

Swiss Federalism and the European Union

To what extent does Swiss federalism still constitute an appropriate response to an increasingly international environment?

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Introduction

Federalism is part of the Swiss ideology and presents a *Sonderfall* in many respects. Historically speaking, the association of the Cantons to a federal state was focused on the conservation of autonomy and sovereignty. During many years, the main idea of the federalist “unity in diversity” constituted a success for Switzerland. Many Swiss are proud of their sovereignty and therefore confront an accession to the EU with scepticism. Nevertheless, the question if traditional Swiss federalism still copes with today’s internationalisation and European integration process has become a subject of much discussion. Contrary to an accession to the European Union, Switzerland cannot abscond from globalisation. In this paper I will point out the necessary adjustment of contemporary Swiss federalism, whereas the main focus will be on the impacts of a potential EU membership given that the “European question” will concern the future of Switzerland.

First, a general review of historical development and peculiarities of Swiss federalisms will help to understand some ideological obstacles with regard to the adjustment of the Swiss federal system. In addition, I will point out the current important role of cooperative federalism. Second, I will explain the challenge of globalisation resulting in a certain pressure of harmonisation in order to analyse in the third part the concrete impacts of an EU membership and the perspectives of Swiss federalism in the future. The central question to what extent Swiss federalism constitutes an appropriate response to an increasing international environment shall be critically analysed throughout this paper.

Swiss Federalism

Historical development

Switzerland’s federal state was created in 1848.¹ The contemporary Swiss federal system is the result of a bicentennial development phase. However, in this nation-building process the interests of federalists and centralists, liberals and conservatives as well as Catholics and Protestants were often conflicting.² To understand the current discussion about opportunities and difficulties of Swiss federalism in the context of globalisation and the European integration process, it is essential to comprehend the traditions of the Swiss idea of a state, especially the evolution of direct democratic and federalist aspects. In this section, I will illustrate the historical state formation development, whereas in the next section I will point out the peculiarities of the Swiss federal system.

Before 1798, Switzerland was a loose alliance composed of thirteen Cantons. During the occupation of the French troops, Napoleon instituted a centralized state. This form of government turned out to be unusual and in addition unsuitable for Switzerland. The so-called “Mediation act” in 1803 led to a compromise by founding a modern form of a confederation with federal aspects.³ Consequently,

¹ Kriesi/Trechsel, p. 34, who describes the Swiss federal system as a “coming together” federalism.

² Abderhalden, *Integration*, p. 14.

³ Abderhalden, *Integration*, p. 15-17; Kriesi/Trechsel, pp. 1-2.

liberals aiming for the “Swiss unification” were opposed by conservative catholic Cantons, who formed the *Sonderbund* with the objective of defending their autonomy.⁴ Finally, the constitution of 1848 enabled anew a compromise whereas the Cantons conserved their original sovereignty⁵ but the most important competences were transferred to the Confederation.⁶ In sum, Switzerland is today as a union of sovereign states not the result of theoretical considerations but the outcome of conflicts between federalists and centralists. Indeed, as we have seen, both the confederation, due to lacking capacity to act, and the centralized state, due to linguistic, cultural and confessional differences did not seem adequate for Switzerland as form of government.⁷

Swiss Sonderfall

Diversity is one of the basic elements of Swiss Federalism. Since self-determination of the Cantons is important to guarantee the preservation of their identity, the delimitation of competences between Confederation and Cantons plays a major role.⁸ Article 3 of the Federal Constitution explicitly states the original sovereignty of the Cantons as long as their competences are not restricted by the Constitution.⁹ One of the main rights that results from article 3 of the Federal Constitution is the right of the Cantons to exert their fiscal sovereignty as far as the latter is not restricted by the Federal Constitution.¹⁰ Furthermore, the cantonal autonomy involves the designation of a Constitution, courts as well as legislative competence. Due to this independence Cantons were able to create their own identity and cultural traditions.¹¹ Swiss citizens consequently often feel part both of Switzerland and their canton. Lidija Basta Fleiner accurately describes this phenomenon with the words: “It is localism – and not universality”.¹²

