The Effects of Globalization on Legal Education – an Agenda from a European Perspective for the Interdisciplinary Training of a New International Commercial Lawyer

JENS DROLSHAMMER*

1 Introduction

The *Juristentag 2000* (Lawyers' Conference 2000) was essentially devoted to the question of how globalization is affecting the Swiss legal system and whether legal training in Switzerland has a sufficiently close connection with economic realities and professional practice. The texts and presentations at the Annual Meeting were dedicated to this topic.[1]

* Prof. Dr. iur, MCL Michigan, Attorney at Law in Zurich. The author is Professor for Anglo-American Law and Planning and Structuring of Legal Transactions), President of the Commission and Lecturer in Law in the Master of European and International Business Law Program (Executie M.B.L.-HSG) and Lecturer in Law in the Master of International Management Program at the University of St. Gallen. He has worked in the Spring Term of 1999 as Visiting Scholar and Fellow at Harvard Law School. He extends his gratitude to Professors Mary Ann Glendon, Detlev Vagts, Arthur von Mehren, David Kennedy, David Wilkins, Peter Murray and Harry S. Martin III for valuable insights and suggestions to write a series of essays under the working title "The Changing International Practice of Law – Aspects of the International Compatibility and Competitivity of Legal Systems, Legal Professions and Legal Educations"; some of the texts are published in a collection of articles and book: Jens Drolshammer/Michael Pfeifer, ed., "The Future of the Legal Profession", in European Journal of Law Reform, Vol. 2, Issue 4, 2000 and in an enlarged book, The Internationalization of the Practice of Law, Kluwer Law International 2001; he is grateful above all to Roman Benz of the publishing house Helbing & Lichtenhahn, whose help in linguistics and style have permitted an increased working pace; he is also grateful to Susanne Meier Schmid for her precise typing and formating the text and to all the helpful personnel of the Hotel Waldhaus at Sils Maria; last but not least, he is thankful to Prof. Dr. Peter Gomez, President of the University of St. Gallen and spiritus rector of a comprehensive new conception of academic education at the University, for his continued interest.

1 Texts and Presentations at the annual meeting of the Swiss Lawyers' Association 2000 under the overarching theme globalization: Christian Bovet, Réception du droit public économique étranger en Suisse, SJV H.3, Basel 2000; 277-312; Karl Hofstetter, Globalisierung und Wirtschaftsrecht, ZSR, NF 119, Basel 2000, 289-312; Heinrich Koller, Globalisierung und Internationalisierung des Wirtschaftsrechts – Auswirkungen auf die nationale Gesetzgebung (einige Thesen), ZSR, NF 119, Basel 2000, 519-566; Shelby du Pasquier, Formation et Globalisations, un nouveau défi pour le juriste suisse, ZSR, NF 119, Basel 2000, 451-462; Anton K. Schnyder, Wirtschaftskollisionsrecht als Regelungsinstrument für eine internationale Wirtschaft, ZSR, NF 119, Basel 2000, 463-476; Rolf Dubs, Wirtschaftswissenschaften im juristischen Studium: Ihr Stellenwert und ihre Einordnung, ZSR, NF 119, Basel 2000, 411-434..

The present text represents the independent contribution of one concerned observer amid competing opinions regarding future reform of legal training in Switzerland. It was written neither for nor with a view to *Juristentag*, but was prepared for publication at the invitation of the president of the *Schweizerische Juristenverein* (Association of Swiss Lawyers). Moreover, it was written independently of the actual texts and presentations at the Annual Meeting on issues of the effect of globalization. While not directly giving rise to this document, the current ongoing reform in teaching practice at St. Gallen University[2] did constitute an impetus to its creation. However, it should be noted that, as Titular Professor, the author is not actually a member of the law department and thus has no knowledge of work produced which is not accessible to the public.[3]

Engagement with this topic is based on the author's own "situationality". For the sake of clarity, it may be useful at this stage to explain this:[4] the author is member of a large, internationally-focused commercial law firm in Zurich and Professor for Anglo-American Law and Planning and Structuring of Legal Transactions at St Gallen University. He generally teaches at interdisciplinary and transactional seminars on economics and management, which apply a principle of subject-matter communication supplementing and complementing basic training in legal principles and analysis, based on the reality to be structured. Knowledge and skills are broken down into problem areas that are generally independent of the various areas of law, and incorporate into the teaching program the actual planning and structuring of legal reality using real events and, specifically, "primary players".[5] In addition, the author also gives introductory lectures on Anglo-American law in a series entitled *On American Legal Culture*, with the intention of setting out the effects on Swiss legal culture of the increasing American hegemony seen over the post-War period in the realms of both international management and law. In the field of the "international practice of law", he is attempting to redefine the knowledge, skills and conduct required today and to conceptualize the roles of the international lawyer and international manager. These reflections have gained practical significance in connection with the vocational training program Master of European and International Business Law M.B.L.-HSG at St. Gallen University; the author, as commission president, made a significant contribution to the course concept. From the summer semester onwards, together with colleagues working in the area of international management, the author has taught within the framework of integrative "co-teaching" on the subject of professional service firms in the context of the St Gallen program leading to Master of International Management. This training takes two years and is an integrative and internationally oriented advanced program of the business management faculty, being the first course of study in Switzerland to be conducted exclusively in English. The author has also looked at the study situation abroad, specifically in 1998 when, together with Prof. Heinz Hauser, then Vice-Principal and in charge of the curriculum of the Community of European Management Schools (CEMS), and Prof. Robert Waldburger, then head of the Legal Department, he investigated the extent to which the innovative idea of the CEMS, an integrated exchange program between European business colleges in the field of international management, could be transferred to legal training. In addition, in the spring term of 1999, upon invitation to participate in the Visiting Researchers' Program as well as in his capacity as Fellow at the European Law Research Center, he worked at Harvard Law School, principally dealing with the subject "The International Lawyer and the Changing International Practice of Law".[6] The author's various experiences of American legal culture have also found their expression in essay form.[7]

[2] See among others new proposals for study reform Vorschlag zur Neukonzeption der Lehre an der Universität St. Gallen, Bericht der Kommission; authors Sascha Spoun und Ernst Mohr, October 1999; Peter Gomez und Sascha Spoun, Persönlichkeiten fordern und fördern, Die neue Studienarchitektur der Universität St. Gallen, Neue Zürcher Zeitung, May 25, 2000, Nr. 121.

[3] As to the procedure applicable to the study reform, see 3.1.4.2.3.

[4] Compare in that context 4.8, The Conceptualization of the Role of an International Lawyer as Key Actor of the Legal Process in Globalization (situatonality analysis); in particular Outi Korhonen, International Law Situated: The Lawyer's Stance towards Culture, History and Community (S.J.D. Thesis Harvard Law School), Kluwer Law International, 2000; New International Law: Silence, Defence or Deliverance, European Journal of International Law, 1996, 1-28; Liberalism and International Law: A Centre Projecting a Periphery, Nordic Journal of International Law, 1996, 481-532; Current Trends in European International Law Publications, European Journal of International Law, 1998, 553-573 and, International Lawyer: Towards Conceptualization of the Changing World of Practice, in: "The Future of the Legal Profession", special edition European Journal of Law Reform, Vol. 2 Issue 4, 2000, and book.

[5] See Jens Drolshammer, Ein didaktisches Experiment an der Universität St. Gallen und ein Plädoyer für eine transaktionale Lehrmethode im modernen Wirtschaftsrecht, in: Solothurner Festgabe zum Schweizerischen Juristentag 1998, Solothurn 1998, 391-411

[6] During the Fellowship at Harvard Law School in 1999, the author started writing a series of texts under the working title "The Changing International Practice of Law – Aspects of the International Compatibility and Competitivity of Legal Systems, Legal Professions and Legal Educations". Thereafter, he acted as co-editor of the special edition of the European Journal of Law Reform with the title "The Future of the Legal Profession", a collection of texts, in which he authored or co-authored various texts himself which relate to the topic dealt with in this book; out of that he edited a larger collection of texts "The Internationalization of the Practice of Law", which included the texts in the special edition of the European Journal of Law Reform.

