation. An internal hospital committee had reached the conclusion that there was no reason to report the matter to the justice authorities, so that the case could be considered closed. He then takes advantage of the occasion for a discussion of the problems that, in his view, make such acts of violence possible. The director argues that under-age girls do not properly belong in the hospital and that they are out of place there. Due to the lack of suitable institutions in the canton of Ticino, he explains, he has repeatedly seen himself compelled to admit such "difficult girls" to the hospital. He complains not only of the inadequate cantonal infrastructure, but also of the prevailing situation in the hospital. There is a shortage of both financial and personnel resources, he notes.

TICINO

Ospedale neuropsichiatrico cantonale

DIREZIONE MEDICA

Telefono (091) 6 18 16

PROCURA PUBBLICA
30 SET 1969
SOTTOCENERINA

All'
On. do Consiglio di Stato
del Canton Ticino
6501 BELLINZONA

6850 Mendrisio,

RACCOMANDATA *29 settembre 1969*

Oggetto:

Caso [redacted] *1953, paziente presso l' ONC*

Onorevoli Signori Consiglieri,

poiché il caso della [redacted] *già oggetto d'esame a suo tempo, su richiesta dell'Avv. Induni, della nostra lod. le Commissione amministrativa non aveva sollevate rilievi ed eccezioni di sorta, non riesco proprio a capire per quale motivo lo stesso vi sia stato riproposto ed in siffatta maniera da determinare lo scritto inviatomi al riguardo e di cui non posso che respingere fermamente, con il suo contenuto, le conclusioni.*

Dato che la prassi in uso – applicata magari in certi casi con eccessiva ortodossia anche laddove l'indagine era già stata esperita con conseguente decisione motivata – dispone che é data ad ognuno facoltà d'essere sentito ed esporre preventivamente le sue argomentazioni sui fatti contestatigli, non posso nella fattispecie non essere stupito, per non dire di più, vista la voluta riesumazione del caso, della procedura seguita in quanto nessuno, ripeto nessuno, mi ha preventivamente informato di questa intenzione e più s'é dato la pena di reinterrogarmi in proposito.

Avrebbe allora potuto costatare come la via seguita – sulla base delle argomentazioni da me fornite a suo tempo alla lod. le Commissione amministrativa del nostro Istituto e ritenute probanti – a parte la mancata denuncia alla Magistra-

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tura dei Minorenni resa discutibile dalla conseguente non esistenza del fatto, ricalcasse i disposti di legge in materia nonché l'iter seguito in casi similari dal precedentemedico cantonale.

Ed anche che, data l'iniziale positività degli esami di laboratorio eseguiti alla [redacted] e confermata dall'esame d'un ginecologo che aveva suffragato la supposta nostra diag[illegible]si, giustificato appariva l'avvio della pratica, dipoi dimostratesi inutile e quindi annullata dalla susseguente "realtà".

Ma più avrebbe permesso d'aprire finalmente un discorso sul problema di fondo di queste ragazze difficili - corpo estraneo in un ospedale quale il nostro impostato sui più attuali moderni metodi terapeutici e socioambientali - che ci vengono malgrado ciò inviate per mancanza d'altra adeguata istituzione nel Cantone, istituzione da me ripetutamente sollecitata dopo la chiusura di quel "Girolamo Emiliani" di Faido che bene o male, a suo tempo, le ospitava.

Ed un altro ancora sui casi che, malgrado la mia pertinace e continua opposizione, ci vengono trasferiti dal Penitenziario cantonale non tanto per essere sottoposti a referto peritale - tempo, nel caso, di degenza limitato - ma per altri considerandi veri e che, data la liberalizzazione in atto da noi e quindi l'impossibilità effettiva di loro adeguata sorveglianza, ne approfittano quasi sempre per rendersi "uccel di bosco".

Ed infine, senza forse allora, oltre al ridimensionamento di eventi quali quello della [redacted] questo discorso avrebbe anche servito ad evidenziare in modo inconfutabile la necessità di facilitare, a chi si vuole giustamente responsabilizzare della direzione d'un complesso quale è il nostro Istituto (oltre mille persone tra degenti e personale ed oltre altrettante ammissioni di nuovi casi all'anno), la soluzione di quei numerosi problemi che dovrebbe di volta in volta poter affrontare e risolvere al meglio: della continuazione del miglioramento degli ambienti e, quindi della no-

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cessità non solo di trasformare ma di procedere a nuove costruzioni, della urgente ristrutturazione del quadro medico sia con l'aumento del loro numero (specie dal lato specialisti) che della modifica sia delle loro condizioni d'assunzione che della possibile stabilità di loro permanenza, eccetera.

E per finire forse il tutto avrebbe potuto determinare finalmente, oltre all'eliminazione di certe dubbie prese di posizione nei miei riguardi, un più oggettivo apprezzamento di quanto modestamente ma tenacemente é stato voluto e realizzato qui dal sottoscritto, pur tra incomprensioni e difficoltà d'ogni genere, in questi suoi venticinque anni d'attività per l'umanizzazione di questo particolare mondo e per la guarigione e la rivalutazione morale e sociale dei suoi ospitati.
Con distinta stima.

IL DIRETTORE
Dr. Elio Gobbi

Copia: - Procura pubblica sottocenerina, 6901 Lugano
- Magistratura dei minorenni, 6901 Lugano
- Medico cantonale, Dr. Moccetti, 6718 Olivone
- Avv. Induni, Presidente della Sotto-commissione amministrativa dell' CNC, 6853 Ligornetto

The hospital director blames numerous factors for the violent incidents that occur in an institution where more than a thousand individuals (including staff) are housed. The letter reads as an appeal to the political leadership to improve the underlying conditions and to make more resources available. In this way, the director attempted to deflect the blame for the rape of O.L. from himself and to shift responsibility to the competent political authorities. In adopting this stance, he was not alone. Not only in the canton of Ticino, but throughout Switzerland, the question of resources was the source of a constant tug-of-war between facility administrators and the political leadership. On the one hand, there was no true political will to create the conditions that were called for; at the same time, there was also no consensus as to how the appropriate structures should look.

Physical, sexual and psychological violence were a recurrent experience for many of the individuals who were the subject of administrative detention measures. The present document illustrates the point that inadequate infrastructures, combined with excessive personnel and financial demands, facilitated the occurrence of such violent acts. It also provides an example of the tendency of many detention facility and hospital administrations to handle cases of violence internally and to close them without involving external actors. Lastly, what is also typical, is that the voluminous file does not include any documentation whatsoever testifying to O.L.'s view of the incident – despite the fact that the young woman was questioned by at least two different people about what happened. The victims often faced difficulties in making their voices heard, particularly when they were held in a closed institution. It is thus not exceptional for violent incidents to be only poorly documented or not at all.

Sources: Archivio di Stato del Cantone Ticino, Fondo Procura pubblica sottocenerina – parte 2, Inc 1038/1969.
For further informations: IEC, vol. 8, chap. 5; IEC, vol. 4, chap. 2.3, 235–239; IEC, vol. 5, chaps. 2.3 and 3.2; IEC, vol. 9, source no. 59.

6 MARKED FOR LIFE: CONSEQUENCES OF ADMINISTRATIVE DETENTION FOR THE LATER LIVES OF DETAINEES

"Detention never ended!"[1]

These were the words of a man who had spent his childhood in foster care and begun his adult life in administrative detention, spoken at a "World Café" organised by the IEC in November 2017. Although he had been released many years before he spoke them, this was his way of saying that the consequences of detention were something he was compelled to deal with all his life. What were those consequences? How did they affect the course of the lives of the individuals concerned? These are the questions addressed in this chapter.

The procedures for leaving a detention facility and ending a term of detention differed according to the various cantonal and federal laws that applied (see chap. 5). Because of this, certain disparities also arise in the process of reconstructing what took place. Under the terms of a conditional release, the individuals concerned were normally placed with an employer, and their daily life remained under more or less close surveillance by cantonal, municipal or non-public authorities; the task of surveillance could be assumed by public sponsors or delegated to private foundations or persons.[2] Individuals under guardianship were also obliged to report regularly to their guardians, whose consent they required for various administrative procedures (signing of an employment agreement, receiving salary payments, getting married, etc.). For detainees released unconditionally – as occurred for example with young adults when they reached the age of majority – leaving the institution where they had been placed was an even more abrupt transition. In keeping with the general policy of providing the individuals concerned with as little information as possible with regard to the decisions of the authorities, detainees were rarely told when they would be released.[3] Many of those interviewed recalled that they

1 Anonymous participant at the IEC World Café, Wabern, 2 November 2017.
2 IEC, vol. 8, chap. 12.3, 581–583, and chap. 13, 605–607.
3 IEC, vol. 5, chap. 4.1.

had experienced their release as an expulsion. They often spoke of having been literally "thrown out" from one day to the next, fully unprepared for life on the outside.[4]

After they had spent many long months, or sometimes even years, under constant surveillance in a facility where all of their acts and movements were subject to very strict rules (see chap. 5), leaving detention was sometimes experienced as a moment of crisis, when everything must be started over from scratch. The shock of leaving was made all the more devastating by the fact that the individuals were often entirely destitute. It is true that some facilities had arrangements for the payment of a "peculium" – a fractional wage credited to the detainee's account. Often, however, that money had already been spent during the detention period and was, in any case, rarely of an amount that could keep the released detainee alive for more than a few weeks, or even days. Upon leaving the detention facility, the individuals concerned often did not even have enough money to use the public transport system, to pay for a room, or to buy food. The challenges they faced were very concrete. "I had absolutely nothing left," recalls one woman at an interview with the IEC. "Just the clothes I was wearing and nothing else. My passport. But no place to go, in any case. That's how it was. So, that's what happened, I passed my nights on the street."[5]

The present chapter deals primarily with the impact of detention on the lives of former detainees over the long term. It is based on the life stories of 60 individuals who agreed to grant interviews to the IEC, as told by them in their own words. The interviews furnished a means of identifying recurrent patterns that illustrate the consequences of administrative detention over the course of the detainees' lives. They also provided insight into the strategies developed by the individuals concerned for mitigating or circumventing those consequences. Because of the manner in which the interviewees were recruited, and the period of time during which they were in detention, their accounts bear witness to experiences that belong to a specific historical era. All of the interviewees were in detention during the post-war period, for the most part between 1950 and 1970, when such administrative measures were used more frequently for young people. In addition, a good number of them were contacted by the IEC when they applied for emergency assistance out of the fund established in April 2014

4 IEC, vol. 5, chap. 4.1.
5 Quoted in IEC, vol. 5, chap. 4.1, 126.

by the roundtable for the victims of coercive welfare measures. Because such measures also included placement in foster care during childhood, many of the individuals concerned had already experienced administrative detention by the time they entered adulthood. The effects of such measures, and the tactics they invented for dealing with them, must therefore be seen within the context of the post-war era, taking into account that the experience of detention reaches back to their youth. Further details may be added to the overall picture, however, by accounts found in the archives, which were written by contemporary eyewitnesses no longer with us today.

The most pervasive effect of detention, as identified by the IEC in its inquiries, was that of the stigmatisation it gave rise to,[6] which was felt by the individuals concerned in many different ways throughout the entire course of their lives. It created barriers to finding regular employment and thus increased the risk of falling into poverty (chap. 6.1). At the same time, it also eroded the individual's family and social ties, sometimes over generations (chap. 6.2). Despite these challenges, the individuals concerned also succeeded in constructing action spaces for themselves, while at the same time developing protection strategies for countering the risks of poverty (chap. 6.3) and stigmatisation (chap. 6.4). Many of them joined together to mobilise support in gaining public recognition of the abuses linked to administrative detention measures and to bring about the passing of the Federal Act of 21 March 2014 on the Rehabilitation of Administrative Detainees and the Federal Act of 30 September 2016 on Compulsory Social Measures and Placements Prior to 1981 (chap. 6.5).

6.1 HEIGHTENED RISK OF POVERTY

As formulated by public authorities in the texts of various laws, in the grounds stated on detention orders or in official descriptions of detention facilities, the stated aims of administrative detention – "education to work" and "social rehabilitation" – were in the detainees' own interest. The reality, however, was that it only increased the likelihood that the individuals concerned would remain destitute for the rest of their lives. Four of the principal consequences of detention, each of which had the effect of increasing the risk of impoverishment, are discussed below: the stigma of detention,

6 For a definition of the terms stigma and stigmatisation, see p. 31.

predisposition to insecure employment, loss of household revenues, and compromised health.

THE STIGMA OF DETENTION

Having often been stigmatised even before they entered detention, administrative detainees underwent a new form of stigmatisation upon their release. This was an inevitable result of the general disrepute in which detention facilities and their occupants were held by the population at large. Regardless of the specific type of facility in question, the mere fact that it had been designed to serve as a closed space for sequestering people who had been socially marginalised or were considered a threat to moral or public order, fuelled existing stereotypes concerning their occupants and reinforced negative attitudes towards them.[7] This stigma was all the more pronounced for individuals who were placed in administrative detention in facilities that also housed convicted criminals; the stain of disgrace and dishonour associated with criminality rubbed off on them. The words of a woman who was administratively detained in the 1960s illustrate how the reputation of detention facilities played a role in triggering the process of stigmatisation: "As I said, when you leave, you can't say to an employer, 'I just spent two years in [name of facility] for no reason'. They say to you, 'What are you, crazy or something? Nobody gets sent there for no reason.'"[8]

The stigma of detention also affects the image that the former detainees have of themselves. Research in the social sciences has already focused attention on the impact of stigmatising experiences on the formation of identity. The tendency of individuals to integrate the negative dimension of a stigma into their personalities increases with the repetition of interactions that cause them to recall such negative images. Drawing on the metaphor of theatre, researchers suggest that individuals who have been stigmatised tend to internalise the role that is assigned to them on a specific stage.[9] In the case of administrative detainees, the fact of having been deprived of their liberty and the conditions of their detention place them constantly in the role of a "social deviant". They are persistently exposed to words or acts that characterise them as "anti-social", "degenerate", "immoral" or "indolent" and thus suggest that they themselves are to blame for the difficult

7 Dargère 2014.
8 Quoted in IEC, vol. 5, chap. 4.1, 127.
9 Goffman 1963; Chantraine 2003.

situations in which they find themselves. They are treated in a manner that shows no respect for their legal rights or their physical integrity, and which also gives no consideration to whatever they may have to say. Many of them have indeed internalised this negative self-image to the point that they actually accept the notion that they themselves are to blame for their marginalisation and even for the violence that was inflicted on them.

The stigma that attaches to them leads, in turn, to discrimination against them in various areas of their lives and, in particular, on the employment market. By way of example, a man who was held in administrative detention at the criminal correctional facility of the canton of Valais (Crêtelongue) wrote to the officer in charge in 1957, as follows: "To have been in detention wasn't worth much to me for a career in the hotel business. […] You have to understand, Mr Perraudin, once the boss knows that I was detained for vagrancy or drunkenness, he just says 'look for another job someplace else, I can't keep you here.'"[10] The guardian of a young woman held for several years in detention at the Institut Bon-Pasteur writes to the Department of Justice and Police of the canton of Fribourg asking for assistance in finding a "place" for his ward, pointing out that "her detention is not exactly a recommendation".[11]

In a letter to the prefect of the Sarine (Fribourg), dated 27 November 1960, a man describes succinctly, in a few sentences, the different stages in the process of stigmatisation (see "Stigma and stigmatisation", p. 31). He speaks of the negatively charged labelling by society, the discrimination that it brings with it, and the negative image that the stigmatised individual develops of himself: "Now I wouldn't even dare to show my face where I used to work, since people don't say, 'He worked for a year at La Sapinière'; they say, 'We don't want the likes of people from Bellechasse working here'. That's why, afterwards, you feel unwelcome, which is what you are in a way, and we just become common crooks, since once we've been banished from society, the only thing we still have left to look forward to is to get caught and be sent back here."[12]

10 Letter from S.D. to the head of the Department of Justice and Police of the canton of Valais, 7 May 1957, Archives de l'État du Valais, 5060-4 box 32, dossier 17/56, quoted in IEC, vol. 4, chap. 3.3, 335.

11 Letter from the guardianship to the Department of Justice and Police of the canton of Fribourg, 8 July 1942, Archives de l'État de Fribourg, DPol 2362 IBP, quoted in IEC, vol. 4, chap. 3.3, 335.

12 Letter from M.C. to the head of Bellechasse, 27 November 1960, Archives de l'État de Fribourg, PFI 3826–3828 (A–C), quoted in IEC, vol. 4, chap. 3.3, 336–337.

PREDISPOSITION TO INSECURE EMPLOYMENT

This stigma has different effects on the ability of the individuals concerned to enter the employment market, depending on the stage in their lives at which detention takes place. During the economic boom in Switzerland after the Second World War, it was relatively easy for released detainees to find paid employment. The stigma of having been in detention nevertheless had the effect of compromising the security of such employment, so that they were compelled to accept jobs that were unsteady, poorly paid and had little social status.

For people who were placed in detention while still in their adolescence or young adulthood, the stigma is compounded by gaps in their vocational training as a result of their having been in detention. For juveniles, detention causes disruptions in their vocational training, seriously impeding it, if it does not end it entirely. Inside a detention facility, it is no longer possible for the young detainees to freely choose the trade they would like to pursue; they must accept the decisions of the authorities. The occupational training programmes offered to them predispose them for jobs that have little social status, are poorly paid, and of which the working conditions are often harsh. Young women are trained for work as domestics or laundrywomen, or for hotel work; young men are, for the most part, prepared for work as manual labourers in construction or agriculture, or as unskilled labourers in manufacturing (see chap. 5).

The opening of access to lower secondary education to the whole of the population, the expansion of the service economy, and the increased use of foreign workers in the agriculture and construction industries in the post-war era only further exacerbated the situation for former detainees: the competition for jobs that did not require training increased while, at the same time, education became a more important criterion for access to steady employment.[13] A lack of vocational training thus became a long-term risk factor for falling into poverty.[14] While interviewees often recounted that they were easily able to find temporary jobs (in the hotel or construction industries) or other ways to get by, they nevertheless stressed the difficulty of finding steady and adequately paid employment.[15]

13 Muller 2007, 714.
14 Crettaz 2012.
15 IEC, vol. 4, chap. 3.3; IEC, vol. 5, chap. 4.2.

For adults placed in detention, there was also the additional risk that the interruption of their employment would cause them to lose their professional qualifications and their capacity for work, thus compromising their chances of finding employment upon their release. Men trained in skilled trades (mechanics, masons or even tailors) regularly wrote to the director of Bellechasse requesting that they be assigned to work more in keeping with their qualifications. A man placed in detention in the early 1940s even suggested to the director that a new position be created for him, where he would be able to use his professional skills. "Being a mechanic by trade, it was always my intention to work at what I was trained for […]. I dare to hope that you do not question my sincerity; because I will be obliged to stay here for a rather long time, it would be more beneficial for me to work in my own trade."[16]

With the increasing competition that arose as conditions on the employment market began to change in the 1970s, individuals who had been in administrative detention found themselves in a weaker position than the average job-seeker in their struggle to avoid unemployment.[17] Low incomes, "unreported" jobs and extended periods of unemployment took their toll in the long run. Because the individuals concerned could not keep up with their social insurance payments, they could also not reckon with receiving any retirement benefits worth mentioning.[18] Many of the former detainees interviewed still today receive only a minimum pension and, in their penury, are compelled to seek welfare assistance.[19]

A REVENUE SUPPLY CUT OFF

The risk of falling into poverty is even more pronounced when an existing source of revenue is cut off as a result of administrative deten-

16 Letter to the head of Bellechasse, 9 May 1942, Archives de l'État de Fribourg, Bellechasse A 7490. Quoted in IEC, vol. 4, chap. 2.2, 192.

17 IEC, vol. 5, chap. 4.2.

18 At the end of the Second World War, various forms of social insurance were introduced in Switzerland at federal level, including, Old-Age and Survivors' Insurance in 1948, which was made obligatory. However, because it was designed to provide only a subsistence minimum, the retirement benefits from Old-Age and Survivors' Insurance are often not sufficient. The regime for occupational pension schemes introduced in 1977 as a means of providing supplementary benefits does not cover all employees. A minimum income is required in order to join such a scheme and because the annuity paid on retirement is proportionate to the amount paid in, those who have contributed less also receive lower benefits (see Leimgruber 2010; Repetti 2018).

19 IEC, vol. 5, chap. 4.4.

tion. This may be seen from letters from family members complaining of the decline in their living conditions since the detention of their loved one (spouse, son, daughter, father or mother). The individuals who were placed in detention generally came from disadvantaged backgrounds (see chap. 3), so that a loss of the income contributed by a single member of a household had a major impact on the family's financial situation. Among the possible consequences were eviction from the family home or property, the bankruptcy of a small business, or greater indebtedness.[20] The letters from family members requesting the release of their spouses, sons or daughters bear witness to the effects that the sudden loss of revenues could have.[21] Thus, for example, one woman requests the release of her husband from Bellechasse – from where she herself had been released some days earlier – with a description of the very concrete material consequences of his detention: "I returned very happily to my family on Saturday and the children are even more pleased than I, but I also found a lot of problems when I arrived. There is, of course, no money left, the rent is two months overdue, and there was a registered letter saying that we have to leave the house by the 1st of September, and we don't know where to go. You can well understand that it is a difficult task for me to try and find an apartment with six children and no money."[22]

PHYSICAL VULNERABILITY AND DAMAGED HEALTH

Detention had the effect of rendering the individuals concerned more vulnerable in the sense that it also affected their health. The reality of detention was such that detainees were often in poor physical health when they were released, partly due to the structurally conditioned undernourishment that was widespread in large multifunctional detention facilities (particularly before the 1950s), but also as a result of the ill-treatment they received. The effects of such deprivation were often clearly obvious to those close to them. The mother of an adolescent minor held in detention in Bellechasse thus urges the director to provide her son with sufficient food, noting that he had returned to her "in a sorry state after his last stay" there.[23]

20 IEC, vol. 4, chap. 3.3.
21 IEC, vol. 4, chap. 3.3.
22 Letter from K.D. to the head, 30 July 1941, Archives de l'État de Fribourg, Bellechasse A 8605. Quoted in IEC, vol. 4, chap. 3.3, 334.
23 Letter from the mother to her son with a word for the head, 22 November 1937, Archives de l'État de Fribourg, Bellechasse A 8750. Quoted in IEC, vol. 4, chap. 2.1, 138.

Prison medicine studies and research on the effects of incarceration describe some of the physical effects of confinement: accelerated biological wear and tear, rapid deterioration of sensory organs (with the exception of hearing due to constant use), weight loss, tooth decay, hair loss, and cessation of menstruation in women. The list of disorders identified by psychiatrists as being linked to detention is also long: depression, prison psychoses, disorientation, anxiety disorders, abandonment phobias, etc.[24]

The accounts by the individuals interviewed are replete with examples of the long-term effects of the harm that was done to their health. Many speak of serious sleep disorders as well as extreme and chronic anxiety. One woman described her "fundamental fears" as her most "faithful companions". A number of those who had been punished by being placed in "solitary confinement" also suffer from claustrophobia; many feel uncomfortable in closed rooms; others are unable to enter a lift or use public transportation. They also mention that the fragility of their health was an impediment in their professional careers and in their social lives.[25]

FROM TROUBLE RE-ENTERING SOCIETY TO TOTAL RE-CONFINEMENT

The cumulative effects of the stigma of detention on finding employment and establishing an identity, combined with the effects of detention on the detainees' health and social life, gave rise to serious impediments to re-entering society. In some cases, the obstacles proved impossible to overcome, particularly after repeated terms of detention. Such a situation can culminate in what sociologist Robert Castel calls a feeling of being "of no use to the world", produced by prolonged exclusion from working life and the various networks of sociability.[26] In some cases, this feeling can translate into an inability to adjust to a life outside a prison environment. As the prison sociologist Gilles Chantraine has noted from interviews with ordinary prisoners, when periods of deprivation of liberty accumulate, "prison can become a material, symbolic and emotional resource" that "counterbalances stigma, loneliness and lack of recognition outside".[27] Similarly, for individuals who have experienced long periods of deprivation of liberty, daily life may be easier for them to imagine in a closed institution than on

24 Chamond 2014.
25 IEC, vol. 5, chap. 4.4
26 Castel 2003.
27 Chantraine 2003, 379.

the outside. This is what we see in the case of one man who received his first sentence of deprivation of liberty in 1968, at the age of 22, and who, after several further such sentences, petitioned directly to the director of the Bellechasse facilities for his continued detention on a voluntary basis – as means of ensuring that he would have work and a roof over his head.[28] Like other such establishments, Bellechasse also had accommodations for so-called "voluntary" detainees. Whether or not such cases of detention could truly be described as voluntary is debatable, in the sense that it was normally more in order to avoid other measures seen as even more coercive, or due to a lack of alternatives, that the men in question asked to be retained in a detention facility. This notwithstanding, it remains a fact that the Bellechasse facilities were thus able to serve on occasion as a place of refuge for certain men for whom re-entering society had become an insurmountable challenge.[29]

6.2 PROBLEMS IN SOCIAL AND FAMILY LIFE

Once a term of detention had been completed, financial precarity was not the sole threat: it was often accompanied by the deterioration of social and family relationships, which also suffered as a result of the stigma attached to detention.

REJECTION BY THE SURROUNDINGS

Among those interviewed, many reported that, after leaving detention, they were obliged to reconstruct their social lives from scratch. Arthur Honegger, who was held in detention for a total of four years in different institutions over the course of the 1940s, describes in his memoirs the distrust and rejection he was met with from his own family: "Home again, for the first time in four years! […] Out for a stroll, I crossed the bridge near the machine factory and went up the main street towards the village. Some acquaintances just barely greeted me. Some people looked away as soon as they recognised me. Even a neighbour who had always liked me ran back into her house when she saw me coming."[30]

28 Archives de l'État de Fribourg, EB Det DI 1-292, (1968–1984). Quoted in IEC, vol. 4, chap. 3.3, 337.
29 IEC, vol. 8, chap. 13.3.
30 Honegger 2018 [1974], 186–187.

The distrust shown by neighbours was often accompanied by the rejection of close family members, after a period of complete separation from them while in detention. It was not easy for detainees' families to maintain direct contact or exchange information with them. Both incoming and outgoing correspondence was systematically monitored and sometimes censored by facility administrations (see chap. 5).[31] Because it was not permitted to include in letters home information about daily life inside the facility, families were often badly informed as to the conditions of detention and the way their adolescent children, spouses, friends or relatives came to terms with them. In addition, because detention facilities were often located in remote places, far from where the detainees' families lived and difficult to reach by public transport, visits became a chore. Thus, friends and family of the detainees only received second-hand information about them, either from the facility administration or from their guardians and, as a rule, only when there was a problem; the echoes that reached them were always negative. Silence, censorship and reports from detention facilities subverted the social and family relationships of the individuals in detention and this, even more so, when it was their own relatives who had supported the imposition of such a measure. The account by Arthur Honegger once again sheds light on the way in which such misinformation could undermine the social life of the individuals concerned after their release and aggravate their stigmatisation. Arriving home, as soon as he opens the door, his foster mother welcomes him by reprimanding him for a theft he allegedly committed while in detention and which was reported to her by his guardian. He describes the distrust she showed, locking all of the closets in the house and hiding the keys.[32] A number of those interviewed by the IEC tell stories of a similar nature and speak of the impossibility of restoring the ties with their families. Under those circumstances, it was very difficult for them to talk about the violence and constraints they had endured; their listeners were quick to suspect them of lying or of having provoked such conduct themselves. One young woman, who was able to return home to her father after being released, recalls that no word was ever spoken about her detention or about what she had experienced during that period. It was not until after the death of her father, several decades later, that she began to speak of the ordeal again.[33]

31 IEC, vol. 4, chap. 2.3.
32 Honegger 2018 [1974], 186–187.
33 IEC, vol. 5, chap. 4.1.

THE DIFFICULTY OF FORMING NEW RELATIONSHIPS

In an equally insidious manner, the stigma of detention acted as a barrier to the formation of new friendships or other social, romantic or family relationships. Until it becomes possible to talk without inhibitions, the experience of detention complicates all relationships. These taboos perpetuated themselves over the long term. Each time they met someone new, each time they found a new group of acquaintances, many of the interviewees recall that they always asked themselves whether or not they should reveal anything about their past or whether it was better to remain silent so as not to jeopardise the relationship. Often, it was easier and less risky to keep silent about the past, given the negative connotations associated with placement in a closed facility and the widespread ignorance about the scarcely credible things they had been through. "They called me a liar, […] that it wasn't true," explains S.T. "Me I don't talk about it, I don't want to talk about it on the outside."[34] In addition to the risk of being treated with incredulity, the silence of the detainees was also motivated by their shame at having been placed in detention. "You don't want to feel ashamed when you tell someone else about your life," writes Nelly Schenker. "That's why it's better to keep silent. To tell the true story, that's something frightening. You can't be sure the other person will believe you […]. If you tell the truth about yourself, you might be regarded as less than nothing."[35] The many accounts by interviewees of the first time that they talked to someone else about what they had been through in detention, without being judged or suspected of lying, show how heavily this silence weighed on them. Speaking of their time in detention was often an occurrence of major significance in their lives and their relationships with others: either because it led to a break-up or because it marked the beginning of a lasting and rewarding relationship of trust. In cases where the result was positive, those "first accounts" or "coming out" turned out to be a genuine turning point. Speaking of her first encounter with a member of the All Together in Dignity Fourth World movement, by whom she did not feel she was being judged, Nelly Schenker recalls that she felt like she was "walking on air". "It was a man, a stranger, who listened to what I had to say, without any change of expression on his face. It was the first time that someone had

34 IEC, vol. 5, chap. 4.1, 128.
35 Schenker 2018, 6.

listened to me, listened to what I had to say […]. That genuine encounter, I will never forget it. For me, it was like a golden treasure."[36]

For a number of those interviewed, there arose the question as to whether or not to tell their spouses. Some did so only after several years of living together; others never did, often at the cost of harming the relationship, they say. Similarly, many of the interviewees have never spoken about it with their children. Those who did, recall it as a difficult step, for which a catalyst (a book, another person, or a specific event) was needed. For the majority of those interviewed, it was only after the public apology by Federal Councillor Eveline Widmer-Schlumpf in 2010 that their friends and family learned of their past in detention.

