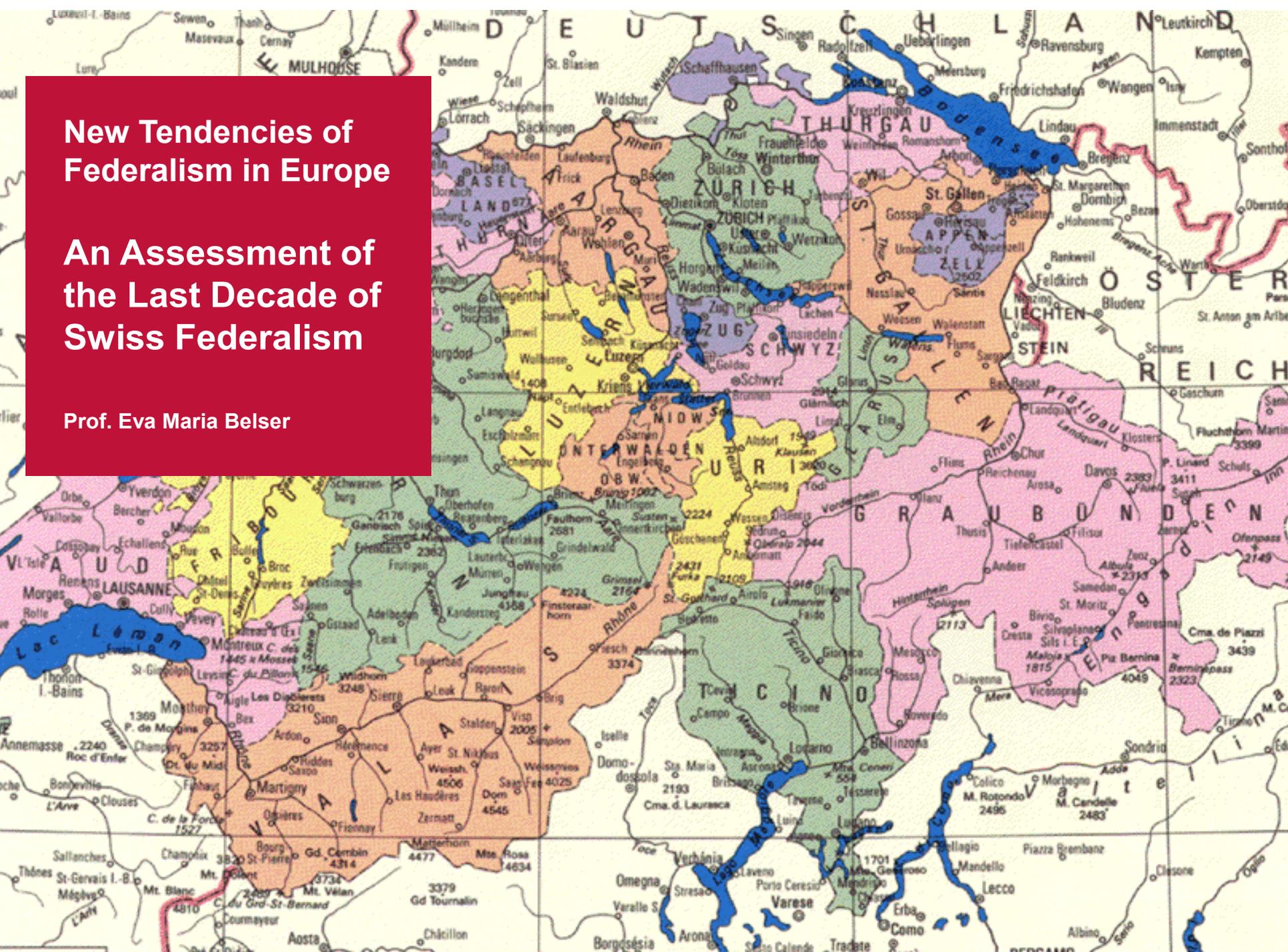


New Tendencies of Federalism in Europe

An Assessment of the Last Decade of Swiss Federalism

Prof. Eva Maria Belser



An Assessment of the Last Decade of Swiss Federalism: Overview

- The federalism reform and its impact: Stop and go!
- The institutional framework: Don't touch!
- The territorial structure: Small is beautiful!
- Intergovernmental relations: Networking!
- The academic and political atmosphere: Affair of the heart and the purse
- Challenges and tendencies: Face-lift and deep mind

The Federalism Reform and its Impact

- Accepted in 2004/entered into force in 2008
- Disentanglement of competences and finances, reassignment of responsibilities
- Respect of the principle of subsidiarity
- Respect of the principle of fiscal equivalence
- Strengthening of intergovernmental relations
- New and more transparent fiscal equalization schemes

Principles for the Allocation and Fulfilment of State Functions

- Art. 43a (1) The Federation only undertakes tasks that the Cantons are unable to perform or which require uniform regulation by the Federation.
 - Principle of subsidiarity
- (2) The collective body that benefits from a public service bears the costs thereof.
 - Whoever benefits, pays!
- (3) The collective body that bears the costs of a public service may decide on the nature of that service.
 - Whoever pays, decides!