[7] Jens Drolshammer, 93. Jahrestagung der American Society of International Law (March 24-27, 1999, Washington D.C.) "On Violence, Money, Power and Culture: Reviewing the Internationalist Legacy" – ein Tag nach Pinochet und Kosovo – Bericht, Beobachtungen und Fragen zum Stand der Internationalität der amerikanischen Befassung mit internationalem Recht, in AJP August 1999, 1030-1036; Jens Drolshammer/Detlev Vagts/ Peter Murray, Mit Prozessieren den Holocaust bewältigen? Die Rolle des Zivilrechts und Zivilprozesses beim Versuch der Wiedergutmachung internationaler Katastrophen, in ZSR Band 118, 1999, I. Halbband, Heft 5, 511-

In the context of the third stage of the author's professional career, this substantial text represents a Peer-Gynt-like extra-curricular quest to describe the requirements of an "international lawyer" and "international manager" in the context of the "international practice of law". It is closely related to the contribution to the St Gallen commemorative text at the *Juristentag 2000, `Amerika gibt es nicht' – Tendenzen einer Amerikanisierung der Rechtsordnung, Rechtsberufe und Rechtsausbildungen in der Schweiz – eine Agenda für eine Umgangsstrategie* ("America does not exist" – Tendencies for an Americanization of the Legal System, Legal Professions and Legal Education),[8] and is essentially based on the observations, as well as frustrations, of the author during the course of his various professional activities – all in the field "international practice of law", as well as law and management.

Following its separation from an originally American law firm which was, from an historical perspective, the first "international law firm" with global ambitions in the wake of the increasing market focus and internationalization of the "international practice of law" (essentially its Americanization), the author's law firm is now in many respects a neo-liberal, technocratic and entrepreneurial organization.

Based on this personal "situationality", the text contains various elements originating from a specific prior understanding, and which are also set out below by way of introduction:[9]

528; Jens Drolshammer, Internationales Recht aus amerikanischer Sicht – Dissonanzen in der transatlantischen Kommunikation – die USA auf dem Wege zur rechtlichen Grossmacht? in Anwaltsrevue 11-12/1999, 9-12; Jens Drolshammer, Mit Prozessieren den Holocaust bewältigen? Bericht über eine Diskussion an der Harvard Law School, Neue Zürcher Zeitung (NZZ) Nr. 121, May 29, 1999, 22; Amerikas Umgang mit internationalem Recht – Jahrestagung der American Society of International Law, NZZ Nr. 124, June 2, 1999, 5.

8 Jens Drolshammer, 'Amerika gibt es nicht' – Tendenzen einer Amerikanisierung der Rechtsordnung, Rechtsberufe und Rechtsausbildungen in der Schweiz – eine Agenda für eine Strategie, St. Galler Festschrift zum Schweizerischen Juristentag, Zurich 2000

9 Starting points of these considerations are contained in the following text contained in the above mentioned working document for the planned collection of essays: "This essay has its origin in a growing puzzlement and discomfort of the author as a practitioner and professor adjunct to the law school of a modern university with a particular focus on the economy limiting itself primarily to economics, management and law The author is more and more confronted with a widening gap between what both sides argue «theory» and «practice» and with a growing dissatisfaction and even alienation between various departments taught at a university as well as between the respective professionals such as managers, economists and lawyers in practice. In sophisticated practice the author is confronted with the growing need to command over an integrative, interdisciplinary and international view, knowledge and skills and to work with other service providers, be they management, economics or communication consultants jointly in the discharge of his professional duties in everyday professional reality. He is confronted with difficulties of communication and cooperation and with specific consequences of a missing understanding of the function of law and lawyers with the decision-makers in management process. In sophisti-

- Within the meaning of the above reflections of ALFRED NORTH WHITEHEAD,[10] the text assumes a traditional academic aim of university education *and* training, supplemented on an instrumental basis, and on knowledge and activity, whereby this aim is to be achieved both in teaching and in research and consulting.[11] The aim thereby is to redefine the relationship between theory and practice in such a manner that today's requirements in the context of the "international practice of law" are better met in the difficult area of law and management.
- Besides the international expansion of trade, "globalization" also entails the influence of economics on international politics and international relations [12] and thus specifically the increasing importance of economics.
- Reform of legal training with a specific professional relevance need not necessarily lead to business and economics taking over legal schooling or training, by which JÜRGEN MITTELSTRASS[13] understands an increased focus on economic aspects, including structural and organizational facts, and also imposes corresponding duties on educational facilities, which would mean the transition from a pure educational paradigm to a business and economic paradigm.
- *With specific reference to business and economics*, this text comprises an overall view of law and management and the professional activity of the "legal practitioner" and "manager", whereby it should be noted that, neither in the teaching of law nor management is there any institutionalized, integrative or

cated teaching at the university the author is confronted with a lack of interest and institutional barriers to integrate law, economics and management in transactional teaching even in those specific transactions in which in reality specialists have been working together to solve the specific problems and issues. He moreover is confronted with an underdeveloped understanding in theory as to how the three dimensions of social science are related. The purpose of the essay is to show in a provocative sketch the need of a more integrative, interdisciplinary and international view and perspective between the three social sciences in research, teaching and practice as seen by a lawyer. The need is particularly evidenced by the declared intent to redefine the relation-ship between theory and practice and to redefine the relationship between so-ciety and in particular between the economic world and the university. The need is also evidenced by the fact that in the service industry modern forms of consulting are being developed which lead to a much closer cooperation between law, economics and management sciences. The essay argues that the universities often limit themselves to pay lipservice to the suggested integration and thus forego an important chance and responsibility to include these issues in a credible manner into the curriculum."

10 Alfred North Whitehead, Essays in Science and Philosophy, New York, Philosophical Library Inc., 1947, 218-129.

11 The University of St. Gallen, besides "teaching" and "research", "consulting" belongs to its core competencies and is also part of its mission statement.

12 Curt Gasteyger, Zurück zur Strategie, Sicherheitspolitik in einer neuen weltpolitischen Lage, NZZ , June 22, 2000, Nr. 143.

13 NZZ, July 6, 2000, Nr. 155

interdisciplinary engagement with this relationship and that no methodology is available for examining, understanding and evaluating the phenomenologically acknowledged transformation in the field. However, we may assume that, at the very top of business management, there is a need for more thorough knowledge of the relationship between law and management and the relevant players, since as a result of globalization, the legal framework for key areas of business activity has dramatically changed. The increasing legalization of business/entrepreneurial activities which, because of internationalization, entails simultaneous applicability of several legal systems, and the new challenges to the cognitive, emotional and cultural intelligence of these "players" have fundamentally altered the significance of law for the upper echelons of management in various ways.

- The text considers the *vital Anglo-Saxon, and particularly American, influence* on legal culture, in particular on the "international practice of law", and gives as much weight to the phenomenon of the Americanization of our legal culture as to its Europeanization.[14] The *sedes materiae* of the spread of American legal culture lies in the increasing hegemony of the United States in an ever more globalized world. Naturally, this trend cannot be held solely responsible for the occurrence of globalization and its effects; authoritative observers take the view that it would take place even without the influential position of the United States. In practice however, the trend towards Americanization dominates, and its far-reaching effects and intensity are further accentuated by the development of the information society. The increasing US dominance observed in international relations, both in foreign and security policy, in the economy and the information society is also influencing the law, legal training and the legal professions. This is true above all with regard to the "international lawyer" and the "international manager".
- First and foremost the text discusses the "international practice of law" and the key role played by the "international lawyer" in private-autonomous planning and structuring of legal relations and legal transactions within the framework of globalization. With this in mind, the text urges a shift of emphasis from the traditional "decision-based practice of law" to a "creative" or "action-based practice of law", while stressing that the value of other professional legal functions, such as that of a judge or court official, as well as forms of legal training based on traditional legal principles, should on no account be demeaned or undermined.
- Since the text takes a *personalized approach*, the "international lawyer" and the "international manager", i.e. the "people", as "players", are the focus. This

[14] Jens Drolshammer, «Amerika gibt es nicht», FN 8.

reflects one of the principal currents in international legal theory after post-modernism,[15] whereby the text draws on the work of MARTI KOSKENNIEMI, who bases his work on "re-establishing the identity of international law by re-establishing that of the international lawyer".[16] Following OUTI KORHONEN, the approach is expanded with the aid of a "Situationality Analysis" of the "International Commercial Lawyer": situationality does not proceed from hypothesis or blueprints of juridical methodologies but motivates the lawyer to examine their profession from their individual and unique standpoint in a systematic way."[17] This forms the basis for conceptualizing the role of these "players"[18] in a general perspective on law and management, in which the "legal practitioner" supplies the basis for legal decision-making and principles of conduct in each individual case, and the "manager" is responsible for realization in a business context. This, in our view, represents a promising approach to supplementing the "decision-based practice of law" by "creative" and "action-based practice of law ".

- At the focus of attention is a reality and effectiveness-oriented perspective on the *international legal process*, with an emphasis on legal realization.
- In this document, *those players principally involved in training and research* – by no means only the universities – are treated jointly as a *network*. The interaction of these players is laid down neither by the state nor the university itself, but arises instead from a "public-private partnership" which administers itself – in the present case, an "international public-private partnership" – committed to the realization of consensually-determined "common interests". In view of globalization, and above all the formation of an information society and the planned linkage of training and research, one might also speak of a *"project collective"*.
- As an example of Continental European legal education, the text is predominantly focused on the training in Switzerland of international lawyers working in business and management. It looks at the roles of the international lawyer and international manager and aims at an overall view of the "players" involved in structuring and realizing the law in the field of law and management. It looks at the activities of teaching and research; by basing itself on the notion of the network, it is not limited in terms of time, subject matter and training

[15] Andreas L. Paulus, International Law after post-modernism, paper presented at the Workshop on New Scholarship in Public and Private International Law, The Hague, July 23, 2000.