However, the nation building process on the national level was also influenced by the process of allegiance and search for identity. In 1891, the national holiday was created and the Swiss ideology was formed by different myths and the accentuation on icons such as the direct democracy, the alpine nature and Helvetia. Thus, Switzerland succeeded to realise the main idea of federalism “unity in diversity” due to an “invented” tradition.¹³ A further instrument to develop diversity is the granting of civic influences via direct democracy. Subsequently, the Swiss community, characterised by linguistic and religious diversity plus communal and cantonal orientation, can be kept together by the subtle combination of federalism and democracy.¹⁴ Switzerland considers democracy to be a constant

⁴ Abderhalden, *Integration*, p. 19; Kriesi/Trechsel, p. 2.

⁵ Article 3 Federal Constitution of the Swiss Confederation of 18 April 1999 (SR 101).

⁶ Abderhalden, *Integration*, pp. 19-20; Kriesi/Trechsel, p. 2.

⁷ Abderhalden, *Integration*, p. 23.

⁸ Fleiner/Töpperwien, p. 325; item, Cottier/Liechti, p. 47.

⁹ Article 3 Federal Constitution of the Swiss Confederation of 18 April 1999 (SR 101); according to Fleiner, p. 106, the Confederation uses its competences with discretion in order to respect the self-confidence of the Cantons.

¹⁰ Cottier/Liechti, p. 48.

¹¹ Fleiner, pp. 104-106 and 111.

¹² Basta, p. 81; Fleiner, p. 110, this author even talks about a sense of belonging to a municipality as a third level in Swiss federalism.

¹³ Kriesi/Trechsel, pp. 8-9.

¹⁴ Fleiner, p.116; Basta, pp. 94-95.

political process and tries to find a consensus within the scope of democratic participation instead of a majority. According to this understanding, democracy presents a required complement of federalism.¹⁵

Switzerland is a nation based on political will. The identity of the nation is neither based on a common culture nor language or religion. On the contrary, Switzerland demonstrates a unity founded on common political and historical values, among them federalism.¹⁶ According to KRIESI/TRECHSEL, Switzerland is a successful “federation of nations” bound by a common political culture. Even if political principles like federalism, direct democracy and neutrality do arouse a Swiss sense of identity, on the cantonal level a certain indifference to other cantonal ethnic groups is visible.¹⁷ Thus, on the cantonal level the sense of belonging results from common culture and descent and is comparable to the German Volksgemeinschaft.¹⁸

At the moment, a dispute about the place of Switzerland in Europe opposes two divergent views. Whereas especially the German part of Switzerland tends to defend the historical myth of Switzerland as a special case, another perception sees the country within the European Union. According to STEINER, this conflict will present a big task in future Swiss politics, given that a consensus on this subject does constitute an important element of the Swiss national identity.¹⁹ With regard to European integration, the main concern in case of an accession to the European Union is the loss of this typical Swiss solidarity being a nation based on political will. Indeed, a reduction of the political system including federalism and direct democracy implies a loss of the national Swiss identity due to the lack of common linguistic, religious and ethnic roots.²⁰ In a further section, I will question this concerns and point out more in detail to what extent internationalisation contributes its part to it.

Cooperative Federalism

The participation of the Cantons in the decision-making process has a long tradition in Switzerland. Thus, cantonal interests are represented in the *Ständerat*, and in case of constitutional amendments plus certain treaties Article 140 of the Federal Constitution demands a so-called *Ständemehr*²¹. Furthermore, Cantons are able to address a *Standesinitiative*, a legislative initiative of the Cantons, to the Confederation. In the so-called *Vernehmlassungsverfahren*, which is a process of consultation, the federal government regularly consults the cantonal government.²² It seems that also the *Konferenz der Kantonsregierungen (KdK)* founded in 1993 gains increasing influence. Once cantonal competences are affected by foreign developments this inter-cantonal committee constitutes the connector between Confederation and Cantons.²³ Today the *KdK* probably presents the main inter-cantonal institution.

¹⁵ Fleiner/Töpperwien, p. 342; item Basta, pp. 86-94, points out the important decision-making process whereas a consensus not the majority is to be found.

¹⁶ Fleiner/Töpperwien, p. 326; Basta, pp. 77-78.