Canton of Obwalden: Unconstitutionality of Regressive Taxes (BGE 133 I 206)



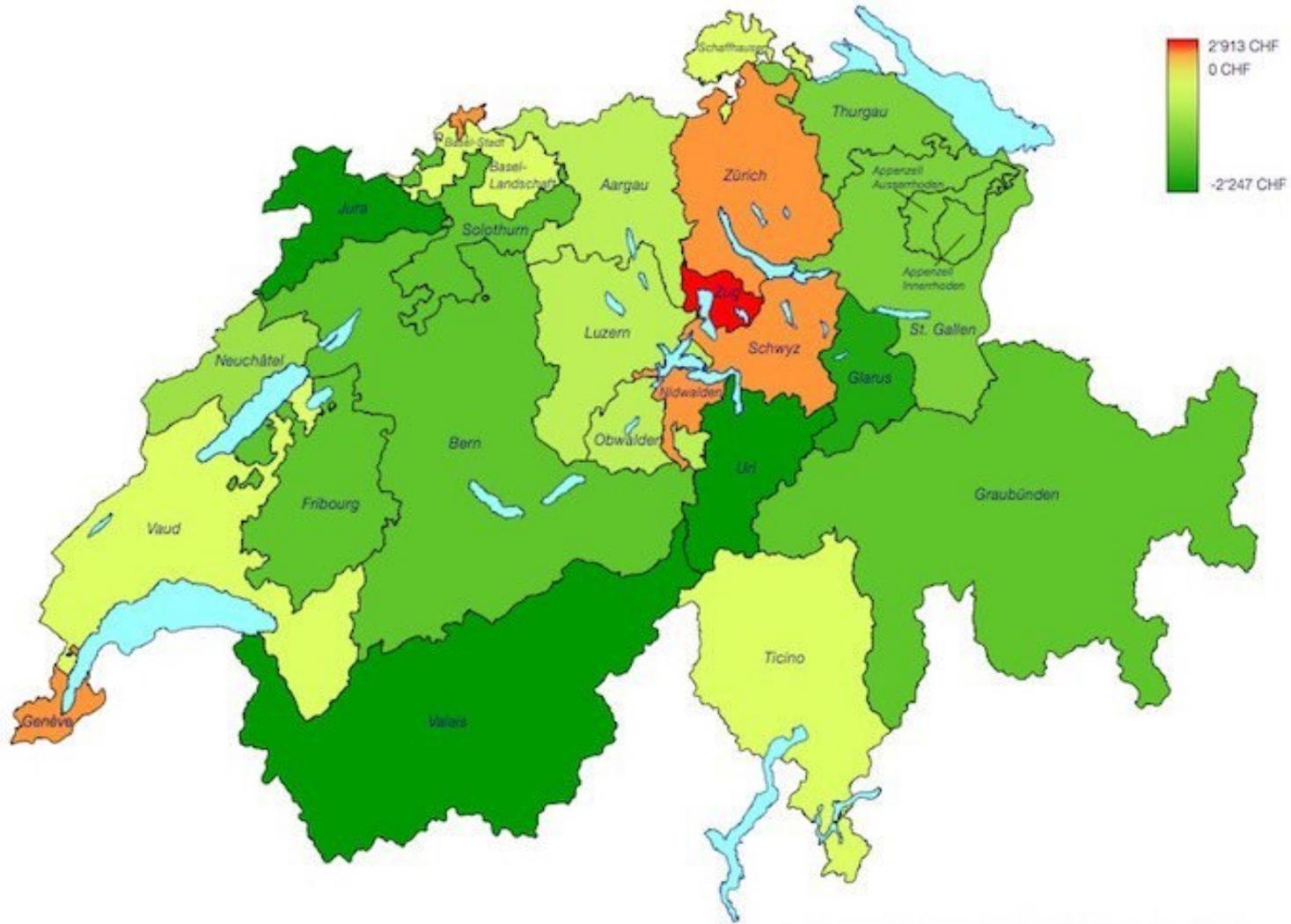
Failure or Intermediate Stage?

- Centralisation by constitutional amendments
 - Reform of the judiciary
 - Reform of the education system
 - Ban of minaret, life incarceration, expulsion of foreigners, music education, secondary homes
- Centralisation by federal legislation and federal decrees (lack of constitutional review)
- Increasing entanglement (education, social security, planning, migration)
- Non-respect of fiscal equivalence principles
- Strengthening of inter-cantonal cooperation

Equalizing or Capturing?

- Funds provided by Cantons with a higher level of resources and by the Federation.
 - payments made by rich Cantons amount to a minimum of two thirds and a maximum of 80 per cent of the payments made by the Federation.
- Equalization of financial resources and burdens
 - According to resource potential and special burdens (geographic, socio-democratic)
 - Up to a minimum of 85% of the Swiss average
 - Decided by parliament (88%...)

«The peak has been reached»