[16] Martti Koskenniemi, From Apology to Utopia, 1989

[17] Outi Korhonen, International Lawyer, towards Conceptualization of the Changing World and Practice, in Jens Drolshammer/Michael Pfeifer, ed., European Journal of Law Reform, Vol. 2 Issue 4, 2000 and in Jens Drolshammer/Michael Pfeifer, ed., The Internationalization of the Practice of Law, Kluwer Law International 2001

[18] ore extensive under 4.8

contexts to preliminary university training and research, or indeed training at business school.

- Solutions will be proposed to the question of how universities might deal with the transformation triggered by globalization, and how they might reposition themselves. However, in this context, the intention is not to replace the existing training approaches, but to supplement them. Within the framework of this document, "internationalization" in the field of training and research also means that developments abroad are noted and taken into account, with the result that international lawyers trained in Switzerland are also able to practice worldwide and are thus "interoperable" and "compatible". Besides training international lawyers, there is also a need to create and run training and research institutions which are internationally "interoperable" and "compatible", and which make a network-compatible and useful contribution to the cooperation between training and research institutions within the network, both at home and abroad. In this context, the term "internationalization" – from "above" and "outside", and to some extent also from "below" – is used in the text to refer to a change of perspective to a perspective from the next level up in the emerging international community in the fields of law and management. Ultimately, "internationalization" also means a stance that is able to accommodate the new realities and engage with them, even if some lack of clarity still prevails regarding the changes taking place. The aim is to change the status quo in so far as this is justified on intellectual, emotional and cultural grounds which, in turn, are supported by "state-of-the-art" knowledge and opinions.
- The text takes an integrative, interdisciplinary and international approach and primarily uses the method of modularity. It does not postulate a coherent and complete system of re-orientation for legal training, but lays the foundation for further discussion.
- Assuming that the will to act and create is there, the text postulates the basic feasibility of structuring teaching and research in the field of the law, also for Switzerland. In this sense, it is future-oriented, aimed at effecting change, and indulges in an action-oriented engagement with a focus on "agenda setting". The text aims to inspire creative change, and the hope is that the winds of change which are currently carrying forward ideas for reform in Switzerland will support this ambition, even though ideas have not yet been set down in black and white, let alone discussed.
- The text cautions that the New Economy, the Internet and the information society may introduce discontinuity into the process of change, which might fundamentally change the international practice of law and both teaching and research in a manner as yet indiscernible; accordingly, this document is a draft in the sense of being work in progress.

The disclosure of perspectives often based on personal "situationality" may contribute to identifying their limitations and "blind spots".[19]

In terms of its nature, the text is an essay; in terms of style, it is a view into the kaleidoscope of "globalization", and a collage of interrelated "*object trouvés*". The dual professional burden as both teacher and practitioner of law makes for isolation in this field, as there are scarcely any teachers in higher education,[20] or

[19] David Kennedy, The Disciplines of International Law and Policy, Leiden Journal of International Law, Vol. 12, 1999, 9 ff., especially 6.7 On avoiding disciplinary blind spots and bias, 131 ff.

[20] See among others P. Gauch, Über die Ausbildung der Juristen, in Festgabe 150 Jahre Obergericht Luzern, Bern 1991, 123-152; Th. Cottier, Die Globalisierung des Rechts – Herausforderungen für Praxis, Ausbildung und Forschung, ZBJV 1997, 217-241; J. Drolshammer, Der Einfluss des EG-Rechts und der Beziehungen Schweiz/EG auf die praktische Tätigkeit von Schweizer Juristen, in Aktuelle Probleme des EG-Rechts nach dem EWR-Nein, Zürich 1993; M. Lendi, Rechtsunterricht an Technischen Universitäten, neue Anforderungen an den Unterricht (Speech of October 24, 1997 at the occasion of the 25th anniversary of the Institut für Rechtswissenschaft of the TV Vienna); E. Höhn, Wie grau ist die Theorie? Gedanken zum Verhältnis von Doktrin und Praxis in der Jurisprudenz, erweiterte und überarbeitete Fassung der öffentlichen Abschiedsvorlesung als Ordinarius für öffentliches Recht an der Hochschule St. Gallen vom 25. Januar 1994, AJP/PJA 1994, 411-423; G. Arzt, P. Caroni, W. Kälin, ed., Juristenausbildung als Denkmalpflege? Berner Ringvorlesung 1992 aus Anlass der Reform des juristischen Studiums: Gunther Arzt, Strafrecht: ein dogmatischer Tyrannosaurus Rex? Pio Caroni, Die andere Evidenz der Rechtsgeschichte, Bruno Huwiler, Römisches Recht und juristisches Studium, Walter Kälin, Internationales Recht als Studienfach, Karl-Ludwig Kunz, Die traditionell vernachlässigten Fächer am Beispiel (nicht nur) der Rechtstheorie, Peter Locher, Steuerrecht im Rahmen der juristischen Ausbildung, Jörg Paul Müller Staatsrecht in der juristischen Ausbildung, Roland von Büren, das Handelsrecht, Wolfgang Wiegand , Zur Funktion und Bedeutung des Privatrechts – Bemerkungen aus Anlass einer Studienreform, Ulrich Zimmerli, Verwaltungsrecht, Bern Stuttgart Wien 1994; E. Kilgus, "Steht die Wissenschaft mit dem Leben im Widerspruch, hat stets das Leben recht", speech of the Dean, at the occasion of the 162nd anniversary of the foundaton of the University of Zurich, April 29, 1995; Bernhard Schnyder, "Ach Gott, Ich bin nicht mehr Dozent", Farewell Lecture, Freiburg 1997; Daniel Thürer, Universitas in theologia – theologia in Universitas, In Festschrift für Hans Heinrich Schmid zum 60. Gebrutstag, Zürich, 1997, 81-102; Gérard Hertig, Juristen an den ETH, in Das Recht in Raum und Zeit, Festschrift für Martin Lendi; Jens Drolshammer, Ein didaktisches Experiment an der Universität St. Gallen und ein Plädoyer für eine transaktionale Lehrmethode im modernen Wirtschaftsrecht, in Festschrift zum Schweizer Juristentag 1998, Solothurn 1998, 391-411; Jens Drolshammer, Der Rechtsanwalt als Hochschullehrer? in Schweizerisches Anwaltsrecht, Festschrift 100 Jahre Anwaltsverband, Bern 1998, 531-546; Jean Nicolas Druey, Der juristische Lehrplan im Jahre 2050, in Die Zukunft des Rechts, Forschungsgespräch der Rechtswissenschaftlichen Abteilung anlässlich des 100-Jahr-Jubiläums der Universität St. Gallen im Juni 1998, ed. Christian J. Meier-Schatz, Beiheft 28, Zeitschrift für Schweizerisches Recht, 1999, 227-238; Benôit Chappuis, Formation et Globalisation: un nouveau défi pour les juristes suisses, ZSR NF 119, Basel 2000, 435-447; Rolf Dubs, Wirtschaftswissenschaften im juristischen Studi-

lawyers, who have sufficient time, inclination, interest or cause to engage in any depth with the consequences of globalization in the field of legal training and research for the international lawyer and international manager working in business and management. *The following text represents a contribution to the proposed conceptualization of these emerging professional roles both from a general international perspective and, in particular, from a European one.*

um: Ihr Stellenwert und ihre Einordnung, ZSR NF 119, Basel 2000, 411-434; Peter Murray/Jens Drolshammer, The Education and Formation of a New International Lawyer, in Jens Drolshammer/Michael Pfeifer, ed., European Journal of Law Reform, Vol 2, Issue 4, 2000 and in Jens Drolshammer/Michael Pfeifer, The International Practice of Law – the Swiss Experience, in The Tulane European & Civil Law Forum, 2000; Jean Nicolas Druey, Wirtschaftsrecht – leben und lehren, Farewell Lecture of June 6, 2000, University of St. Gallen; Walter A. Stoffel, Les Professions Juridiques et le Droit Comparé en Suisse, Revue Internationale de Droit Comparé, 1994, 761-773; L'enseignement du Droit Comparé en Suisse, Revue Internationale de Droit Comparé, 1988, 729-735; Fridolin M.R. Walther, Die Digitalisierung des Rechts, Gedanken zur Zukunft der juristischen Ausbildung und Praxis anlässlich der Jahrtausendwende, recht 2000.