CUT OFF FROM THE FAMILY

In more extreme cases, administrative detention could lead to a complete severance of all family ties. Research on the "Relief Organisation for Children of the Open Road" has already shown how the institutionalisation of adults and children from the Yenish community was perpetuated over generations and resulted in the complete and permanent separation of families.[37] Today, there is still much work to be done in documenting and reconstructing the practices of the authorities with regard to children of women and men who were held in administrative detention between 1930 and 1981. It is already known, however, that such children could be placed in foster care or put up for adoption if they were born to unmarried women detained for "misconduct". A number of women who were detained while pregnant out of wedlock reported that, because of a decision by their guardian, they were not permitted to keep their children and sometimes never saw them again.[38] Letters written by women detained in Bellechasse suggest, moreover, that in cases where it was necessary to obtain the mother's consent for an adoption, the authorities sometimes used coercion or threats (see "Coerced into adoption", p. 289).[39] Categorised as women of dubious morality, their parental rights were denied to them and annulled. The creation of a "mother-infant" space at the Hindelbank prison in 1962 suggests that, at some point, a policy change occurred and that a new willingness had emerged to preserve the ties between mothers and their chil-

36 Schenker 2018, 5.
37 Huonker 1987; Huonker, Ludi 2001; Galle 2016.
38 www.administrativ-versorgte.ch/schicksale.html, Christina, Madlen, Margrith, Mara.
39 IEC, vol. 4, chap. 2.3; IEC, vol. 9, source no. 56.

dren. Not all mothers, however, were able to have access to this structure and preserve their custody over their children. The destruction of the files in the Hindelbank facility complicates the task of analysing differences in the ways individual mothers were treated, and the reasons for those differences. The fact remains, however, that, for many women, placement in detention occurred simultaneously with a separation from their newborn children that was sometimes final.

Such a severance of family ties could also occur years after a term of detention had ended. Many of the former detainees interviewed reported that their own children had later also been placed in foster care. This was often done under constraint (by decision of their guardians), but sometimes also at the request of the parents who did not feel that they were capable of raising their own children.[40] Detention was often the source of health problems and gave rise to living conditions that compromised their ability to assume their parental duties. Many of them also stated that the experience of being placed in foster care during childhood and adolescence had denied them the opportunity to learn the meaning of filial and parental love, and left them incapable of dealing with their own children. Others speak of the constant distrust that the child protection services manifested towards them because they had been in administrative detention in the past.[41]

VULNERABILITY TO CONJUGAL VIOLENCE

It is also striking that a large number of women stated in the interviews that they had experienced and were subjected to violence at the hands of their spouses after release from detention. The dependency that was specific to marital relationships played an important role here. For women, marriage brought with it the end of their subjection to public guardianship and was sometimes the sole means of achieving a degree of economic security and preserving custody of their children. Conversely, separation or divorce could result in their being made once again subject to the authority of a guardian, who could also decide to place their children in foster care.[42] Many women stated that it was for this reason that they had remained in such marriages, despite the violence of their spouses. D.T., who remained with a violent husband for 20 years, explained her decision as follows: "And then, with two

40 IEC, vol. 5, chap. 4.3.
41 IEC, vol. 5, chap. 4.3.
42 IEC, vol. 5, chap. 4.3.

children, of course I had to abandon any dreams of freedom […]. Or otherwise, I would have been given a guardian again, in any case. The children, too […]. That's why I stayed with him for 20 years, until he finally left."[43]

Fear of being made subject to a guardian, together with financial precarity, combined to increase the women's sense of dependency on their spouses and thus transformed marriage into a new form of imprisonment. In the words a lawyer from the canton of Vaud put it in 1938, expressing his astonishment that a woman could be granted release on condition of marrying: "she will be trading one chain for another".[44] While this same fear could be shared by all married women in Switzerland and thus serve as a deterrent to divorce, it was far stronger among women who had already been placed in administrative detention before, and for whom guardianship represented a known risk of being returned to closed detention.

6.3 TACTICS FOR DEFENDING AGAINST THE RISK OF POVERTY

Despite the barriers to finding employment and rejoining society as a result of being in detention, many individuals succeeded in avoiding poverty and developing alternatives, particularly in the period from 1950 to 1980, when there was full employment in Switzerland. This was true for a good number of those interviewed. Although some fell into poverty when they reached retirement age as a result of their precarious situation, this happened only towards the end of a long trajectory, during which they expended great personal efforts to preserve a certain degree of autonomy. Because of their having been socially excluded as a result of decisions taken by public authorities or by their guardians, former detainees generally expressed a strong mistrust of government agencies. Many of them waited as long as possible before seeking any form of public assistance, even when this meant foregoing opportunities for improving their living conditions or their health. In their steadfast attempts to rebuild a life for themselves, the former detainees adopted various strategies that reflect different blueprints that were followed for earning a livelihood.[45]

43 Quoted in IEC, vol. 5, chap. 4.3, 170.

44 Letter to the Departement of Justice and Police, 24 June 1938, Archives de l'État de Fribourg, Bellechasse, Dossier A 2870. See also Odier 2019.

45 For a more detailed discussion of these different career path models, see IEC, vol. 5, chap. 4.2.

MULTIPLE JOBS AND CONJUGAL SOLIDARITY

One such strategy was for the partners in a marriage or a household to take on more than one job, either individually or between them.[46] A steady relationship or marriage did in fact serve to protect a number of people, particularly women, from poverty. Many of them say that they established a veritable business partnership with their domestic partners. Joining their own manpower to that of their partners, they were able to provide complementary services – for the most part as domestic workers – and thereby increase their room for manoeuvre and alleviate financial uncertainties. Thus, for example, K.M. was working as a chamber maid when she met her husband, a porter in the same hotel. After they were married, both continued working at the same jobs in the hotel industry, with a strong sense of commitment towards their work. "I really did everything […] worked all the time […]. I always did my work […] as a chamber maid, in spite of my occasional seizures or, even worse, the flu."[47] After ten years, the couple took charge of the housekeeping at a small hotel, which not only stabilised their financial situation, but also gave them an opportunity to advance in their professions and facilitated the organisation of family tasks. Working in shifts, one days, the other nights, they were thus able to take turns looking after the children.

Working as a couple also had a stabilising effect for F.B. and her husband, both of whom had previously been in administrative detention. Together they worked as janitors for the same municipal administration. Despite difficult beginnings, the working conditions of the two spouses developed in a positive direction. They won the trust of their employer and together were able to attain to a certain degree of financial security. In this way, they succeeded in maintaining a decent standard of living over the long term. "That's how we managed it, and now I have a small pension, not very much, but enough; together with social security, I have almost 2,000 a month. If I hadn't done anything, I wouldn't have that, and I wouldn't have this small house, either. Fortunately."[48]

46 IEC, vol. 5, chap. 4.2.
47 Quoted in IEC, vol. 5, chap. 4.2, 146.
48 Quoted in IEC, vol. 5, chap. 4.2, 147.

THE EFFORT OF LEARNING A NEW PROFESSION

To find a way out of their poverty and the precarity of their existence, some former detainees entered vocational training programmes, often at very high cost to their health and their family lives, in the hope of gaining access to better paid jobs.[49] In most cases, this meant going to school and working for a living at the same time. While some managed to successfully carry out their plans, many were forced to abandon them due to health problems caused by overwork.[50] In order to improve their circumstances, some women took on what are normally considered men's jobs, which would enable them to earn a better wage and thus free up more time for their schooling. Thus, for example, N.L. took a job in construction, as a roofer. This made it possible for her to work fewer hours a week as compared to her previous jobs, so that she had more time for studying. She first completed high school and then obtained a diploma as a construction draughtswoman, which allowed her to apply for better-paid jobs and to cover her household expenses for some years.[51]

Those who benefited from the support of their social surroundings (spouses, relatives, or even social workers) tended to be more successful in such endeavours. For P.B., being given a place to live and a small job in a relative's company made it possible for him to study and complete high school, which, in turn, opened the door to career advancement and financial stability. With the help of her husband, T.R. was able to complete an apprenticeship in the booming chemicals industry that enabled her to launch a career that she describes as "successful", with steady and well-paid jobs in positions of responsibility. After living for many years in poverty with her daughter, M.T. was able to receive occupational training through the support of a social worker. She obtained a licence for driving heavy goods vehicles and found employment as a lorry driver. The job enabled her stop living in poverty but, at the same time, the long and irregular working hours compelled her to accept separation from her daughter, who she decided to place in an institution. Some time later, with the support of the same social worker, she was also able to regain custody of her daughter. Hubert Meyer also benefited from the help of his surroundings, which enabled him to receive professional training. The people for whom his mother worked – as

49 IEC, vol. 5, chap. 4.2.
50 IEC, vol. 5, chap. 4.2.
51 IEC, vol. 5, chap. 4.2.

a domestic on an estate – financed his education at a hotel school. He then found work in the homes of renowned families, even at the royal court of Spain.[52] While the process of social re-integration and taking up a profession was successful in many cases, and sometimes even highly successful, the situation of most former detainees remained precarious. This was due, in particular, to the frail health of many of the individuals concerned and, above all, to the persistent threat of stigmatisation within their professional and social environments.[53]

ALTERNATIVE PATHS TO EARNING A LIVELIHOOD

Other former detainees sought professional independence and self-sufficiency by setting up their own businesses or finding alternative ways of earning a livelihood outside the regular employment market, sometimes through illegal activities.[54] Under this paradigm, the skills that were mobilised were primarily those that young people tend to acquire when they are moved over the years from one closed institution to the next – in order to defend themselves within the group and to create spaces for their own sense of autonomy: extreme resourcefulness, manual dexterity, and a resilience at work and against stress. Among the interviewees, we thus encountered some who had followed paths all on their own. N.P. explained that the technical skills he had developed to protect himself from violence while in detention, he had been able to put to use for other purposes on his release.[55] Initially, this was for carrying out burglaries, which served him as means of survival, but also as a means of recovering his due from a society that had "taken everything" from him. After the birth of his first child, however, he abandoned that career, moved to another canton and put his skills to better use by offering his services as a handyman in private homes. Resolved to maintain his financial independence without public assistance and to provide his children with a decent standard of living, he devoted many hours to his work, including evenings and weekends. Some years later, he started a house-painting company and later opened a small shop. Convinced that he owed nothing to a government that had never done anything for him, he worked only off the books and was not willing to pay taxes until his children started school. Like N.P., other for-

52 IEC, vol. 1, 50–57.
53 IEC, vol. 5, chap. 4.2.
54 IEC, vol. 5, chap. 4.2.
55 IEC, vol. 5, chap. 4.2.

mer detainees also explained that they had lived from theft for many years, partly because they had no other means of gaining a livelihood, but also out of a deep feeling of resentment and a wish to take back from society what had been stolen from them.

Similarly determined to maintain their independence, many women chose the path of prostitution. Former detainee P.R., for example, operated as a sex worker for twelve years after her release and stressed that this occupation had not only provided her with a decent income, but had also been a source of emotional support and solidarity with other women: "Many people don't know it, but the bonds created are much closer than in an office."[56] This same rationale was also given by women who were asked to explain their reasons for taking up prostitution to members of the Cantonal Commission for Administrative Detention in the canton of Vaud in the late 1960s. Insisting that they had no desire to discontinue their professional activities, they asserted that they were better able to make a living in this line of work than as factory workers and that they also had the benefit of a far greater degree of independence.[57] At the same time, however, the desire of other women interviewed to draw a clear line of separation between themselves and the women who worked as sex professionals provided a clear indication of the degree to which that "alternative" is also stigmatised and socially costly for the women who choose it.

Financial independence gained in this way nevertheless remained fragile and could be dangerous; in particular, those whose chosen alternatives for earning a livelihood were tainted by illegality, ran the risk of incurring other penalties or even of being returned to administrative detention. Those whose professional reintegration took a more conventional direction generally note that the opportunity that presented itself to them was exceptional and that it had taken a tremendous investment of effort to learn a new profession, rather than accepting the kind of work that they had been prepared for by the vocational training offered them while in detention.[58] Moreover, regardless of the strategy adopted, any degree of financial stability achieved could easily be wiped out by unexpected events and remained at all times precarious. Other than those who learned a new profession on their release and found steady employment, the majority of

56 Quoted in IEC, vol. 5, chap. 4.1, 137.
57 IEC, vol. 1, 128–135.
58 IEC, vol. 5, chap. 4.2.

the former detainees interviewed had gone through extended periods of unemployment or interruption of their livelihoods.

6.4 RESISTING STIGMA

To pre-empt and escape the disgrace associated with having been held in detention, the individuals concerned developed various strategies by which they had greater or lesser success in improving their position within the social space. The strategies used for escaping disgrace were often costly for the individual, and frequently demanded heavy emotional sacrifices in breaking with their past.

LEAVING THE PAST BEHIND AND CREATING A NEW IDENTITY

One strategy that was often adopted by former detainees was to not return to the place where the administrative detention order against them had been issued and where their past was an open book to both the authorities and the local population. The use of this strategy was attested to both in interviews and in correspondence found in the archives. It was sometimes even recommended by the people responsible for maintaining surveillance over them as a means of letting them "start a new life" and lowering the risk of their being returned to detention. Evidence for such an attitude may be found in an extract from a caseworker questionnaire, completed on 15 July 1957 by a social worker from Malévoz who was responsible for supervising a released female detainee: "Special remarks: Do you have any specific information to provide concerning the person you are assisting: financial situation, family circumstances, future employment prospects, etc.? The individual concerned is no longer in contact with her family. She is trying to 'start a new life'. Personally, we have advised her not to return to Ardon. In hindsight, we realise that this woman has been harshly punished […]."[59]

Some people were also able to escape their former social environment by fleeing to the anonymity of a large city. The lack of prospects for the future could also be a reason to emigrate to another country, as may be seen from the example of Q.C. After his release, he first moved to a different canton in order to avoid constant observance by the authorities, who

59 Questionnaire dated 15 July 1955, Archives de l'État du Valais, 5060-4, box 32, dossier 4/55, quoted IEC, vol. 4, chap. 3.3, 336.

nevertheless continued to monitor him and demand reports on his daily life. Although he had managed to recommence his schooling, he had not succeeded in finding work. Because of this, emigration appeared to be the best option: "Either you spend all your time looking for a job and getting the door slammed in your face, or one day you say to yourself: 'Hey, there's a way out of here, I can move to another country.'"[60]

For many men, the path to emigration was joining the French Foreign Legion. Risking criminal prosecution by the federal authorities, some 8,000 men with Swiss citizenship marched off to fight beside the French in Indochina and Algeria. Among them were many who had been placed in foster care as children or in administrative detention as adults.[61] Leaving offered them the possibility of creating a new identity and of no longer being looked at solely through the prism of their experience as detainees.

Other former detainees attempted to create a new identify for themselves without going away. When applying for a new job, they submitted false résumés, making up fictitious events to cover over the period when they were in detention. Still others tried to create a new identity more closely aligned with the prescriptions of the authorities. Thus, for example, a number of detainees invested a great deal of time and energy in their professional training or their jobs, in an attempt to "give the lie" to the prognoses of the authorities. One interviewee reports: "When I was let out, they [the facility administration] were sure […] that I would just turn into a common thief. And then, when I got out of there, I said to myself: there's only one thing I have to do, not prove them right! So, I started […] going to school […]. And I got my diploma […] too. But I didn't do it as an apology for anything; I did it because I wanted to show them that they weren't going to see me ending up as some petty thief. – That was what gave direction to my life."[62]

Other accounts sent to the director of the Bellechasse facilities show that overcoming a stigma could also be achieved by adopting a new social identity more in conformity with the work norms or moral standards advocated by the authorities. One woman who was conditionally released so that she could enter the convent of Béthanie – after having been held in detention five times for terms of from nine months to two and a half years – kept up a correspondence with the director of Bellechasse. Two letters are

60 Quoted in IEC, vol. 5, chap. 4.1, 138.
61 Huber 2017.
62 Quoted in IEC, vol. 5, chap. 4.2, 156–157.

preserved in her file, in which she stresses her religious conversion and her dedication to her work: "For the feast of Easter, I wish you and all your family a happy and blessed holiday. I am doing very well, I have changed jobs and am now helping with the lavender production, where I label and fill bottles; I would never have thought I would be able to do such fine work, but that was God's will. It was difficult at the beginning, but now I'm quite good at it and I thank you for all you have done for me and may the good Lord reward you for it."[63]

THE SUPPORT OF FRIENDS AND FAMILY

Personal relationships, either newly created or kept alive despite detention, were also capable of helping released detainees with reconstructing their lives. Some were able to rely on decisive encounters and solid relationships, which served as a crucial factor in their ability to protect themselves against stigma, and commence new projects. For F.B., it was especially the family unit that constituted an important rampart. She recounts how the entire family rallied together to prevent one of her nieces, who had become pregnant while still a minor, from being committed to an institution. When the social worker came to pick her up, everyone joined forces to prevent her from being taken away.[64] Another woman told of how her boyfriend agreed to marry her in order to help her keep custody of her son.[65]

Sometimes help came from outside the family. For one of the women interviewed, it was a chance encounter in a café that gave her the idea of writing down her story, and which ultimately led her to a career as a journalist.[66] In a number of other situations, it was social workers who helped to facilitate the social reintegration of former detainees.[67] In addition to the protection and the access to new opportunities provided by such relationships, their importance lay above all in the recognition that they afforded to the individuals concerned.[68]

63 Letter of the detainee to the head of Bellechasse, 24 March 1959, Archives de l'État de Fribourg, Bellechasse A 9095, quoted in IEC, vol. 4, chap. 3.3, 341.
64 IEC, vol. 5, chap. 4.3.
65 IEC, vol. 5, chap. 4.3.
66 IEC, vol. 5, chap. 4.1.
67 IEC, vol. 5, chap. 3.3.
68 IEC, vol. 5, chap. 4.1.

REVERSAL OF STIGMA

Others deployed the strategy of "stigma reversal".[69] By this means, the stigma is mobilised and reclaimed as a medium of communication, of reclamation, and of action for gaining rights and recognition. A typical example is found in the account provided by a young man who describes with pride his skills as a thief, thus reclaiming for his own purposes the stereotype of a delinquent that had been attached to him. Moreover, he is adamant in stressing the fact that he is not just any thief; he has even been recognised for his ingenuity in outsmarting security systems without being identified by the police, who have dubbed him their "star burglar" (*Stareinbrecher*).[70] This is one way in which it is possible for the stigmatised to appropriate the stigma for themselves and transform it into a valorising attribute. Similarly, many of those interviewed stated that they had sought the proximity of marginalised social environments, where they felt more comfortable and less looked down upon. In the company of "outsiders" who themselves had been stigmatised, the individuals concerned perceived the social ties and interactions as more accessible. Many speak of their discomfort when they meet with those they define as "normal" – even if things are not always easy in the society of the marginalised. M.T. describes this ambivalence: "I wouldn't have felt comfortable in the company of normal people from a certain social background […]. That's why I hung out in the worst kind of places and I had friends there, but I didn't feel comfortable there either, since they talked about stuff I wasn't interested in […]. The fact is, I was smarter than that, but with those other people I didn't feel comfortable either […]."[71] Thus, a number of those interviewed said that they had taken refuge in the "milieu",[72] in urban subcultures or in groups of "rockers" or "bikers", or even in the itinerant Yenish communities, where they found a safety net and opportunities for social contact.[73]

L.T., for his part, joined in the protest movements of the late 1960s. As a former foster child and administrative detainee, he became an important source of information for the so-called "Home Campaign" fighting against the use of closed detention for juveniles and for institutional reforms. As a political movement, it gave him social recognition and a sense of belong-

69 Goffman 1963; Fassin, Rechtman 2009.
70 IEC, vol. 5, chap. 4.1.
71 Quoted in IEC, vol. 5, chap. 4.1, 129.
72 Code word for the sex worker milieu.
73 IEC, vol. 5, chap. 4.1.

ing, and offered a prospect for the immediate future following his release.[74] This made it possible for him to transform his experience of foster care and detention into a resource for starting out in a new life. That experience, he recalls, gave him the feeling of a new liberation following his release from detention. "1968 had to happen, for me as well, so that I could free myself from things that had become outdated, that were behind the times, and from those restrictions. I truly needed that, that atmosphere."[75]

6.5 FIGHTING FOR THE FUTURE: NEVER AGAIN!

In the same way as L.T., who joined an organised, collective action movement, a number of other former detainees fought at different levels to ensure that "that never happens again". All of those interviewed, expended a great deal of energy to find a way out of precarity and improve the conditions of their lives. Some of them also took to the barricades to ensure that their own children would not be placed in foster care or be made subject to other administrative measures. Many former detainees told us that they had also been in therapy, not only in order to receive treatment for themselves, but also in an attempt to prevent the transmission of their own traumas to the next generation.[76] Out of a similar therapeutic motivation, at times virtually as a matter of survival, some took up painting or composing music, some put their life stories to paper. Together, these widely disparate endeavours combined to create the foundation on which it was possible, over the long term, to launch a collective effort to discredit the use of administrative detention and other coercive welfare measures. The commencement of the rehabilitation process undertaken by the federal authorities, and the passing in 2016 of the Federal Act on Compulsory Social Measures and Placements Prior to 1981 was made possible by the emergence of those endeavours in the public space and in concert with other similar efforts in various social domains.[77]

Collective mobilisation on the issue of administrative detention began in the 2000s, under the influence of movements launched by victims of other coercive measures, including, in particular, children who had been

74 IEC, vol. 5, chap. 4.1.
75 Quoted in IEC, vol. 5, chap. 4.1, 131.
76 IEC, vol. 3, chap. 4.3.
77 For the emergences of scandales, see Rayner 2015, 33.

taken from their families and placed in foster care. The history of the popular movement protesting the involuntary placement of children in foster care and the abuses committed in connection therewith is now well documented.[78] In the following, we will draw attention to certain events and key actors that played a role in focusing national debate on the issue of administrative detention and to the prevailing circumstances that facilitated that development. It is necessary to distinguish between two separate trends, one on each side of the Sarine, the river that marks the boundary between French-speaking and German-speaking Switzerland.

MOBILISATION OF FORMER DETAINEES

In French-speaking Switzerland, a major role was played by Louisette Buchard-Molteni. Having been placed in foster care in several different institutions during her childhood and transferred to the Bellechasse prison facility on the day of her 18th birthday, Buchard-Molteni took up drawing and worked at it at a frenetic pace for many years. In 1995, she published the story of her life under the title *Le tour de Suisse en cage* [A Round Tour of Switzerland in a Cage].[79] In a report about her that was broadcast on the programme Viva on Switzerland's French-language television in 1991, she explained that she was trying to exorcise her past and that, without her drawings, she would not have been able to survive for long. Louisette Buchard-Molteni then launched a political campaign to denounce the injustices of the foster care system, which she claimed were the result of a systematic targeting of the most vulnerable segments of the population. She demanded that the authorities of the canton of Vaud express themselves publicly on the treatment that had been inflicted on children in foster care and on the summary detention orders that had been issued. To publicise her demands and attract the attention of the general public, she climbed construction cranes in Lausanne, from where she scattered leaflets and hung banners. She also went on several hunger strikes in front of the Parliament building. She was supported in this, in particular, by Daniel Cevey, who himself had been put in foster care as a child and later detained

78 Heller, Avvanzino, Lacharme 2005; Lengwiler et al. 2013; Furrer et al. 2014; Leuenberger, Seglias 2015; Praz, Avvanzino, Crettaz 2018; Ziegler, Hauss, Lengwiler 2018. For a detailed discussion of the conditions for forgetting and the emergence of the debate over the treatment of foster children, see Praz 2016.

79 Heller, Avvanzino, Lacharme 2005. In this work, Pierre Avvanzino retraces the life and political combat of Louisette Buchard-Molteni.

repeatedly in a psychiatric hospital.[80] Towards the turn of the millennium, Louisette Buchard-Molteni demanded that a commission of historians, modelled on the "Bergier Commission"[81] be appointed in order to shed light on the manner in which coercive welfare measures had been applied and the motivations behind them.[82] That demand was officially submitted as a parliamentary motion by Jean-Charles Simon in 1999; after being transformed into a formal postulate, it was then shelved by Parliament in 2003. In protest against that decision, Buchard-Molteni launched a hunger strike in front of the office of the Department of Education and Youth of the canton of Vaud. In response, Charles Kleiber, State Secretary at the Federal Office of Education and Science, granted funding for an exploratory historical inquiry into the placement of children in foster care in the 20th century, under the direction of Geneviève Heller.[83] Louisette Buchard-Molteni passed away in March 2004, never learning of the findings of that study nor of the creation of the present IEC on administrative detention. Her highly publicised hunger strike nevertheless provided the impulse for a series of radio and television investigations that uncovered much new evidence. Her efforts were a major turning point that helped raise broad public awareness and trigger the launching of an inquiry into the events in question. It was also thanks to her that meetings between former foster children began to be organised and new rights movements emerged throughout French-speaking Switzerland. Since that time, also other coercive welfare measures, including sterilisation and institutionalisation of children as part of a eugenics measures carried out in different cantons, have been studied and documented.[84]

In German-speaking Switzerland, the publication of various biographical accounts contributed to the awakening of public awareness for this chapter in Swiss history. One of the oldest such works is that of Gotthard Haslimeier, *Aus dem Leben eines Verdingbuben* [Tales from the Life of a Contract Child], published in 1955, following other accounts by Nathan Loewenthal (1896), Johannes Schaffner (1922) and Carl Albert Loosli (1924).[85] The number of such publications began to rise in the 1970s,

80 Cevey, video interview, CIE, 4 May 2017.
81 Independant Commission of Experts Switzerland – Second World War.
82 Praz 2015.
83 Heller, Avvanzino, Lacharme 2005.
84 Heller, Jeanmonod, Gasser 2002; Huonker 2002.
85 Huonker 2018.

with the assistance of the public advocacy magazine *Der Beobachter* – in the wake of denunciations of the "Relief Organisation for Children of the Open Road", triggered by an article that appeared in that magazine in April 1972. Of particular note were Arthur Honegger's *Fertigmacher* [Spirit Crushers] (1974) and Mariella Mehr's *Steinzeit* [Stone Age] (1981), which received two literary awards. Like Louisette Buchard-Molteni, those authors also speak of the need to exorcise their past through the process of writing, whereby the publication of their stories and the ensuing political combat came later. The telling of their stories is intended not only to bear witness to the past, but also to buttress political demands, that is, to denounce the exclusionary practices and wanton use of violence encouraged by the absence of municipal, cantonal or federal oversight over local authorities.

In the foreword to his autobiographical novel *Fertigmacher*, Arthur Honegger wrote: "I am not targeting any specific individuals or institutions. My only intention is to represent circumstances and systems that hinder the development of marginalised youth and often transform the best of intentions into the very opposite."[86] Mariella Mehr adds: "I wrote *Steinzeit* for myself. The idea that I had to say and show these things so that they wouldn't happen to other generations of itinerant groups had not yet come to me. *Xenos*,[87] on the other hand, I wrote for all of the 'wandering people' [*Fahrende*]. I wanted to give a voice to those who are still not able to speak for themselves."[88] After *Steinzeit*, she wrote several other books and dedicated herself to denouncing the abduction of Yenish children and the systematic discrimination to which the entire Yenish community was subjected. She has launched numerous offensives to gain an apology from the directors of the "Relief Organisation for Children of the Open Road"; she has denounced the discriminatory manner in which records were kept and used; she has campaigned for not merely making the records kept on children and their families available for consultation to the individuals concerned, but also for transferring full ownership of the files to them.[89] In the wake of the widespread media coverage of the scandal, in which she played a major part, Federal Councillor Alphons Egli apologised in 1986 on behalf of the Swiss Confederation for the financial support it had accorded the or-

86 Honegger 2018 [1974], 4.

87 A play entitled *Die Kinder der Landstrasse* ["The Children of the Open Road"], first performed in Bern in spring 1986.

88 Quoted by Marianne Pletscher in the afterword to *Steinzeit*, Mehr 2009 [1981], 188.

89 Rüegger 2016.

ganisation over decades, thereby encouraging the systematic persecution of the Yenish minority through the confiscation of their children. Between 1988 and 1993, reparations totalling 11 million Swiss francs were paid to the victims, and the federal government now makes an annual contribution to the *Radgenossenschaft der Landstrasse*, a representative association of Switzerland's Yenish and Sinti minorities. The first historical inquiry into the fate of the Yenish children was published in 1987. It included eleven interviews, transcribed and edited by Thomas Huonker, with members of the Yenish community, of whom several had been held in administrative detention in correctional labour facilities such as Bellechasse (Fribourg), Herdern (Thurgau), Kalchrain (Thurgau) and Realta (Graubünden), or in psychiatric institutions.[90]

In the emergence of political collective action groups for the creation of a law on the rehabilitation of the victims of all coercive welfare measures ordered by administrative authorities, two events appear to have played an important role. On 28 November 2004, in Glattbrugg (Zurich), a conference of former foster children, attended by more than 200 individuals,[91] provided them with the certitude that they had not been the only ones to have been forcibly taken from their families and placed in the care of others. This was also an important step towards raising social awareness.[92] The idea for the Glattbrugg conference came from six women, who were also instrumental in its organisation. Former foster children themselves, they had met with each other for the first time on 23 March 2004 for the purpose of establishing a discussion and support group. One month later, a group discussion on the subject was broadcast on Switzerland's German-language television network, which elicited much reaction, including some 30 letters from other former foster children. Combined with other letters received by the television network in response to earlier programmes on the subject, this now gave the women organisers a collection of some 350 such documents.

90 Huonker 1987.

91 www.verdingkinder-suchen-ihre-spur.ch, consulted on 28 March 2019; Seglias, Leuenberger, Huonker 2004.

92 A number of gatherings of former victims of coercive welfare measures had already been held in Switzerland previously. In December 1970, in Rüschlikon (ZH), a study day had brought together more than 450 political, institutional and academic personalities, together with a group of juveniles out of reform or correctional facilities, who had organised and were calling for reforms (Heiniger 2016). Other such meetings were also organised within the framework of the *Heimkampagne*, by associations for the "children of the open road", and within the framework of the Swiss branch of the ATD Fourth World movement, whose focus was on poverty in the broader sense.

The decision was made to invite all of their authors to attend a conference. A number of historians, including Loretta Seglias, Thomas Huonker and Marco Leuenberger, who had played an important role in compiling the life stories of former foster children, also attended the conference and prepared a report on the event.[93] That report prompted the creation of several associations, including *Verdingkinder suchen ihre Spur* [Contract Children Seek their Roots], *Netzwerk verdingt* [Network of the Contracted] and *Fremdplatziert* [Placed in Care]. Although their primary focus was on the violence inflicted on children placed in foster care, the different events, and the accounts of the individuals concerned, all made reference as well to incidents of deprivation of liberty without any connection to criminal acts.