Nettoausgleichszahlungen pro Kopf in CHF; Finanzausgleich 2017

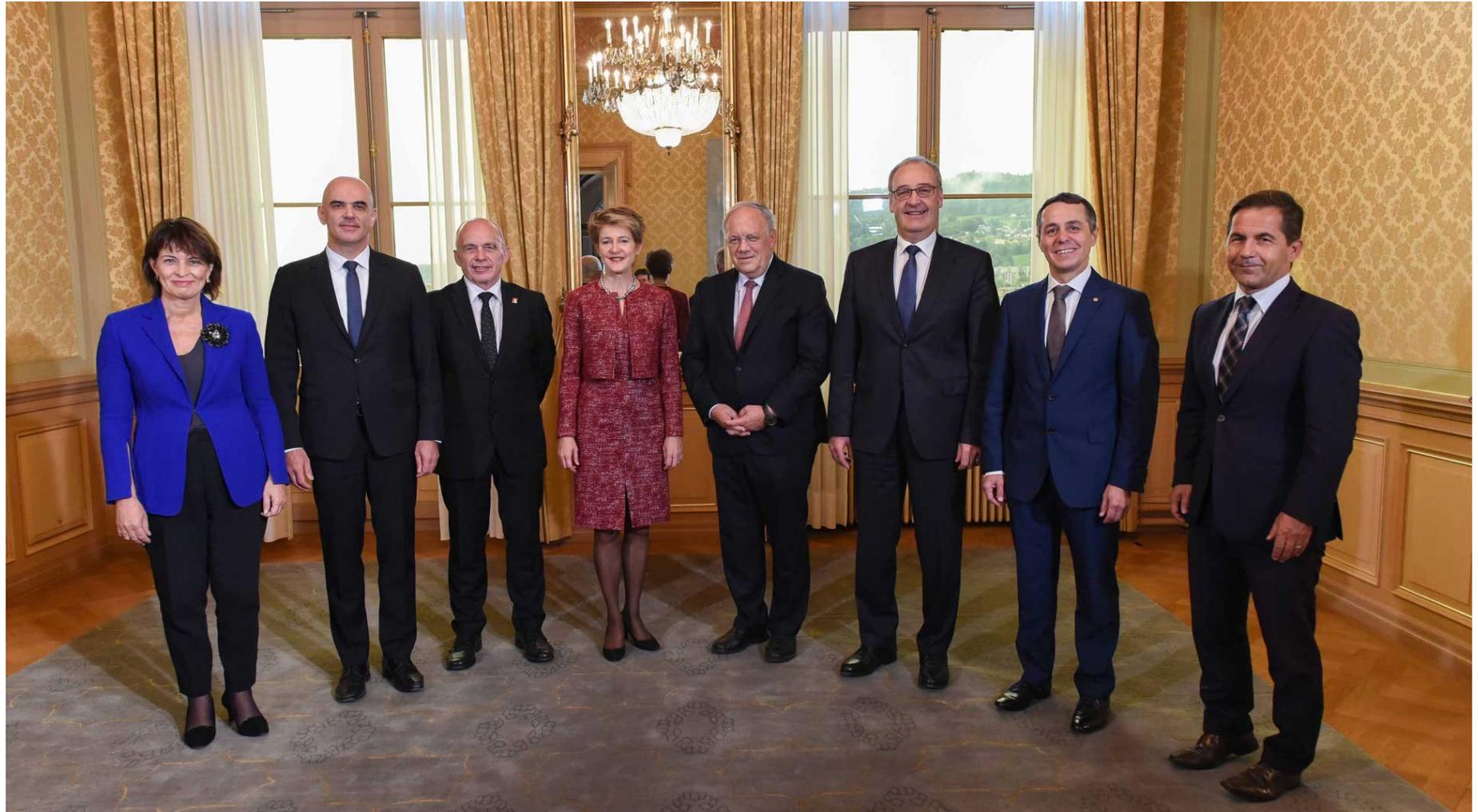
Equalizing or Capturing?

- Proposals of the Conference of Cantons
 - Equalization determined by law only
 - Equalization guarantees minimum level of financial resources to all Cantons
 - Equalization goes to up 86.5% (3-year-transition period)
 - The Confederation participates to the maximum extent; its contribution goes entirely to the Cantons with low resources
 - A joint political committee will monitor equalization.

The Institutional Framework I: The Weak Federal Judiciary



The Institutional Framework II: A Indirectly Elected Collegial Gouvernement



The Institutional Framework III: A Bicameral Parliament



Proposals to Reform the Council of State

- Upgrading «semi-Cantons» (in view of mandatory referenda...)
- Increasing inequality – increasing imbalance
 - Zurich 1'446'000
 - Bern 1'009'000
 - Vaud 761'000
 - Geneva 477'000
 - Appenzell a.Rh. 15'800
 - Uri 36'000
- Balancing representation of Cantons
- Representation of cities

Canton of Schwyz: Unconstitutionality of High Natural Quora (BGE 143 I 92)