2 New Challenges for the Science and the Practice of Law in Connection with the Growing Interdependence of the World Economy

Introduction

The following will be a discussion of the effects of globalization on the international practice of law and the international lawyer. Issues relating to teaching and research in law and management cannot be considered without first making an assessment of the current context.[21] Globalization is already having a substantial effect on the Swiss economy, although the consequences of this for the Swiss legal system and legal education have yet to be investigated fully.[22] The papers presented at the *Juristentag 2000* (Lawyers' Conference 2000) represented a turning point in this respect. The first step must be to arrive at a working definition of the phenomenon of "globalization".[23] The term is used here primarily to

[21] In that context it is striking, that the present discussions of the study reform at the University of St. Gallen contain a much shorter and less sophisticated analysis of the needs of the study reform in the area of law compared to the areas of management science and economics.

[22] The effects of globalization on the Swiss legal system have not been analysed in depth yet. Exceptions are publications of THOMAS COTTIER, Die Globalisierung des Rechts – Herausforderung für Praxis, Ausbildung und Forschung, ZBJV 1997, 217-241, and DANIEL THÜRER, Globalisierung der Wirtschaft: Herausforderung zur "Konstitutionalisierung" von Macht und Globalisierung von Verantwortlichkeit oder: Unterwegs zur "Citizen Corporation"?, Forumsbeitrag in ZSR 119 I, 2000, 117 ff.; DANIEL WÜGER, Globalization – Challenges to Constitutions – the Case of Treaty Making, Schweizerische Zeitschrift für Politische Wissenschaft Vol. 4 (1998), Issue 2, 111-119. Of further interest are texts concerning international economic law by THOMAS COTTIER: The Challenge of Regionalization and Preferential Relations in World Trade Law and Policy, European Foreign Affairs Review 2, 1996, 149-167; The Impact of New Technologies on Multilateral Trade Regulations and Governance, Chicago Kent Law Review, Volume 72, 1996, 415-436; Handlungsspielräume und Zwangslagen der Schweiz in den internationalen Handelsbeziehungen; Dispute Settlement in the World Trade Organization: Characteristics and Structural Implications for the European Union, Common Market Law Review 35, 1998, 325-378; the Annual Meeting of the Swiss Lawyers' Association in the year 2000 at St. Gallen adds some new perspectives, see KARL HOFSTETTER, Globalisierung und Wirtschaftsrecht, ZSR, NF 119, 289-312, Basel 2000; HEINRICH KOLLER, Globalisierung und Internationalisierung des Wirtschaftsrechts – Auswirkungen auf die nationale Gesetzgebung (einige Thesen), ZSR, NF 119, 519-566, Basel 2000; SHELBY DU PASQUIER, Formation et Globalisations, un nouveau défi pour le juriste suisse, ZSR, NF 119, 435-447, Basel 2000; ANTON K. SCHNYDER, Wirtschaftskollisionsrecht als Regelungsinstrument für eine internationale Wirtschaft, ZSR, NF 119, 463-476, Basel 2000.

[23] See TONI M. FINE, The Globalization of Legal Education in the US, in JENS DROLSHAMMER/MICHAEL PFEIFER, ed., European Journal of Law Reform, Vol. 2 Issue 4, 2000, under I. Theoretical Underpinnings: The Need for a Global Legal Education, "As the word itself implies,

globalization is a ubiquitous term ("It is hard to escape talk of globalization. Globalization is, by definition, everywhere. It is big. All else pales in comparison, and, according to the prevailing view, it is ineluctable. Whether globalization is as encompassing and inevitable as imagined may be less important than that perception, and its ability to affect policy and action. This is evident in the fated meeting of globalization talk and legal education reform." ADELLE BLACKETT, Globalization and Its Ambiguities: Implications for Law School Curricular Reform, 37 Colum, J. Transnat'l Law 57, 58, footnotes omitted (1998); "Let's cut to the chase. Globalization is both hype and an inescapable reality. Either way it can be scary. For no matter how you slice it, the bottom line is that globalization – real or perceived – is altering how business is done and hence how we, as in-house legal professionals, need to service such business." GABE SHAWN VARGES, Coping With Global Angst: Five Practical Prescriptions, 17 No. 4 ACCA Docket 20 to 17 No. 4 ACCA Docket 20, 34. As one author has stated, "Globalization has replaced the Cold War as the unifying theme of our era.... It has the potential to define the twentieth century and even the next millennium.... It is hard to read the news without finding a politician, business leader, or pundit commenting on this trend." ALFRED E. ECKES, THOMAS L. FRIEDMAN, The Lexus and the Olive Tree: Understanding Globalization, 9 Minn. J. Global Trade 132, 132 – 33 (2000). Globalization has also been described as "the process of denationalization of markets, laws and politics in the sense of interlacing peoples and individuals for the sake of the common good. While science and communications have fostered a global economy they have also complicated the adoption and enforcement of legal rules, creating new problems for international lawyers." STEPHEN ZAMORRA, NAFTA and the Harmonization of Domestic Legal Systems: The Side Effects of Free Trade, 12 Ariz. J. Int'l & Comp. L. 401, 405-06 (1995), QUOTING JOSE DELBRUCK, Globalization of Law, Politics, and Markets – Implications for Domestic law – A European Perspective, 1 Ind. J. Global Legal Studies 9, 11 (1993). New York Times columnist Thomas Friedman observes that globalization is eradicating "the traditional boundaries between politics, culture, technology, finance, national security and ecology." THOMAS L. FRIEDMAN, The Lexus and the Olive Tree: Understanding Globalization 15 (1999)) used by everyone and understood by nearly no one ("At the heart of the ambiguity of globalization lies one simple question: 'What is it?' However, its terrain may well be too multifaceted and contested to be reduced to a unifying definition that captures anything more meaningful than the externalization of matters that were once considered to be purely national." ADELLE BLACKETT, Globalization and Its Ambiguities: Implications for Law School Curricular Reform, 37 Colum, J. Transnat'l Law 57, 60 (1998)). Globalization is most often thought of as the movement towards an increasingly small and interdependent world in which legal issues and transactions more and more transcend national boundaries (The term globalization as a succinct expression of process, still captures – better than any other single term I know – the awesomeness of the profusion of forces being unleashed by the advances in technology, travel, and political and economic liberalization. It connotes powerfully the notion that more industries, companies, and professions (including in-house counsel) can increasingly expect their fate to be influenced, if not shaped, by factors beyond the parameters of their own countries and regions, and suggests that these factors are likely to be so interconnected and fast moving as to be beyond the control of any single nation, let alone company, industry, or profession. And it hints thus that success in the years ahead will be increasingly about leveraging – and not sidestepping – these momentous developments. GABE SHAWN VARGES, Coping With Global Angst: Five Practical Prescriptions, 17 No. 4 ACCA Docket 20 to 17 No. 4 ACCA Docket 20, 34 (footnotes omitted)). Given these realities, the need for a global legal education is well recognized today. While there may be no real challenge to the growing need for changes in legal education to better prepare students for the changing world wrought by globalization, there is no consensus as to what constitutes a global legal education or an obvious approach to teaching law on a global basis.

describe the process of the increasing interdependence of the world's economy, but its meaning can be wider than that and include the internationalization of all areas of life, i.e. of economic, political, social and cultural relationships. Globalization has been brought about not just by economic factors but also political, technological and socio-cultural ones.[24] A series of quite revolutionary technical developments, including those in transport, communication and information technology have created a remarkable scope for their application. The dissolution of political blocks as well as the growth of new institutions such as WTO, EU, NAFTA, and MERCOSUR have facilitated contact across national borders. Because these factors have coincided, they have brought about a dynamic never previously experienced, which is having an effect, not just on industrial nations but also on almost all other countries. Most recently, the situation has been altered in a remarkably positive respect by factors most easily summarized under the general headings "information society" and "New Economy". The following analysis of the status quo focuses principally on the international lawyer and on international law firms and is made mainly with a view to the repositioning and refocusing of training and research in the fields of law and management. The perspective is then further narrowed down to the issue of whether the developments brought about by globalization will lead to an "internationalization" of legal practice, training and research. In section 2.1 we describe the internationalization of law and the effects of this on lawyers in international practice. Section 2.1.1 covers the change and growth of the international practice of law. Section 2.1.2 deals with changes in the relationship between the international practice of law and management. Section 2.2 describes *the main elements of the change in the international practice of law, insofar as they are being brought about by a tendency for Americanization.* Section 3.1 describes the current situation of teaching for the international practice of law and the challenges facing a legal practitioner in the international practice of law. The question is raised as to what knowledge an international lawyer can and should have for the international practice of law. Such discussions as there have been about the change in Switzerland are set out in section 3.1.4, which then goes on to ask, by way of a "flash back", what has actually happened? And what have been the effects of this change? These trends are described in section 3.2 by way of a "look forward" in order to provide a realistic context for the discussions that follow in respect of teaching (in section 3.3) and research (in section 4) for the international practice of law. The intention is to derive from this what the necessary and desirable elements for legal teaching and research would be. The text primarily deals with the Swiss system of legal educations by way of example and is written from a European perspective. It lays the

[24] Modelled on a description of Schweizerische Industrieholding (Industry Association), see Jens DROLSHAMMER/MICHAEL PFEIFER, Vollbeitritt, 900.

groundwork for facing up to the demands of internationalization, in particular for developing answers to the ever growing influence of tendencies for the Americanization of legal systems, legal professions and legal educations in the area of the international practice of law.