¹⁷ Kriesi/Trechsel, pp. 11-12.

¹⁸ Kriesi/Trechsel, p. 11; q.v. Basta, p. 80.

¹⁹ Steiner, pp. 183-185.

²⁰ Stürchler/Schroeder, p. 2; Fleiner/Töpperwien, p. 326.

²¹ The *Ständemehr* is achieved by the time 12 Cantons have adopted the legislative proposal. Thus, a constitutional amendment demands the majority of the voters as well as the Cantons. See more in detail: Hänni, pp. 107-108.

²² Rhinow, p. 67; Abderhalden, *Integration*, pp. 145-147; cf. regarding practical problems of this mode of participation in the scope of federal foreign affairs: Hänni, pp. 209-211.

²³ Stürchler/Schroeder, pp. 11-12; Rhinow, p. 67.

The committee is present in domains where coordination between Cantons is needed, particularly regarding questions of European integration and cantonal participation on the federal level.²⁴ In addition, the statute regarding cantonal participation clarifies existing forms of cooperation.²⁵

In a federal state an efficient collaboration between the Federation and the constituent states as well as the constituent units among each other is of particular importance. International integration in particular implicates a loss of competences of the constituent states. This is why cooperative federalism gains importance in Switzerland.²⁶ Growing mobility and equalisation of living conditions go across political frontiers. Therefore, functions that cannot be solved on cantonal respectively national level demand a willingness of cooperative problem solving.²⁷ In fact, the term “federalism” already includes the element of cooperation and coordination. However, their exercise within the federal system is not considered to be self-evident. This is why cooperation has to be re-emphasised.²⁸ Article 44 of the Federal Constitution is regarded as the basic norm of cooperative federalism.²⁹

As already indicated, cooperative federalism will very probably become even more important due to internationalisation. In the next section, I will dwell on the subject regarding the importance of the participation of regional players.

Adjustment of the Swiss federal system

Switzerland is confronted with an increasing internationalised federalism on the one hand and a European federalism on the other hand. In what follows I will show to what extent national-political modifications are inevitable in both cases.

The challenge of globalisation

It is interesting to note that modifications of Swiss federalism can be imposed independently of the European question, namely in the context of internationalisation. Therefore, various authors consider globalisation the real challenge of future-oriented nations.³⁰ Even the question of a more efficient cooperation between Confederation and Cantons has been raised by the Bundesrat without regard to an accession to the EU.³¹ Before proceeding to the effects of the EU membership to Swiss federalism I will explain how the Swiss federal system is already affected by globalisation.

²⁴ Hänni, p. 343.

²⁵ Bundesgesetz über die Mitwirkung der Kantone an der Aussenpolitik des Bundes vom 22. Dezember 1999 (SR 138.1); Abderhalden, *Integration*, p. 148.

²⁶ Abderhalden, *Integration*, p. 43.

²⁷ Rhinow, pp.68-69.

²⁸ Abderhalden, *Integration*, pp. 45-47.

²⁹ Article 44 Federal Constitution of the Swiss Confederation of 18 April 1999 (SR 101); Abderhalden, *Bundesverfassung*, p. 216.

³⁰ Thereto in detail: Linder, pp. 432-436; Fleiner/Töpferwien, p. 329; Rhinow, p. 70; Stürchler/Schroeder, p. 2; Pfisterer, *Herausforderung*, pp. 318-320.

³¹ Bericht des Bundesrates zu den Auswirkungen verschiedener europapolitischer Instrumente auf den Föderalismus in der Schweiz, in Erfüllung des Postulates Pfisterer [01.3160] „Föderalismusbericht. Erhaltung des Föderalismus bei den verschiedenen europapolitischen Optionen“ vom 15. Juni 2007, BBl 2007 5907, p. 5945.