Cantonal Elections

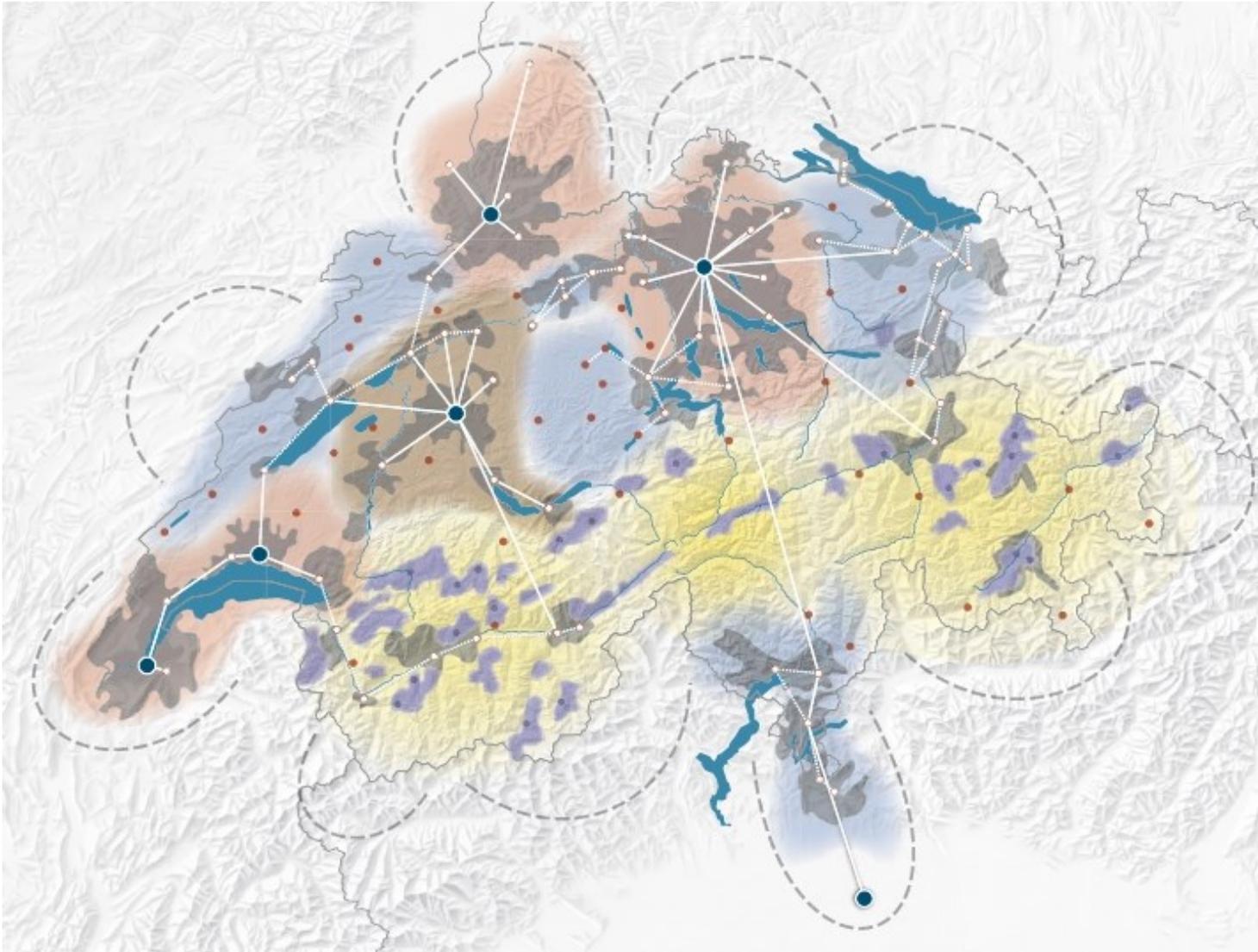
- Increased obligation to harmonise
- Homogeneity clause («democratic constitution»)
- Human rights (equal weight of votes)
- Role of the Federal Supreme Court (constitutional review)
- Role of the Federal Assembly (approval of cantonal constitutions)

- Future of majority vote?