2.1 The Internationalization of Law and its Effects on the Activities of Lawyers in the International Practice of Law[25]

2.1.1 The Changes and Growth of the International Practice of Law

Over the last 30 years greatly increased international communication, commerce and financial transactions have expanded the demand for legal services which cross national borders and involve multiple legal systems and regimes. The international practice of law has become an important and growing branch of the legal profession in the leading commercial states of Europe, the Americas and Asia. The following comments and observations are written primarily from a European perspective.

Over this period, international legal practice has grown from an obscure specialty to a robust field of professional endeavor for lawyers in many of the world's developed economies. The number, variety and size of international business transactions currently carried out by firms all over the world on a daily basis in the late 1990's eclipses the levels seen as recently as a decade before. Scarcely any firm of

[25] The text under 2.1 relies on and partially cites from the text PETER MURRAY/JENS DROLSHAMMER, The Education and Training of a New International Lawyer, which appeared in Jens Drolshammer/Michael Pfeifer, ed., European Journal of Law Reform, Vol. 2 Issue 4, 2000 and in Jens Drolshammer/Michael Pfeifer, The Internationalization of the Practice of Law, 2001. The author thanks Peter Murray for his consent to reproduce qualified and partially cited passages of the text; a part of the text under 2.1.1 is based upon presentations of the speakers Beat Hess, ABB, Hans Peter Frick, Nestlé, Horst C. Dengler, Procter & Gamble, John Edwards, Michael Pfeifer and in particular Michael Oppenhoff, at the In-house Counsels' day of block 8 Legal Profession of the Executive Master of European and International Business Law of the University of St. Gallen; the text under 2.2 is based upon statements of the author in a presentation in front of the Swiss Re Group Legal Conference 1999 "Sailing with the Winds, Leading Trends in International Legal Practice". The majority of the part on the effects of American legal culture are contained in "Amerika gibt es nicht" – Tendenzen einer Amerikanisierung der Rechtsordnung, Rechtsberufe und Rechtsausbildungen in der Schweiz – eine Agenda für eine Umgangsstrategie, St. Galler Festschrift zum Schweizerischen Juristentag, Zürich 2000.

any size in Europe or North America can conceive of ongoing business without reference to international markets and international competition.[26]

Deregulation and liberalization of national economies has been accompanied by international mergers in very diverse sectors. The variety of different forms of international business combinations can boggle the imagination. In Europe the internationalization of business has been mightily spurred on by the course of European unification A recent trend of great import to the international business scene has been the prevalence of international business alliances of every description, in which business entities contract short or long-term partnerships, joint ventures and other joint relationships to complete a particular project or exploit a particular market.[27]

Along with the growth in international business transactions and relationships, there has been an inevitable increase in the number of disputes over these transactions and relationships. Manufacturers of products sold worldwide face worldwide product liability exposure.[28] Litigants in many lands are no longer shy about asserting claims against foreign firms for restitution under local law.[29] Transnational litigation and international arbitration are growth industries.

[26] See e.g. Neue Züricher Zeitung Fokus, May 1999, devoted entirely to globalization in business, economic and cultural affairs; G. BOXBERGER/H. KLIMENTA, Die 10 Globalisierungslügen, Munich 1998, with additional references to literature on the merits of globalization/the terror of the economy/the globalization trap/the myth of the world market; HARTMUT BERG (ed.), Globalisierung der Wirtschaft: Ursachen – Formen – Konsequenzen, Schriften des Vereins für Sozialpolitik, Vol. 263, Berlin 1999; C. CHRISTIAN VON WEIZSÄCKER, Logik der Globalisierung, Göttingen 1999; JÜRGEN HABERMAS, Die postnationale Konstellation, Frankfurt a. Main 1998, 65 ff.; ULRICH BECK, (ed.), Politik der Globalisierung, Frankfurt a. Main 1998; the same, Was ist Globalisierung?, Frankfurt a. Main 1997; DANIEL THÜRER, Globalisierung der Wirtschaft: Herausforderung zur 'Konstitutionalisierung' von Macht und Globalisierung von Verantwortlichkeit Unterwegs zur 'Citizen Corporation'?, ZSR Vol. 119 I, 2000, 107 ff.; in English language see e.g. THOMAS FRIEDMAN, The Lexus and the Olive Tree, New York, 1999; DAVID HELD/ANTHONY MCGREW/DAVID GOLDBLATT/JONATHAN PERRATON, Global Transformations, Politics, Economics, Culture, Stanford, 1999; ANTHONY GIDDENS, Runaway World, How Globalization is Reshaping our Lives, New York, 2000.

[27] See JULIAN GRESSER, Strategic Alliance Mediation Creating Value from Difference and Discord, in Jens Drolshammer/Michael Pfeifer, ed., European Journal of Law Reform, Vol. 2 Issue 4, 2000 and book.

[28] Manufacturers of silicon breast implants sold worldwide are embroiled in worldwide litigation and are seeking worldwide settlement of claims by citizens of many countries. Other well known current examples include international air crash litigation against Swissair and TWA, consumer class action cases against BMW and Roche, the Microsoft antitrust case with international implications; international patent litigation involving the Biogen patents; international fraud claims against BCCI. Overviews of the most prominent ongoing transnational litigations are found in the specialized publications of the International Legal profession.

[29] An example of this form of transnational litigation is the "holocaust claims" being asserted in American and European courts against German and international firms based on alleged mis-

This internationalization of business activity and dispute resolution has been accompanied by internationalization of the lawyers who serve business and resolve business disputes. Major law firms based in London, Frankfurt and New York have gone far beyond the diffident branches and correspondent relationships of two decades ago, to become worldwide networked enterprises with partners and major offices in many lands.[30] English, and to a lesser extent, American firms have emerged as early leaders in this globalization trend.[31] At the same time, multinational companies and businesses have increased the size and international reach of their in-house legal staffs. A recent development on the international scene which is causing concern, if not consternation, on the part of the traditional legal profession, is the incursion of the mighty "Big Five" international accounting and management consulting firms, with massive multinational legal staffs into areas of professional practice formerly considered the preserve of the legal profession.[32]

conduct arising out of the Holocaust; see DETLEV VAGTS/JENS DROLSHAMMER/PETER MURRAY, Mit Prozessieren den Holocaust bewältigen? Die Rolle des Zivilrechts und Zivilprozesses beim Versuch der Wiedergutmachung internationaler Katastrophen, Zeitschrift für Schweizerisches Recht, NF Volume 118, 1999, 541-528; BURKHARD HESS, Entschädigung für Zwangsarbeit vor US-amerikanischen und deutschen Zivilgerichten, Die Aktiengesellschaft 1999, 145-154 and in Newsletter of the Deutsch-Amerikanische Juristenvereinigung, Nr. 2 1999, 33-39; MICHAEL J. BAZYLER, Nuremberg in America: Litigating the Holocaust in United States Courts, 34 University of Richmond Law Review 1 (2000).

30 See JENS DROLSHAMMER, The Future Legal Structure of International Law Firms – Is the Experience of the Big Five in Structuring Auditing and Consulting Organizations Relevant?, in Jens Drolshammer/Michael Pfeifer, ed., European Journal of Law Reform, Vol. 2 Issue 4, 2000; Special Issue Global Boom, The American Lawyer, November 1998; Lawyers Go Global, The Battle of the Atlantic, The Economist, February 26, 2000; Surviving in the New Europe: Strategies for European Firms, in: European Counsel, March 1998, 31. The new "global" law firms incorporate such elements as offices in the most important European jurisdictions dispensing both international and national legal services, teams of employees with dual competences (international law and national law specialists) and integrated networks of branches providing the ability to exchange teams relating to individual projects.