Globalisation implies the reduction of the capacity to act of a nation state. However, a certain political room to manoeuvre can be preserved via international collaboration and integration.³² In this regard, the Swiss two-fold strategy of politico-economic integration and foreign-policy abstinence runs contrary to preserving its capacity to act.³³ Internationalisation implicates a certain pressure of harmonisation. Switzerland confronts this pressure by continuous “Europeanisation” of their law through a so-called *autonomer Nachvollzug*.³⁴ Thus, even if not formally bound to European law, Switzerland is under pressure to configure its legal system compatible with the latter. If not, the nation would have to put up with significant, particularly economic, disadvantages. It thus seems, that Switzerland not really maintains its autonomy via the method of „autonomous“ implementation of laws given that factually it is forced to adaptation.³⁵ Furthermore, internationalisation implicates that regional special solutions have to give way to a more competent assignment of functions. It thus seems, that the latter are no more justifiable and can be solved more efficiently by cooperation on a superior level.³⁶ However, on the cantonal level as well, internationalisation involves the development of rights to participate. As a result, regional players will probably be included in the national decision-making process whenever they increase their efficiency of problem solving.³⁷

According to COTTIER/LIECHTI, the integration process intensifies the collaboration between Confederation and Cantons. In several domains significant implied and factual shifts of competences in favour of the Confederation are observable. These constitutional amendments occur without accession to the EU.³⁸ Thus, from the Swiss perspective it would be worth it to have a discussion about the handling of globalisation in the sense of counteracting subtle restriction of sovereignty via even more effective mechanisms of intensified collaboration.³⁹

European and Swiss federalism – similarities and differences

The European Union is a political construction “sui generis” with a tendency of considerable federalist features.⁴⁰ Thus, the decision process in every European institution allows a disproportionate representation of small nations, and modifications of the primary contract as well as the entry of new member states are subject to unanimity. Furthermore, the European Union is obliged to respect the identity of their member states. In opposition to former tendency the codification of the principle of subsidiarity⁴¹ involves the appliance of gentle proceedings to preserve the autonomy of the

³² Fleiner/Töpperwien, p. 329; Linder, p. 432.

³³ Linder, p. 434.

³⁴ Stürchler/Schroeder, p. 7; Linder, p. 434; Fleiner/Töpperwien, p. 329.

³⁵ Hänni, p. 320.

³⁶ Stürchler/Schroeder, pp. 7-8.

³⁷ Stürchler/Schroeder, pp. 10-11; Pfisterer, Herausforderung, p. 319.

³⁸ Cottier/Liechti, p. 58.

³⁹ According to Linder, p. 437, Switzerland is certainly not able to decide on the accession to the globalisation.

⁴⁰ Pfisterer, Herausforderung, p. 311.

⁴¹ Article 5 para. 2 of the treaty establishing the European Community: “[...]the Community shall take action in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States[...]”.

constituent units. Consequently, the federal structures of the member states are indirectly taken into consideration through the two-stage European federalism.⁴²

According to FLEINER/TÖPPERWIEN the European federal system resembles that of Switzerland. In their opinion, the European Union is only imaginable with a federal structure. However, the EU has to adopt some fundamental values of Switzerland in order to persist for any length of time. If Switzerland develops federalism to support the participation of the Cantons, the European Union tries to accentuate the self-determination of their member states within their federal system. With the objective to promote public responsiveness and realise a three-stage federalism composed of regions, member states and the European level, the EU wants to strengthen the so-called Committee of the Regions who incorporates regional ambassadors of every member state.⁴³ In this regard, STEINER emphasises on the importance of multiple identities in enforcing the role of regions in European politics, given that the latter cross national borders.⁴⁴ Indeed, this regionalism expresses an improved political self-confidence of local structures which would like to represent their interests on the European level.⁴⁵ However, according to LINDER, the momentum of the European integration process does have limits. Thus, member states only accept restrictions of their sovereignty as long as the advantages of liberalisation and legal harmonisation are significant.⁴⁶

What is at stake here is the further development of federalism within the European Union. Thereby the preservation, promotion and protection of diversity and peculiarities of the European nations should come to the fore. In the case of an accession to the EU, Switzerland could contribute important federal experiences to this development process.⁴⁷

Impact of an EU membership on Swiss Federalism

Loss of sovereignty

Indeed, as we have seen, the federal structure of Switzerland presents a challenge to further collaboration with the European Union, but no obstacle.⁴⁸ However, an accession to the EU implicates some partial restrictions of cantonal competences. Thus, primarily the cantonal competence of legislation would be delimited, whereas the functions of implementation and enforcement would increase. In particular the cantonal responsibilities in the domain of education, culture, health care, infrastructure, justice, government procurement, building law, police collaboration, legal assistance and vocational qualification would be affected by the *acquis communautaire*.⁴⁹ With regard to fiscal sovereignty, an EU membership would implicate a shift of competences which should not be

⁴² Linder, p. 444; Pfisterer, Herausforderung, p. 313.