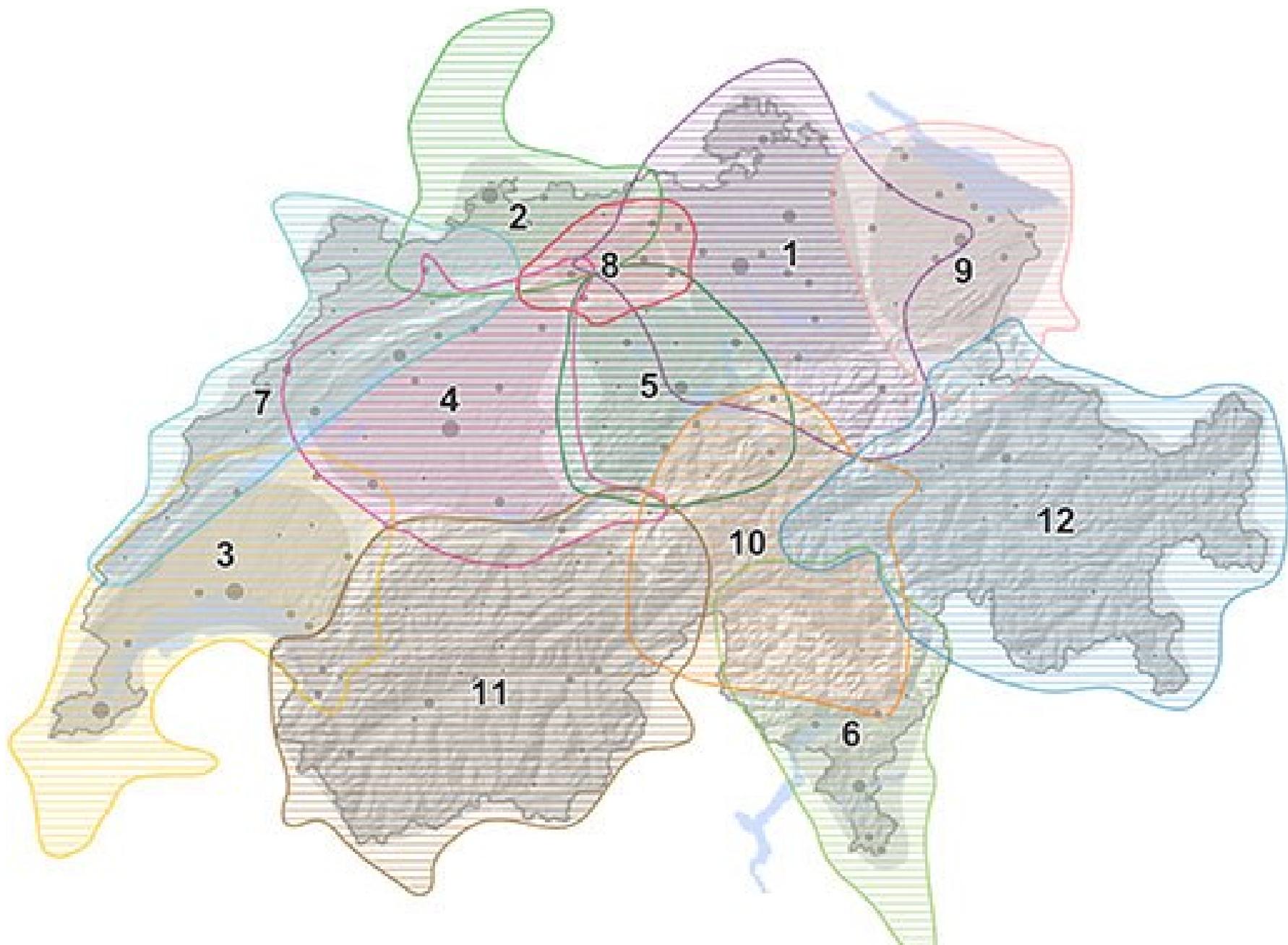
The Territorial Structure



3 plus 1 plus 4, and the rest...



26 Cantons – 12 Areas of Life



Reforming the Cantons

- In 1979, the Canton of Jura was created.
- Laufental decided to adhere to the Canton of Basel (1994), Vellerat to the Canton of Jura (1996), Moutier to the Canton of Jura (2017)

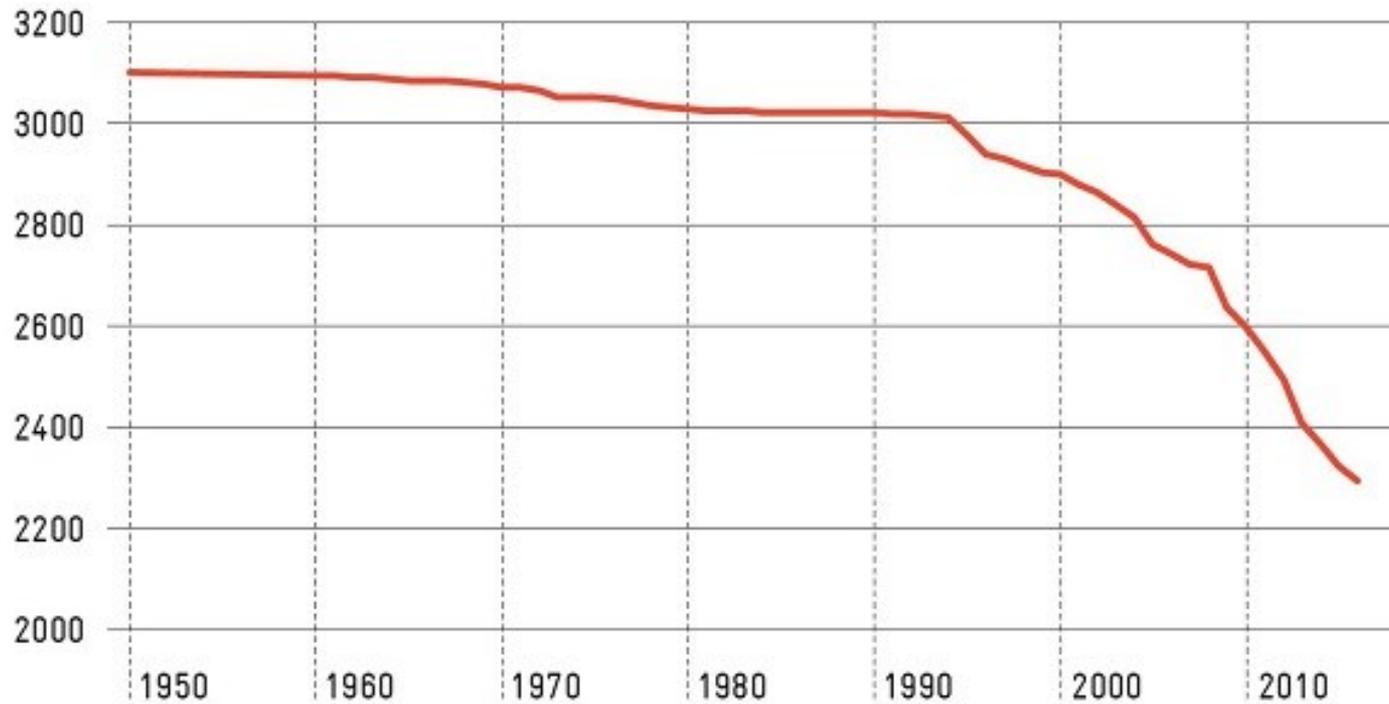
- In 2002, the amalgamation of Geneva and Vaud failed.
- In 2014, the amalgamation of the two Basel failed for a third time.
 - «Requiem for cantonal amalgamations»

Reforming Municipalities

- 1848: 3203 municipalities
- 2003: 2842 municipalities
 - Between 1953-2003: reduction by 7% (compared to 59% in Germany and 42% in Austria)
 - Since 2003: strong increase in amalgamations
- 2012: 2495 municipalities
- 2016: 2300 municipalities
- 2017 and 2018: dozens of amalgamations are planned or in the process of being executed