31 See JAMES L. HESKETT, Managing in the Service Economy, Harvard Business School Press Boston 1986; JAMES L. HESKETT/LEONARD A. SCHLESINGER, Out in Front, Building High Capability Service Organizations, Harvard Business School Press Boston 1997; JAMES L. HESKETT/W. EARL SASSER JR./LEONARD A. SCHLESINGER, The Service Profit Chain, New York 1997; DAVID H. MAISTER, Managing the Professional Service Firm, New York 1993; the same, True Professionalism, The Courage to Care About your People, your Clients and your Career, New York 1997, STEPHEN MAYSON, Making Sense of Law firms, Strategy, Structure and Ownership, London 1997; MARK C. SCOTT, The Intellect Industry, Profiting and Learning from Professional Service Firms, New York 1998. Swiss publications in this field e.g. are rare and suffer from the fact that due to the predominance of the English language in this field, they are not taken note of in their German form; see e.g. GÜNTER MÜLLER-STEWENS/JENS DROLSHAMMER/JOCHEN KRIEGMEIER, Professional Service Firms, Frankfurt 1999.

32 See e.g. ARNDT RAUPACH, Globalisierung Full Service-Concept und Multi-Disciplinary Practices auf dem Beratungsmarkt, Anwaltssozietäten auf dem Weg zur Internationalisierung, internationale Wirtschaftsprüfungsgesellschaften auf dem Weg zum Global Legal-Service, in Der Fachanwalt für Steuerrecht im Rechtswesen, Festschrift, 13-49. On the legal issues concerning Multidisciplinary Practices, see Preserving the Core Values of the American Legal Profession, The Place of Multidisciplinary Practice in the Law Governing Lawyers, Report of the New York State Bar Association Special Committee on the Law Governing Firm Structure and Operation, Albany, New York, April 2000; on the recommendations of the New York Bar Association on MDP see SIDNEY M. CONE III, The Future Debate on Multidisciplinary Practice in the United States, in Jens Drolshammer/Michael Pfeifer, ed., European Journal of Law Reform, Vol. 2 Issue 4, 2000 and book.

The trend toward internationalization of business and legal practice, which has characterized the last two decades, does not appear likely to reverse or abate in the near future. Improvements in communications, the dismantling of financial and currency barriers, and the waning significance of language impediments, with the widespread adoption of English as a world language of business, will do nothing but hasten the process of internationalization of business, financial and commercial activity. "International legal practice" will become an ever greater component of lawyers' professional activity in practically every part of the world, but particularly in Europe, North America and East Asia, where both major business enterprises and major legal resources are currently concentrated.[33]

Over the last 30 years in Europe the Bar, as perceived by the public and by its own membership, has evolved from an organ of the public administration of justice to a market-oriented service provider. In the "good old days" the degree of specialization was low and the lack of business understanding and judgment widespread. Law firms were small units in locally structured markets. The markets were well protected and were partly competitive.[34] At that time, the national economies were regionally fractured around small and mid-size markets, usually around dominating centers: the economy was largely made up of mid-size and family-owned enterprises, the importance of the financial sector was small and legal matters generally were undervalued by the business community.

As a consequence of this situation, up until the 1980s, the major industrialized firms had large legal departments with a high degree of specialization. They retained in-house counsels as specialists, particularly in litigation. The mid-size enterprise went for a personal, long-term and loyal consulting relationship. The

33 See the following US and British publications specialized in the international practice of law, which usually appear on a monthly basis: International Journal of the Legal Profession; Lawyer International, The Legal Business Briefing on International and Emerging Markets; Legal Business; The American Lawyer; European Corporate Lawyer; European Counsel; Commercial Lawyer, London; International Legal Practitioner, International Bar Association, London; International Business Lawyer, International Bar Association, London; the New York Times, The Wall Street Journal and The Financial Times are at the forefront of reporting on the international practice of law on a daily basis.

34 We largely follow a line of argument presented by M. Oppenhoff in block 8, Legal Professions, of the Executive M.B.L.-HSG, see FN 85.

international practice of law was heavily focused on incoming investment and on trade relations. This led to the concentration of a few internationally oriented law firms, who organized their cooperation nationally and internationally on a best-friends-system.

Since the 1980's, drastic changes have taken place. Globalization has brought far-reaching concentration and internationalization. The complexity of economic and legal matters has grown. Increasing specialization has been accompanied by increased sensitivity to costs on the part of many clients. Increased mobility and easier communication now had an effect on the legal profession. At the same time, liberalization and freedom of establishment grew so that the protection legal services had previously enjoyed from competition became less. Greater orientation towards finance and the growing influence of the predominantly Anglo-Saxon financial service providers have led to a concentration of the most lucrative segments of legal consulting in the financial centers of London and New York. The volume of transactions has also grown exponentially.

These developments have made rapidly increasing demands on legal advisors. There has been an increase in specialization, also in the hours during which lawyers would have to be available and in manpower. An increasing understanding of economic relationships has come about, as has specialized knowledge of individual industries and service sectors. The internationalization of business activity brought with it the use of new technological facilities, new working structures as well as interdisciplinary cooperation with consultants and other professional groups. There was a general decrease in solidarity and loyalty both among professionals as well as between clients and law firms. As part of the internationalization of economic activity, clients demanded legal advice in the major legal systems, in some cases, even along the lines of one-stop-shopping; they also made increasing demands in terms of specialization. Higher quality services were demanded, which in turn required education and continuing professional training of a very high level.

In continental Europe these developments brought about transitional problems for several reasons. There was a shortage of professionals and financial resources. The individual legal systems lacked "global applicability". The existing structures proved to be inflexible and the cultural differences between the individual countries on the European continent were substantial. There was also an, as yet, insufficient focus on market orientation and only a limited ability to carry out legal management. The unwillingness of continental European law firms to act as lead counsels in international transactions made it easier for attractive and lucrative services to be provided by Anglo-American financial centers. This meant that there was the danger that European firms would in future simply act as subcontractors for international law firms. Because of a lack of experience, quality control problems also arose when branch offices were opened in other legal systems. In general, these trends brought about a tighter organization of legal firms, as well as an increasing market focus, which in turn caused the Bar to subdivide into a number of different market oriented groupings: small firms, mid-size firms (the range of services of which would be clearly circumscribed) and major law firms with an international reach.

In several respects, developments in Switzerland differed from those in the rest of continental Europe. The presence of lawyers with an above-average standard of training and international focus, as well the existence of a more limited market for legal services, meant that foreign law firms had no strong incentive to set up in Switzerland. Swiss law firms were also relatively restrained in their entrepreneurial drive. As a result, practically none of them became active on a large scale in cross-border activity or in other countries. Thanks to a favorable economic and trading position, Swiss law firms nevertheless had enough fields of business left open to them as a result of strategically advantageous factors such as the Swiss arbitration system, tax laws and the advantages offered by Switzerland as a location for company headquarters.

A number of trends in the last few years have worked against legal practitioners. There was a substantial reduction in direct investment from abroad; the general competitiveness of the country and certain Swiss firms was reduced. In addition, structural changes in Swiss multinational corporations led them to relocate large parts of their management and in-house legal departments to other countries. At the same time, foreign multinational corporations now felt obliged to locate their regional or international headquarters in Switzerland only in exceptional cases. This was because the tax environment had changed and Switzerland had been left out of the process of European integration. Increasingly, Swiss arbitrators started to find competition growing up in other countries.

A number of difficulties are based not so much on external circumstances as on the continuing structural shortcomings which Swiss law firms suffer from. For example, even the largest law firms are too small to act as international lead counsels. The modest scale of Swiss law firms is partly the result of the Bar being geographically and culturally fragmented in Switzerland. However, in Zurich there has been a trend towards concentration in the last few years, as the city and its outlying areas have established themselves as a center of service provision. Apart from problems of size, there is also a lack of understanding of business and a comfortable inclination to rely on the prosperity of the post-war period, which has been responsible for the lost opportunities. The entrepreneurial potential of law firms therefore went unrecognized, and the consequences of the involvement of the "Big Five" in service sectors relevant to lawyers were underestimated. In addition, the increasing trend towards the use of information technology and the

lack of any national focus in certain service sectors have meant that even the best-trained Swiss lawyers are being deprived of work. It is unclear to what extent Swiss clients now choose Swiss lawyers to advise them even in Switzerland when it comes to substantial New Economy projects. These factors have made the professional activities of Swiss lawyers more difficult in the international practice of law. The controversy surrounding the Holocaust funds not only harmed the reputation of the country and its companies, but in part also that of its lawyers.