On the specific question of administrative detention, the publication of Ursula Biondi's life story, *Geboren in Zürich* [Born in Zurich] (2002), and the media coverage it received some years later following a report by journalist Dominique Strebel, was a decisive step towards raising its profile and building public awareness. Those events set in motion the process of organising collective action by the former detainees and the putting the subject of administrative detention on the national public agenda. Although Ursula Biondi's book was only the latest in a long series of works dealing with children who had been forcibly separated from their families and placed in foster care, it was the first to place its main focus not on childhood experiences of institutional abuse, but on the realities of being placed in care at a multifunctional facility – that is, together with convicted criminals – without having committed any crime. As was the case with Louisette Buchard-Molteni and Mariella Mehr, Ursula Biondi's primary motivation for writing down her story was to free herself from her pent-up emotions. Through the process of writing down her life story, she sought a means of overcoming the traumatic memories associated with the year she had spent in Hindelbank when she was 17 years old and pregnant. It was in 2008, six years after it had been published, that her book and the story of her detention in Hindelbank were unexpectedly transformed into the impetus for an activist political movement. Dominique Strebel, a journalist with the public advocacy journal *Der Beobachter*, researching an investigative report on "administrative detention", decided to contact Ursula Biondi. It was on that occasion, she says, that she came to understand the full extent of her commitment, in particular, as it also brought her into contact with other women, such as

93 Seglias, Leuenberger, Huonker 2004.

Gina Rubeli, Christina Jäggi and Rita Schreier, who had also been held in detention in Hindelbank. That meeting and the publication in book form of the results of Dominique Strebel's investigative efforts played a decisive role in expanding the movement and in creating political synergies around the issue. Among other things, they led to the creation in 2010 of the "Administrative Detainees 1942–1981" association – renamed the Association for the Rehabilitation of Administrative Detainees, RAVIA, some years later – whose membership numbers swelled rapidly. Among those who served the IEC as eyewitnesses, a large number said that hearing Ursula Biondi's story in the media had triggered something for them. They told of how they recognised themselves in her story and had then contacted her, either directly or through her association. The women who established the association, for their part, took advantage of this new-found support for lobbying political and other public personalities. Further assistance was provided by Elisabeth Keller, from the secretariat of the Federal Commission for Women's Issues, which had also helped to draw media attention to Ursula Biondi's story. They were thus able to obtain meetings with, among others, the woman director of Hindelbank,[94] as well as several members of Parliament, to whom they presented their demands. Support also came from the Zurich parliamentarian, Jacqueline Fehr, a member of the socialist party, who had already once put forward a motion, on 11 March 2004, demanding a historical inquiry into the matter of children forcibly placed in foster care. Now, in 2009, she again requested, with an interpellation, the Federal Council to take steps for the rehabilitation of "minors placed in reform education facilities" prior to the introduction into the Civil Code of the provisions on "involuntary commitment" in 1981.[95] One year later, the Federal Council held a commemorative ceremony at the Hindelbank women's prison, at which it offered its apologies for past injustices. This served as a turning point in accelerating the process leading to the adoption of the rehabilitation acts.[96]

The media devoted extensive coverage to the Ursula Biondi story and that of other young women who had been placed in closed detention because they had become pregnant without being married, or due to behaviour categorised as rebellious. Together with the ceremony in Hindelbank, this gave an added impetus to the work of existing former fos-

94 Strebel 2010.
95 Fehr, 30 April 2009, quoted in IEC, vol. 3, 10.
96 IEC, vol. 3, 10–11.

ter children groups, helping to mobilise both others who had suffered a similar fate and politicians. The image presented by Ursula Biondi – that of a rebellious young woman, still a minor, being placed in detention for having resisted the social role prescribed for her – captured the public imagination and revived the political debate over the compulsory placement of children in foster care.

That image also came to define the public perception of the victims of administrative detention policies in Switzerland. It is true, of course, that many of the administrative detention measures ordered, particularly in the 1960s and 1970s, were in fact imposed on young women who were considered to be rebels, or whose sexual conduct was deemed immoral. Nevertheless, those measures were also used against a large number of individuals with far different profiles, who received less media coverage, and with regard to whom there was less discussion in both the general public and in political circles. Over the entirety of the period under inquiry, administrative detention was ordered also for adolescents without family, destitute women suspected of engaging in prostitution and, above all, working-class men considered to be "drunks" or "indolent" (see chap. 3). The fate of these men was little known and little discussed in the media. They were seldom mentioned in the political discussion over administrative detention measures and they were not publicly perceived as "victims". One of the men interviewed said that he had hesitated at first to contact the association "Administrative Detainees 1942–1981" in the belief that it was only concerned with women who had been placed in detention as minors.[97]

The media visibility of former detainees in French-speaking and German-speaking Switzerland contrasts with their absence in the Italian-speaking media. It was only in 2015, after the adoption of the 2014 law, that historical studies on coercive welfare measures[98] and a documentary on Swiss Italian Television (RSI) by Mariano Snider *Cresciuti nell'ombra* brought the issue to the forefront and mediatized their voices.

CIRCUMSTANCES LEADING TO THE ADOPTION OF THE REHABILITATION ACT

While the mobilisation of former detainees and the media coverage they received were of decisive importance for the formation of a remem-

97 C.N., CIE interview, 15 March 2016.
98 Bignasca, Valsangiacomo, Poncioni 2015.

brance policy and the adoption of a reparations act, additional factors came into play in the 2000s, which lent the voices denouncing the use of coercive measures a new salience and making them heard by political leaders. As already noted, both public personalities and historians actively participated in the process of establishing collective action groups. The emerging international trend to formulate remembrance policies and the increased sensitivity of elected officials for such issues also played a role.

Since the 1990s, numerous Western countries have formulated remembrance policies on such issues as the forced placement of children in foster care and the abuses that were committed in connection therewith. Substantial research and reparation projects have been established on the model of the inquiry conducted by the Australian government in 1995 with regard to aborigine children taken from their families between 1910 and 1975. The global dimension to this national inquiry process was such that it led to the creation in 2011 of the International Network on Studies of Inquiries into Child Abuse, Politics of Apology and Historical Representations of Children in Out-of-Home Care, among whose members are historians, archivists, museum directors and child protection professionals.[99]

This development grew out of another general trend that had taken shape over the course of the preceding decades: that of recognising the rights of "victims". Following the example of the efforts undertaken by Holocaust survivors, various groups began to form, in diverse contexts, claiming the status of "victim" and seeking recognition of the violence that had been inflicted on them.[100] In those groups, the traumas endured are understood not only as sufferings, but also as a resource that may be used by individuals to assert certain rights. At the same time, a reconfiguration of the contemporary moral economy has led to a reconsideration of individuals who have gone through a traumatic experience, attaching greater impor-

99 www.lib.latrobe.edu.au/research/ageofinquiry/index.html, consulted on 28 March 2019; while these different national inquiries were all designed to lead to a process of remembrance and reflection on the manner in which government institutions and society in general behaved towards vulnerable and discriminated social groups, they differed in their form and their objectives at three identifiable levels. Some accord greater importance to legal-financial aspects (assignment of legal responsibility, reparations issues); others to historical investigation (reconstruction of past events and their consequences, assessment of responsibility in the context of the period); still others focus on the socio-political dimension (hearing of the individuals concerned, recognition and support for them, assistance in consulting pesonal files, reparations in the broad sense). Lengwiler et al. 2013, 53.

100 Chaumont 2000.

tance to allowing them to be heard and taking into account their "subjective" point of view.[101]

Switzerland has not been unaffected by this trend. This was clearly signalled as early as 1986 with the recognition of the traumas suffered by Yenish children who were taken from their families and placed in foster care by the "Relief Organisation for Children of the Open Road". Since that time, the country has also adopted other remembrance policies of a similar nature.[102] Thus, for example, a group of historians was appointed to form the Independent Commission of Experts – Second World War, which published its results in the early 2000s. In addition, various parliamentarians took an active role in the efforts of victims to mobilise. Taking up once again the subject of the interpellation submitted some years earlier by Jacqueline Fehr, National Councillor Paul Rechsteiner, a member of the socialist party, tabled a parliamentary initiative for "a law on the rehabilitation of individuals who had been placed in detention by administrative order".[103] Coming on the heels of the apology pronounced by Eveline Widmer-Schlumpf at Hindelbank (2010), his initiative was more favourably received and was taken up without demur. Barely a year later, a group of scholars from different social science disciplines launched an appeal for the formation of a roundtable as a means of making known to the general public what individuals targeted by coercive welfare measures and foster care placement orders had gone through, and to encourage a thorough inquiry into the facts in Switzerland. Pointing out that such historical investigations were already being conducted, or had even been completed in several European countries, the appeal stressed that this was "sorely lacking in Switzerland".[104]

Thereafter, on 11 April 2013, Federal Councillor Simonetta Sommaruga reiterated the government's apology, asking for "forgiveness […] for the great suffering that was inflicted".[105] At a meeting with nearly 700 individuals who had been victims of coercive welfare measures (placement of children in foster care, administrative detention, forced adoptions, involuntary sterilisation, etc.), the Federal Councillor stressed on this occasion, in particular, the responsibility of the Swiss Confederation in connec-

101 Fassin, Rechtman 2009.
102 See the introduction to the present volume.
103 Rechsteiner 13 April 2011, quoted in IEC, vol. 3, 10.
104 Resolution for the creation of a Round Table for coercive welfare measures and the forcible placement of children in foster care, dispatched to the Federal Council in autumn 2012.
105 Federal Department of Justice and Police 11 April 2013, quoted in dans IEC, vol. 3, 11.

tion with the compulsory placement of children in foster care. In response to the appeal by scholarly researchers, she established a roundtable that would bring together representatives of former detainees and other individuals concerned with representatives of the public authorities (federal government, cantons, cities, municipalities, churches and the academic community) for the purpose of "shedding light on the sufferings and injustices to which the victims were subjected".[106] In response to the Rechsteiner initiative, the Federal Act on the Rehabilitation of Administrative Detainees was passed by Parliament on 21 March 2014. That law, however, did not address the request for the systematic payment of financial reparations to the victims, as had been formulated by the roundtable.

Reflecting a growing responsiveness on the issue among the population at large and, more specifically, among their elected representatives, a settlement was reached two years later, establishing a regime for such financial reparations to accompany the symbolic efforts devoted to rehabilitation. Reacting quickly to the adoption of the 2014 Rehabilitation Act, a group of former foster children established within 10 days a task force led by businessman and former foster child Guido Fluri. While fully reaffirming the gains represented by the law of 21 March 2014, the group filed on 19 December of the same year a popular initiative for a referendum on the establishment – for a limited period of 20 years – of a special fund of 500 million Swiss francs for the payment of reparations to individuals who had been directly and gravely affected. In opposing that initiative, the Federal Council put forth a counterproposal addressing the financial issue, under which a flat payment in the amount of 25,000 francs per person would be made to the individuals concerned, out of a smaller fund of 300 million francs.[107] Despite opposition on the part of some representatives of the victims, who objected to the reduction in the amount of the solidarity fund, and on the part of some right-wing parties, who rejected the entire notion of paying reparations, the referendum initiative was withdrawn. The government's indirect counterproposal was then adopted, making it possible to accelerate the process. The Federal Act of 30 September 2016 on Compulsory Social Measures and Placements Prior to 1981 thus entered into effect on 1 April 2017, replacing the law of 21 March 2014.

106 Federal Department of Justice and Police 2014, 8.
107 Swiss Federal Council 2016.

6.6 INTERIM CONCLUSION: FROM DETENTION TO RECOGNITION – A LIFELONG OBSTACLE COURSE

The work of the IEC has clearly demonstrated the deleterious impact of administrative detention on the lives of the individuals concerned. At the same time, however, it has also identified some of the strategies they developed in order to mitigate those effects. The inquiry leaves no doubt that both entering and leaving closed detention were traumatic ruptures in the lives of those concerned and had lifelong consequences. This notwithstanding, administrative detention was often only one point along a continuum of measures imposed over the course of lives already marked by precarity and disaffiliation. As we have noted, administrative detention measures were applied in the main to individuals in situations of family and social precarity (see chap. 3). They were often ordered after other measures had already set in motion a process of stigmatisation in which multiple actors were involved (see chap. 4). Upon leaving detention, the individuals concerned continued to be tainted by new stigmas; and they once again became the target of measures ordered by the public authorities, including renewed detention or the placement of their children in foster care. The individuals on whom administrative detention measures were imposed were subject to an imperative of self-dependency, which devolved both from the conditions of their release and from their own desire to distance themselves as much as possible from all public institutions. Under those circumstances, the individuals concerned sought, in most cases, to guard their silence about that episode in their lives in order to escape further stigmatisation. It was only after historians, journalists and, finally, political personalities, began to denounce the use of coercive welfare measures that there arose a willingness to talk more openly.

In view of this finding, it may be said that the stigmatisation and social isolation of the individuals concerned, both before and after their detention, appear to have played an important role in the fact that the process of rehabilitation was launched by the public authorities only after 30 years had passed since the amendment of the Civil Code in 1981 and the repeal of the relevant cantonal laws. There can be no doubt that the process of stigmatisation, having prompted many people to emigrate or to maintain their silence on this episode in their lives, also lowered the chances of establishing a sufficiently strong collective movement for the denunciation of coercive welfare measures capable of exerting pressure on the

political class. In addition, stigmatisation could also give rise to inhibitions that prevented the individuals themselves from acknowledging that they had been "victims" of those measures and from demanding reparations. What is more, it impeded elected representatives, who were sensitive to the injustices that had been committed, in their efforts to garner the political majority needed to put the question at the top of the public agenda or to have it regarded as a matter of political urgency. This impediment was rendered more pronounced by the drop in the number of administrative detention orders issued nationally during the 1960s and 1970s (see chap. 3). Further, the fact that some cantons had already amended their laws so as to provide better legal protection for the individuals targeted also contributed to the diminished importance of the issue in the eyes of the responsible authorities (see chap. 2).

The end result was that only after the types of behaviour and ways of life that had been stigmatised and had served to justify the use of administrative detention had gained greater acceptance in the general population and among their elected representatives that such measures could be publicly denounced and that collective opposition to their use could be mobilised. It is, moreover, perhaps no accident that the image of a young woman, not yet of age, placed in closed detention because she had engaged in non-marital sexual relations was better able to provoke public discussion on the subject than that of a grown man placed in detention due to alcohol consumption.

With regard to the success of the rehabilitation process, the verdict of the individuals concerned is not unanimous. While some say that they are satisfied with the steps that were taken and the work that was done, others take a more critical attitude, in particular, with regard to the roundtable, where some feel that they did not receive a proper hearing. Opinions are also divided in connection with the historical inquiry that was carried out. Some point to the symbolic importance of this undertaking, particularly with a view to educating future generations; others have sometimes suggested that it was an unnecessary expenditure of money that could have been better used to enlarge the solidarity fund. Lastly, there are also ambiguous feelings with regard to the work of historical investigation and remembrance that was carried out in respect of their own detention experience. For many, reading the material contained in the files that were kept on them came as a genuine shock. Some discovered for the first time what had been said and written about them, the brutality of the words used to

characterise them and the silence that was maintained regarding the violence they had been subjected to. There is also much ambivalence with regard to the question of their status as victims. In the interviews, much emphasis was placed on the importance of being recognised as "victims" of the measures imposed by the authorities. The public debate and recognition of the injustices committed are also seen as opening the way to self-rehabilitation. Conversely, others also underscore the importance of not becoming trapped in the position of victims, who merit only compassion and shocked dismay. Quite to the contrary, it is their wish to speak out and be heard as full-fledged citizens as they await the findings of the historical inquiry. Thus, for example, writes Nelly Schenker:[108] "I would like for the historians to explain to us why the administrative authorities, the guardianship office, behaved that way. Otherwise, what good are the apologies, if nothing changes, it we are still looked down on and judged. […] And the only reparations that count are that there is a change in the laws, in their conduct, and in the way we are looked upon."[109]

In essence, the protracted process that led to the passing of the 2016 act was only one step along a long path in the lives of the individuals concerned, and in their struggle to forge a movement for individual and collective reparations.

108 Nelly Schenker, who has been active in the ATD Fourth World movement since 1979, was repeatedly committed to foster care as a child and to administrative detention as an adult. She recently published an account of her life. Schenker 2014.

109 Schenker 2018, 8.

SOURCE 8:

FREEDOM UNDER SURVEILLANCE

At its meeting of 22 December 1967, the Bern Government Council decided to extend D.T.'s detention of by another year, but to suspend enforcement of the decision. For the now 49-year-old citizen of the canton of Bern, this meant that while she would be permitted to leave the confines of Hindelbank, this would not in fact be the start of a new, independent life in freedom. Rather, she would remain subject to parole for a period of two years. In other words, she would remain under official surveillance and was required to undergo a two-year probationary period.

The Government Council decision was recorded in the minutes of the meeting as follows: "Considering that this individual must continue to be monitored and receive intensive counselling in the future, the facility administration, the psychiatrist and the advisory bodies advise that the measure be extended conditionally for a term of two years." Under the canton of Bern's 1965 Correctional and Detention Measures Act, which was applicable here, the Government Council was required to impose parole on all individuals for whom enforcement of an administrative measure had been suspended or who had been granted conditional release. It determined which authority would exercise oversight, what conditions the parolee would be required to obey, and how long the probationary period was to last. In most cases, the applications submitted to the Government Council were accompanied by an assessment on the part of the facility administration and, in some cases, by a psychiatric opinion. The option of parole, combined with probation and release conditions, was available in most cantons and was also provided for under criminal law.

Under the Government Council decision, D.T.'s parole is made subject to a number of conditions. The intent is to steer D.T. in the direction of an "orderly life". In part, the conditions are formulated as general rules of conduct. Thus, for example, she was admonished not to give any cause for complaint and to take on a regular job with "enthusiasm and good will". Because D.T. had originally been placed in detention under the accusation of alcoholism, an important condition of her release was the obligation to abstain from drinking and to refrain from visiting taverns. In addition, she was to obey the recommendations of an alcohol counselling office and, if necessary, to undergo withdrawal treatment. Finally, the decision also in-

CANTON DE BERNE

Extrait du Procès-verbal du Conseil-exécutif

22 décembre 1967

8093. Asile pour buveurs; prolongation conditionnelle du placement.-

[redacted], divorcée [redacted], fille de [redacted], née le 5 juin 1918 à [redacted], originaire de [redacted], ouvrière de fabrique, domiciliée légalement à Berne, actuellement aux Etablissements de Hindelbank, a été, par arrêté du Conseil-exécutif du 21 mars 1967, placée pour un an aux établissements précités en raison d'alcoolisme et attendu qu'elle menait une vie déréglée et oisive. Cette mesure prendra fin le 16 janvier 1968.

Durant son séjour aux Etablissements de Hindelbank, [redacted] s'est bien comportée et n'a donné lieu à aucune plainte. Elle fut essentiellement occupée à la salle de couture ainsi qu'à la confection de tapis. Ses prestations ont été satisfaisantes. Dans un récent rapport, la direction souligne notamment que l'intéressée témoigne actuellement d'un bien meilleur état d'esprit face aux problèmes qui la concerne et qu'elle fait preuve de bonnes dispositions. Estimant toutefois que cette personne devra encore être suivie et conseillée de façon intensive à l'avenir, la direction des établissements, le psychiatre, ainsi que les autorités préconsultatives, proposent de prolonger conditionnellement la mesure pour une durée de deux ans et d'assortir celle-ci au placement de [redacted] sous patronage.

Entendue à ce propos le 11 décembre 1967 par la préfecture du district de Berthoud, l'intéressée s'est déclarée d'accord avec les mesures préconisées la concernant.

La Direction de la police se rallie à la proposition faite par les autorités préconsultatives.

Ainsi, arrivée sous peu au terme de son placement aux Etablissements de Hindelbank, [redacted] semble avoir repris des habitudes d'une vie mieux ordonnée et laborieuse. Toutefois, au vu du dossier et compte tenu notamment des expériences défavorables faites précédemment avec l'intéressée, il est absolument indispensable de veiller à ce que cette personne puisse encore bénéficier d'une surveillance appropriée en liberté. La proposition des autorités préconsultatives trouve ici sa pleine justification. En conséquence, le Conseil-exécutif ordonne que la mesure dont [redacted] est l'objet soit prolongée conditionnellement pour la durée de deux ans. Cette mesure sera assortie d'un placement sous patronage de même durée ainsi que de diverses règles de conduite. Par ailleurs, l'intéressée devra suivre les conseils d'un agent du dispensaire antialcoolique et, au besoin, se soumettre à une cure ambulatoire de désintoxication.

Vu ces circonstances et en vertu des articles 26, 28, 30, 55, 60 et 64 de la loi sur les mesures éducatives et de placement, le Conseil-exécutif

2

arrête:

1. Le placement de [redacted] aux Etablissements de Hindelbank est prolongé d'un an. Il est toutefois sursis à l'exécution de cette mesure durant un délai d'épreuve de deux ans.

2. Elle sera placée sous patronage pendant la durée du délai d'épreuve.

3. Il lui est enjoint:
a. de se comporter à l'avenir de façon à ne donner lieu à aucune plainte et à aucune condamnation,
b. de travailler régulièrement, avec zèle et bonne volonté,
c. de faire gérer son salaire en cas de nécessité,
d. de s'abstenir de toutes boissons alcooliques et d'éviter la fréquentation des auberges,
e. de suivre les conseils de l'agent du dispensaire antialcoolique qui sera désigné par les organes de patronage,
f. au besoin, de se soumettre à une cure ambulatoire de désintoxication alcoolique,
g. d'observer tous les ordres des organes de patronage, notamment d'occuper la place qui lui sera procurée et de ne pas la quitter sans l'autorisation de ceux-ci.

4. Si, durant le délai d'épreuve, [redacted] persiste, au mépris d'un avertissement formel des organes de patronage, à enfreindre une des règles de conduite qui lui a été imposée, si elle se soustrait obstinément au patronage ou si, de toute autre manière, elle trompe la confiance mise en elle, l'Office cantonal du patronage portera le fait à la connaissance de la Direction de la police en vue de l'introduction de la procédure de réintégration.

5. Les frais de la procédure sont à la charge de la Direction des oeuvres sociales de la ville de Bienne.

6. Il peut être recouru dans les 30 jours contre le présent arrêté auprès du Tribunal administratif.

A la Direction de la police.

Certifié exact

Le chancelier p.s.:

42/65 se
Geht an die Direktion der Anstalten in Hindelbank zur Kenntnis und Eröffnung an [redacted]. Ein Doppel ist uns mit Eröffnungsverbal zurückzusenden.
Infolge Hospitalisierung der [redacted] vom 18.12. - 23. 12. 1967 wird das Entlassungsdatum auf den 21.1.1968 aufgeschoben.
Beilage: 2 Doppel RRB
Bern, den 27. Dezember 1967

POLIZEIDIREKTION DES KANTONS BERN
Abt. für den Vollzug von Strafen & Massnahmen und das Gefängniswesen
Der Adjunkt:

cluded an obligation not to leave the place of residence to which she had been assigned without the prior consent of the authorities. Individuals on parole were required to be reachable by the authorities at all times. This form of spatial surveillance was an important instrument of control.

Refusal to cooperate with the parole authority, and any failure to obey instructions, was considered by the authorities as a "breach of trust" and could potentially result in a return to detention. Responsibility for the oversight and monitoring of obedience to instructions was not delegated to a single authority. Instead, there were various actors from the welfare system involved, who worked in collaboration. These could include, depending on the circumstances of the case, guardians, parole officers, social workers, or the staff of addiction counselling services. The different actors provided each other with information as to the conduct of the persons under supervision and sometimes also collected information from the individuals' relatives or employers. In this way, they were able to surround their "charges" with a finely woven net of varied information sources and control mechanisms.

Sources: Staatsarchiv des Kantons Bern, BB 4.1.4444.
For further informations: IEC, vol. 8, chap. 14; IEC, vol. 4, chap. 3.3.

SOURCE 9:

COERCED INTO ADOPTION

"It has not been very easy to obtain the consent of the aforementioned to renounce her rights to her child." These words were written by the director of the Bellechasse facilities, Camille Grêt, to a clergyman from the canton of Vaud, on 13 April 1942. The latter wished to convince the 22-year-old E.U., from the canton of Vaud, to put her illegitimate child up for adoption. E.U. had been placed in detention in Bellechasse after being accused of engaging in prostitution. The reference to her reluctance to give her consent suggests that this was a forced adoption, and that she did not voluntarily give up her child. It was clearly only under pressure that the mother relinquished her rights. "Nevertheless, she did in the end understand that it would be all the wiser to follow the course we recommended, given that she had absolutely no certainty as to her own financial future, let alone to that of her child."

This short letter provides an illustration of the manner in which administratively detained women were sometimes compelled to give up their children for adoption. Those most often concerned were unmarried mothers, who had limited economic or social resources at their disposal; particularly at risk, as well, were Yenish women. By the 1970s, the "Relief Organisation for Children of the Open Road", established by the charity Pro Juventute, had taken some 600 Yenish children from their parents. In the interviews conducted by the IEC with former detainees, numerous women spoke of how they had been pressured into giving their children up for placement in foster care or for adoption. By contrast, in the personal files on the women concerned, only rarely does one find any suggestion that pressure was used or, indeed, that there was any practice of taking children away from their mothers. Even in the case of E.U., the letters exchanged by director Grêt and his clergyman correspondent must be read with care in order to reconstruct the manner in which the adoption was arranged.

Legally, a declaration of consent by the mother was required, as a rule, for a child to be put up for adoption. However, E.U.'s son had, at the time, already been placed with a family that wished to adopt the boy in the near future. When the natural mother insisted "vehemently" – in the words of the letter here cited – on her rights, and demanded that her son be returned to her, the Vaud cantonal authorities informed her that he had already

Bellechasse, le 13 avril 1942.

Monsieur l'abbé [redacted]
Révérend Curé

Le Brassus
Vaud

Monsieur le Curé,

Nous vous prions de nous excuser du retard que nous avons mis à répondre à votre lettre du 2 février 1942, concernant Mademoiselle [redacted], internée dans nos Etablissements. Il n'a pas été très facile d'obtenir de la prénommée la renonciation à ses droits sur son enfant. Cependant, elle a fini par comprendre qu'il était préférable de prendre le parti que nous lui suggérions, d'autant plus que son avenir matériel n'est pas du tout assuré, ni, à plus forte raison celui de son enfant.

[redacted] est de religion protestante et, selon votre désir, nous ne lui avons pas indiqué le lieu où se trouve son enfant.

Vous trouverez donc ci-jointe la déclaration que notre pensionnaire a bien voulu écrire et signer de sa main. Nous espérons que cette pièce régularisée vous permettra d'entreprendre l'adoption de l'enfant, et de le préserver ainsi d'un sort malheureux.

Nous vous prions d'agréer, Monsieur le Curé, l'expression de nos sentiments respectueux.

Le Directeur :

Annexe : 1 déclaration

been put up for adoption. Whether this was in fact the case, or whether this merely invented as a means of convincing the mother to abandon her project, remains unclear.

The correspondence shows that the clergyman, the facility administration, and the guardianship authorities all played an important mediating role in the adoption process. The facility director had direct access to the mother, which meant that he was in the best position to exert pressure on her. The letter also provides information as to the arguments that, in director Grêt's view, spoke in favour of adoption. For one thing, he refers to the young woman's precarious financial situation and prophesies that E.U. would be compelled to raise her child in circumstances of material need. For another, he describes the prospect of the child's being raised in "orderly circumstances" within an intact family structure as the better alternative for the child.

Women who were already in detention when they gave birth were often not even permitted to see their newborn children; they were later not given any information about them and were denied the right to visit them. E.U., as well, was left in ignorance concerning the whereabouts of her son. "In keeping with your wishes, we have not told her where the child is," Grêt informed the clergyman in question.

Beginning in the 1960s, a new approach was adopted at the Hindelbank facilities, where only female detainees were admitted. At the initiative of the Swiss Evangelical Association's women's aid organisation, a separate section for mothers with infants was established. There, newborn babies were permitted to stay with their mothers up to a certain age and to be taken care of by their mothers outside of working hours. The idea behind the new section was that the bond between the mother and her child would help put the women back on the "right path". Even in Hindelbank, however, it was not a matter of course that women would be permitted to keep their children. The decision continued to be made by the facility director, the competent authorities and the women's families, without consulting the women themselves.

Sources: Archives de l'État de Fribourg, Bellechasse A5859.
For further informations: IEC, vol. 4, chap. 2.3; IEC, vol. 8, chap. 8, 387–388; IEC, vol. 9, source no. 56.

7 CONCLUSION

> "But despite all the coercion and the security measures, the more time passes, the less 'administrative justice' is able to fully stifle the voices of its victims. The day will come when they will join forces, when they will come to settle accounts with their cowardly, lying tormentors."[1]

With these words Carl Albert Loosli concluded his book *"Administrativjustiz" und Schweizerische Konzentrationslager* ["Administrative Justice" and Swiss Concentration Camps], which he wrote in 1939. In that work, he criticised the fact that orders could be issued by administrative authorities depriving individuals of their liberty, taking issue both with the arbitrariness of the decisions on which such orders were based and the conditions in which people were detained. Having himself been detained in the Trachselwald (Bern) reform education facility, Loosli knew from his own long experience of what he was speaking. In his closing sentence, he expresses his deep belief that one day the voices of those concerned will be heard and that the injustices done will be acknowledged.

In this, he was not mistaken: 80 years later, on 21 March 2014, Swiss Parliament voted to adopt the Federal Act on the Rehabilitation of Administrative Detainees. That law officially recognises the injustices done to the individuals who were victims of coercive welfare measures, "in particular, those who were placed in establishments for the enforcement of criminal sentences without having been convicted of a crime". At the same time, it also provides for the launching of a process of remembrance.

During that interval of 80 years, other events paved the way to this development. The provisions of cantonal law that permitted such deprivation of liberty measures were repealed and a uniform national regime was introduced by an amendment to the Civil Code in 1981. While not entirely eliminating the possibility of imposing detention for other than criminal reasons, the new legal institution of involuntary commitment for welfare purposes was assorted with provisions for protecting the rights of the individuals at a standard consistent with the terms of the European Conven-

1 Loosli 2007 [1939], 271.

tion on Human Rights. Conversely, the question of the liability of cantonal and federal authorities in connection with administrative detention measures that had until then been applied, or with their consequences for the individuals concerned, received little or no attention.