Reforming Municipalities

Zahl der politischen Gemeinden in der Schweiz



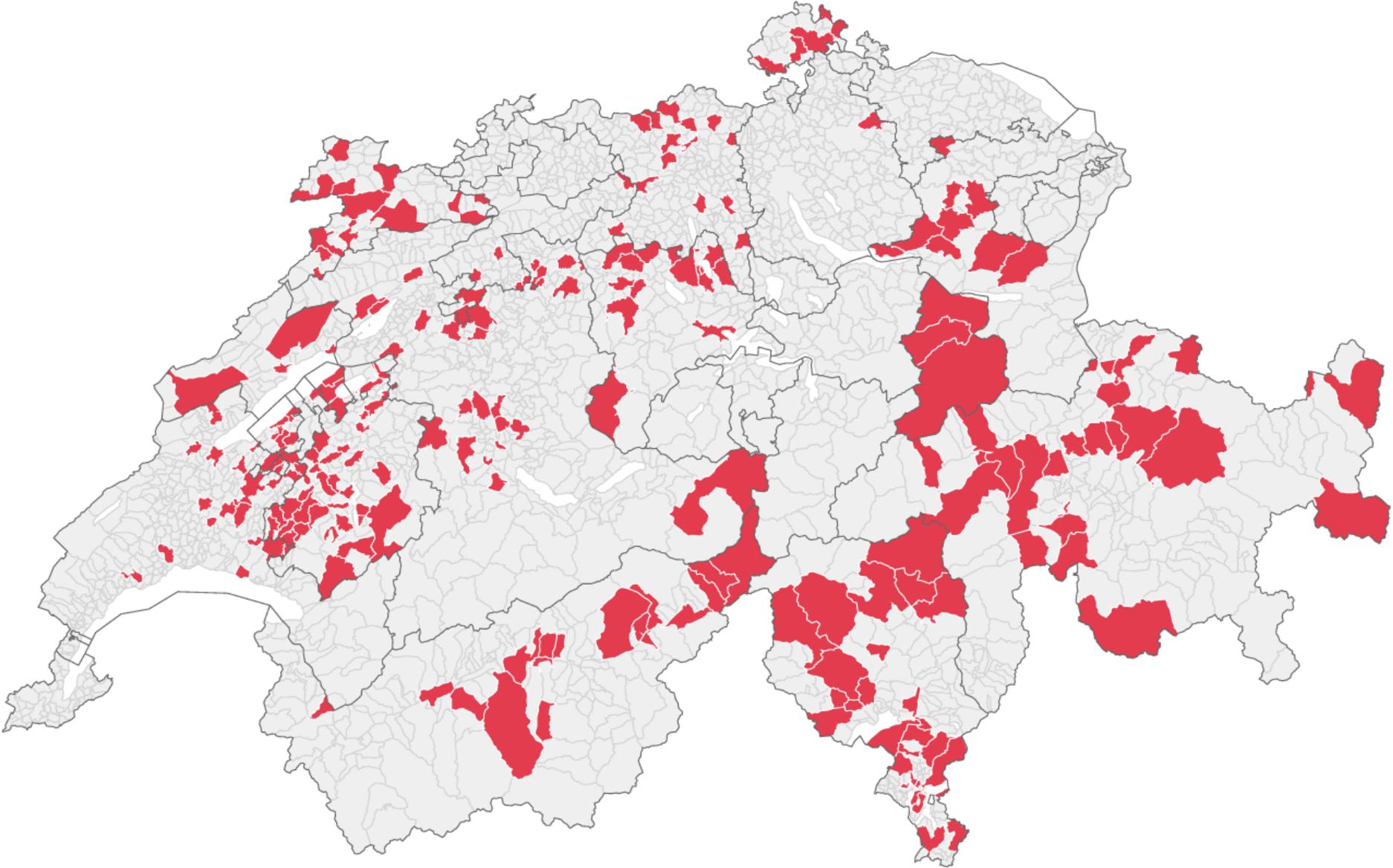
Quelle: BFS (historisiertes Gemeindeverzeichnis)

Driving Forces for Territorial Reform

- Better governance in urban areas
- Governance in rural areas
- Savings in economic resources and personnel
- Shortcomings of horizontal cooperation
- Federal planning and federal incentives
- Cantonal planning and cantonal incentives
- Forced amalgamations

The Role of the Federal Supreme Court

- 2005: Forced amalgamation do not violate the federal constitution when they are based on cantonal law (Ausserbinn)
- 2016 The parliament of Ticino did not violate the federal constitution when it nullified a cantonal initiative on amalgamations (violation of the European Charter of self-government)