⁴³ Fleiner/Töpperwien, pp. 338-340.

⁴⁴ Steiner, p. 189.

⁴⁵ Pfisterer, Herausforderung, p. 315, who points out the interdependence between political rights of say and efficient execution of community law by the regions.

⁴⁶ Linder, pp. 442-443.

⁴⁷ There to in detail: Fleiner/Töpperwien, pp. 340-345; Linder, p. 444.

⁴⁸ Bericht des Bundesrates vom 15. Juni 2007, BB1 2007 5907, p. 5972.

⁴⁹ Stürchler/Schroeder, p. 14; Schweizer, p. 25.

underestimated.⁵⁰ According to the federal perspective, an important need of reform consists because of the obligatory raise of the value added tax in the event of an EU membership. In this case, additional tax income of the Confederation should be compensated in favour of the Cantons.⁵¹ However, the competences of the Confederation would be predominantly affected namely in the range of economic, environmental and transport policy.⁵²

At the moment, future restrictions of self-determination are difficult to evaluate given that the European Union is in a permanent development process.⁵³ The assignment of competences to the EU is, comparable to Switzerland, subject to the principle of conferral. In this regard the Cantons do have the possibility to influence the vote of Switzerland. However, the *Ständemehr* would be inapplicable in the case of shifts of competences on the European level.⁵⁴ As a result of the so-called doctrine of implied powers this competences can be extended. Article 308 of the Rome Treaty⁵⁵ permits the European Community to act, if the intentions of the Community demand it. Since competences are often defined as objectives and not based on functions, their interpretation is difficult.⁵⁶ However, according to STÜRCHLER/SCHROEDER, a current countertrend can be observed to former extension of responsibilities by the European Union.⁵⁷

Based on the above, a loss of sovereignty cannot be avoided in the case of an accession to the European Union. The same applies with the regard to globalisation. An EU membership would disclose previously covert deprivation of sovereignty.⁵⁸ In the next section, I will address the issue of a possible compensation of this loss of self-determination.

Prospects of cantonal participation

In the case of an accession to the European Union the Cantons can assist in the further development of the *acquis communautaire* in a fourfold way. Intrastate, Cooperative federalism will be applied, which affects Swiss decisions on topics related to European policy as a whole. On the European level cantonal ambassadors do have the opportunity to participate the Committee of the Regions and influence via lobbying or by direct attendance of European committees the European decision making process.⁵⁹

Cooperative Federalism relating to EU membership

The ambition of the regions to obtain effective rights to say and the interest of the states to represent an unanimous bargaining position on the European level stimulates the cooperation between the nation

⁵⁰ Cottier/Liechti, pp. 58-59.

⁵¹ Bericht des Bundesrates vom 15. Juni 2007, BBl 2007 5907, pp. 5975-5976; Stürchler/Schroeder, p. 15.

⁵² Stürchler/Schroeder, p. 15; Schweizer, p. 25.

⁵³ Schweizer, p. 22.

⁵⁴ Stürchler/Schroeder, p. 15; Schweizer, p. 18.

⁵⁵ Article 308 of the treaty establishing the European Community.

⁵⁶ Schweizer, pp. 18-21; Stürchler/Schroeder, p. 15.

⁵⁷ Stürchler/Schroeder, p. 16.