It was only at the turn of the 21st century, under growing pressure from former detainees and the media, that a number of cantons commissioned inquiries or expressed apologies, and that consideration began to be given to the question of the federal government's involvement. In 2010, the Federal Council expressed itself for the first time concerning its responsibility in connection with the injustices that were committed against the individuals who had been subjected to coercive welfare measures. This helped prompt a wider awareness of the issue, both in the general population and among members of Parliament. In 2014, the IEC was appointed with a mandate to contribute to this process of remembrance. Its research was conducted over a period of four years, focusing in particular on what is known as "administrative detention". Taken literally, the term designates the deprivation of an individual's liberty based on the order of an administrative authority, with no direct reference to any criminal offence or conviction by a court of law. Rather than merely identifying or confronting the perpetrators, as Loosli proposed in 1939, the IEC Synthesis Report focuses on understanding what practices the term "administrative detention measures" effectively referred to in the period between 1930 and 1981. In so doing, it addresses different aspects of three fundamental issues: first, the reasons for which individuals were placed in administrative detention, and the manner in which this was done; second, the factors that made it possible for the administrative detention regime to maintain itself until 1981; and lastly, the categories of individuals who were targeted by administrative detention measures and the impact these measures had on their lives.

The work of the IEC contributes to the process of remembrance and the rehabilitation of the individuals concerned by providing the knowledge necessary to understand and explain the circumstances that made it possible for numerous individuals to be sequestered from society without having committed any offence. It is also intended as a contribution to academic and political discussion over the way in which Switzerland and its public authorities relate to the task of maintaining the social order and dealing with the marginalised portions of society. While the laws on administrative detention and their application studied by the IEC now belong to

the past, other provisions of law are still in effect which make it possible, still today, to sequester individuals not accused of having committed any criminal offence. In 2016, for example, some 14,580 people were hospitalised in Switzerland without their consent, under orders issued by a medical or administrative authority.[2]

The summary that follows begins with a brief recapitulation of the main conclusions set forth in the Synthesis Report. Based on those findings, two subjects at the heart of the current rehabilitation and reparations process are then addressed: the first is that of the historical character of the injustice inherent in administrative detention; the second is the significance of administrative detention in the overall history of Switzerland in the 20th century. A final section suggests different possible perspectives for further research.

A CONFUSED PATCHWORK OF LAWS

One significant result of the IEC's research is that it reveals that behind the two words "administrative detention" is concealed a large legislative patchwork, of which the contours are confused and difficult to grasp. Although the specific term "administrative detention" was not systematically used by the lawmakers, each canton had its own statutes allowing the deprivation of liberty of individuals who had not committed any crime. The emergence of such laws dates back to the 19th century, when a number of the German-speaking cantons established compulsory labour facilities designed for the poor, who the authorities believed were unwilling to work. Over the course of the first half of the 20th century, other laws and enactments proliferated, by various means and at a different pace, throughout all of the cantons of Switzerland, in such varied domains as welfare assistance, combating alcoholism, prostitution and juvenile delinquency. To this arsenal of cantonal laws was added the Civil Code in 1912, in which the provisions on guardianship also introduced new possibilities for detention without trial. These numerous cantonal laws and the different ways in which guardianship law was applied gave rise to a complex legal regime, in which the boundary between the administrative and judicial authorities charged with applying them were often permeable and difficult to identify. This is particularly so with regard to reformatory education measures for juveniles provided for in the cantonal and – from 1942

2 Schuler, Tuch, Peter 2018.

on – federal criminal codes, and with regard to the provisions on guardianship, which in certain French-speaking cantons fell to the jurisdiction of the local judicial authorities.

Common to all those various statutory provisions was that they permitted the deprivation of liberty also outside the ordinary judicial framework and on the basis of legal provisions on morality. The emergence of these laws in the 19th century was part of an effort by the country's political and social elite to find measures for dealing with mass poverty, which they feared would grow and which they perceived as a threat both to the social order and to the public treasury. The potential grounds that could be asserted for imposing administrative detention under those laws tended to relate more to forms of conduct considered improper by the authorities than to any specific acts. Among such grounds, the laws in question mention, for example, "indolence" and "misconduct". Thus, in the early 20th century, administrative detention measures proved themselves to be a highly versatile instrument of social control.

In short, administrative detention laws gave rise to a "second class" legal regime, which made it possible to circumvent existing legal norms and individual rights of freedom. The laws relied upon extremely broad and loosely defined criteria for justifying detention, which left the authorities a wide margin of discretion for interpretation and application. In this way, they could be used not only to impose sanctions, but also as a means of preventing the emergence of ways of life that were not consistent with the authorities' demands for conformity. In practice, the use of vaguely defined legal criteria made room for arbitrary decisions and for violations of the rights and integrity of the individuals who were targeted. The linguistic imprecision was compounded by the absence of firm rules and regulations concerning the application of the laws, which were subject to almost no oversight. In the face of these imponderabilities, the individuals concerned were left with few possibilities for asserting their rights and were thus frequently obliged either to rely on informal assistance from their friends and family or to take flight. While some laws did make provision for legal remedies and even designated an appellate authority, it was nevertheless difficult for the individuals targeted to avail themselves thereof and make their arguments heard. This was the result of various *de facto* obstacles – from the failure of the authorities to transmit information, to the summary enforcement of detention orders, and the routine circumvention of oversight authorities.

The lack of precision in the legal criteria for imposing administrative detention measures also helps to explain why it was able to remain in use for such a long period of time. Because of their imprecision, the laws were an instrument that could be easily modulated and accommodated to changing circumstances over the course of time. Neither elected representatives nor administrative officials had an interest in depriving themselves of provisions that allowed them to resolve various types of conflict in a manner that was both convenient and, often, the least costly. The lack of political will to invest in seeking other alternatives for dealing with problematic social and personal situations in a manner that would respect fundamental rights was another factor that contributed to the perpetuation of the use of such measures.

THE FINAL STAGE IN A PROCESS OF EXCLUSION AND STIGMATISATION

A second important achievement of the IEC inquiry is that it demonstrates that the use of administrative detention was not solely the result of a conflictual relationship between the authorities and the detainees. Rather, it was the last stage in a long process involving a large number of actors. The procedures for ordering administrative detention also varied from canton to canton, and depending on the specific law that was applied. Thus, such decisions could be taken by prefects, guardianship authorities, special commissions, municipal councils or cantonal councils in keeping with highly variegated procedures and oversight mechanisms. The IEC inquiry has nevertheless identified two basic paradigms that represent the opposite ends of a broad spectrum of procedures for implementing administrative detention orders. At one end are regimes of a disciplinary-repressive nature, which rely on weak government structures; here, decisions depended as a rule on a single individual who was granted a large margin of discretion. At the other extreme were regimes that were more strictly regulated and bureaucratised, where decisions were made collectively by a group of actors who could be held to account by oversight authorities for the procedures followed. Those oversight authorities, however, had often been involved in the drafting of the respective detention laws and tended rather to confirm the decisions taken by the competent authorities than to verify that the rights of the individuals concerned had been respected. Either way, the path that led to detention was complex under both paradigms, and the procedure cannot be reduced to a simple decision by the

authorities. Administrative detention was often ordered for individuals who already found themselves involved in a process of social exclusion and stigmatisation. The research that was conducted reveals that the intolerance of the majority of the population for deviant modes of behaviour played an important role in the use of administrative detention and in the perpetuation thereof over time. The process that ended with detention was often set in motion by complaints from the immediate social surroundings of the individuals concerned. Sometimes it was a wife who filed a complaint against her husband for domestic violence; sometimes parents at a loss as to how to deal with their disobedient children; also common were denunciations by neighbours or local moral authorities (priests, pastors, teachers).

DETENTION A PHENOMENON OF LIMITED SCOPE

A third important finding of the IEC is that administrative detention targeted only certain specific social groups. It is estimated that in the period from 1930 to 1981, a minimum of between 20,000 and 40,000 individuals above the age of 16 were administratively detained. Because administrative detention was used more frequently during the periods of economic crisis in the first half of the 20th century, it is posited that the number of individuals who were detained over the course of the entire 20th century was at least 60,000. As approximately half of those individuals were placed in detention more than one time, the number of detention orders that were issued was much larger. While these figures appear quite high as absolute numbers – particularly if one keeps in mind the arbitrary manner in which administrative detention orders were issued and their persistence over a long period and across the whole of Switzerland – they nevertheless represent only a small fraction of the population. The use of administrative detention was limited to certain combinations of circumstances, particularly in the post-war era. Its persistence throughout the entire country is indicative of the fact that the practices of social marginalisation and exclusion were deeply anchored in Swiss society. Certain social configurations constituted risk factors, which influenced the chances of an individual's being placed in administrative detention. Thus, for example, poverty and social disaffiliation, that is, the living at the margins of the employment market and sociability networks, particularly family networks, rendered individuals more vulnerable to the risk of detention. The risk was also higher for members of socially stigmatised minorities – such as illegitimate children

or members of the Yenish community – as well as for individuals whose relationship with the authorities was conflictual. During the economic crisis that preceded the Second World War, the question of employment played a greater role; while social isolation was a more prominent risk factor after the war, when administrative detention measures tended to be targeted more against the younger population. The limited use of administrative detention measures to target only the members of stigmatised groups also explains why it was able to perpetuate itself over such a long period of time and why the authorities saw no reason to launch a process of rehabilitation at an earlier stage. Because it affected only a small minority of individuals, scattered over the entire country, the subject was seen as marginal both by local municipal and cantonal authorities and by the country's political leadership. For the individuals directly concerned, it was difficult to achieve the critical mass needed to ensure sufficient support for their demands for reparations.

Over the course of the process that culminated in detention, the authorities often attempted by other measures to impose discipline on the individuals about whom there were complaints. It was not until the 1960s, with the emergence of alternative measures for dealing with forms of social non-conformity prohibited by the authorities, that the use of administrative detention measures began to decline. As a rule, detention tended to be imposed on those who had resisted such measures or had attempted to circumvent them. This was the case, for example, with men who did not comply with medical surveillance measures relating to their consumption of alcohol, or who did not honour their promises to abstain from drinking. Detention could also be ordered in cases where the individuals targeted challenged figures of authority, refused to accept decisions imposed on them, or merely attempted to defend themselves. This could be the case, for example, if they refused to submit to the demands of their social worker or guardian, or again, if they protested repeatedly against the insecurity of their employment conditions, or filed complaints concerning acts of violence committed against them in the institutions in which they had been detained. Finally, administrative detention measures also served to fill gaps in the juvenile welfare system, for dealing with minors who had no place to live and who reform institutions refused to admit. In short, administrative detention existed and perpetuated itself essentially as a regime for dealing with problems involving stigmatised individuals living in socially vulnerable circumstances. In this way, administrative de-

tention measures clearly contributed to reinforcing the process of exclusion to which certain individuals were subjected and thus to consolidating social inequalities.

THE GENDER OF DETENTION

The research of the IEC confirms, moreover, that there was a gender bias in the use of administrative detention measures. This is evidenced not only by the fact that a large majority (80 percent) of the individuals concerned were men, but also by a clear distinction between the grounds on which men and women were detained. Men tended to be characterised as indolent, or accused of consuming unreasonable amounts of alcohol, while the arguments used to justify the detention of women bore more upon their failure to respect the norm for female sexuality as being reserved for marriage and, in particular, upon suspicion of prostitution. In practice, application of the laws on administrative detention was embedded within a continuity of different statutes and measures designed to defend the middle-class gender order based on a division of roles and tasks between the sexes. On men, it was incumbent to ensure the family's economic stability; women were responsible for care of the family and reproduction, that is, for preserving the peace and morality of the household, in particular, by limiting their sexuality to the framework of marriage. It was in keeping with this logic that detention facilities dealt with detainees in different manners, depending on their gender. Thus, chores connected with the maintenance of the premises and householding were reserved for women, while men tended more often to be assigned to outdoor labour. The conditions for release also differed according to gender. While the requirement of demonstrating conformism and a willingness to work applied to both sexes, for women, it was possible for marriage to act as an alternative to detention. Lastly, the living and working conditions in facilities for women were often worse than in comparable institutions for men. In addition, women in detention were paid less well for their work and were offered fewer (or only with greater delay) opportunities for occupational training. Moreover, there was an insufficient number of facilities capable of accommodating young women, so that they were often detained in criminal correctional facilities such as Hindelbank.

MEASURES OF EXCLUSION

A fourth result of the IEC's research is the finding that administrative detention measures frequently increased the social pressure on the individuals concerned and thus contributed to their further exclusion from society. Detention measures were executed in many different kinds of institutions that differed from one another in size, denominational affiliation, organisational type and intended purpose. Although the laws sometimes prescribed specific types of institutions and distinct regimes for the different categories of individuals against whom detention orders were issued, those provisions often remained dead letter. Instead, detainees were frequently placed in multifunctional facilities, together with inmates serving ordinary criminal sentences. Men who were placed in detention due to alcoholism were more often placed in compulsory labour facilities than in sanatoriums. Regardless of which facility is concerned, however, the written and oral testimony of former detainees is unanimous in describing the asperity of the living conditions, where violence and isolation were omnipresent. The unwillingness of the cantons and municipalities to invest larger amounts in such facilities, particularly in facilities that also served for criminal correction, led to chronic deficiencies in infrastructure, maintenance and personnel. Perpetuating for many years the logic behind traditional measures for assisting the poor, it was expected that the costs of maintaining the facilities would be shifted to the detainees themselves and would be covered through their labour and the payment of boarding fees. Work was obligatory for detainees in all facilities and working conditions were often extremely harsh: monotonous and physically exhausting labour with extensible working hours and no compensation. Economic and security considerations were systematically given priority over concerns as to the future reintegration of the detainees in society or respect for their integrity.

For the individuals concerned, entering a detention facility was a truly devastating experience. Rarely informed in advance as to the conditions of their detention, they lived in constant uncertainty, while the impenetrability of the system largely deprived them of means for defending themselves. They were at the mercy of the facility administration and staff, who were the actors with the most determinant influence on whether they would be granted release or an improvement of their living conditions. Life in detention was also a source of greater vulnerability to violence and violations of their physical and sexual integrity. Despite reforms designed to

improve living conditions in the so-called "educational" facilities, or reformatories, beginning in the 1960s, one finds little change in the accounts of the individuals concerned as to the likelihood of their being given a hearing or treated with respect.

The IEC's inquiry has shown that, in addition to the suffering resulting from being cut off from society and from the harsh living conditions in the facilities themselves, administrative detention also had lasting consequences, with which the individuals concerned were compelled to cope for the rest of their lives. The fact of having been placed in closed detention gave rise to severe stigmatisation, which seriously impeded the social reinsertion of the individuals following their release. Often held in the same detention facilities as ordinary prisoners, they were tainted by the same stigma which the general population attached to convicted criminals. For juveniles, social reintegration was rendered all the more difficult by the fact that they were largely unprepared for life outside of an institution and that the occupational training they had received did not provide them with sufficient skills. Upon their release, they were predestined for unstable employment at badly paid jobs with low social prestige.

Moreover, the preservation of administrative detention orders on the record, together with the grounds for such orders, made it possible for this information to circulate between different authorities over prolonged periods of time. Individuals were thus pursued by their records, giving rise to more intense surveillance and increased distrust towards them on the part of the authorities. Upon their release, the former detainees remained under surveillance by welfare caseworkers or other social services. The difficulties of social reinsertion, the distrust of the authorities, and the continued surveillance proved to be additional risk factors that increased the likelihood of their being returned to detention. Over the longer term, those conditions also heightened the risk of their falling into poverty. In many cases, the traumatic experiences of these individuals over the course of their lives also had an impact on the generations that followed. In short, administrative detention measures both gave rise to and exacerbated the very problems to which it was intended to provide a solution. All this notwithstanding, the individuals concerned did not remain passive and their lives cannot be reduced to the sole experience of detention. Many of them were able to fend off the risk of poverty and a return to detention and thus succeeded in breaking out of the vicious circle of never-ending detention.

A TENTATIVE ASSESSMENT: HISTORICAL LAW – PAST INJUSTICE?

For the contemporary discussion over the rehabilitation of former administrative detainees, as well as for a historical assessment of past events, legality and injustice represent two crucial categories of thought, yet they differ in their connotations. In the following, we will briefly review the various issues that come into play here. To what extent was the use of administrative detention wrongful? What is the relationship between the historical laws that were applicable to the use of administrative detention and political recognition that a historical injustice was committed? In adopting the 2014 Federal Act on the Rehabilitation of Administrative Detainees, Swiss Parliament acknowledged that numerous administrative detention orders had been issued or enforced in a manner that, from today's point of view, must be considered unjust. This assessment was part of a process of recognition and reparation of the suffering and deprivations that were inflicted on administrative detainees and which continue to afflict them to this day. The question of whether the use of administrative detention constituted, already at the time, a violation of the then applicable law was deliberately not addressed by the 2014 Rehabilitation Act.[3] This approach is in keeping with the long-established line of Swiss remembrance polices, which attach central importance to assessing the past from today's perspective – and is thus circumspect in passing judgement on the legality of past conduct.[4]

This notwithstanding, the question must be posed: to what extent were administrative detention law and its implementation by public officials in violation of recognised rights and applicable law at the time? To what extent was the problematic nature of administrative detention law apparent to those living then? As already suggested in the introduction to this volume, it is not possible to provide a definitive answer to these questions. The findings of the IEC inquiry nevertheless permit a more thorough discussion thereof. There are three fundamental issues to be distinguished: the legality of the practices followed by the public authorities, the questionable legality of cantonal administrative detention orders, and the compatibility of the laws and their application with inviolable fundamental rights.

The question concerning the legality of the practices followed by public officials can be answered relatively simply. There are countless examples

3 See "Bericht der Kommission für Rechtsfragen des Nationalrates", 6 September 2013, Bundesblatt 2013, 8639.

4 Schürer 2009.

which demonstrate that the officials who applied the laws on administrative detention failed to adhere to the applicable legal and constitutional provisions and violated – at times, flagrantly – the prescribed legal procedures and the procedural rights of the individuals concerned. Thus, for example, no hearing was given to the individuals prior to the issuance of a detention order. At times, they were placed in detention before an order had even been issued; they were not informed as to the grounds or the legal remedies available to them; the term of detention was not predetermined; and the prescriptions on the segregation of administrative detainees were not adhered to. All of these violations were unlawful under the laws in force at the time or constituted, at the very least, a gross abuse of discretionary powers. Such breaches of the law were not at all uncommon and are indicative of a widely prevalent attitude. In isolated instances, they were also censured by higher authorities, including on occasion the Federal Supreme Court. It is manifest that this strongly error-prone and often arbitrary application of the law was a systemic problem. A legal regime formulated in such ambiguous terms, which granted broad powers of discretion the authorities and almost no rights to the individuals concerned, invited practical application in a manner easily conducive to arbitrary violations of rights and personal integrity. This was compounded by a culture of pretending not to see, of turning a blind eye to irregularities – including physical and sexual abuse – in facilities where detention measures were enforced.

The high susceptibility to arbitrariness also derived from the fact that the cantonal administrative detention laws were, properly speaking, exceptional laws. In the political discussion that preceded enactment of the administrative detention laws, it was an acknowledged fact that those laws were targeted against the socially stigmatised sectors of the population. It was also taken for granted that, in order to achieve certain socio-political objectives – ending the abuse of welfare assistance, combating alcoholism and prostitution – procedural rights and legal certainty would have to be curtailed. A conscious effort to use administrative law as a means of circumventing the legal standards recognised under criminal and civil law was one of the primary driving forces behind the enactment of administrative detention laws. Of particular importance in this connection was the bypassing of the judiciary and the use of sanctions as an element of a probationary system. The characterisation of the cantonal administrative detention laws as special laws raises a question as to whether those statutes were themselves in breach of elementary principles of law – specifi-

cally that of equality before the law – and thus also in violation of the fundamental prerequisites of justice.[5] Taking into account the circumstances under which those laws were created, and the "spirit" that informed them, the answer to that question must doubtlessly be in the affirmative. A more nuanced response is called for with regard to the provisions on administrative detention under federal guardianship law. Those provisions, because they are included in the Civil Code, cannot be said to have the character of exceptional laws. Here, it was primarily due to the absence of adequate legal safeguards that untenable decisions were sometimes made in individual cases. The fact remains, however, that closed detention ordered under federal guardianship law was, for the individuals concerned, barely distinguishable from that ordered under cantonal law – which only further highlights how difficult it is to judge such matters in hindsight.

The question of consistency with inviolable fundamental rights is, by contrast, more complex – not least because the understanding of the notion of fundamental rights and the accepted justifications for invasions of personal liberty under the rule of law have evolved over the course of time. In this connection, too, there are various aspects to be considered. Even where cantonal administrative detention laws are concerned, these were statutes that were enacted in a formally correct manner. The possibility of legitimately depriving human beings of their liberty for their own welfare or for protecting public order was never fundamentally questioned, not even by the Federal Supreme Court, provided that there was a statutory basis for doing so, that the facts of the case were not established in an arbitrary manner, and that the right of due process was guaranteed.

At the same time, it would be mistaken to place the blame for administrative detention practice on the prevailing "legal *zeitgeist*" of the time. The use of administrative detention was controversial from the time it was first introduced in the 19th century. The problematic nature of administrative detention law was a subject of recurrent debate, though without any lasting effect. The complaints of administrative detainees who protested against the failure to respect their rights fell on deaf ears. Criticism of ad-

5 The German legal scholar and philosopher Gustav Radbruch argued, with reference to the laws enacted under the National-Socialist regime, that statutes sacrifice their status as binding where they are enacted without even a pretense on the part of the lawmaker to respect the elementary principles of justice and, in particular, that of equality before the law. The principle, the famous "Radbruch's formula", although originally tailored to the injustices committed in Nazi Germany, remains today an important point of reference for retrospective-normative judgements of historical law.

ministrative detention by legal scholars, political personalities and publicists focused initially on the inadequate legal protection for the individuals concerned and, in particular, on the absence of judicial process and the lack of legal remedies. After the Second World War, the broad powers of discretion that had been granted to local authorities and the reliance on undefined legal concepts began to be targeted by critics. Not until the 1960s, in the context of discussions surrounding the European Convention on Human Rights and the extension of the scope of unwritten fundamental laws by the Federal Supreme Court, did the compatibility of administrative detention law with the right to personal liberty take centre stage in public discussion. The proportionality – and thus the lawfulness – of deprivation of liberty measures for the protection of alleged public interests was now openly questioned by legal experts. Similarly, limits began to be imposed on the acceptability of justifying invasions of personal liberty by claims that they were being committed for the protection of the individuals concerned. On the other hand, the unjust aspect of past administrative detention practice was barely an issue in the discussion surrounding the introduction of involuntary commitment measures in 1981. The main issue in that connection was the need for a rapid and pragmatic amendment of the existing legislation in order to attain conformity with the European Convention on Human Rights.

The Federal Supreme Court took up many cases involving administrative detention law over the course of the 20th century. The majority of the decisions concerned the arbitrary disregard of procedural rights or the division of powers between the federal and cantonal governments. The right to personal liberty had been guaranteed by many cantonal constitutions since the 19th century, and since 1963 at the federal level, in the form of an unwritten constitutional right. Contrary to Germany's Federal Constitutional Court, which had ruled in 1967 that the betterment of adult individuals was not a government responsibility, the Swiss Federal Supreme Court had never expressed itself as to the fundamental legality (and proportionality) of administrative detention measures. This was, in part, a consequence of the many formal and *de facto* obstacles that impeded access to the high court; but it was also a result of the extreme reticence manifested in the Court's case law over many years. The IEC must therefore leave open, at normative level, the question as to the extent to which the principle of proportionality ought to have precluded appeals to overriding public interests – for this, further legal research is necessary.

This notwithstanding, given the notorious susceptibility of administrative detention practice to arbitrary and erroneous decisions, the socio-politically motivated denial of elementary rights and the tenacious insistence of countless detainees, lawyers and political leaders on the unjust nature of administrative detention, the evidence for the constitutionally dubious nature of the laws then in force is irrefutably clear. Despite the legitimacy conferred upon it in the context of democratic procedures and the absence of legal challenges put forward against it, administrative detention law was a highly problematic construct from the very beginning. It was a legal regime in which the potential for great injustice was inherent, and which by its very nature violated elementary principles of law and thus also the fundamental prerequisites of justice.

SWITZERLAND – A PEACE-LOVING AND CIVILISED COUNTRY?

How does the historical injustice that was associated with administrative detention and other coercive welfare measures fit with the prevailing view of Switzerland's modern history? Switzerland, like other European countries, saw itself as having emerged from the turbulence of two world wars as a peace-loving and civilised society. To this day, political leaders and the media are prone to portraying the country's more recent past as a success story. Depending on the point they wish to make, they lay stress on the country's prosperity, its gradual expansion of direct democracy, its liberal economic order, its multilingualism, or the success of its welfare and social partnership systems. Regardless of where the accent is placed, however, the dominant narrative is one of progress, consensus and proven success.[6] The men and women who were sent to administrative detention have no place in such narratives. To the contrary, the stigmatisations, deprivations and violence that were inflicted on them represent the dark side of Switzerland's model of success. They are the reminders that Switzerland in the 20th century was home not only to the benefits of prosperity, social justice and direct, participatory democracy, but also to the denial of rights, discrimination and marginalisation. What this also means is that history takes on a different aspect depending on the social status, gender and personal experience of every individual – and is told differently depending on the teller's point of view.

Social exclusion and coercive welfare measures are not a speciality unique to Switzerland. The history of administrative detention is never-

6 Germann 2017.

theless a story that was made in Switzerland and which reflects important aspects of 20th century Swiss society: a direct democratic legal culture, but with little appreciation for fundamental rights; a reflex resistance to international legal standards; tight social controls with strong pressure to conform; a hierarchical gender order; persistent social exclusion of the poor as the reverse side of a strongly work and achievement oriented ideology; and a poorly developed and chronically underfunded social security system. Despite the formal equality that reigned, who effectively belonged to that society and enjoyed full citizenship rights, under those circumstances, depended on their gender, family background, social status and personal repute. Conversely, individuals with limited material or social resources at their disposal, or who for other reasons did not belong to the imagined community, became victims of exclusion and segregation tendencies. Those victims included not only the individuals concerned by coercive welfare measures, but also women who stood up for their rights, individuals with a non-sedentary lifestyle, foreigners, and intellectuals who were perceived as questioning the narrow consensus on the norms of Switzerland's patriarchal middle-class establishment. The mechanisms that contributed to the process of social marginalisation were of a decidedly brutal nature: they compromised the life prospects of the individuals concerned and occasioned physical impairments, traumas and secondary social disadvantages of which the effects could endure for the rest of their lives. The history of administrative detention thereby touches on a taboo: it shows that, also in Switzerland, social relations were marked by structural and physical violence.

Some of those who were held in administrative detention compare in ego-documents the living conditions and punishment practices in Swiss detention facilities to those of the internment camps of totalitarian states. In this, they follow the lead of Carl Albert Loosli, who drew the comparison with Nazi concentration camps prior to the Second World War. It is certainly true that there are unmistakable parallels with the working conditions in "total institutions" (Goffman) under authoritarian (and other) systems. Those parallels include insufficient legal protection for individuals ordered into detention, compulsory labour, disregard for the personal needs of detainees within the structured daily regimen, and quotidian physical and sexual violence. This notwithstanding, the usefulness of such comparisons, which ignore the prevailing social conditions against the background of which such phenomena occurred, is debatable. Administra-

tive detention practice in Switzerland, despite its obvious incompatibility with rule-of-law norms and the brutality by which it was characterised, can nevertheless not be compared to the systematic relentlessness and murderous logic that, by the 1930s, had become the driving force behind the persecution of "social enemies" in Nazi Germany and the Soviet Union – not to mention the "extermination through labour" of millions of individuals during the Second World War. Administrative detention measures were deployed within the context of a broadly defined notion of invasive welfare policies. They were ordered, in most cases, only for single individuals and their purpose was to temporarily segregate those individuals from the rest of society. Comparisons with criminal totalitarian states are thus of little value for understanding what happened in Switzerland. More important is the question of how it was possible for such forms of institutionalised violence as administrative detention and other coercive welfare measures to establish themselves within a society that had an image of itself as conspicuously free and non-violent.

The history of administrative detention in Switzerland places in doubt the country's own self-image as a prosperous and open society. It raises the challenge of coming to terms with a more nuanced view of one's own history. To that image belong *also* persistent social inequalities and the forcible exclusion of individuals at the margins of society. This includes not only the unequal distribution of material resources (and thus also denial of a secure position in society), but also – for specific categories of the population – the refusal of social recognition, and of the chance to exercise fundamental rights and participate fully in society. The legal construct of administrative detention and the practices that developed on that basis bring to light the contradictions inherent in a saturated middle-class society; a society that owed its cohesiveness – and thus its ostensible success – not least to a hermetic separation from those "below" (or from "the outside"), and one that punished those who did not meet its moral expectations, or who fell through the gaps in the social safety net, by depriving them of their fundamental rights.

OPEN QUESTIONS AND FURTHER RESEARCH PERSPECTIVES

Historical research is an ongoing process that is driven by the formulation of new questions and the discovery of new sources. A historical inquiry, such as that conducted by the IEC, can also not furnish definitive answers. The IEC decided on a research procedure based on detailed case

studies and interpolated estimates that permitted the analysis of exemplary excerpts of the historical reality, from which it was then possible to generalise. Another central concern was the collection and analysis of as large a number of ego-documents from former detainees as possible. To this end, many interviews were conducted which remain available also for future research. Due to source material and funding limitations, it was not possible, however, for the IEC to conduct a comprehensive review of all types of measures and facilities that were used in all of the cantons. The IEC also had to contend with methodological limitations connected, among other things, with its participative research approach. The National Research Programme (NRP 76) "Welfare and Coercion" and other studies will supplement the findings of the IEC, combining to provide a more comprehensive picture of the use of coercive welfare measures in Switzerland. Also with regard to the question of administrative detention, in the narrow sense, there remains a need for further historical research. With this in mind, the Synthesis Report offers suggestions for prospective areas for further research.

First, the placement of individuals in closed detention was a complex and dynamic process, in which numerous actors with diverse motives were involved. It was evident, in particular, from the interviews conducted by the IEC with former detainees, that in most cases, there was a confluence of several factors that ultimately prompted the authorities to issue an administrative detention order. It is often difficult to say why certain individuals were placed in detention, while others in similar situations were able to avoid such a fate or were subjected only to measures of a less invasive nature. In order to better understand the mechanisms that led to placement in closed detention, further research is needed at local level in order to embed the logic of social exclusion and the related constructions of social deviance in a comprehensive analysis of social relations. There are two considerations of particular importance in this regard. For one thing, there is a need for a more detailed analysis of the interconnection between different forms of social control (social work, guardianship, the judiciary, psychiatric institutions, schools, etc.) in geographically confined areas (villages, cities, districts). This should include an inquiry into the role of family and neighbourhood relationships. A satisfactory explanation has also not yet been found for the fact that men were placed in closed detention so much more frequently than women. For another thing, there is a need for a more detailed analysis of the motives and rationales of public authorities beyond

the grounds that were officially proffered. Of particular significance in this connection are financial considerations, which were studied by the IEC primarily in relation to the institutions that served for the enforcement of administrative detention orders. Conversely, there is still very little known about the financial motivations of the authorities that issued those orders; as their motivations were always far from being entirely clear.