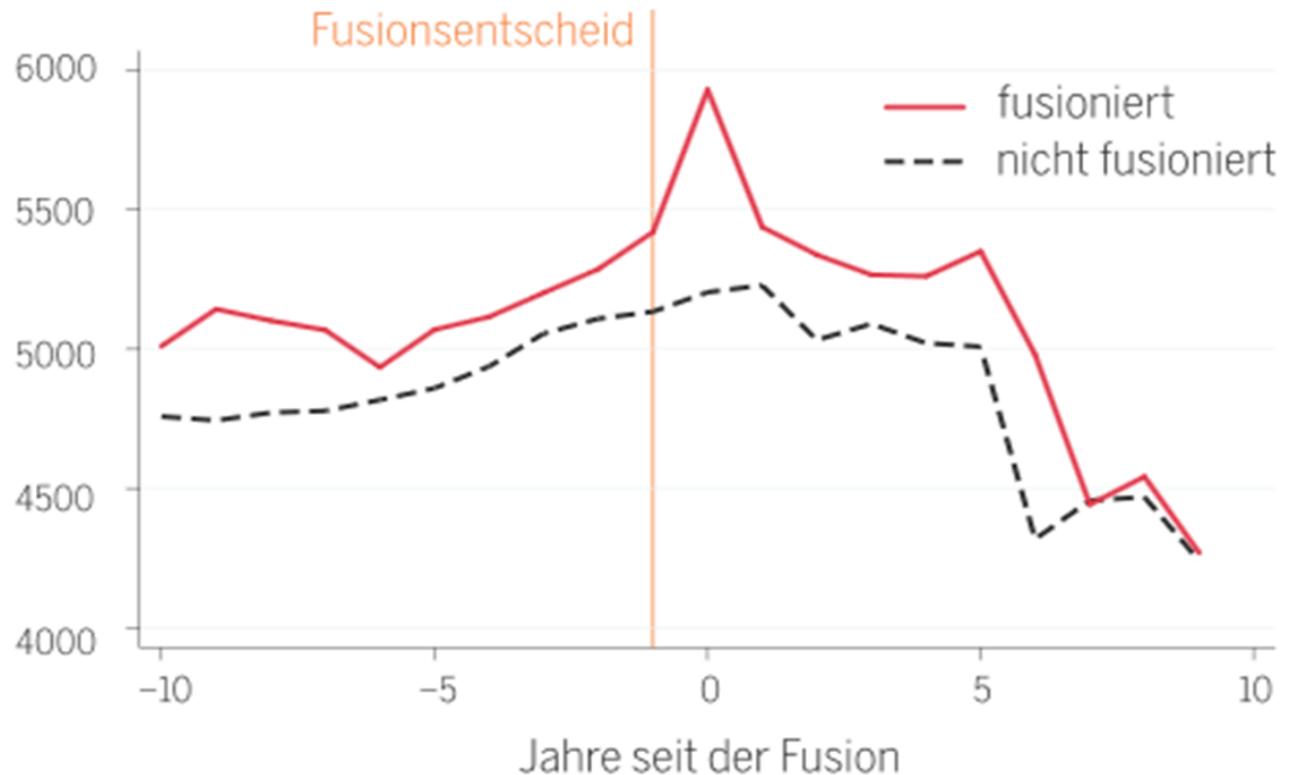
■ Fusionierte Gemeinden in der Schweiz 2001–2014

Quelle: Studie Studerus/Schaltegger, 2016

Assesment of Amalgamations

- Effects on local identities and local democracy
- Economic effects

Entwicklung der Gesamtausgaben pro Kopf
In Schweizer Franken



Living with Unequal Units

- The largest municipalities
 - Zürich ($\approx 345'000$)
 - Genf ($\approx 178'000$)
 - Basel ($\approx 164'000$)
 - Bern ($\approx 122'000$)
- The smallest municipalities:
 - Corippo (12): amalgamation planned
 - Martisberg (24)

Average population: 2700

Open Questions

- Future of municipalities?
- Effects of increased horizontal cooperation on democracy?
- Effects of inequality of units on representation and power-sharing (unreasonably small units “cause” centralisation)?
- Governance of metropolitan areas?
- Effects of new tiers and semi-tiers of government on the power-sharing arrangements?

Intergovernmental Relations



Intercantonal Cooperation

- Reactions to Europeanization and centralisation
- Constitutionalisation of cooperation and participation
- Inter-cantonal Treaties («concordats», currently: more than 700)
- Inter-cantonal law harmonisation («three-and-half-tier federalism»)
- Inter-cantonal conferences and institutions (some of them with law-making powers)
- Participation in federal law-making («third chamber»)

Intergovernmental Relations

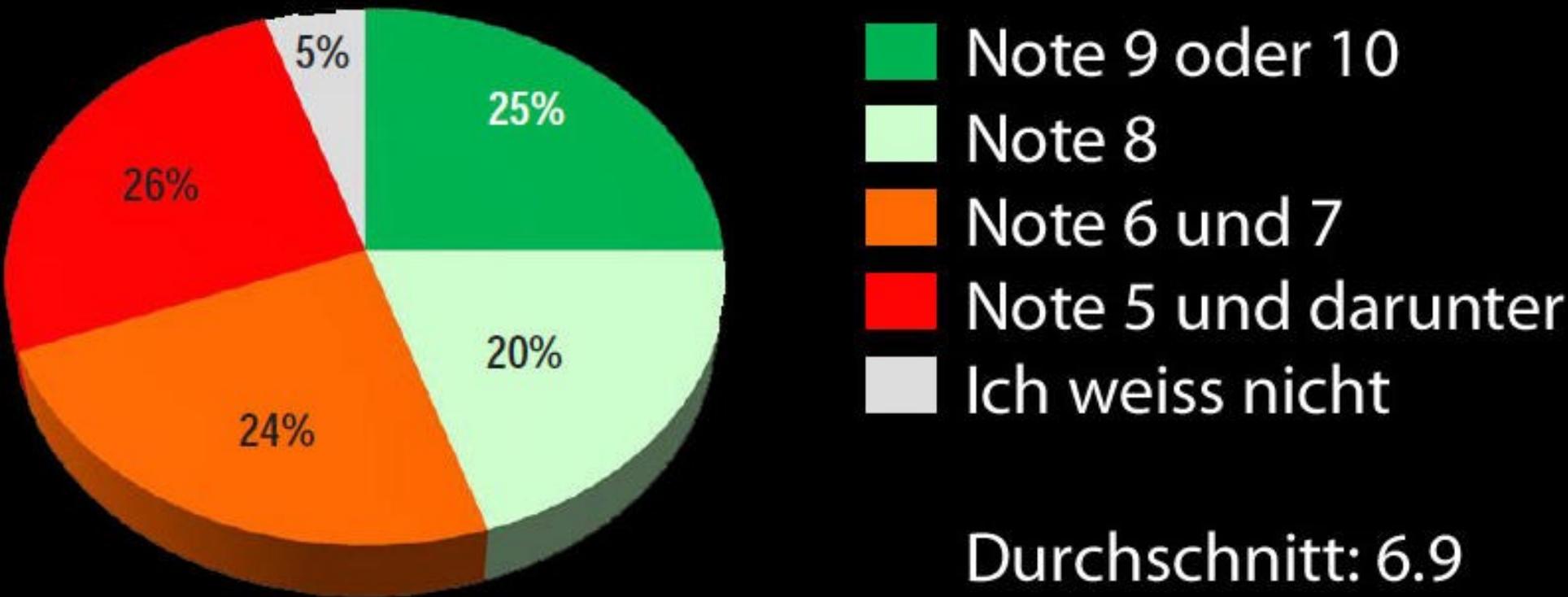
- Democratic deficit
- Lack of accountability
- Flexibility – inflexibility
- (Unconstitutional) financial deals
- Unequal weight of Cantons
- Failures to harmonise
 - Forced cooperation
 - Conditional competences