Although the international practice of law has undergone changes over the past 30 years that can certainly be described as revolutionary, there is a striking lack of any adequate conceptual framework for this process. It was only quite late on that these trends led to a demand for a more profound understanding of the roles of the international lawyer and legal departments in the international practice of law; this is particularly true of the role played by legal education.[35] At the beginning of the new millennium the term "international lawyer" is used to describe numerous different players on the international legal scene.[36] Firstly, there are international lawyers acting for governments or international organizations which essentially apply public international law. Given the growth in private international transactions and relations, even this sphere of operations for lawyers is undergoing growth. The second major group of international lawyers consists of partners and members of law firms mainly engaged in the abovementioned international practice of law. The number of mergers of law firms from different countries, the number of branches of major foreign law firms in the leading commercial centers and most of all, the change in the business activities of their clients are all evidence of the fast growth and increasing importance of this branch of legal practice.[37] This group includes the international legal networks of multinational accounting and consultancy firms, which nowadays provide services that have traditionally been provided by lawyers in independent practice.[38] Another group of lawyers involved in the international practice of law is made up of the members of legal departments of multinational companies. This group has grown substantially over the last 20 years. There is also a fast-growing group of lawyers involved in conflict resolution in the international practice of law, and these are employed exclusively in litigation at large and small law firms. This is particularly true of international arbitration, as well as the activities in commercial courts at a national level.[39] As long as the internationalization of economic activity continues, it is safe to assume that the number of lawyers engaged in the international practice of law is not going to get any smaller.

2.1.2 The Changes in the Relationship of the International Practice of Law with International Management

The changes that have been described in the international practice of law are reflected in the legal departments of companies. The intention here is to describe, in a comprehensive and integrated way, the interrelationships and interaction between the various decision makers in law and management: between outside and in-house counsel on the one hand and managers on the other. We shall be looking at this mainly from the legal practitioner's point of view.

[35] On November 9 and 10, 1998 some 105 lawyers from 25 countries gathered in Paris France to constitute the first Paris Forum on Transnational Practice for the Legal Profession. At this historic meeting the participants considered from several points of view how the international legal profession should best be regulated. Does the legal profession possess unique attributes, which make regulation by the WTO and similar organizations inapposite? How can impediments to practice in jurisdictions other than that of original licensure be reduced? What common values are shared by lawyers all over the world? Some of the papers presented at the Paris Forum are published in 18 Dickinson Journal of International Law, 1-173 (2000).

[36] See the various texts of DETLEV VAGTS, Are there no International Lawyers Anymore? 75 AJIL 134 (1981); An Introduction to International Civil Practice, 17 Vanderbilt J. Trans. L. 1 (1984); Dispute-Resolution Mechanisms in International Business, 203 Hague Receuil des Cours 10 (1987); International Law in the Third Reich, 84 AJIL 661 (1990); The International Legal Profession: A Need for More Governance? 90 AJIL 250, (1996); Connecting Two Legal Systems in The International Practice of Law: Liber Amicorum for Thomas Baer and Robert Karrer 247 (1997); Restitution for Historic Wrongs: The American Courts and International Law, 92 AJIL 232 (1998); Professional Responsibility in Transborder Practice: Conflict and Resolution, to appear in the Georgetown J. of Legal Ethics, September 2000; Transnational Legal Problems (4th ed. 1994 with Henry Steiner and Harold H. Koh).

[37] The best sources of information on the internationalization of the legal professions are the specialized publications on the legal profession cited in FN 33, which appear on a bi-weekly or monthly basis. The broad picture e.g. is described in Lawyers Go Global, The Battle of the Atlantic, The Economist, February 26, 2000.

[38] See JENS DROLSHAMMER, The Future Legal Structure of International Law Firms – is the Experience of the Big Five in Structuring Auditing and Consulting Organizations Relevant?, in Jens Drolshammer/Michael Pfeifer, ed., European Journal of Law Reform, Vol. 2 Issue 4, 2000 and book; GÜNTER MÜLLER-STEWENS/JENS DROLSHAMMER/JOCHEN KRIEGMEIER, Professional Service Firms, Frankfurt 1999.

[39] See e.g. MARC BLESSING, Introduction to Arbitration – Swiss and International Perspectives, Swiss Commercial Law Series, ed. by Nedim Peter Vogt, Basel and Frankfurt a.Main, 1999; YVES DÉZALAY/BRYANT F. GARTH, Dealing in Virtue, International Commercial Arbitration and the Construction of a Transnational Legal Order, Chicago and London, 1996; International Court of Arbitration, Arbitration in the Next Decade, Proceedings of the International Court of Arbitration's 75th Anniversary Conference, Geneva, September 25 1998, Special Supplement – ICC International Court of Arbitration Bulletin; ROBERT BRINER, Globalization and Future of the Courts of Arbitration, in Jens Drolshammer/Michael Pfeifer, ed., European Journal of Law Reform, Vol. 2 Issue 4, 2000 and book; STEPHEN GOLDBERG/FRANK SANDER/NANCY ROGERS, Dispute Resolution, Negotiation, Mediation and other Processes, 2nd edition, Boston, Toronto, London, 1992.

In legal matters at companies, it is generally lawyers who prepare the bases for the decisions and managers who make those decisions. It is only when these "players" work together in accordance with their respective responsibilities and the aims to be pursued, that the company's legal and economic interests can be guaranteed. In recent times, legal departments have been extended and upgraded and the role of General Counsel has been included in the upper echelons of the management of an organization. [40] Many company managements now regard the international practice of law as a separate function of the company. Alongside the development of the international practice of law by a company's lawyers, their relationship with outside counsel has become more professional and cooperative. Increasing horizontal and professional mobility between these two groups of "legal practitioners" has grown up. In the same way as legal practitioners employed by law firms, those employed by companies have also come to organize themselves in national and, in some cases, international associations or sector-specific organizations; there are also special forums and round tables for the international exchange of experience.[41] From the point of view of a company's management, the international practice of law is a separate company function and has also become the subject of consultancy offered by consultancy firms. They take their lead from the management sophistication of the company. In terms of their relationship to the "manager", the two kinds of "legal practitioner" giving advice must be viewed accordingly and in relation to one another.

One of the tasks of a university is to create the conditions for the later interdisciplinary combination of law, political economy and business studies, as well as the cooperation of managers and advisors. It is not only in teaching, but also research that there is a substantial lack of theoretical foundations. For this reason, section 4 of this text sets out a possible agenda for the theoretical encompassing of law and management and suggests possible fields for research. The attempt is made to assess how the activities of the various players in this field have changed. Suggestions are made as to how teaching, research and practice could be combined to form a network of all the players involved. It should be noted that the need referred to for a theoretical foundation must itself be justified in theoretical terms; that the appropriate approach for research must be determined and made to accord with teaching. From the point of view of teaching, "learning by research" is likely to be important. [42]

[40] See MARKUS DIETHELM, Globalization and Future of the International Practice of Law from a General Counsel's Perspective of a Multinational Enterprise – a Navigator of Management and Steward of the 'Future of Law'?, in Jens Drolshammer/Michael Pfeifer, ed., European Journal of Law Reform, Vol. 2 Issue 4, 2000 and book.

[41] The profession of in-house Counsels is organized in various organizations serving issues of common interest. These include American Corporate Counsel Association www.acca.com, Practising Law Institute www.pli.com, Corporate Legal Times www.corporatelegaltimes.com, International Bar Association www.ibanet.org, General Counsel Roundtable www.executive board.com, Council of Chief Legal Officers www.gcr.executiveboard.com, Stanford Law School www.law.stanford.edu/execed.com. Vereinigung der Unternehmensjuristen, Deutsche Vereinigung der Syndikatsanwälte.

The need to understand and optimize the relationship of law and management as well as "legal practitioners" and "managers" by means of an integrative, interdisciplinary and international perspective has now been recognized, even at the level of senior management, precisely because of the effects of new legal strictures on key areas of company activity. Greater attention has been paid to the legal dimension because of the increasing and qualitatively changing legal regulation of a company's activities, which, because of the effects of internationalization often take place in several legal systems at once. Legal compliance has gained in importance because modern commercial law has imposed increased civil, administrative and, in many cases, criminal sanctions on companies. Given the increasing influence of the media in society, this has increased the risk to corporate reputations. Of strategic importance are international tax planning, providing for the impact of company law on a group, compliance with different and partly overlapping systems of regulation, international competition law, international liability, environmental law etc.

Teaching in law and management, as well as the training provided for legal advisors and management consultants, has failed to take sufficient account of this paradigm change. It is striking that these interrelationships have not yet been researched on an institutional basis and that there is no methodology to examine, understand and evaluate the changes that have been seen to take place. There appears to be a particular lack of any theoretical approach to the increased importance of the law for senior management in an integrative, interdisciplinary and international way. It must be supposed that consultancy has adapted to this change more quickly and concertedly than legal practice. Universities, both in their teaching and research, must take account of the interrelationship between law and management for the strategic direction of a company. In this field, especially, one would expect to find a substantial change of emphasis in the tools to be acquired in terms of knowledge, skills and attitudes. The increasing strictures imposed by law on senior management would be likely to be felt, particularly in the strategic

[42] The profession of in-house Counsels is organized in various organizations serving issues of common interest. These include American Corporate Counsel Association www.acca.com, Practising Law Institute www.pli.com, Corporate Legal Times www.corporatelegaltimes.com, International Bar Association www.ibanet.org, General Counsel Roundtable www.executive board.com, Council of Chief Legal Officers www.gcr.executiveboard.com, Stanford Law School www.law.stanford.edu/execed.com. Vereinigung der Unternehmensjuristen, Deutsche Vereinigung der Syndikatsanwälte.

planning and direction of a company's activities. Legal issues will therefore also have to be considered at a more senior management level and at a different point in time, sometimes taking account simultaneously of different areas of law and different legal systems. The results of such research would almost certainly lead to more appropriate organization of the situation that currently pertains, for instance, in respect of law faculties, company management and external legal advisors. This text takes the position that teaching in law and management should form a substantial part of general academic training, and that this applies not only to business schools.