Second, in addition to case studies at local level, there is a need for a comparative study that could situate the Swiss experience within an international context. The IEC chose not to engage in such a comparative study. Isolated comparisons that were drawn, however, suggest that further research of this kind would be fruitful and could offer important insights into the functioning of the Swiss welfare state and of the rule of law in Switzerland. Such an undertaking would be highly demanding from a methodological point of view. Difficulties arise already from the outset due to the absence of a precise definition of the term administrative detention. What is certain is that other countries also had legal measures with a similar function, but which were called by different names and descended from different legal traditions. A possible point of departure for such a comparative study could be, for example, the use of punitive measures in the context of social welfare systems; the ways in which societies deal with social deviance (welfare assistance, guardianship, treatment of addictions, the combating of prostitution and juvenile delinquency, etc.); the underlying conceptions of legal protection and fundamental rights; or the multifunctionality of the institutional network at the interface of social welfare and criminal correction. Of particular importance in such comparative analyses is that attention be paid to changes that occur over time, meaning that the temporal scope of the study must be sufficiently broad. This is especially so with regard to the evolution of the concept of fundamental rights after 1945, during which time – as our findings have thus far shown – the discrepancy between the way that concept was construed in Switzerland and the way it was understood by neighbouring countries continued to widen. Another factor that should be included in such studies is the osmotic relationship between different areas of state intervention, such as alcohol treatment and juvenile welfare, for example. Consideration should also be given to national legislative processes as they relate to international conventions and organisations.

Third, the research of the IEC has shown that, during the post-war era, cantonal detention regimes gradually became more highly differen-

tiated. Socio-medical approaches and less invasive alternative measures took on greater importance, though they did not entirely displace administrative detention measures. A parallel development was a progressive expansion of the scope of legal protection through such developments as the establishment of administrative courts. The manner in which this evolution took place differed from canton to canton. The general direction was nevertheless clear, and it anticipated many of the principal components of involuntary commitment, which was introduced in 1981. Among them were the improvement of the legal position of the individuals concerned and the increasing psychiatrisation of invasions of personal liberty. The research findings of the IEC thus call for a reassessment of the proposition that replacement of the administrative detention laws by provisions on involuntary commitment constituted a major turning point, as is widely taken for granted in the current discussion over reparations. What happened, rather, was that an extended transitional phase lasting from 1960 to 1990 culminated with the introduction of a new regime under the name of involuntary commitment for welfare purposes. This was typified by a shift away from measures for the protection of the social order to an emphasis on protection of the individuals concerned as grounds for involuntary commitment. This notwithstanding, even after 1981, it remained possible to impose such measures on the grounds that an individual constituted a "burden" to his or her surroundings. The alternative of ordering detention in a criminal correctional facility, under certain circumstances, remained – and still remains today – a possibility. As the continued detention of young women up to the early 1970s shows, this process, too, was characterised by many asynchronicities. Questions also arise as to the steps that were taken for dealing with the "drug problem", which in the 1970s began to gain priority on the social and healthcare policy agendas. The research findings for this period – as traditional role images began to dissolve and be replaced by more individualistic life models – remain difficult to interpret.

The changes in the conditions for the deprivation of personal liberty between 1960 and 1990 thus also require more detailed investigation. An important aspect of this question is the growing significance of psychiatric hospitalisation, which received only marginal attention in the IEC's research. It is known that psychiatric treatment played an important role in the preparation of the legislative provisions on involuntary commitment for welfare purposes. This being the case, to what extent can it be said that

responsibility for intervention by the authorities was shifted to the area of psychiatric treatment? What changes did this bring with it in terms of the groups of individuals concerned and the nature of the measures ordered (term of hospitalisation, medication, availability of legal remedies)? To what extent did the individuals concerned continue to be the object – if possibly in a different form – of stigmatisation and social exclusion tendencies? By widening the focus to beyond the "watershed" of 1981, it is possible to trace the history of administrative detention practice over a longer arc of time and connect it with measures used today for dealing with individuals who have fallen through the social safety net.[7]

Fourth, the process of historical reappraisal, which led to the recognition of the injustices committed and to the establishment of the IEC, is itself also a subject that merits more detailed analysis. Why did it take so long for official Switzerland to take notice of the injustices inflicted on administrative detainees? What were the prevailing social conditions that made it possible for a group of men and women who had suffered such injustices to place the issue on the political agenda and, after years of silence and denial, to fight successfully for their own rehabilitation? Questions that must be investigated include the forms that mobilisation took and the public resonance that was generated by associations of former detainees and other victims. Another question concerns the image that the general public has of administrative detention – which will, in future, also be shaped by the publications of the IEC. What is the significance of the finding that, historically, it was largely men – many of whom had alcohol problems – who were targeted by administrative detention measures when considered in relation to the fact that the primary focus of early public interest in the subject was on young women who had been sent in the 1960s and 1970s to criminal correctional facilities for adults? What do such perception filters tell us about the culture of remembrance in today's society, and what conclusions can be drawn as to public awareness of the problem of invasions of personal liberty – in connection, for example, with involuntary commitment measures or immigration law? An important element of such research will be a discussion of these issues at eye level with individuals who themselves were subject to administrative detention or other coercive

7 See the reseach project being conducted by Cristina Ferreira and Jacques Gasser, "Protéger par la contrainte: Etude socio-historique de la privation de liberté à des fins d'assistance", at the University of Applied Sciences and Arts, Western Switzerland, and Ferreira, Maugué, Maulini 2017.

welfare measures. It is only by adopting a participative approach that it becomes possible to create broad public awareness of the historical injustices committed and the implications for the present and the future.

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TEXTS BY PERSONS AFFECTED BY COMPULSORY SOCIAL MEASURES

The following pages gather texts written by victims of administrative detention and other compulsory welfare measures. To consolidate the fruitful exchange conducted with the victims over the years of research, the IEC chose to give them a voice in the final report. It therefore invited them to write a personal text on the reassessment currently under way or on any other topic they thought pertinent to the issue. The authors revised their texts and then authorised their publication. The IEC wishes to sincerely thank each of them for their valuable contribution, which will surely add to public debate.

I EXPECT THE IEC'S FINAL REPORT to make a further, vital contribution to the public debate on compulsory social measures. In truth, I had never expected the public at large to take an interest in the serious and often terrible fates of the victims and people affected by these measures, but more and more attention has been paid to the topic since the 1980s and 1990s. This was catalysed by the recognition of the injustice against travellers and later against administrative detainees. Many accounts and investigation reports were published. Films such as *Der Verdingbub* [The Contract Boy] and *Lina* were very well received – to the extent that they were discussed in schools, and grammar school students wrote essays on them.

The IEC has enlivened this broad discourse with its participatory research approach and interim findings. For example, it gave the people affected an insight into its working processes and canvassed their opinions through Q&A sessions and workshops. The IEC's two General Secretaries have in fact taken on the role of intermediaries, acting as a point of contact for many of the concerns raised by those affected. I have found the procedures and roles of the IEC and its members to be both diligent and circumspect. The IEC's President explained very clearly on a number of occasions that many of the compulsory social measures used in the past constitute crimes and did so even under the laws applicable at the time.

As we await the publication of the IEC's definitive findings, I have the following questions and thoughts: Will the final report portray the pain and suffering of the victims and people affected in plain language? Will it be noted that gruesome and persistent acts of violence were committed against babies, children and young people under the heading of "social measures"? That children and adults alike were beaten, starved, humiliated and degraded for years at a time? It is this severe mistreatment and its lasting impact on the lives of those placed in care and detention that led to the outcry and thus the inquiry. I am concerned that I might see nothing but matter-of-fact academic observations such as "Prior to 1981, institutions existed whose staff treated others in the early stages of their lives in a physically and psychologically negative manner." This sort of reporting would trivialise the matter and almost be tantamount to an exoneration of the authorities, public bodies and institutions responsible. Will the perpetrators be named, at least as groups and their institutions? Will their dependence on insufficient material resources be mentioned? And what about the *zeitgeist*? Did it allow free reign for gratuitous violence? Will we get answers to questions like how it was that statutory offences were not prosecuted – the

crimes against those affected that should automatically have been investigated and punished? The fact that, for example, many girls and women were abused, as indeed were boys and young men? Why did the courts, public prosecutors and police do nothing? Or the doctors who had a duty of care and an obligation to report crimes? And where the distinguished head of the household got his uneducated maid pregnant and had the name of an unknown foreigner recorded on the birth certificate as the father – how was this falsification of documents permitted that had the potential to ruin the lives of unmarried mothers and their babies? Such actions, which were against the law even then, must not be trivialised or played down, let alone pardoned by academic excuses.

These are just some of the questions that arise in connection with the IEC's work. The IEC, of course, is not the whole story, it is merely part of the process that began with the federal act mandating an investigation and includes the recognition of the injustice, the claim for compensation, the solidarity contribution for victims, the right to view dossiers and other measures. These other steps towards rehabilitation are also worthy and important for reconciling those affected with society and with our country. It cannot be taken for granted that a state, its government and its parliament acknowledge historical injustices. Doing so will have an effect on the future and make it easier for other minorities to gain recognition. The apology is really a plea for forgiveness – a plea those affected do not have to grant. Refusing to forgive or saying nothing could move the discussion forwards and potentially result in better outcomes. It cannot be taken for granted that everyone will apply for a solidarity contribution. Even when people are poor and needy, it must not be assumed or expected that they automatically have to accept any form of handout gratefully and without question. Their freedom and dignity must be respected.

All of these rehabilitation efforts represent significant successes for those affected and reflect a positive political culture in our country. As mentioned above, many travellers, administrative detainees and others subject to placement have fought hard to achieve this result, but it was not until the Reparation Initiative in 2015 that all those affected were included. As much as the rehabilitation is to be welcomed, we need to be aware that it will remain a piecemeal process. There will always be victims and groups who are left out. The severity of individual fates is not taken into account. The younger victims especially, who have not yet reached retirement age, remain trapped in bitter hardship and dependence. The 25,000-francsoli-

darity contribution is no recompense for the suffering and lost lives, it is purely symbolic. However much research is done, it cannot heal the lifelong wounds. Indeed, no support was offered for any form of individual therapy to deal with the trauma.

And yet, if I can see myself as part of something bigger and not just as myself or in the context of my family or the circles in which I move, then I must view all rehabilitation efforts in a positive light. They constitute an investment in the future and a commitment to justice, solidarity and decency in the way we treat each other in this country, and for that I am grateful!

Urs Allemann-Caflisch
Bern, 26 September 2018

I, ERNA AMSLER-SOOM, GREW UP IN A WORKING-CLASS FAMILY in Zurich's District 5. We were poor, but we were brought up with love and good manners, and there was always food on the table. My father worked all the time, never taking a holiday, to support my mother and nine children. We were never subjected to violence, although the files say different (all lies). On 25 January 1954, the police took my sister and me away to the Lory home in Münsingen, a closed institution. They pulled out all of my sister's teeth, top and bottom, and then gave her drugs. In June 1962, she died of a stroke and kidney failure. My mother died of a broken heart before she was 50, and I can never forgive social services for that. My father died of cancer aged 57. Instead of offering protection, social services destroyed our parents and us children. We had no appointed guardian or child welfare advocate, as my father remained our legal guardian until his death in 1963. The files stated that my parents were ordinary people. At the Lory home, we had no contact with the outside world and only received visitors every three months. We were allowed to send a letter – which was checked – every two weeks. It was worse than prison, always under the supervision of the farmers, forced to work in the fields. After 27 months in the home, I was sent to Bäretswil to be a domestic worker. I was never paid any wages; they were taken by social services. Even today, 80 years old, I still suffer and have to take pills to help me sleep. The files say we all had a screw loose, we should all be sterilised. I still suffer as a result of what they did to us. Besides the anger and disappointment, I also feel guilt when I think about my family. After our interview, my sister Brigitte Soom and I handed our files over to Mr Thomas Huonker. I spent weeks reading them and could not believe how much was made up or just plain lies, not what we went through at all. Shortly after my mother died in 1957, the files (!!!!) state: "Finally, we can implement our plan to move the two youngest sisters, 12 and 14 years old, to the home for difficult children in Kehrsatz". We were powerless, even my father. My eldest brother, Hermann Soom, fled to the Foreign Legion after he was threatened with detention without any backing from the courts. We have Ursula Müller-Biondi and the media to thank for everything: the letters, phone calls and discussions, and our admission to the RAVIA association for administrative detainees. We also received our files thanks to Uschi. I have had frequent contact with the IEC, with Mrs Zimmermann, and I am glad that she takes the time to talk to me. I always get information from the IEC by e-mail, and I am very grateful for this. This is just a brief account. I could write a whole book about social services and their lies. Now I am

sad again about the files. They also say that my mother was lazy and spent all day in her armchair, smoking and drinking, which is simply not true. She always had a meal ready when we got home from school, and she did housework every day. She never swore like the files say she did, she was a woman of faith, and we had little trouble at school. How can people invent these horror stories? It makes me sick – I have had two ulcers.

At 15, after I finished school, I wanted to go to the French-speaking part of the country to learn the language. We found a place, but social services said no because it was too expensive and they did nine years of school, not eight like in Zurich. So I was not able to learn a trade. I turned my hand to office cleaning and started working for the city of Zurich, which I did for many years.

Erna Amsler-Soom
21 August 2018

URSULA BIONDI, BORN 18 DECEMBER 1949 IN "ZWINGLI'S CITY OF ZURICH" AS A FOURTH-GENERATION ITALIAN AND ROMAN CATHOLIC.

My family on my father's side came to Switzerland from Tuscany (Italy) back in 1897. The naturalisation process was highly traumatic, especially while National Action Against the Alienation of the People and the Homeland (NA) was at large in the period from 1961 to 1966, when I was between 11 and 16 years old. It was worst of all for Italians.[1] The two-tier class system that prevailed at the time, the provincialism of the cantons, religion, the fact that women did not have the vote, the culture of nepotism and conservatism, and the restrictive, duplicitous morality all played a dramatic role in my childhood and youth during the 1950s and 1960s.

Up until the age of 16, I was bitterly disappointed by adults: a brutal father, a mother who repeatedly threatened to kill herself, and the 38-year-old man I worked for as an au pair, who sexually abused me massively for months. As inevitably happens, I met my true love, Heinz. He was Swiss and seven years older than me. Heinz had already been married and was forbidden from remarrying for a year and a half after his divorce. Back then, "living in sin" (an unmarried couple living together) was against the law in Zurich! The "system" ruled over us, not protecting us, but separating us forever.

The decision by the Zurich authorities on 11 November 1966 – over 50 years ago now – and the "educational measures" at Hindelbank are permanently etched in my memory. Hindelbank never goes away. The psychological and physical wounds inflicted on me while I was locked away will stay with me until the end of my life.

The injustice and the effects of the authorities' arbitrary actions at that time are shocking. – Both the act of taking a newborn baby from its mother in the maternity ward of Bern's *Inselspital* for forced adoption and the arbitrary detention supported by no court ruling, entailing exploitation through forced labour without pay, together with the resulting lifelong trauma, the stigmatisation as an "ex-convict" and the lifelong claustrophobia caused by being shut in a cell, are crimes against human dignity. As a pregnant

1 My father, whose mother was Swiss, suffered from very late naturalisation for himself and his children, even though his wife was also Swiss and he, like his children, had been born and grown up in Switzerland.

17-year-old girl, outside the hours of forced labour, mealtimes and an hour a day in the yard along with the convicted criminals, I was locked up in a small cell, just eight square metres, from 6.30 in the evening until 6.30 in the morning with no human contact. In addition to all the terrible experiences, including the suicides of desperate women subject to administrative detention, I found being locked up at weekends, abandoned and hopeless, to be the most awful of tortures on top of having my child taken away and suffering untold heartache. It cost me my sanity and very nearly my life.

Conclusion – The state not only aided the abuse of parental powers and mistreatment, the consequences of which I must bear for my whole life, it even demanded the sum of 6,774.90 Swiss francs from my parents for supposed "care costs" – payment for services that were never rendered, despite the fact that I was forced to work without pay. –

After getting my three-month-old baby back following an incredibly tough and desperate battle, I was released from prison after a year and one week. I regained my freedom on 1 May 1968. I embarked on an impressive career that took me to the UN's International Labour Office in Geneva, among other places. I was only able to do this because I evaded the trauma for 33 years. Every time it caught up with me, I started a new project – always moving on, moving on, moving on. I achieved a lot in life this way (yes, I was lucky), but at the age of 50, I stopped running from my past. I suffered a nervous breakdown and signed up for psychotherapy. I was suffering from a severe dissociative disorder, as psychiatrists put it. Seeking closure, I published my memoir *Geboren in Zürich* [Born in Zurich] in 2002. This made me a fantastic distraction for people who were dissatisfied with their lives, as well as for those who wished to cover up their own misdeeds. I also noticed that many of those who had jumped on the bandwagon at the time still permeated the collective consciousness. One aging journalist even said to me that traitors used to be lined up against the wall. The vicious bullying had already started and could not be stopped. I spent years walking a fine line between the pain of my past, which caught up with me violently when I spoke out, and the daily battle to avoid isolation in the present. Regardless of the cost, I had no choice but to defend the happiness I had worked so hard for, my career, my social standing and to put every effort into preventing myself from being labelled an "ex-con", since the vicious bullying threatened all of it. It became clear to me that the state had for decades

neglected its duty to teach young people that the freedom they enjoy today must not be taken for granted because previous generations paid dearly for it, some of them with their lives. This is why, in the decade from 2000 to 2010 after I spoke out and up to the first official apology, many found it easier and, above all, more convenient to stigmatise me than to accept that they themselves might once have been deemed dissolute, work-shy or similar, and locked up. One need only think of living in sin, children born out of wedlock, homosexuality, etc. It was clear to me that the stigma of being an ex-con in the context of administrative detention from 1942 to 1981 absolutely had to be discussed within society at large. Following years of fighting bitterly on my own, combined with much turmoil and pain in both social and private circles that tested the limits of what a person can endure, I finally found salvation at the start of 2008, when *Der Beobachter* magazine agreed to help me. Dominique Strebel, editor and legal expert at *Der Beobachter*, took my preliminary writings about my youth and published them under the title "*Behördenwillkür. Zur Erziehung ins Gefängnis*" [At the Whim of the Authorities. From Education to Incarceration], while also conducting intensive research into this dark chapter of Swiss history. At the same time, *Der Beobachter* launched a campaign to find others like me: "Administrative detainee? Please get in touch!" All this eventually caused people to start believing my story, but the vicious bullying did not stop until Federal Councillor Eveline Widmer-Schlumpf gave an official apology on behalf of the Swiss government on 10 September 2010 at Hindelbank Castle. *This apology to the people subject to administrative detention between 1942 and 1981 was a matter of vital importance to me.* It was the great breakthrough that paved the way for the next steps in Swiss social history. –

Independent Expert Commission (IEC) on Administrative Detention – On one hand, a bitter aftertaste remains from the long silence, the decades of scandalous and soul-destroying stonewall tactics on the part of those responsible in government before an official apology was made and followed up with rehabilitation, an investigation and recognition in the form of the solidarity contribution. It is also sobering to note that the roundtable saw the authorities more concerned with protecting the perpetrators than they were with the victims, who have to continue to live in poverty now the talks are over. That is all extremely painful! On the other hand, I am very grateful to the IEC for the fact that I lived to see an investigation shedding

light on administrative detention beyond individual cases, revealing how inhumanly the authorities of the time treated administrative detainees. The respectful manner in which the IEC treated us as equals also shows that there has been a shift in mentality among the authorities.

The IEC's investigation into administrative detention is part of the recovery process for those who were administrative detainees in the period from 1942 to 1981 and thus draws this dark chapter of Swiss history to a close. At the same time, however, it is a beginning – a warning to the next generation that never again must any individual ever be made to suffer at the whim of the authorities as we were! It is therefore essential that this dark chapter in Swiss history be added to the standard school curriculum so as to pass the wisdom of experience from one generation to the next.

"We cannot undo the things that happened,
but we can make sure they do not happen again."

Dr. h. c. Ursula Biondi
Former child victim of the authorities
Constantly fighting for justice since the start of 2000
18 June 2018

Former President of RAVIA, the association for administrative detainees
www.administrativ-versorgte.ch
In recovery since 2014
Acting as an advisor since 2008
Participant in the roundtable for victims of compulsory social measures
www.fuersorgerischezwangsmassnahmen.ch/pdf/RT_Teilnehmer_de.pdf

Member of the Reparation Initiative Committee
www.wiedergutmachung.ch/home

Associate member of the Parliamentary Group on Compulsory Social Measures
www.pgfzm.ch

Awards:
– 6 September 2013: Prix Courage, *Der Beobachter* magazine
– 15 November 2013: Honorary doctorate in law commemorating 250 years of law in Fribourg
– 1 June 2015: Anna Göldi Human Rights Award

THE FEDERAL COUNCIL AND THE PARLIAMENT DECIDED to allocate 300 million francs for the solidarity fund, instead of the 500 million we had requested. That was a slap in the face for all of us who had been held in administrative detention. The government knew that the former detainees would not demand a referendum, if for no other reason than the advanced age of many of those concerned. Some Members of Parliament were not even in favour of the 300 million. They, of course, started thinking of ways they could reduce the 300 million even further. The idea was to make it as difficult as possible for the former detainees to get a majority in Parliament to agree on a solidarity fund in that amount. Then, in order to make things even harder for those concerned, they decided, among other things, to require that the former detainees re-examine their own case histories (their files). For many of them that was a very painful form of torture. But that was not enough, of course. They also set a twelve-month application deadline for filing requests. That was intentional, since they knew there were some former detainees who would miss the deadline. The officials who were responsible for the procedure were very ingenious in finding ways to keep the number of applications as low as possible. And they also succeeded. The federal government knew who they were dealing with, what kinds of people had been held in administrative detention, and they took advantage of that, like I said, to keep the number of applications as low as possible. And, in the end, they were also successful.

EXAMPLES:

– Keeping publicity on TV, in the print media, etc. to a bare minimum. Those in charge knew, of course, that the majority of the victims had been in homes and other institutions, and this was deliberately downplayed in the media. Instead, the term "fostering" was favoured over "home".

– Since a significant number of victims are very old, it was clear that their access to means of communication would be highly restricted and that they would perhaps even be incapable of keeping themselves informed. There were also victims who were quite simply illiterate. They had no choice but to visit the victim support units in person in order to make their claims heard. This was a very difficult step to take for many of them – indeed, that was the whole point!

– The application forms were designed to make the victims feel like they were the guilty ones. To get anything from the government, they needed to give proof, which meant delving back into their distant past.

This was a very painful process for many of them. The government knew, of course, that many victims had long since lost all faith in the authorities that had stigmatised them. This was just another way to keep the number of applications low.

– I am not surprised that victims had to mobilise themselves to submit these applications, even though it should have been the government's job to organise proper communication. I believe that its failure to do so was intentional.

– There were also victims who said they were prepared to actively help others submit their application, which would naturally entail certain costs (expenses). Those responsible in government were not interested! We took note of this.

– My conclusion from all this: I am now convinced that the government's communication about the solidarity contribution merits an inquiry into every aspect of its treatment of the victims.

I was elected President of FremdPlatziert, an association for victims of compulsory social measures, in 2017. The association had expressed a desire to disband, but it seemed important to me that it should continue. When the application process for the solidarity contribution began, I had my doubts right from the start as to whether it would pan out the way the government envisaged. I was proven correct in one respect: all the machinations mentioned above that were used to keep the number of applications low. People in the government then started to question why there were so few applications, acting as though we, the victims, were to blame for this. As President of FremdPlatziert, I had first-hand experience of where the real difficulties lay as regards motivating victims and assisting them with their application for the solidarity contribution. My main problem was persuading them. This involved very many one-on-one conversations, and obviously I had to listen to their stories once they had made up their mind to apply. When it came to filling out the forms, I quickly noticed that many victims had a lot of difficulty with them. Most of them found the forms too complicated or were simply unable to answer some of the questions. With some of them, it took me several attempts to get the forms completed. A few even told me they wanted nothing more to do with the whole business. They had suffered enough over the years. Some also told me that they preferred talking about it with like-minded people, i.e. other victims. They would also have preferred to apply for the solidarity contribution through

an association. These were victims who had lost confidence in the government a long time ago. One such person, when I spoke to him about the application, said that he did not believe me: "They beat me, molested me, abused me and so on, and now the government comes along and wants to pay me off? It's a lie!" The biggest stress of all regarding the applications was with those for whom I had to have everything under control. Most were quite simply unable to cope with the whole process. Finding people's dossiers also proved to be a very difficult and laborious task in some cases, especially as many victims, particularly the older ones, could no longer remember all the details clearly, be it when social services put them in care, how long they spent in the home, even their own parents' names! I also realised that, the more I approached the subject with them, the more difficult and withdrawn they became. There were also victims, of course, who were very candid and forthcoming in their accounts, and happy to accept the financial compensation. More or less everyone was of the opinion that the amount offered was not enough in view of the pain they suffered. The view that money alone could not heal the wounds was widely held. Many of the victims complained that they had not benefited from adequate schooling, as a result of which they could not pursue a career and were thus at a financial disadvantage, all of which affects their lives now. Some confided in me just how bad their financial situation was. One even admitted to me that he would occasionally eat dogfood so as not to starve. I find this very worrying. Most victims would have liked to see the issue of compulsory social measures addressed much sooner. Many have died or fallen so far into poverty that it is really too late for them. Most would have appreciated more than just 25,000 francs in compensation. That money will not last, and more should be done for the younger victims in particular, perhaps in the form of a special pension or something like that.

As President, I felt compelled to help victims submit their application, and I amassed a lot of valuable experience and received a lot of thanks in doing so. I would do it all again.

Robert Blaser
President of the FremdPlatziert, association for victims of compulsory social measures
Victim for twelve years: ten in a home, two in a reformatory school.

DUPLICITOUS EXCUSES, GIVEN TOO LATE, THAT SERVE ONLY TO MISINFORM PUBLIC OPINION

Excuses that will never be heard by 80,000 victims neglected by criminal justice authorities that chose to forget about them for four decades. Excuses devoid of any trace of sincerity or genuine desire to make amends – excuses and reparations that will cost the authorities responsible nothing as they will in fact save themselves 80,000 solidarity contributions of 25,000 Swiss francs each.

Authorities placing themselves above the law, guilty of the most vile atrocities, appointing themselves judge and jury.

Forced sterilisation of women, unjustified administrative detention, children torn away from their mothers by force, mothers who would never see their children again. Families decimated as their children were placed in orphanages, mistreated and molested, children sent to farms, beaten and treated like animals, girls raped and murdered, no value placed on the bond between siblings, no schooling or vocational training, forced internment in psychiatric hospitals without justification, clinical trials, the list goes on. *The triumph of brute force and ignorance over the rule of law.*

Following a long battle over more than 20 years, it was thanks to the determination of Louisette Buchard-Molteni, Ursula Biondi and myself that a motion was finally put forward in Bern in 1999 demanding an independent inquiry after more than 40 years of silence on the part of the authorities. Showing no sign of morality or respect for human life whatsoever, the authorities deliberately ignored Jean-Charles Simon's motion.

However, the fight continued, and a roundtable was set up for the victims in 2013. Once again, they were betrayed by the authorities: largely in the minority, their proposals were either ignored or put to the vote by a chair who did not seem to care that being in the minority meant that there was no chance of the vote resulting in a positive outcome for them. On top of this, many of the victims were very poorly educated and faced with representatives of the authorities and the FOJ[1] as well as heads of social ser-

1 Federal Office of Justice.

vices and academics. The mix of roundtable participants was thus unquestionably based in favour of the authorities in order to serve their interests, namely not discussing any reparations whatsoever or taking responsibility for what their victims had suffered.

During four decades of silence, the authorities refused to inform those affected about their dossiers. Throughout this forty-year period, the authorities showed no sign of caring about what had become of their victims. I remain convinced that they deliberately withheld information as they were all too aware of the legal and financial consequences their crimes might have. Forty years of rejecting any blame and all victims' claims for compensation. The perfect crime, the guilty parties never fearing justice because there was none.

What does the aid granted by the authorities (4,000 to 8,000 Swiss francs per victim) mean after decades of poverty, social exclusion and all the things that go with that? No compensation was offered to married couples: the authorities left it to the spouses to pay the price for their negligence.

What does the 25,000-franc solidarity contribution represent when your existence has been reduced to nothing by the authorities responsible, which continue to keep thousands of their victims in poverty with total impunity?

How can we tolerate the fact that victims in poor health asking for payment of the solidarity contribution to be accelerated are told by the FOJ, and I quote, "The term 'seriously ill' refers to physically ill persons at the end of their life. An example would be a person with terminal cancer who only has two months to live."?

How can we accept that the authorities withheld some of a victim's disability insurance, forcing him to use the aid money and the solidarity contribution to pay his overdue tax bill? This is the kind of subterfuge employed by the authorities to circumvent the roundtable's ruling that seizing these two payments for the payment of debts should not be permitted.

Why were the cantonal authorities not required to pay an equal solidarity contribution of 25,000 francs to their victims, given the conclusive proof that it was they who committed all of these abuses that violated human rights conventions as well as the federal and cantonal constitutions?

How can the federal authorities spend some 100 to 120 million francs on their counterinitiative, while thousands of people who were affected remain trapped in poverty, with the authorities that bear full responsibility for this humanitarian atrocity displaying total indifference to their plight?

Daniel Cevey
Romanel, 30 September 2018

WHAT WE NEED NOW

The buffet has been cleared away.
The Federal Councillor has made her thank-you speech. The roundtable is over.

The historians are at work, publishing in-depth analyses of the how, the where and the why of compulsory social measures in the 20th century.

The politicians have done their duty. The Federal Act on the Rehabilitation of Administrative Detainees was passed by Parliament in 2014, albeit without any entitlement to compensation. Three years later, the Federal Act on Rehabi Prior to 1981 came into force, this time in involving a solidarity contribution for the victims.

So far, so laudable.

But what now?

Have all these actions given the victims a better life? Have they become more confident, braver, stronger? The wounds inflicted on them by religious zealots, power-hungry, blinkered, would-be pedagogues, exploitative farmers and a state that turned a blind eye – are they healed?