The Academic and Political Atmosphere

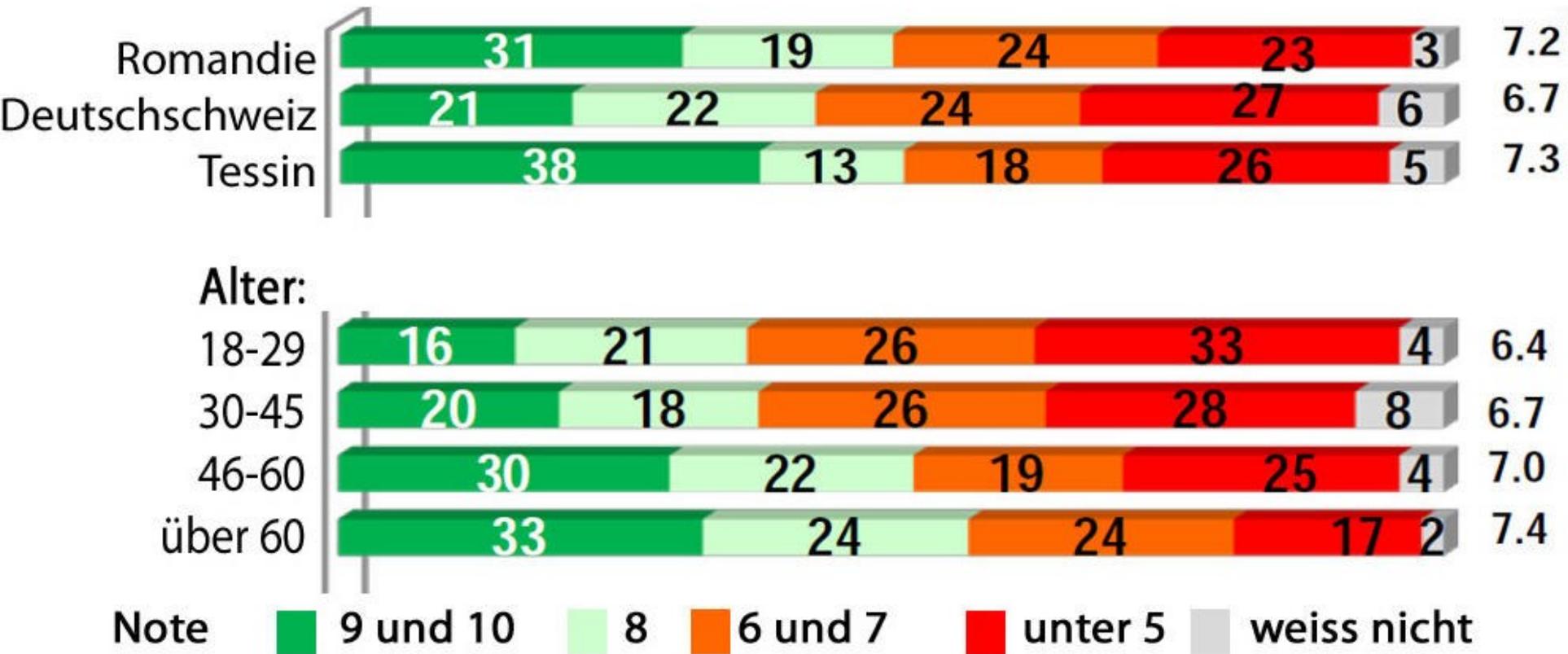
- Academic
 - Political sciences (identity and diversity, party politics, demographic evolutions)
 - Economic sciences (fiscal federalism, competitiveness)
 - Legal science (multilevel governance, laboratory, monitoring)
- Political
 - Affair of the heart
 - Affair of the purse
 - Federal Dialogue

How much do you like federalism?

Wie sehr hängen Sie am Schweizer Föderalismus?



Wie sehr hängen Sie am Schweizer Föderalismus?



Challenges and Tendencies

- Strengthening constitutionalism and expanding constitutional review
- Strengthening the principle of fiscal federalism and fiscal equivalence
- Respecting the principle of subsidiarity while confronted with great inequalities of units
- Opting for asymmetry?
- Flexibilising federalism by-territorialising autonomy
- Rethinking the role of parliaments, redesigning democracy and accountability