⁵⁸ Linder, p. 437

⁵⁹ Stürchler/Schroeder, pp. 17-20; Bericht des Bundesrates vom 15. Juni 2007, BBl 2007 5907, p. 5945.

state and its constituent states.⁶⁰ Consequently, the *Bundesrat* emphasises the cantonal rights to participate by protecting at the same time a unitary Swiss position. Both a two-way alternate communication and an optimised utilisation of intrastate proceedings to collaborate are of importance within the scope of adjustment of the Swiss federal system to an increasing international environment.⁶¹ According to the *Bundesrat* the *Konferenz der Kantonsregierungen* should continue to play a major role in this coordination process. The *KdK* has proven itself by rapid response capacity and primary committee of contact of the Confederation. Through this form of collaboration Cantons are able to confront the Confederation as a unity by adopting a coordinated position.⁶² However, cooperation is predominantly a matter of governments. Cooperative federalism implicates a stronger influence of the executive on legislation. Therefore, this mode of collaboration demands a sufficient democratically confirmed control of the executive institutions.⁶³ The question of a deficit of legitimation is particularly posed in the case of cooperation between cantonal executives. A reinforced parliamentary collaboration would cause a superior legitimacy of executive decisions. Thereby the parliament has to be currently informed and has to obtain the opportunity to make representations during negotiations. In addition, the legislative body ought to be entitled to propose amendments and approve inter-cantonal agreements. Finally, the enforcement of the latter should be under parliamentary supervision.⁶⁴

It is up to Switzerland to enforce the current position of the Cantons. The adaptation of their internal order is of utmost importance in the case of an accession to the EU, especially when it comes to accomplish a balancing act between efficiency and public responsiveness.⁶⁵ By the time Swiss population experiences a successful reinforced collaboration of the Cantons on the federal level, they will be willing to accept participation as a part of federalism.⁶⁶

Participation of the Regions on the European level

On the European level Cantons do have the opportunity to participate. I will pass on the detailed description of the different institutions and therefore approach this subject by a general overview.

In principle, the legal system of the European Union only presents a two-stage federal structure.⁶⁷ Nevertheless, the EU is aware of the important role of the regions and increasingly supports the political participation of this third level. Regionalism is supposed to assist an efficient enforcement of community law and diminish the European difficulty of closeness to the citizens.⁶⁸

⁶⁰ Börzel, p. 376.

⁶¹ Bericht des Bundesrates vom 15. Juni 2007, BBl 2007 5907, p. 5975.

⁶² Bericht des Bundesrates vom 15. Juni 2007, BBl 2007 5907, p. 5945; in detail to the function of the *KdK* in foreign policy: Abderhalden, *Integration*, pp. 111-114 and Hänni, pp. 355-356.

⁶³ Pfisterer, *Herausforderung*, pp. 327-328; Bericht des Bundesrates vom 15. Juni 2007, BBl 2007 5907, p. 5945; Fleiner/Töpperwien, p. 335.

⁶⁴ In detail concerning the deficit of democracy with regard to the collaboration of cantonal executives and a possible necessity to strengthen the cantonal parliaments: Hänni, pp. 369-382.

⁶⁵ Pfisterer, *Herausforderung*, p. 321; regarding the tensions between public responsiveness and efficiency: Stürchler/Schroeder, p. 22.

⁶⁶ Fleiner/Töpperwien, p. 335.

⁶⁷ Schweizer, p. 24.

⁶⁸ Pfisterer, *Herausforderung*, pp. 314-315.

As already indicated, the Cantons achieve, in case of EU membership, the opportunity to appoint deputies in the Committee of the Regions. The latter serves as an independent bridge between European institutions and regions. The main functions of the Committee of the Regions consist of developing statements to draft law of the commission, and in certain domains the hearing of the Committee is obligatory.⁶⁹ However, PFISTERER deems this participation insufficient. The author points out, that the decisions of the CoR do not have any binding effect and the ambassadors participate without regional instructions. In addition, members of the Committee of the Regions are elected by the European Council of Ministers, not by the regions or member states themselves.⁷⁰ Furthermore, regional governments get to do lobbying on site. However, the effectiveness of this representation of interest remains with the regions.⁷¹ Thirdly, Cantons can distinguish themselves directly in other European committees. For instance, the German Länder attend with their own ambassadors negotiations insofar as the subject demands participation intrastate or if fundamental interests of the Länder are affected.⁷² It is to mention that the European Union places more emphasis on a better integration of regional players and raises its awareness to regional and local concerns.⁷³

Reform of Swiss federalism (?)