Is everything alright now? Hardly.

Feelings of shame and guilt have caused most victims to bury their awful experiences deep inside themselves for decades. It would have been too painful, too disturbing, too frightening to open this Pandora's box in haste. However, as the media began to report more and more on the sad fates of the children contracted out to work and placed in homes, more and more of those directly affected summoned all of their courage to start telling the story of the suffering caused to them.

For a short while, there was hope. We were being understood. We were not being left alone. Society seemed genuinely on our side, the home and contract children who had once been so cold-heartedly marginalised. Even the archives opened their doors and supported victims where they could – insofar as our files had not been deliberately destroyed.

But now the topic is gradually disappearing from the public eye again. The media reports are fewer and further between, the headlines are thinning out. Questions arise: What will happen with the victims? How do we all carry on? What I know from my own experience and from speaking to a lot of other victims is that the public discussion of this dark chapter in Swiss social history awakened old traumas for many of us.

The academics have confirmed that many victims of compulsory social measures in Switzerland suffer from complex forms of post-traumatic stress disorder (PTSD). The German-speaking Society for Psychotraumatology describes this broad range of conditions as "a particularly severe and long-lasting trauma due to psychological, physical or sexual violence or experiences of emotional neglect in childhood. Many sufferers believe themselves to be helpless and feel that they have little influence over what happens in their lives".

PTSD is normally compounded by other psychological problems, as a result of which it often goes undiagnosed for a long time. It is therefore essential for sufferers to receive the treatment they need: targeted trauma therapy from qualified specialists.

The psychotraumatologist Andreas Maercker conducted a research project at the University of Zurich that involved asking former contract and home children how they are faring today. Their responses are sadly unsurprising. Many suffer from depression in addition to PTSD. They believe that they do not matter and frequently have suicidal thoughts. Maercker's research team even found that people who were placed in care as children, suffering violence and being torn away from their roots, display an increased risk of dementia in old age.

What is thought to be the past inescapably pervades the present.

In 2013, I helped to get the roundtable up and running at federal level. My own story of years spent in a home and so many bad experiences drove me to do this. I had also kept quiet for a long time. Only when I retired did I find the courage to go public with my story. I had a gut feeling that the commemoration in 2013 in Bern and the public apology by the national government, expressed by Federal Councillor Sommaruga, would make

many victims feel the need to speak out. That is why I put forward the idea of a low-level point of contact for each language region, staffed by people with psychological and psychiatric training and available round the clock for victims at the start of the reappraisal and reconciliation process.
It was a helpline especially for former contract and home children, people who had been forcibly sterilised, forcibly adopted and administratively detained. It was a safe place where they would not be left alone with the dark memories that had been reawakened and where they would receive professional counselling.

There was opposition to my idea on financial grounds. It was pointed out that cantonal victim support units were already available. Looking back, however, it is clear that therapeutic counselling was needed and still is. The victim support units unquestionably performed vital work as regards searching for files, but treating people with PTSD is a matter for specialists.

The Federal Act on Compulsory Social Measures and Placements Prior to 1981 makes no mention of the severe impact on the health of the victims, which lasts into old age. This has less to do with ignorance and more to do with financial policy considerations. While it is noted that there is an entitlement to assistance and compensation under the Victim Support Act, there is no specific indication that victims who have PTSD have the right to make a claim for their treatment. This would have probably blown the budget for the government's solidarity fund all at once.

In summary, the Swiss government has apologised to the victims of compulsory social measures and offered to pay reparations in the form of a solidarity contribution of 25,000 Swiss francs per person – to people who can supply credible evidence that they are victims.

However, the politicians do not seem to be prepared to offer and fund any longer-term and more in-depth support by way of suitable therapies, although there are enough specialists in our country who are experienced in treating PTSD. On top of this, we now know that funding could be provided. Many victims who were entitled to receive a solidarity contribution opted not to claim it. Some did so because they could not bear to rake over their painful past once again. How telling!

However, this means that only two-thirds of the 300 million francs approved by Parliament has actually been paid out. As the law would have it, the unused portion should be returned to the federal coffers.

Or should it? The law is not set in stone. Parliament can change it. All it needs is the political will to do so – the will not to leave victims with severe health problems to their own devices. This would be a further step towards consigning the whole episode to history.

Sergio Devecchi

FACED WITH THESE DEMAGOGUES, *who surely have their roots in Nazism, Switzerland allowed the childhoods of an astonishing number of children to be destroyed – the very lowest figure cited is 20,000, but the real one is far higher.*

Approaches to education throughout Switzerland bore parallels with concentration camps, shaped by a caste-like division between the rich, the middle class and the poor (who were to be eliminated …)

If we look at the training given to social workers, we find that it was based on the theories of Joseph Jörger.

The various accounts of students at the social services colleges will be presented in chronological order and compared. They will also be interpreted in the context of an article by Joseph Jörger, acknowledged in particular by Alfred Siegfried, Walter Haesler and the psychiatrist Benedikt Fontana as a pioneer in genealogical research.

The views of the alienists of Vaud and Geneva tell us what they thought about this disorder, also known as oligophrenia (from the Greek *oligoi*, meaning few, and *phrên*, meaning spirit) or pauperism.

Oligophrenia is synonymous with mental retardation due to congenital or very early deficiencies in intellectual development.

Three degrees of oligophrenia were recognised, and thus three categories of sufferer: idiots, imbeciles and morons. The more modern system refers to profound, severe, moderate and mild intellectual disability. Those subject to administrative detention were classed as oligophrenia sufferers because this meant that the cantons did not have to pay for them and could instead pass responsibility for them to the disability insurance scheme. It was not until after the Second World War, in 1948, that the national Old-Age and Survivors' Insurance scheme was introduced, with Disability Insurance following in 1960 and Unemployment Insurance becoming compulsory in 1976. In the words of the attending physician and future director of the Bel-Air psychiatric clinic in Geneva, Ferdinand Morel, a distinction was drawn between "idiots, imbeciles, and the mentally and morally deficient (pauperism)". The attitude would later emerge that "poverty is a disease, and the bad poor person is a useless creature, dangerous to society".

Pauperism was also generally associated with another defect known as "perverse constitution". This was described as "the make-up of an in-

dividual in all its hereditary elements, such as are present from birth: it groups together individuals whose behaviour is repeatedly in conflict with morality. A nebulous category comprising those with congenital mental and moral deficiencies".

The leaders of this school of thought tended to be middle class rather than rich, and many of them were in liberal professions – doctors, social workers, members of the clergy, professors, in particular of biology and sociology. During the period from 1941 to 1981, the term "population" was understood to mean a certain class of the populace. Cantonal governments were made up exclusively of representatives of the middle and upper classes. In terms of religion, it seems that most cantonal government members were either Catholic or Protestant. In terms of language, there may have been a relatively balanced mix of German and French speakers. "This political elite is, as a general rule, made up of middle-class Protestants, men of the Church, practitioners of liberal professions, and property owners. They enjoy considerable support in traditional finance circles."

The women's social studies college in Geneva was founded in 1918 by Hans Töndury, Professor of Business Economics at the University of Geneva, in line with three principles: patriotism, the family and the emancipation of women.

What was taught and what I found in the reports compiled by the canton of Valais education authority (which had a great deal of difficulty providing me with my dossier):

First of all, the authority ordered an investigation, then it accused "the father of the household, who is an alcoholic [along with my mother, who had never drunk alcohol in her life] [and] the mother, who leaves the home in an indescribable state of disarray". Police officers who came to investigate described seeing clothes left on a sofa, which they said demonstrated that my mother was incapable of bringing us up properly. This measure, reinforced by surveillance of suspicious cases, was usually sufficient to take children away from their parents, according to the Valais education authority (my archives). This material sheds light on all of the methods used to teach social workers at the time, and the theories of Joseph Jörger, which also state that children may be placed "under the protection" of an institution in more serious cases (sadly without defining these), while allowing the parents to retain guardianship. Finally, there is a reference to "the most severe measure, withdrawing the father's parental rights". This was the case

for my father, who was placed under cantonal guardianship. But we were never hungry, cold or beaten. This type of argument can be found in the Nazis' theories on educating children from 1937.

I have a number of questions about their work. Were the family trees drawn up by Jörger and Siegfried adopted? Were they carried over in their original form, or did the students produce their own work based on observation and case studies, for example? What solutions were advocated for cases deemed hopeless? It was easier and more satisfying to take it out on the children as this conveyed a (moral) image.

Did the proponents of eugenics have different ideas on this matter?

An examination of the proponents and opponents of the law of the canton of Vaud law reveals that, contrary to the preconceived opinion that spread following the eugenics experiments in Germany during the Second World War, eugenics is not in fact a school of thought predominantly associated with extreme right-wing ideologies, but one that enjoyed support on both sides of the political divide. The Geneva example, for its part, illustrates the diversity of the scientists involved. We can therefore see that, in the cantons of Geneva and Vaud, eugenics represented a hope for social progress in the collective imagination for much of the first half 20th century and that this vision persisted for some time after that.

It is interesting to find Rudolf Waltisbühl among the supporters of Alfred Siegfried. Waltisbühl is another controversial author cited in the three accounts and by Siegfried himself. A legal scholar refers in his 1944 thesis refers "without reservation [to] the interesting experiments conducted with a view to improving the genetic health of the Swiss people". This does not seem far from "redemptive antisemitism"; he was also in favour of forced sterilisation.

The people responsible for Switzerland's largest cleansing of disadvantaged children believed that they were taking care of suffering children, but the reality of the matter is that they were content merely to take the children away from their parents. Their principle was simple: reintegrating an entire family into society was inconceivable because the "evil" was in the genes, so they explained that these worthless creatures, as they described us, had to disappear.

All it took for millions of Jews and Roma to be executed from 1941 onwards was a decision made outside the law by certain people in the upper echelons of the Nazi regime. All it took for 20,000 lives to be ruined in Switzer-

land was a decision made by certain public servants outside the law and beyond all control as they felt safe in the knowledge that they were above all that.

People all over the world know how many Jews were killed by the Nazis. In Switzerland, we do not even know how many young people took their own lives in the various prisons where they were detained – because no one is interested in us. In no report on Swiss prisons of the era, will you find any mention of a teenager who died in custody through suicide, since they never existed as far as Switzerland is concerned, but I saw it with my own eyes … To this day (2018), the canton of Valais has never offered any apology for its crimes … and yet it was one of the biggest providers of administrative detainees to Swiss prisons, with 670 victims …

Philippe Frioud

Enclosed: CPT report

Strasbourg, 9 August 2001

Dear Sir/Madam

In accordance with article 10 paragraph 1 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I am pleased to send you a copy of the report drafted for the attention of the Swiss government by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Switzerland from 5 to 15 February 2001. The report was adopted by the CPT at its 45th plenary meeting from 3 to 6 July 2001.

I would like to take this opportunity to draw your attention specifically to paragraph 226 of the report, wherein the CPT asks the Swiss authorities to deliver a report on the measures taken in response to its report *within six months*. If at all possible, it would be preferable if the Swiss authorities could deliver a copy of their report electronically.

Please do not hesitate to contact me if you have any questions regarding either the report or the procedure going forward.

I would be very grateful if you could confirm receipt of this letter.

Yours sincerely

Silvia Casale
President of the European Committee
for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Federal Office of Justice
Criminal Law and Appeals Division
Bundesrain 20
CH-3003 Bern

The Swiss Federal Council has consented to the publication of the CPT report mentioned above as well as its response thereto. The latter is included in the document CPT/Inf (2002) 5.

MY STORY

RECOUNTING YOUR LIFE STORY: A CHOICE OR A NECESSITY?

One evening, an old friend who lived close to me told me that the FDJP had launched a project to collect statements from people who had been put into care as children by administrative decision. This project is the result of efforts undertaken by various associations fighting for these injustices to be recognised, calling on a large number of accounts given by victims in the media and in books they have written. All of these accounts corroborate each other, revealing a range of physical and psychological abuse, some of it very serious (in particular sexual abuse), and a denial of protection and basic human rights.

THROW UP OR FREE YOURSELF!

To begin with, I did not want to revisit a difficult past, having definitively suppressed and forgotten all manner of pain, never having been believed or taken seriously. Nevertheless, "all that crap" that had been carefully consigned to my subconscious still lived inside me. One night, it all came back! In particular, the sexual abuse by a priest in whose care I was placed during the summer holidays over several years. I wrote an account, which was published, and I contacted the victim support unit in Lausanne, then I visited the cantonal children's court, among other places. Revisiting the past in this way was difficult, not so much because of what I went through, but more due to a crushing doubt that has stayed with me for as long as I can remember. This doubt is intrinsically linked to my personality, I have internalised it subconsciously but somehow also consciously. Raped by a priest, not believed by my devoutly Christian mother, for whom I have always had great admiration and respect, ignored by my father. Accustomed to keeping quiet "around anyone respectable and influential", to remaining polite and well-mannered around my parents' bosses (for their sake): I was the vicious one, the depraved one. I realised that I had allowed this image, which I had perhaps not accepted, but had at least come to see as completely normal, to influence my whole life. Today, I can barely dare to imagine that I might have liked to have children of my own, a wife to love who was neither the Blessed Virgin nor the untouchable woman the curates taught me about.

IS IT POSSIBLE TO CHOOSE YOUR OWN DESTINY?

In submitting to the conformity demanded by my various "educators", I forgot who I was. I sought solace in a "job well done" (chauffeur and hotel concierge) for those who have the power, the money, the moral high ground. I learned to say "As you wish, Madam" like a consummate professional. Sometimes close to my employers, sometimes going through the motions and despising a superficial world cocooned in its own privilege and certainty.

EXPERT OPINIONS!

I have received a total of three expert opinions on the violence I experienced. The first was from victim support, then Bishop Morerod and his two experts tasked with recording my account, and finally the Independent Expert Commission. As far as victim support and Bishop Morerod's experts are concerned, I was never given a copy of their reports, despite asking for one repeatedly. Did they understand my story? Did they stay true to my account – more simply, did they respect the Data Protection Act, which stipulates that all dossiers kept on a citizen must be accessible to that individual? By contrast, I received a full copy of the interview conducted by the IEC and was thus reassured that I had been heard. In the other two instances, I was at the mercy of the codes employed by experts who, despite efforts to remain objective, filter and appropriate what is said to suit their own agenda. All my life, it has been the same story with experts of every kind.

More experts! I made a pilgrimage to Rome, and one morning I attended a very intimate mass with Pope Francis. I also went to confession […] with some uneasy thoughts, I must admit. How does the priest behind the grille handle his own sexuality, and who is he to offer absolution for my many sins?

TO GO DOWN IN HISTORY, DO YOU HAVE TO BE A "GOOD VICTIM"?

First of all, everyone I dealt with was nice and keen to show good faith. History, of course, will tell its own story and decide what the "truths" are, but I know that there is no repairing the damage I suffered. It is up to me to take care of myself and fix what I can. The past is there, heavy and undeniable, and the more I go back to it, the more I come up against a brick wall. I have met various people with good intentions, some of whom were blinkered in their certainties by dint of their desire to do good. I have

met journalists, skilled historians, benevolent souls to whom I became attached. What remains is for me to deal with my loneliness, certainly to offer forgiveness, but also a continual turmoil that will only end when I depart this world for the next.

Hubert Meyer

IN THE CIRCUS OF THE NAKED WHITE APES AROUND THE TURN OF THE MILLENNIUM: FORCED ADOPTION AND STIGMATISATION IN SWITZERLAND

In ludo candidorum simiorum nudorum saeculo exeunte: De adoptione coercita et nota in Confoederatione Helvetica inusta

Encouraged by the range of events organised by the IEC, I actively participated in them from 2016 onwards. I had finally found a reputable platform bringing together academics and victims to process the injustice inflicted on us. The intensive workshops and meetings placed a great strain on me as everything came back to the surface, and I would go to bed at night utterly exhausted. Nevertheless, I felt that the experts and other victims of compulsory social measures (VCSMs) and former contract children took me seriously and supported me. My story about my mother and me was no longer "crazy", people listened. We were finally absolved of guilt for what happened to us. From an academic point of view, the IEC faced a positively herculean task: addressing a highly complex and far-reaching topic in a relatively short space of time together with us VCSMs in the most efficient, objective and sympathetic way possible. During the workshops to draw up the research questions, it became clear that, while the key issues were being covered, some were merely being sketched out, and others were being left out completely – examples being the role of the Church and forced adoption, together with the stigma attached to it. Despite this, the new network I had built up helped me to exert pressure on private and state institutions to get access to information on what had happened to me. In 2017, for example, Mr Reto Brand, head of the Compulsory Social Measures and Placements Unit, helped to find my dossier after seven years of fruitless searching (it was in the cellar at the Federal Office of Justice in Bern) and have it duly handed over to the Fribourg cantonal government. This dossier was important in proving definitively that I was forcibly adopted and in reconstructing my mother's life as a VCSM. Having originally had the files read out to me back in 1995, I also wanted to read them again for myself as a humanities graduate. I wanted to get to the bottom of this "crazy" story that I had heard in that same year from my mother, who had always been all I had, even though I suffered from being branded the "daughter of a criminal slut". The dossier, which has shrunk by around seven centimetres since then, clearly recounts how I was torn away from my mother after I was

born and how she was forced to sign me over for adoption. However, the file containing details of how social services in Fribourg refused to provide my mother with any support has vanished. Among other sensitive information, the second consultation also revealed that I was probably sexually abused by monks as a baby and had to be force-fed as a result of this. This would explain why I went back and forth between the hospital and the children's home until I was "released" for adoption at the age of five months.

Finding my dossier provided me with proof of the forced adoption, and further research has also made it easier to understand my mother's "crazy" story. Six years old and motherless, she was taken from her Swiss father by the state, separated from her two brothers and sent to a convent. She ran away at 16 and went to live with her father, who had moved to Paris. Three years later, still unmarried, she became pregnant by an Algerian (a Harki?). The French authorities took the child away from her, and she went to prison for the first time. Up until 1983, the Catholic Church did not allow "sinful" marriages, for example between Catholics and Muslims.[1] In addition, single mothers who had been in prison were generally regarded as "criminal sluts", regardless of how this came to be. They were forever denied a normal married life and a career. I found a letter from the embassy in my dossier confirming that my mother had fled the French State while pregnant with me and made her way to "perfect" Switzerland. According to the letter, she hoped that she would be allowed to keep me. However, I was taken from her at birth in Fribourg in 1972, and social services left her to beg on the streets. After that, she fled again to Italy and then Geneva. My youngest half-brother was forcibly aborted at five months in the cantonal hospital, and she was forcibly sterilised at the same time. This was in 1974. Following this act of social hygiene, she had to work as a prostitute in Les Pâquis, Geneva, and was sent to prison again. I was about eight or nine at the time. My social environment knew what was happening. From then on, I was known decisively as a bad child and "daughter of a criminal slut" who deliberately lied and cheated and was too lazy to work. I was abused as a nanny and maid, punished for transgressions I had not yet committed, and was easy prey for bullying and violent crimes, including one murder

1 Canon 1060, *Codex iuris canonici*, the canon law of the Catholic Church, 1917 (in force until 1983). E-mail correspondence with Prof Astrid Kaptijn, Vice Chancellor and Lecturer in Church Law, University of Fribourg (Switzerland), 27 March 2018.

attempt and death threats (from inside the family as well as outside), and rape by men outside the family. Apparently I was asking for it – for all of those things. An unsuccessful bid to kill myself and an occupational illness were said to be attempts at insurance fraud and contested right up to the Federal Supreme Court. I was forced to take part in trials of psychoactive drugs, and the authorities tried to lock me up as a "crazy woman". My physical suffering due to a hereditary blood disorder that led to eight miscarriages, my occupational illness and several near-death experiences was ignored until the disorder was diagnosed in 2010. I was denied emergency treatment at the Sonnehof hospital in Bern until as late as 2013. That same year, my mobile phone, computer and e-mail account were hacked. Besides false promises of marriage, I was regularly dumped while pregnant. I lost the last child in 2014. In the circus of the naked, white apes, I was treated as "fair game" for decades, abused, slandered, denigrated and silenced. A law that was in force until 1981 permitted the administrative detention of the poorer population of ultra-conservative Switzerland, which destroyed my mother's life and caused lasting damage to my own. I suffered from the stigma of being the daughter of a "criminal slut", as a result of which I had no rights until 1981, and monks, for example, were allowed to have their way with me right after I was born. Even until 2015, psychiatrists continued to assume that criminal tendencies were 100 percent passed down in the genes – these days, they say 50 percent.[2] The question of whether the ignorance over a miscarriage, from a medical point of view, was a deliberate act of ethnic cleansing must remain unanswered. At any rate, the Bible empowers the Catholic Church to take such measures against illegitimate, bad and cursed children like myself.[3] What made things worse was that society in general did not permit us to speak out about compulsory social measures and placements. There was no one for us to talk to and no way for us to defend ourselves. By ignoring our suffering, society, the elite, the Church and the state tolerated the Swiss population's condemnation of us VCSMs. It was Guido Fluri's initiative that led to us receiving help and to

2 Probation and Alternative Sentencing Department (ABaS), meeting of 24 October 2015, "Psychiatric treatment: then and now", guest speaker: Jens Sommer, forensic psychiatrist, "Treatment and therapies for people with criminal tendencies", 2 pm.

3 See *Book of Wisdom*, in: *Die gute Nachricht. Die Bibel im heutigen Deutsch (The Good News. The Bible in Modern German)*, second edition, Deutsche Bibelgesellschaft, Stuttgart, Vandenhoeck & Ruprecht, Göttingen 1982, 949, chapter 3 verses 11–12 and 16–19, chapter 4 verses 3–6.

instruments like the IEC being created, which is important for us. Nevertheless, a great deal of suffering could have been avoided if the government had apologised more than 30 years earlier, when the aforementioned law was revised. Only now is this history of slavery and oppression of VCSMs in Switzerland being reappraised. Only now are we allowed to exist and talk about it, as I did recently at a panel discussion on forced adoption at the Polit-Forum Bern.[4]

Forced adoption and the related stigmatisation as the "daughter of a criminal slut" caused lasting damage to my social and financial welfare. Despite receiving a good education and various awards, my hard work has brought only poverty. I could not lead a socially and financially successful life because I was not born into the right kind of family and did not marry into one, but no one in the increasingly conservative, patriarchal, rich and complacent post-war Switzerland wants to marry someone like me. People prefer to keep to their own. Questions that will remain unanswered include how I am related to a current Federal Councillor, the identity of my father, how I was conceived in a French prison and whether I will ever feel at home in Switzerland. My mother, now retired, has informed me that she wishes to forget about everything and seize every opportunity to travel.

Caroline Montandon
M.A., Art and Culture Historian
30 September 2018

4 Panel discussion on 23 August 2018 at the Polit-Forum Bern on the photography exhibition *Wer bin ich? Adoption im Wandel (Who Am I? Adoption through the Ages),* held from 13 August to 21 September 2018. I worked on the exhibition as project manager, scientific advisor, translator, writer, editor, communicator and fundraiser. See my CAS thesis *Wer bin ich? Adoption im Wandel. Fallstudie einer Fotoausstellung im Polit-Forum Bern (Who Am I? Adoption through the Ages. Case Study of a Photography Exhibition at the Polit-Forum Bern)*, submitted on 26 May 2018 (awarded a mark of 6) for the Certificate of Advanced Studies (CAS) in Promoting a Cultural Institution at the Institute of Art History and Museum Studies (IHAM), part of the University of Neuchâtel's Faculty of Arts and Humanities.

I WAS ASSIGNED THE TASK OF EXPRESSING MY OPINION on the rehabilitation work carried out with regard to administrative detention and compulsory welfare measures before 1981.

1. Important steps taken by the government during the rehabilitation process. The apologies made by prominent political personalities, which represented a positive and decisive turn in view of the rehabilitation of the victims and paved the way for projects of historical research.

Already in 1986, Federal Councillor Alfons Egli apologised for the wrongdoings inflicted against the Yenish, the Sinti and the Roma. This acknowledgement paved the way for further steps. In 2010, Federal Councillor Eveline Widmer-Schlumpf made her apologies, which were followed in 2013 by the official apologies of Federal Councillor Simonetta Sommaruga on behalf of the entire Federal Council. On this occasion, two research studies and a roundtable were launched. The Independent Expert Commission (IEC), headed by Dr M. Notter, started its activity immediately. Soon after, Mr Guido Fluri successfully launched the initiative for a "solidarity contribution". The National Research Programme (NRP 76), also known as "Welfare and Coercion – Past, Present and Future", directed by Prof A. Grob, will be submitted to Parliament by 2024.

2. Rehabilitation work started by the roundtable and carried out by the researchers of the IEC and of the NRP76 project.

The roundtable was put in place with the utmost rapidity. It was important to act quickly in the eyes of the politicians, of the population and especially of the victims. Its members were chosen according to different criteria: partly representatives of the victims and partly representatives of various associations. The deputy director of the Federal Office of Justice, Luzius Mader, was appointed head. Submitting and assigning the management of such a delicate project to a representative of a department that had acted as the "iron fist" of the government at the time of the events, when the injustices and the pain inflicted on the victims occurred on an almost daily basis, was neither an easy nor a fortunate solution. Probably for lack of time, Mrs Sommaruga had to appoint someone quickly, so without great caution, nor the required sensitivity or tactfulness, she appointed one of her employees to direct this delicate project. The majority of the 20,000 victims found themselves facing the "cop" of the past again and therefore did not approve of the choice and did not take part in this roundtable with full confidence.

The trust factor was missing! For the management of such a project, one could have appointed an external person with proven and acknowledged experience, such as, for example, Mrs Calmy-Rey, Mrs Dreifuss or Mrs Widmer-Schlumpf, or Mr Benedikt Weibel (formerly of Swiss Federal Railways) or Mr Peter Arbenz, first delegate of the Federal Council for refugees, or other figures with experience in the management of such important and delicate projects. Mrs Sommaruga preferred to take the easiest route by choosing one of her employees. And in my opinion, this was a mistake! Nothing against Mr Luzius Mader. Actually, on various occasions the victims and society in general had the impression that the project lacked actual "supervision" on behalf of who had assigned the mandate itself – especially regarding communication with the mass media and with the victims scattered all over the Swiss territory.

Moreover:

The urgency to start the project as soon as possible nipped in the bud all the simplest steps required for a thorough preparation of a project of this extent. *For example*:

a) Prepare and train all the players responsible at federal, cantonal and local level. Some people in charge at the cantonal social departments were not well prepared on the topic. Each person took assignments depending on how convenient they were for them (*it did not matter:* "Sommaruga, Mader or Bern");

b) Promote a communication system in the three languages enabling a more frequent exchange, also with the victims who do not have the internet or that are dispersed in different regions and vales. Ensure that everything that is written in German at official level is always translated in the other two languages! Promote and appoint, from the beginning, even before the project is launched, three people responsible at regional level (DE/FR/IT) for ensuring communication with the victims;

c) Set up a psychological support network with at least two experts for each canton, who assist the victims *free of charge* (and not through the victims' private medical insurance!);

d) The norms and criteria set forth by the law for the payment of the solidarity contribution did not take into account various critical points concerning payment. Still now, there are victims who have doubts about how and especially when they will receive this sum.

Conclusion regarding the rehabilitation work carried out by the roundtable:

In my opinion, the work was carried out under pressure and in a hurry (a bit like a quick patch-up job). Undoubtedly, there was obvious time pressure – and a great deal of work was done. But when time is very short and the means and resources are "rationed", the result will be mainly *quantitative*. Nonetheless, it will be up to history experts and society to judge the QUALITY of the work done.

3. Personal appreciation of today's Switzerland.

Switzerland has taken and is still taking important steps towards the reassessment of its past. With Jean-François Bergier's report (Independent Commission of Experts Switzerland – Second World War) – and now with our dark past with thousands of victims (compulsory placements until 1981) – Switzerland has shown that it is able to stop in its tracks and reassess its past with concrete measures and historical studies of high value. Therefore, compared to other states, Switzerland has proved its qualities as a state with high moral and social values. The direction of the IEC study group was able to prove, on various occasions, that it really was independent and highly capable of mastering the difficult task assigned to it. It collected and studied facts retained in archives and recounted by the victims themselves with a high degree of professionalism and caution. Contacts and communication function both inside and outside the group. We are all eagerly awaiting the final report.

4. Expectations for a more supportive future with the implementation of sustainable and appropriate measures.

The IEC's final report should be accompanied by proposals addressed to Parliament. One of these could be the redefinition of this chapter of our history – which should be included in the history textbooks used in schools. In the sector of support to the population, a very professional system has been set up which goes by the name of KESB (Child and Adult Protection Authority).

The (Swiss Roman-Catholic) Church has taken important steps to ascertain quality in the choice of novices – not only on the "vocational" side, but also regarding their cognitive aptitude – by offering a special Master's course. In conclusion, all these measures should guarantee that, through training and continuous, systematic awareness-raising in the population, the sustainable goals that we all wish to reach are actually achieved:

a) Do absolutely everything possible in order not to *forget*! Be constantly alert.

b) Crush *silence*! (Sometimes society is silent – even if it notices things that are wrong or serious!)

c) In this way, avoid the *reoccurrence* of these painful events that have afflicted us for years and that are the source of much woe in our society.

Sincerely, I wish to underline and confirm that the positive results of the last decade with regard to this tragic and complex chapter of our history have been achieved "almost exclusively" thanks to the presence of women in the Federal Council (Mrs Federal Councillor E. Widmer-Schlumpf and Mrs Federal Councillor S. Sommaruga). For some time now, I have been considering myself a promoter of a strong and active participation of WOMEN in politics.

Gianni Mora
July 2018

THE MURDEROUS CLASSISM OF SWITZERLAND'S MANAGEMENT[1]

Of protectors and pimps

I didn't make it. It would have been my last wish: a quiet, cat-friendly flat in the countryside with a balcony or a patio and a bathtub. When I heard that I had once again ended up renting a flat in a building that was due to undergo an expensive renovation, I wanted to treat myself to a rural home. I have experienced so much class prejudice again in the past few years that nothing can hurt me anymore, and I can escape the protective anonymity of the city to be as close as possible to my greatest source of strength, nature.

Now I have fallen prey to the most shameless exploiters of social housing. As ever, no one can really help. Even the tenants' association is not so accessible to someone as poor as me. I should be entitled to terminate the lease without notice, but how can I assert this right when I know that I hardly have a chance of finding a flat that will be good for me? Since the social services people refuse to review my application because I did not want to sign over my pending disability pension (which, in all likelihood, I will never receive anyway) to them, I have been living off the solidarity contribution for almost two months.

Having to move house is nothing new for me or indeed for my family – on both Portuguese and Swiss sides. My father's illness was mercilessly exploited, and getting caught up in Swiss bureaucracy yet again almost certainly sent him to an early grave. He had made it, despite being sent away as contracted labour as a child. And so his wish to recognise me as his child and leave his "beloved Maria da Saudade Pereira" an inheritance was denied. On the contrary, in fact: his final years were made terribly bitter, although he apparently remained warm and friendly through it all. That is how I remember him. He must have been in horrendous pain. His two apartment buildings were sold, our inheritance placed in the care of the communal council, and of course the deposit of 25,000 Swiss francs (per person) my father had to pay to the municipality in the canton of Zurich for his loved ones to move there was deducted from the value of the estate.[2] The backdated orphan's pension was also not paid out.

1 This refers not only to the Federal Council and Parliament, but also above all to the "captains of industry" who can wave through laws (sometime in the space of a week).

2 I have since learned that a member of council staff bought one of the apartment buildings at a knock-down price …

But enough about the pimps who slam doors, shutting us out and leaving us to our own devices. The next few lines are dedicated to my guardian angel, who not only gave me life, but also made me able to live.
My mother, Maria da Saudade Pereira:

Mother Zones (raft-building camp, parent's day, sometime in the 1980s)

You came
and looked
at the rafts
carrying us
on the river

City shoes
in the tent; cramped but tidy
With your trousers rolled up,
you sat with me
by the campfire
around the soup pot

We will be
the foxes
in the treasure hunt,
crouching in the branches
of the pear tree,
interlacing our toes

We are holly oaks
and silver thistles;
we find ways.
And we were gifted
with hearts.

I have often thought of times spent with my mother of late, and I sometimes try to put them into words.

I am very glad that I could spend some time with her and see how she dealt with people who forced their way into our flat.

Yes, the guile of the Lisbon man […] no, dear Pires, also the Lisbon woman – the whole population of Portugal, in fact.

It must have been the psychiatrist, if my reading of the small pile of files that were not made to disappear is correct. After the third time getting locked up,[3] when it was written that I was becoming a menace to society; I was six years old in 1970.

She knew almost instantly which doctor would be needed. He came (nowadays I might call him a bit of a poser) dressed in khaki, smelling sweet, but with creases ironed into his tight trousers, as if he needed a barricade against poverty.

What did my mother do?

She began to fuss over the fabric, how neat and carefully ironed his trousers were. I always knew from her behaviour when there was danger, as if we shared a secret radar to warn against people who wanted to control us or invade our space.

She never had to explain anything to me. I grew up with that "say it several ways and let them make their own mistakes" attitude. How many times we laughed as she swung the carpet-beater, chasing me through the flat, chortling, "I've got to hit you, you naughty, naughty child, that's what we do in Switzerland, that's how it has to be!" Her dark, warm voice, her vitality, her theatrical flair. I miss you, Mamuscha, I miss you.

I am reminded of our bus trip through the Alentejo in the spring three years ago. The ancient fisherman, probably the last one still alive, who told us the bus would come along, we could be sure of it, and yes, the stop was over there. We sat there together, silent. We had been told.

We wended our way through this broad country, and the conversations always came with a story or two.

Someone asked the very young driver of a cross-country bus, "Does your granny still not know where the bus stop is?" Everyone laughed, of course, but then we pulled up in front of the little, white house that looked basic, but very well-kept, and the driver and two other men got out, patiently and with a grin and a wink in all directions, casually took the Granny's luggage and smiled at each other as the lady, about 60 years old, dressed

3 I was detained by order of the Swiss authorities from 1965 to 1981.

in black with a headscarf, checked several times that the door was locked, but left the window next to it wide open for her many cats.

They all knew that they had to play along – and were happy to – as she said, "I'll carry this basket. I could take all three of you hooligans, and yes, I've got food for everyone." They said, "Isn't that far too heavy, my dear? Let us take it." At that, she made the typical gesture I was so familiar with: flat palm, fingers pressed tightly together as if to give a slap. Her eyes wide, she said, "I'll give you three lads a clip round the ear." Then this short, roundish woman with snow-white locks falling over her wrinkled face unleashed a tirade that I assume always takes the same course. It is a kind of ritual.

I sat in the middle by the door, fighting back tears, and wanted to stay for ever.

Once, at an official bus stop, we all stood there, just as I stand in cold Switzerland, only here I stand alone. We were briefly alone, just the two of us, and she said, "They've painted the toilet a lovely shade of blue, haven't they?"

Other than that, we barely spoke, as usual: feeling our way, live and let live.

In Portugal, signs telling you what you are not allowed to do, do not have to be embellished with knitting or graffiti, they just stand there, and people say, "A perfect circle, and isn't it lovely and white?"

How many dogs did I see in this broad country, running free even though they were not strays, peeing against signs bearing a picture of them with a line through it?

You have to be able to read the signs, that is all.

I am very happy to have found Sara Zimmermann and Elie Burgos, two people who can do just that.

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OUR STORY MUST SERVE TO BRING ABOUT CHANGE

Text drafted jointly by the group "Researching history for the future of our children", part of the Swiss branch of the ATD (All Together in Dignity) Fourth World movement[1]

We were motivated by public recognition of the injustice suffered by the victims of compulsory social measures and placements: the people affected, men and women touched by poverty today. We have been meeting regularly with like-minded people for four years and engaging in dialogue with professionals, researchers and politicians.

Our concern is that the history is being written without us, the people who lived through it and continue to live with the effects to this day. We provide mutual support in efforts to understand, analyse and question research, acting in true partnership with the historians.

1. THE EXCUSES GIVEN IN 2013 AND THE SOLIDARITY CONTRIBUTION

One point that is very important to us is that the matter should not be forgotten just because the state offered excuses and paid compensation. We are worried that the page will be turned, and nothing will change. This would be unbearable. Children died. We owe it to their memory not to close the book.

The excuses given by the Swiss government embolden other countries. At a European ATD Fourth World meeting dealing with the right to family life, parents from the UK, France, Belgium, the Netherlands and Luxembourg told us of the hopes they had for these excuses and the historical research commissioned by the Confederation.

2. ACCESS TO DOSSIERS

It takes courage to view your own dossier. You are afraid of what you might find. Some of us did not make this step alone and visited the victim support units and archives with a person we trust by our side.

Reading your own dossier is very difficult because you do not know what you will discover. You are transfixed by what you do discover. So many things happened that you did not know about. You relive your whole past,

1 www.quart-monde.ch.

and it hurts. Sometimes, you read about things you do not remember. What is the truth? Our memories or our dossiers? Some of the things that were written down are not true: "Usually, there should be positives and negatives, just like with anyone, but there are only negatives. That conditions us, it stays with us. These negative dossiers stop us from moving forward. They break us."

It is terrible if you do not even find a dossier. It is as if you did not exist, as if you had not lived. You wonder if anyone will believe you. How can you prove beyond doubt what happened?

This awakens dormant memories. It all comes back to you like a film in slow motion, like a flashback. There are no words to describe the pain.

The group gave us the courage to go and find our dossiers, to bring the skeleton out of the closet, so to speak, and talk to others about our experiences. The group gave us the strength to learn who we are. We have got to know ourselves and each other. We discuss without prejudice, and we listen carefully. This helps us to think about things in a new light, which makes us feel better. How can we help those who are alone, those who dare not speak out or take action, those who feel ashamed, those whose speech is filled with rage?

3. HISTORICAL RESEARCH

We find trying to understand what happened to us beneficial, which is why some of us have written down our own stories: "Writing made me realise that I was a good person and not what the dossier said I was."

We have followed the historical research with interest, making an effort to understand the language used.

We invited the historians on the Independent Expert Commission on Administrative Detention to engage in dialogue with us. We prepared ourselves and were proud to talk to them. Now we are keen to hear their response to the proposals we put forward to them.

OUR QUESTIONS:

– If a doctor wrote in a dossier that a person is mentally deranged, what will the historian take away from that? That those who were detained were mentally ill?

– How will our parents feature in this story? Even now, very little is being said about them. What place do these parents who had their children stolen from them have?

– Why is poverty seen as a consequence of these placements, not a cause?

We bare our souls. How will our story be understood? How will it be interpreted? Will we recognise ourselves in the account drawn up by the historians? What lessons will be learned?

There is a common thread in our dossiers: poverty, suffering, brought up as less than nothing. Even now, we struggle every day. One of us thought she recognised herself in the book *Suisses sans nom. Les heimatloses d'aujourd'hui*[2] [The Nameless Swiss. Modern-day heimatlose]. She said to herself, "There are other families who lived through the same things as mine. It's not just my parents' fault." This sense of shared history stops us from feeling that we are to blame; it eases our pain and gives us the strength to speak out.

4. OUR STORY MUST SERVE AS A WARNING TO FUTURE GENERATIONS

We are united in fighting for the same cause and in rejecting misery. We are taking part in this process to ensure that no one else has to go through the experiences we had. Our story must serve as a warning to future generations that things have to change.

MANAGING POVERTY

Children placed in care in the 1930s were sent to work on farms. They were told that this was what was best for them: they were punished from the outset. It was considered normal at the time. Things seem to evolve with every generation, but children are still placed in care as a result of poverty.

Children are listened to more these days, and they have more rights than they used to, but who listens to the parents? The power professionals hold over parents from disadvantaged backgrounds has not changed: "As a parent, you're influenced by professionals. You have to keep your mouth shut and do what they say."

Placement continues from generation to generation: "We were put in care, our kids were put in care. Sometimes even our grandkids were put in

2 Beyeler-Von Burg Hélène, *Schweizer ohne Namen. Die Heimatlosen von heute*, ATD Fourth World, Treyvaux 1985.

care. There's no escaping the system. It's like a train that just keeps going and doesn't have any brakes."

What about young people today? Some of them are unable to find their way. They are unable to take responsibility for themselves because they have been put in gilded cages. One young person told us: "The care home's a place with a real sense of community, but it's almost like a prison." We carry the past with us, but we are here for the sake of these young people's futures.

ATTITUDES TOWARDS THE POOR

There was a time when prejudice against children in care was commonplace: "I was going to school while I was in care. Some parents who knew I was from the home didn't want me in their houses because they thought I'd steal things, that I was a bad influence. I wasn't allowed do an apprenticeship in some shops or companies because of that."

People were broken by prejudice, social norms, a lack of recognition for their abilities and bureaucracy. They were left with no confidence. Just receiving support, not being able to give of themselves, it destroyed their pride, it is a form of charity that destroys dignity: "It still feels like poverty was written on our faces. Without knowing why, people associate it with us like some sort of curse."

That is what must change today.

Text drafted jointly during a weekend workshop on 12/13 August 2017 at the ATD Fourth World movement's Swiss headquarters in Treyvaux.

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Pierre Zanger

I MUST BEGIN BY EXPLAINING THAT I WAS NOT ESPECIALLY KEEN to revisit this subject that I had consigned to the very back of my mind since childhood, and that finally bringing it back to the fore caused me a great deal of sadness. After taking a step back for a while, I am able to express myself more freely, but I do not wish to dwell on the subject indefinitely.

First of all, I had the opportunity to meet a number of people whose experience of childhood or adolescence was dramatic in various respects. We came together in a spirit of solidarity to demand reparations from the Swiss government. As a result of this, a commission of experts was appointed.

Here is a brief summary of my conclusions from all that has been said and written:

– The government should change the fundamental principles of laws – which are still in force – based on prejudices and lowest common denominators that devalue every individual who is subject to them. These principles have been in place for a century, and I believe them to be outdated in view of the natural evolution of things and human nature, which continue to be exploited by unethical people in the modern world, causing great suffering in single-parent and two-parent families alike.

– The modest sum of 25,000 Swiss francs can never be sufficient to compensate for the suffering people have experienced. The government did not take the time to meet us, listen to us and consider our situation as it should have done. Sadly, the fear of being forced to do so respectfully and thus realise the enormity of the problem facing them would have cost them so dearly, both financially and in terms of conscience, that they took pains to vote through a law that would prevent us from moving forward for the time being.

I ask for – we ask for, or should I say I demand – we demand a life-long allowance, an exemption from taxes, medical expenses: be they of physical or psychical origin, they have to be covered by the State and all this for the whole of the life of each victim of this genocide that went on throughout this period.

I would like to take this opportunity to thank all of the researchers who listened to me and allowed me to express myself in this country that never really listens to its people and turns a deaf ear to their real wishes and needs.

I very much appreciated the attention, interest and respect shown to me by all those conducting the research. I felt that I was being listened to, heard and understood in some way, which I liked.

I would like to conclude by wishing the whole research team all the very best for their further work and thanking them most sincerely for paying attention to myself and all those affected.

M. Steiner

FEAR REMAINS MY CONSTANT COMPANION. I often wonder where this fear comes from, but really it is perfectly clear. I never had a chance during my childhood to build basic trust – in my mother or in any other adult. That made this fear inevitable. Looking at my files just made it worse.

Based on what I went through and my experience of psychological treatment, I have to say that it cannot help. Talking to experts brings out emotions. You tell your story, and then you cry and cry, perhaps even for a day or two afterwards, but it changes nothing. The injustice cannot be put right that way, you cannot get your childhood back.

My main concern is to assert my rights, the rights I was denied from birth. If I did not believe in some kind of justice, I would probably not have made an effort to access my files. For me, it was never about financial "reparations". What drove me was the thought that what was done to many other children and to myself was a huge injustice. It is not right that anyone should be allowed to do to children what was done to us.

I found many judgements like the following in my files: "Urseli is a typical itinerant child, with all the lovable qualities, but also the unpleasant attributes these children have … exceptionally unruly … morally very troublesome … a pathological liar, the medical term being pseudologia fantastica"; "Let us hope that we can educate this child to become a decent young person (although I am under no illusion in this regard!)." I wasn't even five years old.

Such predictions mean that there is very little chance of making a start anywhere else, seeking unprejudiced encounters that allow you to build a life of your own, especially not when, like me, you are labelled as – genetically – "slatternly and morally labile" at the age of eight. This effectively gave every man carte blanche for sexual advances. Who would believe a Yenish child? Even if it were true, I was sure to have brought it on myself. That is why my mother's husband could warn me right to my face that, if I did say anything, no one would believe me anyway. He also threatened that I would end up back in a home if I told on him.

My mother's husband made a record of the night before my 14th birthday, when my uncle raped me. He made me tell him everything and wrote it down. To this day, I would like to know what was in that record, made by the man who abused me for years. His conclusion on the matter: "Don't kid yourself that anyone will believe you if say anything about me."

Even my mother gave me no support, but instead slapped my face and said, "Thank God you're not pregnant." Indeed, I am astounded that

I never did get pregnant at that time. It was only when my mother said that that I understood where children come from, or where they can come from. I had already been "written off" and ended up in a home as punishment that same day. I had no way out – that was the story of my life right from the start.

Somehow, I managed to survive, talk about my experiences and realise the injustice of it all. It was only this recognition of the wrongs done to me and to many others, boys as well as girls, and my desire for justice to be done that gave me the strength to play a part in reappraising my own story of suffering and that of the Yenish people in general.

Despite that, I am still unable to let go. For all that has been achieved, I have to say that the price was too high, and it has fallen a long way short of what should have been achieved. It is thus all the more hurtful that, while a follow-up tender has been held for National Research Programme NRP 76, the whole Commission has not summoned the courage even to begin addressing the sexual abuse or the role of the courts. This is a serious failing on the part of those responsible for reviewing this matter. I can only ask what we must do to be heard on this subject as well. What more is expected of us victims?

I absolutely acknowledge the hard work that is being done and the successes achieved. I say to myself, "Uschi, we've come further than ever before." And yet, this unwillingness to discuss the problem of sexual abuse comes as another blow, particularly after I raised the issue repeatedly at every opportunity before the project got up and running. Above all, I pointed out that it was important to investigate how often charges were brought, which charges were brought to trial, how the trials were conducted, and whether the complainant was believed. Were there differences according to case history or the victim's record in a home? In other words, the role of the criminal justice system must be reappraised in this respect as well.

As a child, I often prayed that I would be gifted with parents. I held out the same hope for the research into the history of the Yenish people, but it is hard not to resign yourself, not to give up hope. How should we victims of compulsory social measures build trust? Time and again, people say to me, "Uschi, you've talked until you were blue in the face, and what good has it done?"

All I can do is keep stressing that legal rehabilitation is more important than cash handouts. Without it, we cannot avoid our past catching up with us again and again. How can someone with a history like that live a

kind of life they feel is worth living? For my own part, I count myself lucky if I can get up every day and stumble through life without the aid of anti-depressants.

My relationships have also suffered as a result of my past. I entered into some relationships because it was easier for me to be financially dependent on a man to some extent than to depend on social welfare. I was entitled to social welfare, of course, but I did not want it. That was how deeply rooted my mistrust in authorities was.

I always tried to avoid claiming unemployment benefit for the same reason. I often had several jobs at once because one job on its own did not pay enough for me to live on, especially with the children. My greatest fear was that I would have my children taken away from me if I claimed social welfare. I was scared that I would not be able to stand the pressure. Even though I have been very vocal in fighting for the rights of the Yenish people and have not shied away from public appearances, I would curl up like a mouse when it came to defending myself. I get a lump in my throat, and my heart starts to race, so I have always tried to avoid situations like that.

My need for security and desire to remain independent are both very strong. I always make sure that I have a way out, a "back door" to escape through. I could not live without always having a Plan B in mind. I do not care about material possessions. Only having a car – any car – is important to me because it means I can get away whenever I want to.

The fear I mentioned at the start as the defining emotion of my life and the fear of dependence naturally become more pronounced with age. I never want to be in a home again. I hoped that joining Exit would be my Plan B in this regard, and this shows that joining was not really an act of free will, but ultimately something I was forced to do by my awful past.

In the end, I feel that I have to leave many things unsaid for the sake of my two daughters.

Uschi Waser
2 August 2018

RECOMMENDATIONS OF THE INDEPENDENT EXPERT COMMISSION (IEC) ON ADMINISTRATIVE DETENTION

1 GENERAL INTRODUCTION

Tens of thousands of people were detained in Switzerland up to 1981 without having committed any crime. This was most often done on the basis of an administrative decision – without the protection offered by the judicial process – as a result of behaviour or lifestyles judged to deviate from the dominant norms in terms of work, family or sexuality. These people were excluded from society in reform schools, farming colonies, prisons and psychiatric hospitals. In these institutions, they were frequently subject to exploitation, physical and psychological violence and sexual abuse. Under the pretext of protecting public order and morals as well as regulating social security costs, individuals who were poor, vulnerable, rebellious or marginalised were deprived of their liberty for lengthy periods in violation of their basic human rights and reduced to living conditions unworthy of human person.

The Federal Act on Compulsory Social Measures and Placements Prior to 1981 (CSMPA) of 30 September 2016 aims "to acknowledge and redress the injustice suffered by victims of [these] measures" (art. 1 para. 1). The CSMPA, which supersedes the Federal Act on the Rehabilitation of Administrative Detainees of 21 March 2014, enshrines in law the recognition for which people have fought for several decades, people who were subject to placement as children or administrative detention as teenagers or adults. In addition to this recognition *ex lege* of the injustices committed, the CSMPA entitles those recognised as victims who submit an application within 12 months to a "solidarity contribution" of 25,000 Swiss francs (arts. 4–9). It also governs the preservation and use of dossiers relating to compulsory social measures (CSMs) and placements prior to 1981, and guarantees the persons concerned by these dossiers facilitated access to them free of charge (arts. 10–13). In addition, it stipulates that "self-help projects by organisations for victims and other persons affected" are to be promoted (art. 17). Finally, the CSMPA orders a full scientific investigation into CSMs and mandates an independent (expert) commission to conduct an "academic inquiry into administrative detention [taking] account of other compulsory social measures and placement cases" (art. 15).

The Independent Expert Commission (IEC) on Administrative Detention thus has a mandate from the Federal Council to conduct the neces-

sary research, the conclusions of which, "once brought to the attention of the general public, [must contribute] to an understanding of why and how these measures were ordered and implemented and what consequences they had for the persons affected and those close to them".[1] To this end, the IEC studied in detail the processes by which administrative detention was legitimised and delegitimised, the authorities' practices in this regard, the means and conditions of detention, and the life stories of individuals who were deprived of their liberty through these measures. It also examined the national extent of this coercive phenomenon and established an overview of the large body of legal provisions governing it from the middle of the 19th century until 1981.[2] The IEC's findings on administrative detention have now been published. In its dispatch to the two chambers of Parliament, the Federal Council refers to these findings as "one of the pillars on which to deal with this issue" in the political spirit of "recognition" and "reparation" as set out in the CSMPA.[3]

The special context in which the IEC has worked positions it on an interface between science, politics and society. It is party to a "politics of memory" that entails "the reappropriation of past history through a memory informed – and often aggrieved – by that history".[4] Its scientific research into the past is therefore expected to permit a political "recognition" of historical facts that were hitherto largely ignored and to play a part in reaffirming national cohesion and promoting best practice going forward. Indeed, this is why the CSMPA provides for "the competent authority" to encourage the publication of the findings to a broad public in various forms, including media productions, exhibitions, exposés (art. 15 para. 5a) and teaching materials (art. 15 para. 5b). The aim is in particular to "raise awareness

1 Dispatch of 4 December 2015 concerning the popular initiative "Reparation of the injustice inflicted on contract children and victims of compulsory social measures (Reparation Initiative)" and the indirect counterinitiative (Federal Act on Compulsory Social Measures and Placements Prior to 1981), 15.082, 119, www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20150082, consulted on 11 September 2017.

2 For the complete list of publications of the IEC, see p. 315–316.

3 Dispatch of 4 December 2015 concerning the popular initiative "Reparation of the injustice inflicted on contract children and victims of compulsory social measures (Reparation Initiative)" and the indirect counterinitiative (Federal Act on Compulsory Social Measures and Placements Prior to 1981), 15.082, 119, www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20150082, consulted on 11 September 2017. The IEC's scientific research is extended by the National Research Programme "Welfare and Coercion – Past, Present and Future" (NRP 76).

4 Ricœur Paul, "La mémoire, l'histoire, l'oubli", *Esprit* 3, 2006, 20.

among the public, the authorities, institutions and individuals who, under the laws currently in force, are implicated in the issue of compulsory social measures and placement" (art. 15 para. 5c).

The question thus arises of how to "redress the injustice suffered by the victims" once the events of the past are officially, scientifically and publicly recognised. It is helpful to recall that the CSMPA is the result of a long political process triggered on the initiative of people victim of CSMs and allied persons (not only politicians, but also researchers and representatives of institutions, associations and cultural groups). After a number of fruitless attempts to persuade Parliament to take up this issue,[5] it adopted the parliamentary initiative put forward by National Councillor Paul Rechsteiner in April 2011 demanding the enactment of "a law on the rehabilitation of administrative detainees".[6] This initiative followed the official apology offered by Federal Councillor Eveline Widmer-Schlumpf, then head of the Federal Department of Justice and Police (FDJP), along with representatives of the cantons, to those subjected to such measures in their youth, at a commemoration ceremony held at Hindelbank prison in the canton of Bern on 10 September 2010. Following another commemorative ceremony at the Kulturcasino in Bern on 11 April 2013, attended by some 700 people victim of CSMs – administrative detention as well as forced placements, forced adoptions, sterilisations without consent and other measures – a *Roundtable* was organised under the aegis of the FDJP, now led by Federal Councillor Simonetta Sommaruga. This brought together representatives of victims, federal, cantonal and communal authorities, churches, the Swiss Farmers' Union, and educational and academic institutions with a view to "shedding light on the suffering and injustices inflicted on the victims".[7]

5 See e.g., Simon Jean-Charles, motion, "The true history of Swiss orphans", 99.3297, 17 June 1999, www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=19993297, consulted on 28 February 2019; von Felten Margrith, parliamentary initiative, "Forced sterilisation. Compensation for victims", 99.451, 5 October 1999, www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=19990451, consulted on 18 March 2019; Fehr Jacqueline, interpellation, "Victims of administrative detention in childhood. Moral reparations", 09.3440, 30 April 2009, www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20093440, consulted on 12 February 2018.

6 Rechsteiner Paul, parliamentary initiative, "Rehabilitation of administrative detainees", 11.431, 13 April 2011, www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20110431, consulted on 11 March 2018.

7 "Mesures de coercition à des fins d'assistance et placements extrafamiliaux en Suisse avant 1981. Rapport et propositions de la Table ronde pour les victimes de mesures de

This multilateral platform was more precisely intended to serve as a forum for dialogue and a source of proposals that would "enable the authorities, institutions and organisations concerned to assume their responsibilities with regard to the victims".[8] The *Roundtable* advocated in particular a large-scale investigation into CSMs and also put forward a number of recommendations for recognising the injustices suffered and granting financial benefits to those concerned by these measures. According to its report, published in July 2014, these benefits "must be sufficient to attenuate and, as far as possible, compensate the effects of compulsory social measures and placements suffered by victims to this day".[9] Some months previously, it had started an "immediate assistance fund" in conjunction with the Conference of Cantonal Directors of Social Services and the charity Swiss Solidarity. Using voluntary donations from the cantons and municipalities, various institutions and organisations, as well as private benefactors, this fund made it possible to grant lump-sum payments of several thousand Swiss francs to "persons affected in their entirety by compulsory social measures ordered prior to 1981 who are currently in financial difficulty and require immediate assistance".[10] It was a "transitional solution" in anticipation of a legal basis for granting financial benefits to the persons concerned within the scope of an overall policy of "reparation". Such a legal basis was precisely the goal of the popular initiative "Reparation of the injustice inflicted on contract children and victims of compulsory social measures (Reparation Initiative)" launched on 1 April 2014 and submitted to the Federal Chancellery on 19 December of that year. This initiative, which met with an enthusiastic reception from the Swiss population and was supported by politicians from numerous parties as well as leading

coercition à des fins d'assistance et de placements extrafamiliaux", Bern, Federal Department of Justice and Police, 2014, 8, www.fuersorgerischezwangsmassnahmen.ch/pdf/RT_Bericht_Vorschlaege_fr.pdf, consulted on 24 July 2016.

8 "La Table ronde a commencé ses travaux", media release, Federal Department of Justice and Police, 13 June 2013, www.fuersorgerischezwangsmassnahmen.ch/fr/2013-06-13_mm_table_ronde.html, consulted on 8 March 2019.

9 "Mesures de coercition à des fins d'assistance et placements extrafamiliaux en Suisse avant 1981. Rapport et propositions de la Table ronde pour les victimes de mesures de coercition à des fins d'assistance et de placements extrafamiliaux, Bern, Federal Department of Justice and Police, 2014, 33, www.fuersorgerischezwangsmassnahmen.ch/pdf/RT_Bericht_Vorschlaege_fr.pdf, consulted on 24 July 2016.

10 "Le fonds d'aide immédiate est réalité", media release, Federal Department of Justice and Police, 15 April 2014, www.bj.admin.ch/bj/fr/home/aktuell/news/2014/2014-04-15.html, consulted on 4 February 2019.

academic, cultural and ecclesiastical figures, demanded in particular the creation of a 500 million franc fund for the purpose of paying "financial reparations".[11] The CSMPA adopted by Parliament on 30 September 2016 represented an indirect counterinitiative to this popular initiative. As previously mentioned, it governs the payment of a "solidarity contribution" to CSM victims – up to a maximum of 300 million Swiss francs in total – "by way of recognition and reparation for the injustice caused to them" (art. 4 para.1). However, the Federal Council noted in its dispatch to the two chambers that the sum of 25,000 francs per victim "could not repair the injustice suffered and neither indemnifies nor repairs the violation of morality in the true sense, but is instead a tangible symbol of recognition of the injustice and an expression of solidarity on the part of society".[12]

Federal Councillor Sommaruga's speech at the commemoration ceremony in April 2013 was headed "Nothing has more value than human dignity"'[13] It must be noted, however, that the financial benefits paid out to date are not sufficient to ensure that most people victim of CSMs finally have the means to live out their days with dignity. A representative of people affected by CSMs explained at the 12th *Roundtable* meeting that, "to live a life that's worth living", they need a place where they can feel at home, a job suited to their skills, an income that takes away their constant financial worries, mobility ("I've been a captive long enough," he said), not to be continually at the mercy of the authorities, and finally to be able to

11 Popular initiative "Reparation of the injustice inflicted on contract children and victims of compulsory social measures (Reparation Initiative)", Federal Chancellery, www.bk.admin.ch/ch/f/pore/vi/vis448t.html, consulted on 18 March 2019. In a financial plan for funding "reparation" and "indemnification" measures put to the roundtable in June 2013, the associations for CSM victims demanded the payment of 120,000 Swiss francs per person in the form of an annuity, "Anträge an den Runden Tisch für die Opfer fürsorgerischer Zwangsmassnahmen Schweiz zur Abfassung entsprechender Empfehlungen betreffend Umsetzung eines Finanzplans für die Kosten von Aufarbeitung und Entschädigung", *Kinderheime in der Schweiz. Historische Aufarbeitung*, www.kinderheime-schweiz.ch/de/pdf/antraege_finanzplan_runder_tisch_10_juni_2013.pdf, consulted on 11 March 2019.

12 Dispatch of 4 December 2015 concerning the popular initiative "Reparation of the injustice inflicted on contract children and victims of compulsory social measures (Reparation Initiative)" and the indirect counterinitiative (Federal Act on Compulsory Social Measures and Placements Prior to 1981), 15.082, 103, www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20150082, consulted on 11 September 2017.

13 "Rien n'a plus de prix que la dignité humaine", speech given by Federal Councillor Simonetta Sommaruga in Bern on 11 April 2013, Federal Department of Justice and Police, www.ejpd.admin.ch/ejpd/fr/home/aktuell/reden---interviews/reden/archiv/reden-simonetta-sommaruga/2013/2013-04-11.html, consulted on 4 February 2019.

afford "a little holiday every year or two". He concluded with a fundamental question: "Are [these] needs so different to anyone else's?"[14]

People victim of CSMs interviewed as part of the IEC's research expressed the view that the damage caused by the injustices they suffered is immeasurable and thus irreparable. The issue is much more to rehabilitate those people who have been excluded from society, stigmatised and condemned to silence by an organised system of coercion. In other words, it is important, based on the recognition of past events and their frequently disastrous long-term consequences, to make these people's lives dignified in the present and for the future. The very notion of "human dignity" is fundamental to the Universal Declaration of Human Rights of 1948, the moral and legal legacy of the Second World War. The aim was "to oppose the institutionalised practice of declaring certain categories of people 'sub-human'; to oppose the institutionalised practice of treating these 'sub-humans' as common merchandise, systematically denigrating and humiliating them, leaving them to die of hunger and assassinating them without any consequence whatsoever".[15] It was precisely because of their violation of human rights that the cantonal laws governing administrative detention were abolished in 1981 and replaced by provisions in the Civil Code governing "detention for the purpose of assistance" (art. 397 of old Civil Code). The IEC's work confirmed that the cantonal laws on administrative detention violated the right to personal liberty and failed to respect the legal principle that there should be no punishment without a demonstrable breech of the law, instead submitting the individuals concerned to arbitrary judgement. Worse still, discrimination between citizens was shown to be entrenched in these laws, with men and women deemed to be on the fringes of society, excluded from the protection of common law and judged "undeserving" of fundamental rights.