Swiss federalism is based on the concept of divisibility of sovereignty. In this regard, the Swiss federal system is amenable to European integration.⁷⁴ An EU membership would not implicate the reduction of federalism and democracy but the reconstruction of the latter. Moreover, an increasing global environment claims a further phase in reforming federalism.⁷⁵ Federalism presents a permanent creative challenge, whereas the balance between diversity and unity, liberty and limits, home and cosmopolitanism has consistently to be found.⁷⁶ If Switzerland taps the full potential of these fields of tension, then integration will strengthen and revitalise Swiss federalism. According to FLEINER/TÖPPERWIEN, an accession to the EU would even present a chance for development of the Swiss federal tradition. Due to the pressure of adaptation and the increasing internationalisation of national problems, several authors hold that the need of reform exists also without an accession to the European Union.⁷⁷

Indeed, as we have seen, present Swiss federalism of self-determination will mutate into a federal system more affected by participation.⁷⁸ The restriction of the states' room for manoeuvre as a result of internationalisation could at least in parts be regained through participation in the EU. The Confederation in particular obtains a new important function due to further development of federalism. As a connector between Cantons and European institutions the latter has to coordinate and inform as

⁶⁹ Stürchler/Schroeder, pp. 17-18; also Hänni, p. 187.

⁷⁰ Pfisterer, Herausforderung, pp. 322-323.

⁷¹ Stürchler/Schroeder, pp. 18-19; cf. in addition regarding the participation of the German Länder in the European committees: Hänni, pp. 185-188.

⁷² Stürchler/Schroeder, p. 19; Hänni, p. 185.

⁷³ Stürchler/Schroeder, p. 19; Bericht des Bundesrates vom 15. Juni 2007, BBl 2007 5907, p. 5972; Pfisterer, Herausforderung, p. 315.

⁷⁴ Fleiner/Töpperwien, p. 327.

⁷⁵ Pfisterer, Föderalismusreform, p. 124.

⁷⁶ Pfisterer, Herausforderung, p. 326.

⁷⁷ Fleiner/Töpperwien, pp. 331-332.

⁷⁸ Pfisterer, Herausforderung, p. 325.

well as to represent the common cantonal interests and Swiss federalism on the European level.⁷⁹ Thus, the junction of the fields of foreign affairs and federalism is requested in order that decisions are uniform according to an outward impression whereas they are inwards supported by cooperative federalism.⁸⁰ Therefore, the *Bundesrat* recognises that the latter presents a general condition to intensify the relationship between Switzerland and the European Union.⁸¹ Furthermore, Cantons play a major part in Swiss policy towards Europe. In the context of cooperative federalism they are requested to support foreign policy democratically. In particular power shifts to government and administration are to be countered by reforms in favour of parliaments and the people. In compliance with the commandment of democratisation Cantons should be supported by the Confederation.⁸² Thus, the effectiveness of federalism can be increased in the future.

Conclusion

In conclusion, this analysis demonstrates that, independent of an EU membership, the adaptation of the Swiss federal system is unavoidable. With regard to internationalisation, sovereignty is overemphasised and the acceptance of participation is in short supply, even if the latter could compensate a loss of sovereignty. As we have seen, an EU membership would involve new possibilities of cooperation and present a chance for further development of Swiss federalism. Furthermore, Switzerland could play an important part in the discussion about the future constitution of the European Union due to their traditional wealth of experiences. Consequently, the idea of traditional federalism does not constitute the appropriate response to internationalisation and European integration process, particularly if the point is to face increasing loss of sovereignty. Swiss federalism should rather meet the challenge of globalisation and European integration in order to preserve the Swiss identity on a forth federal level. Moreover, only innovative changes of Swiss federalism can guarantee the balance between public responsiveness and efficiency. Thus, federalism will continue to stand for legitimacy.

⁷⁹ Fleiner/Töpperwien, pp. 331-332.

⁸⁰ Pfisterer, Föderalismusreform, p. 121.

⁸¹ Bericht des Bundesrates vom 15. Juni 2007, BB1 2007 5907, p. 5976.

⁸² Pfisterer, Föderalismusreform, p. 123.

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