Under the special mandate conferred on it by the CSMPA and based on its findings from four years of research, the IEC assumes the task of submitting recommendations for the attention of the Federal Council. While its main focus was on the issue of administrative detention, its rec-

14 Minutes of the 12th roundtable meeting, chaired by the Delegate for Victims of Compulsory Social Measures, www.fuersorgerischezwangsmassnahmen.ch/fr/table_ronde.html, consulted on 5 March 2019.

15 Sutter Alex, "Unzureichender Schutz der Menschenwürde in der Schweiz", *humanrights.ch*, 11 July 2017, www.humanrights.ch/de/menschenrechte-schweiz/inneres/analysen/menschenwuerde, consulted on 28 February 2019.

ommendations concern all people victim of CSMs. The experience gained with the individuals concerned through joint exchange and personal interaction has shown that it is pointless to draw a distinction in this regard. In many cases, the different types of CSM followed on from each other in the lives of individuals who were not necessarily aware of their nuances. In the continuity of the close relationships established with people victim of CSMs, the IEC judged it expedient to include them in the process of drafting recommendations and formed a focus group for this purpose, which met three times.[16]

The Federal Council mandated the IEC to establish the historical facts and to provide the means to understand them and assess their impact on the people affected and those close to them, all of this independently. The time has now come to take stock, i.e. the history of administrative detention produced by the IEC must be translated into concrete political actions in the present – some of which require new legal provisions – that extend the reach of the initiatives already in place. The IEC's recommendations (see chap. 2 below) are aimed at healing the human, social and political rifts laid bare by this story, and facilitating the production of knowledge and future thinking about the current measures for protecting adults and children as well as, more generally, about poverty, exclusion and marginalisation. To this end, the IEC also proposes a project (see chap. 3 below) designed to bring most of its recommendations together under one roof, entitled the *House of the Other Switzerland* (*Haus der anderen Schweiz / Maison de l'autre Suisse*).

16 The IEC would like to offer its most sincere thanks to Nicole Aeby, Robert Blaser, Daniel Cevey, Kurt Gäggeler, Andreas Jost, Gabriela Merlini Pereira and Marianne Steiner for their commitment and hard work. These recommendations were produced by Christel Gumy in close collaboration with the IEC on Administrative Detention.

2 RECOMMENDATIONS

2.1 REHABILITATION OF CSM VICTIMS THROUGH ADDITIONAL FINANCIAL BENEFITS

A number of people victim of CSMs currently live in a very precarious situation, facing financial, social, physical and psychological problems. The IEC's research confirmed that these circumstances are a direct result of lives marred by being placed in care and/or administrative detention. The processes of exclusion, marginalisation and stigmatisation (re)produced by the measures these people were subjected to, combined with the appalling living conditions in the places where they were detained – malnourishment, rudimentary hygiene, back-breaking work, abuse and violence, lack of education, etc. – severely affected their chances of social and professional integration and, in many cases, caused lifelong damage to their physical and mental health. Specifically, a significant number of people victim of CSMs are reliant on social security or have insufficient old-age pensions because the CSMs affected both their working hours that were subject to pension contributions and their access to stable jobs with sufficient social protection. They are also confronted with medical and dental bills that heavily erode their budgets due to the impact of placements and detention on their health. On top of all this, some victims are tied to their homes and thus isolated and unable to afford the mobility that is so essential to any form of social integration, and this despite having spent part of their lives incarcerated due to the injustices committed against them. These factors, in particular, prevented many of them from taking the steps required, both from a personal perspective and in terms of the paperwork, to claim within the one-year deadline the "solidarity contribution" for which the CSMPA provides.[1]

In view of the prejudice suffered by persons subjected to CSMs, the consequences of which they are still reminded of daily and for which the

1 "Derniers acquis de la recherche scientifique au sujet du nombre de demandes de contributions de solidarité présentées par des victimes de mesures de coercition à des fins d'assistance", media release, IEC on Administrative Detention, 11 January 2018, www.uek-administrative-versorgungen.ch/recherche/contributions-de-solidarite?filter=0, consulted on 28 March 2019.

authorities bear a certain responsibility, the IEC recommends additional financial benefits aimed at improving their quality of life over the long term to complement the one-off immediate assistance and solidarity contributions already paid out. The IEC also takes up some of the proposals put forward by the *Victims' forum* set up in connection with the *Roundtable* as well as the associations of individuals concerned, as it is convinced of their relevance to the background set out above. These proposals were not taken into account in the CSMPA of 30 September 2016.

– Granting a lifelong Swiss Federal Railways travel pass.

– Standardising across all cantons the practice of granting tax rebates to CSM victims who have amassed tax debts as a result of financial difficulties.

– Creating an assistance fund to pay medical, psychotherapy and dental costs that are not covered by basic health insurance or are subject to an excess.

– Entitling persons who were victims of CSMs to a special lifelong pension that is independent of social security or supplementary benefits.

– Cancelling all deadlines for registering as a CSM victim and claiming the solidarity contribution.

2.2 REHABILITATION OF CSM VICTIMS THROUGH SUPPORT FOR CITIZEN ACTION

A large proportion of people victim of CSMs currently live in isolation and suffer from exclusion, i.e. the lack of experience of citizenship due to the obstacles they face as regards taking part in social and political life, organising themselves, engaging in debate and making their voices heard. The IEC's work has shown that this state of affairs is the result of a process that has taken place over the course of their lives, sometimes across generations, in which placement and detention are paradigmatic. The legal basis underpinning these measures engendered a social hierarchy that denied the full citizenship rights of people judged to deviate from the dominant social norms in terms of work, family, parenthood or sexuality and accused of being a threat to public order and/or morality. These laws were founded on the denial of their right to personal liberty and left a great deal of scope for arbitrary decision-making, and the procedures employed to enforce them left the individuals concerned largely defenceless against the author-

ities and produced social marginalisation and disaffiliation. Moreover, victims of CSMs who spent the greater part of their childhood and then early adulthood in institutions, subject to severe discipline and highly regimented, monotonous routines, did not benefit from the basic education they needed to engage in a democratic society. They were not free to think or act for themselves – even less so to look forward to a future of self-determination or even co-determination. Even while living among their peers, they were sometimes subjected to strategies designed to isolate them through an institutional disciplinary organisation.

Given that education and the conditions permitting them to engage in society are rights that people affected by CSMs were all too often denied, but are prerequisites for full participation in public debates and political initiatives that concern them today, the IEC recommends putting in place instruments to rectify these deficiencies at least in part:

– State financial support for citizen action to help people victim of CSMs gain access to resources, both material (offices, computers, printers, etc.) and human (expertise and counselling).

– A new platform for political debate and negotiation between people victim of CSMs and practitioners whose expertise is judged relevant to deal with the issues raised, with the victims in the majority.

– Comprehensive financial support for individual or collective projects initiated by CSM victims. In this regard, it would be necessary to decouple art. 17 lit. b of the CSMPA of 30 September 2016, which concerns "support[ting] self-help projects by organisations for victims and other persons affected" from the Federal Act of 5 October 1990 on Subsidies (SR 616.1), which attaches conditions to financial assistance that are too restrictive in this instance.

– The creation of "peer helper" positions in government services responsible for child and adult protection similar to those already introduced in the mental health field. The term "peer helpers" refers to individuals who have first-hand experience of CSMs and have undergone specialist training to act as translators/mediators between people affected by child and adult protection measures and representatives of the authorities responsible for deciding on and applying such measures.

2.3 REHABILITATION OF CSM VICTIMS THROUGH FACILITATED ACCESS TO KNOWLEDGE AND CULTURE

A number of people victim of CSMs suffer from having been (and, in many cases, still being) deprived of access to training, information and culture. This, of course, plays a part in a vicious circle in which financial hardship, social disaffiliation and a lack of citizenship mutually sustain each other. The IEC's research established that the authorities saw administrative detention as the coercive last resort in dealing with socio-political problems such as poverty, alcoholism and youth "at risk". The intention behind detaining individuals deemed "deviant" or "antisocial" was to create an opportunity for "re-education" and "moral correction" that would make them "useful" to society. In practice, however, these measures served primarily to segregate particularly vulnerable populations that did not benefit from the basic protections of stable employment or solid family and community integration – and at low cost in doing so. They served to condemn undesirable social backgrounds and lifestyles that were thought to jeopardise the established order. The places where people were detained – educational institutions, farming colonies, prisons, etc. – favoured repressive regimes in which forced labour generally took precedence over education or treatment. The opportunities for vocational training in institutions for adolescents were rudimentary for young men, who were consigned to a future as subservient, menial labourers, and virtually non-existent for young women, whose destiny was imagined to be solely that of mothers and housewives.

People victim of CSMs were thus denied the right to an education, as recognised in the International Covenant on Economic, Social and Cultural Rights adopted by the United Nations in New York in December 1966 and ratified by Switzerland in December 1991. The Covenant states that education "shall be directed to the full development of the human personality and the sense of its dignity. […] [It] shall enable all persons to participate effectively in a free society" (art. 13 para. 1).[2] The IEC notes that CSM victims are still feeling the effects of this denial of rights today in terms of their financial means, their social integration, their positioning as political

2 International Covenant on Economic, Social and Cultural Rights, SR 0.103.1, *Swiss Confederation*, www.admin.ch/opc/fr/classified-compilation/19660259/index.html, consulted on 21 September 2018.

subjects and indeed their personal development. It therefore recommends initiatives that will finally help to restore this right to them.

– Free access to education and training courses chosen freely by people victim of CSMs in line with their interests and needs, without any consideration of age or career prospects. Such courses may be basic or advanced, scientific or artistic.

– Free access to museums and public cultural and sports offerings.

– An effective and easily accessible system for providing people victim of CSMs with information (e.g. through support staff and/or hotlines). We define "information" here as any information that is useful to these people, i.e. anything from details of their benefit entitlements and how to claim them to the findings of scientific research concerning them.

2.4 REHABILITATION OF CSM VICTIMS THROUGH THE PRODUCTION AND DISSEMINATION OF KNOWLEDGE

In recent years, campaigning around CSMs has led to a variety of research efforts. Several cantons and some institutions have commissioned reports, and university degree coursework and doctoral theses have been devoted to the subject. The IEC was mandated by the Confederation under the CSMPA to conduct "a scientific study of administrative detention". The CSMPA, which aims "to acknowledge and redress the injustice suffered by victims", states that "[The] Federal Council shall arrange for a comprehensive academic inquiry to be conducted into compulsory social measures and placements prior to 1981" (art. 15 para. 1). To this end, the IEC's work was complemented by the National Research Programme (NRP 76) "Welfare and Coercion – Past, Present and Future", under the aegis of the Swiss National Science Foundation, which has funded around 20 academic projects at Swiss universities and colleges. A substantial effort has thus been made to gather knowledge, but the scope and complexity of the issue mean that gaps persist in terms of overall and in-depth understanding and the ability to derive lessons essential to the rehabilitation of CSM victims and carry out a critical analysis of current practices. The history of CSMs has not yet been documented for the whole of Switzerland, and certain aspects warrant further attention (in particular the questions of sexual abuse committed in closed institutions, forced labour, the responsibility of private companies and the place these measures occupied in the history of broader

healthcare and social policies, both in Switzerland and internationally). But it is mainly the mobilisation of the expertise of the persons concerned by these measures that is lacking. The CSMPA stipulates that the findings of scientific studies must be disseminated in order to "raise the awareness of the general public and public authorities, institutions and private individuals who are involved in compulsory social measures or placements under the current law" (art. 15 para. 5c). The aim of this provision is to ensure that knowledge of acts committed in the past prevents them from being repeated in the present. However, the IEC found that, over the course of time, the authorities have shown a strong tendency to emphasise the progress made relative to past practices. It seems essential to reappraise the normative frameworks, both social and judicial, that governed the use of CSMs and the values associated with them in order to create a *rupture* in practices and thinking.

With this in mind, the IEC recommends initiatives for gathering knowledge on CSMs and disseminating it to a broad public so as to encourage a critical appraisal of current practices. In particular, a *shift in perspective* is required that involves participatory research, to establish "minority" knowledge from the individuals concerned themselves as a counterpoint to the "majority" expertise of the academic community. The aim must also be to give people victim of CSMs an opportunity to take ownership of their history by establishing rectifying discourses in relation to those conveyed by the administrative dossiers that have been authoritative over their lives up to now.

– Promoting scientific research into CSMs focusing on aspects and/or regions not yet studied in accordance with *participatory* methods, i.e. according to methods that provide people victim of CSMs an expertise based on experience, recognised on the same basis as scientific expertise and valued in terms of both knowledge production and remuneration.

– Promoting and funding initiatives by people victim of CSMs aimed at producing knowledge to complement academic findings on CSMs.

– A systematic study of Swiss law with a view to identifying the individuals or groups whose legal rights in Switzerland are currently restricted *a priori*.

– A reflective and critical appraisal of the social norms propagated and prescribed by current social measures and by the institutions and professionals responsible for implementing them.

– Continuing education on the problem of penal, civil and administrative measures designed to restrict people's freedom. This should be open to all parties involved in the implementation of these measures (e.g. in law enforcement, social and care professions) and should aim, in particular, to improve their understanding of the damaging effects some of these measures have had in the past.

– Teaching the history of CSMs in schools as an integral part of Swiss history, with the relevant curriculum to be developed in close collaboration with people victim of CSMs.

3 *HOUSE OF THE OTHER SWITZERLAND* PROJECT

The idea of a place dedicated to people victim of CSMs emerged during the process of elaborating IEC's recommendations. This project, which became known as the *House of the Other Switzerland* (*Haus der anderen Schweiz* / *Maison de l'autre Suisse*), is intended to implement in a sustainable way most of the above recommendations concerning support for citizen action and access to knowledge under one roof by providing the requisite infrastructure and human resources. But more importantly, it would ensure visibility and legitimacy in the public eye for the history of CSMs and the people affected by them. The goal would be to use this history and the expertise of experience as a basis for promoting social and political reflection on broader issues, such as exclusion, poverty and marginalisation, as well as on current "adult and child protection measures". In other words, the *House of the Other Switzerland*, as its name suggests, would help in raising awareness of the "hidden sides" of Switzerland and questioning our relationship to "the other" when it diverges, be it voluntarily or otherwise, from the lifestyles accepted by the majority in a given period.

ORGANISATION:

The *House of the Other Switzerland* would comprise a number of "departments" designed to meet the needs or projects defined by people victim of CSMs and covering most of the recommendations set out above. Below are examples based on discussions with a group of CSM victims at workshops relating to the recommendations:

– Memory and History. This department would organise exhibitions and other events on the history of CSMs that would be initiated and designed by individuals concerned by CSMs, providing them with the means to appeal to a broad public. It would also set up physical and media archives chronicling the lives of CSM victims, e.g. in partnership with existing archive institutions.

– Research. This department would promote and organise knowledge-gathering initiatives of persons concerned by CSMs. It would also serve as an interface between universities and colleges, on the one hand, and people affected by these measures, on the other, in coordinating participatory research through institutional partnerships.

– Citizen Action. This department would make infrastructure and expertise available to people victim of CSM to help them organise and develop concerted, self-determined citizen action projects. It would also form a "commission" that would serve to communicate claims of persons concerned by CSMs and act as a privileged discussion partner for various political authorities.

– Education and Cultural Activities. This department would be responsible for organising educational courses and cultural activities requested by people victim of CSMs. Its other tasks would include enabling persons concerned by CSMs to acquire or develop the skills required for the projects conducted in the other departments.

GOVERNANCE:

How the governance of the *House of the Other Switzerland* would be organised is yet to be determined (e.g. as an association, foundation or cooperative). It would be led by an independent board, with the vast majority of board members being persons concerned by CSMs.

FUNDING:

The Confederation supplies the *House of the Other Switzerland* with premises and funding that allow it to establish itself and ensure its general functioning over the long term. This funding would require amendments to the CSMPA. Some specific departmental projects conducted with external partners could be funded jointly under short-term or long-term agreements.

LOCATION:

The *House of the Other Switzerland* would be based in Bern, since the national capital is where the political institutions and the Federal Administration are to be found, and also benefits from a central geographic location. Regional branches would be conceivable, working in partnership with various local institutions.

4 CONCLUSION: BASIC HUMAN RIGHTS – AN ISSUE THAT REMAINS OPEN?

Administrative detention was legitimised by legal norms that created huge potential for injustice from the outset and violated fundamental principles of law and thus also basic prerequisites of justice. In addition, it became apparent that the authorities responsible for enforcing these laws themselves failed to observe the law and the Constitution and, in some cases, committed various serious violations of correct procedure and the procedural rights of the individuals concerned. The highly error-prone and often arbitrary application of the law was evidently a systemic problem caused by vaguely worded legislation that was open to interpretation, and gave the authorities a great deal of scope to exercise their own discretion, while at the same time granting those affected virtually no rights at all. These laws encouraged a "laissez-faire" attitude in practice that simply accepted the violation of victims' rights. On top of this, there was a culture of turning a blind eye to institutional malpractice and to physical and sexual abuse as well as an almost total lack of effective supervision.

Swiss law has moved on since 1981 and now offers better protection for human rights, also thanks to international protection instruments, but these rights must still be defended on a day-to-day basis. It is vital that those in positions of responsibility within the state and society as a whole are sufficiently aware of basic human rights.

We hope that, in communicating the history of administrative detention compiled by the IEC, in particular to persons involved in the application of custodial measures and supervisory authorities, we can encourage critical reflection on current practices in this area. This must instil in people the need for them never to stop questioning the paradoxical relationships that can exist between the rule of law, justice and human rights.

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INDEPENDENT EXPERT COMMISSION (IEC) ON ADMINISTRATIVE DETENTION

At the end of 2014, as part of a wide-ranging political process, the Federal Council appointed an Independent Expert Commission (IEC) with the scientific investigation of the use of administrative detention in Switzerland before 1981. This was to be done taking into account, in particular, the point of view of the direct victims of such measures and other concerned parties. Also to be included in the study was an examination of state-ordered measures and the conduct of public officials in this connection. The IEC was also instructed to consider the relationship between administrative detention and all other compulsory welfare measures, including the placement of children in foster care. The Commission is publishing its findings in the form of nine individual monographs. It has also prepared a report to the Federal Council summarizing the results of its research.

The legal basis for the IEC's mandate was initially the Federal Act on the Rehabilitation of Administrative Detainees, which was adopted by Parliament on 21 March 2014 (*SR* 211.223.12). That law was replaced on 30 September 2016 by the Federal Act on Investigation of the Use of Compulsory Welfare Measures and Custody Arrangements prior to 1981 (*SR* 211.223.13), which was passed by Parliament as an indirect counter-proposal to the popular initiative for a national referendum on "Reparations for Indentured Children and the Victims of Compulsory Welfare Measures" (Reparations Initiative).

The IEC on Administrative Detention is an interdisciplinary body. While the majority of its nine members are historians, it also includes experts from the social sciences, psychiatry/psychiatric history and legal science and history. More details on the composition of the Commission and the organisation of the research work are available on the website: www.uek-av.ch/uek.

During its first meeting, the Commission discussed the notion and the limits of its «independence», focussing in particular on independent research conducted according to strict scientific criteria. Independence is an essential condition for the IEC to be able to carry out its mandate and guarantee the legitimacy of its work.

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UNABHÄNGIGE EXPERTENKOMMISSION (UEK) ADMINISTRATIVE VERSORGUNGEN

Der Bundesrat beauftragte im Rahmen eines breiten politischen Prozesses Ende 2014 eine unabhängige Expertenkommission (UEK) mit der wissenschaftlichen Aufarbeitung der administrativen Versorgungen in der Schweiz vor 1981. Dazu gehörten insbesondere die Auseinandersetzung mit der Perspektive von Betroffenen und Opfern sowie die Analyse staatlicher Interventionen und behördlichen Handelns. Die UEK sollte dabei auch die Bezüge zu allen anderen fürsorgerischen Zwangsmassnahmen und Fremdplatzierungen berücksichtigen. Die Kommission veröffentlicht ihre Forschungsergebnisse in Form von neun Monografien sowie einem Schlussbericht zuhanden des Bundesrats.

Die gesetzliche Grundlage dieses Auftrags war zunächst das vom Parlament verabschiedete Bundesgesetz über die Rehabilitierung administrativ versorgter Menschen (*SR* 211.223.12) vom 21. März 2014. Das vom Parlament als indirekter Gegenvorschlag zur eidgenössischen Volksinitiative «Wiedergutmachung für Verdingkinder und Opfer fürsorgerischer Zwangsmassnahmen (Wiedergutmachungsinitiative)» verabschiedete Bundesgesetz über die Aufarbeitung der fürsorgerischen Zwangsmassnahmen und Fremdplatzierungen vor 1981 (AFZFG, *SR* 211.223.13) ersetzte das alte Gesetz am 30. September 2016.

Die UEK Administrative Versorgungen wurde interdisziplinär zusammengesetzt: Sie besteht aus neun Mitgliedern, schwergewichtig Historikerinnen und Historikern, aber auch Vertreterinnen und Vertretern der Sozialwissenschaften, der Psychiatriegeschichte/Psychiatrie und der Rechtswissenschaften/Rechtsgeschichte. Über die Zusammensetzung der Kommission und die Organisation des Forschungsbetriebs gibt die Website Auskunft: www.uek-av.ch/uek.

Bei ihrer ersten Sitzung hat die Kommission den Inhalt und die Grenzen der «Unabhängigkeit» diskutiert. Die UEK hat insbesondere auf eine unabhängige Forschung geachtet und diese nach strengen wissenschaftlichen Kriterien durchgeführt. Die Unabhängigkeit ist eine grundlegende Bedingung für die Ausführung ihres Auftrags und die Legitimität ihrer Arbeit.

Für wertvolle Hinweise und Anregungen im Rahmen des Forschungsprogramms und des Forschungsdesigns dankt die Kommission: Prof. Dr. Pierre Avvanzino (École d'études sociales et pédagogiques de Lausanne), Prof. Dr. Markus Furrer (Pädagogische Hochschule Luzern), Elisabeth Keller (Eidgenössische Kommission für Frauenfragen), Dr. Gregor Spuhler (Archiv für Zeitgeschichte, ETH Zürich), Prof. Dr. Sabine Freitag (Otto-Friedrich-Universität Bamberg), Prof. Dr. Caroline McGregor (National University of Ireland, Galway), Prof. Dr. Michaela Ralser (Universität Innsbruck), Prof. Dr. Xavier Rousseaux (Université catholique de Louvain), Prof. Dr. Christian Schrapper (Universität Koblenz-Landau).

Die Kommission spricht insbesondere allen Personen ihren aufrichtigen Dank aus, die von administrativen Versorgungen und weiteren fürsorgerischen Zwangsmassnahmen betroffen waren und mit ihr im Austausch waren, die bereit waren, sich befragen zu lassen, die ihre privaten Unterlagen zur Verfügung gestellt haben und die wertvolle Hinweise zu den Forschungsarbeiten und weiteren Projekten der UEK gaben. Ihre Unterstützung war für die Arbeit der UEK grundlegend.

Unabhängige Expertenkommission (UEK) Administrative Versorgungen

COMMISSION INDÉPENDANTE D'EXPERTS (CIE) INTERNEMENTS ADMINISTRATIFS

C'est dans le cadre d'un vaste processus politique que le Conseil fédéral, à la fin de 2014, a chargé une commission indépendante d'experts (CIE) de réaliser une étude scientifique sur la pratique de l'internement administratif en Suisse avant 1981. Concrètement, la mission de la CIE était d'écrire et d'interroger l'histoire des internements administratifs en tenant compte du point de vue des victimes et des personnes concernées, en analysant les interventions étatiques et les pratiques des autorités et en prenant en considération les rapports avec d'autres mesures de coercition à des fins d'assistance et placements extrafamiliaux. Les résultats de ses recherches sont publiés sous forme de neuf monographies et d'un rapport final à l'intention du Conseil fédéral.

La première base légale de la CIE figurait dans la Loi fédérale du 21 mars 2014 sur la réhabilitation des personnes placées par décision administrative (*RS* 211.223.12). Elle a été remplacée par la Loi fédérale du 30 septembre 2016 sur les mesures de coercition à des fins d'assistance et les placements extrafamiliaux antérieurs à 1981 (LMCFA, *RS* 211.223.13), adoptée par le Parlement en tant que contre-projet indirect à l'initiative populaire fédérale «Réparation de l'injustice faite aux enfants placés de force et aux victimes de mesures de coercition prises à des fins d'assistance (initiative sur la réparation)».

La CIE Internements administratifs a été conçue selon une approche interdisciplinaire, avec neuf membres de différents horizons, principalement des historien·ne·s, mais aussi des représentant·e·s des sciences sociales, de la psychiatrie et de l'histoire de la psychiatrie, ainsi que du droit et de l'histoire du droit. Le site internet www.uek-av.ch/uek donne des informations sur la composition de la commission et l'organisation des recherches.

Lors de sa première réunion, la CIE a débattu du contenu et des limites de son indépendance. Elle a porté une attention particulière à assurer que ses recherches, menées selon de stricts critères scientifiques, se déroulent dans une complète indépendance. Cette indépendance était à ses yeux une condition essentielle à la réalisation de son mandat et à la légitimité de son travail.

La Commission tient à remercier les expert·e·s suivant·e·s pour leurs précieuses contributions et suggestions dans la conception du plan de recherche de la CIE et la réalisation de ses travaux: Prof. Dr. Pierre Avvanzino (École d'études sociales et pédagogiques de Lausanne), Prof. Dr. Markus Furrer (Pädagogische Hochschule Luzern), Elisabeth Keller (Commission fédérale pour les questions féminines), Dr. Gregor Spuhler (Archiv für Zeitgeschichte, ETH Zürich), Prof. Dr. Sabine Freitag (Otto-Friedrich-Universität Bamberg), Prof. Dr. Caroline McGregor (National University of Ireland, Galway), Prof. Dr. Michaela Ralser (Universität Innsbruck), Prof. Dr. Xavier Rousseaux (Université catholique de Louvain), Prof. Dr. Christian Schrapper (Universität Koblenz-Landau).

La Commission exprime tout particulièrement ses vifs remerciements aux personnes concernées par un internement administratif ou d'autres mesures de coercition à des fins d'assistance qui ont accepté de raconter leur vécu et de mettre à disposition leurs archives privées, et qui ont donné de précieuses indications sur les travaux de recherche et d'autres projets de la CIE. Sans leur soutien, la CIE n'aurait pas pu accomplir sa mission.

Commission indépendante d'experts (CIE) Internements administratifs

COMMISSIONE PERITALE INDIPENDENTE (CPI) INTERNAMENTI AMMINISTRATIVI

Nel contesto di un vasto processo politico, alla fine del 2014 il Consiglio federale ha incaricato una commissione peritale indipendente di analizzare scientificamente gli internamenti amministrativi precedenti il 1981 in Svizzera. Il mandato prevede che nella ricostruzione storica del fenomeno sia considerato in modo particolare il punto di vista delle vittime e delle persone coinvolte come pure analizzati gli interventi statali e l'operato delle autorità. La commissione ha altresì il compito di tenere conto nella sua analisi delle altre misure coercitive a scopo assistenziale e dei collocamenti extrafamiliari, nonché dei loro legami con gli internamenti amministrativi. I risultati delle sue ricerche vengono ora pubblicati sotto forma di nove monografie e di un rapporto finale destinato al Consiglio federale.

La base legale del mandato commissionale è in origine costituita dalla Legge federale del 21 marzo 2014 concernente la riabilitazione delle persone internate sulla base di una decisione amministrativa (*RS* 211.223.12). La Legge federale sulle misure coercitive a scopo assistenziale e i collocamenti extrafamiliari prima del 1981 (LMCCE; *RS* 211.223.13), adottata dal Parlamento come controprogetto indiretto all'iniziativa popolare federale «Riparazione a favore dei bambini che hanno subito collocamenti coatti e delle vittime di misure coercitive a scopo assistenziale (Iniziativa per la riparazione)», ha sostituito la legge precedente il 30 settembre 2016.

La CPI Internamenti amministrativi ha una composizione interdisciplinare: i suoi nove membri sono principalmente storici, ma anche rappresentanti delle scienze sociali, della psichiatria e della sua storia nonché delle scienze giuridiche e della storia del diritto. La composizione della Commissione e l'organizzazione dei lavori di ricerca sono illustrate sul sito: www.uek-av.ch/uek.

Nella prima seduta, la Commissione ha discusso il concetto e i limiti della propria «indipendenza», ponendo l'accento sulla necessità di una ricerca indipendente, condotta in base a rigorosi criteri scientifici. L'indipendenza è stata ritenuta la *conditio sine qua non* per raggiungere l'obiettivo richiesto e garantirne la legittimità.

Per i preziosi suggerimenti nel quadro del suo programma di ricerca, la CPI ringrazia: prof. dr. Pierre Avvanzino (École d'études sociales et pédagogiques de Lausanne), prof. dr. Markus Furrer (Pädagogische Hochschule Luzern), Elisabeth Keller (Commissione federale per le questioni femminili), dr. Gregor Spuhler (Archiv für Zeitgeschichte, ETH Zürich), prof. dr. Sabine Freitag (Otto-Friedrich-Universität Bamberg), prof. dr. Caroline McGregor (National University of Ireland, Galway), prof. dr. Michaela Ralser (Universität Innsbruck), prof. dr. Xavier Rousseaux (Université catholique de Louvain), prof. dr. Christian Schrapper (Universität Koblenz-Landau).

La Commissione esprime in particolare i propri sentiti ringraziamenti a tutte le persone che, interessate dagli internamenti amministrativi e da altre misure coercitive a scopo assistenziale, hanno acconsentito a farsi intervistare e hanno messo a disposizione i loro documenti privati, fornendo preziosi spunti per i lavori di ricerca e altri progetti commissionali. Il loro sostegno è stato essenziale per il lavoro della CPI.

Commissione peritale indipendente (CPI) Internamenti amministrativi

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