2.1.3 The Key Elements of the Changes in the International Practice of Law

The changes that have been described in the international practice of law are summarized below in headline form. The developments this branch of the law has undergone can be characterized by the following elements, set out here in no particular order.

- Globalization
  By this we mean the increasing interdependence of the global economy, which is exemplified in a corresponding globalization of international commercial law and in the respective activities carried out by legal practitioners engaged in the international practice of law. The effects of this are unclear and little study of them has been undertaken. To the same extent that globalization brings about an internationalization of economic, political, social and cultural relations, which in turn are determined by economic, political, technological and associated cultural trends, this change affects the international practice of law and the training for it. What is happening calls for an internationalization of national legal systems, the legal professions and legal education from a global point of view. Given the lack of certainty because of the speed of change, it would seem sensible to try to understand the legal dimension of globalization, not by using the theoretical model of international commercial law, but with the help of a systematic conceptual breakdown of the activities carried out by international lawyers as "players" in the international legal process.
- Legalization
  These developments have also changed the role of law and the legal professions quite substantially, because there is growing legalization, a growing expansion of law, in the most diverse areas. The applicability of different national legal systems, based on the territorial principle, has increased the significance of the creation and planning of legal relations in a neo-liberal context.
- The spread of information
  The field of application of the international practice of law is characterized by an increasing tendency for goods – from an economic perspective – and chattels – from a legal prospective – to be essentially replaced or complemented by information. Any approach to the international practice of law which seeks to take account of this situation will require an integrated approach to communication, which in turn is inherently tied up with information.
- Growing interdisciplinary approach
  Increasing complexity, specialization and division of labor has brought about a new interdependence of separate disciplines, which must be integrated both in the practice of and training for the international practice of law.
- Professionalization
  The changes in the international practice of law are characterized by professionalization in several respects.
- Market orientation and commercialization
  The international practice of law is characterized by a fundamental change of perspective as far as the provision of legal services is concerned. There is a new change of focus towards the market and competition. International lawyers now regard themselves as "legal entrepreneurs".
- Specialization
  The huge growth in areas of law and legal issues is leading to corresponding specialization in the international practice of law, which is having a fundamental effect on professional roles, career prospects, the organization of law firms, the provision of services and, most of all, on legal education. The trend towards specialization in the international practice of law does have certain technocratic elements, which sit uncomfortably with the simultaneous demand for judgment-based legal advice.
- The increasing role of procedure – "from content to process"
  The need for a conceptual framework remains when we look at the changes in the provision of legal services as such. The change in respect of content, techniques and style in legal services in the international practice of law is quite marked. The following elements and aspects are simply characteristics of this change and are not intended as generalizations within any theoretical foundation. The changes include: a relative change of emphasis from an activity based around court and administrative decisions to one focused around planning and structuring; the shift of perspective from "content to process", from legal advice to the solution of legal problems and the treatment of issues in a

wider context, a substantially increased significance of the communicative dimension in dealings with law, the increased need to work together with other service providers in an integrated and interdisciplinary form and the development of strategic legal advice as a consequence of new management methods and new legal developments. There is also a growing use of information technology. New skills and tools are being developed in the methodology for the solution of legal problems. There is a growing significance of emotional intelligence in the provision of legal advice, as well as a growing importance of attitudinal elements, such as legal ethics. Overall, there is a continuation of the trend to move from legal consulting to legal management and from legal management to business consulting. The main challenges posed for a possible conceptual framework are also influenced by the problem of realistically perceiving the legal services and the legal advisers acting in the various areas affected by this change.

- Institutionalization and organization
  The growth in numbers, geographical reach and specialization of international lawyers and the international practice of law, together with the above-mentioned professionalization and commercialization, effectively mean that the professional life of an individual is carried out within the organizational context of a company. The trend for international law firms to become professional service firms means that organizational principles such "one firm", "one-stop-shopping" and "top-down management" are threatening the effective survival of the "partnership principle".
- The emancipation of education and professional roles
  Education in the international practice of law is being adapted "from a global perspective". This is essentially leading to the internationalization of education and training. University training is being supplemented by lifelong learning; new networks are springing up of those involved in legal education and further professional training in the international practice of law. Cognitive intelligence is being supplemented by emotional and cultural intelligence. Knowledge skills are being contrasted with activity skills; intellectual, commercial and cultural skills and being contrasted with ethics and attitudinal skills. New technologies, for example bio-technology, material and information technologies, call for general and interdisciplinary knowledge of aspects of life either already subject to, or about to be subjected to, legal regulation. This trend makes for new professional roles such as the international lawyer as facilitator, as enabler, as process and information engineer, etc.
- "Tendency for Americanization"
  The international practice of law is now essentially characterized by a tendency for Americanization.

The *sedes materiae* of the most recent spread of American legal culture makes for growing dominance by the United States in a world subject to globalization. Apart from influencing various aspects of foreign and security policy, the economy and the information society, this growing US dominance is having a strong influence on the law, legal education and the legal professions. This trend is increased by the spread of the English language as the dominant language in international relations and international trade as well as by the spread of American management methods in both the management of organizations and in management consultancy. This phenomenon will be examined further in section in 2.2.[43] There is a growing consensus that these developments require a European reponse.

2.2 The Role of Tendencies for Americanization of Legal Systems, Legal Professions and Legal Educations in the Area of the International Practice of Law

Whether we like it or not, the effects of globalization in respect of the international practice of law can be seen most strongly in an Americanization of the legal system, the legal professions and legal training in Switzerland. This general trend goes far beyond the effects on teaching and research and is – as will be shown – of great importance for the choice of educational methods as well as the form and content of teaching in the areas of law and management. We shall seek to set this out in a comprehensive analysis of the current situation and also refer the reader to the commemorative volume published on the occasion of the *Schweizerische Juristentag 2000* (Swiss Lawyers' Conference 2000) entitled *"Amerika gibt es nicht" – Tendenzen einer Amerikanisierung der Rechtsordnung und Rechtsausbildungen in der Schweiz – eine Agenda für eine Umgangsstrategie* ("America

[43] See JENS DROLSHAMMER, "Amerika gibt es nicht" – Tendenzen einer Amerikanisierung der Rechtsordnung, Rechtsberufe und Rechtsausbildungen in der Schweiz – eine Agenda für eine Umgangstrategie, St. Galler Festschrift zum Schweizerischen Juristentag, Zürich 2000. The special history of subpart 2.2 on Americanization merits a remark: After a Fellowship at Harvard Law School, the text was written for the Festschrift zum Schweizer Juristentag 2000. Because of its length and its depth, the editors suggested extending it into a book. The author therefore included this text in an unabridged form, since the analysis of the development of the international practice of law in the Anglo-Saxon world are important for the understanding of the need to reorganize and refocus legal education for international lawyers. In turn, the editors came back and asked to be able to publish the parts "Elements of a Strategy" in four areas in the Festschrift zum Juristentag; this parallel and double publication merits to be mentioned because of the difficulty of parallel writing of various texts on related topics and the uncontrollable publishing dates of such texts by the different publishers.

does not exist" Tendencies for an Americanization of the Legal System and Legal Education in Switzerland – An Agenda for a New Approach), which was written in parallel to this text; for the reader's convenience a number of extracts from it have been included here.[44]

The following issues are investigated: what is our attitude to the tendency for an "Americanization of the Swiss legal system"? Are we affected by American legal culture and, if so, how do we deal with this? Are "American matters" and tendencies for "Americanization" proper subjects of enquiry, awareness and action for legal policy as far as the Swiss lawyer is concerned when dealing with the significance of American legal culture and its effects on Switzerland? The question is raised whether the effects of this on the activities of the international lawyer in the international practice of law are not far more profound and comprehensive than all other influences, in terms of the effect it has on language, on the organization of law firms as well as on their output, workload and infrastructure, and, most of all, whether we have even become aware of the extent of this influence. This in turns raises questions about the many and varied effects of this trend on education and training, in particular on the teaching of international lawyers in the sphere of law and management. It must be assumed that the Anglo-Saxon influence – not merely that of America – is currently more significant for the Swiss international practice of law than European developments, even where these are associated with the European Union.[45] We take the position that this phenomenon is significant for Switzerland and has not been sufficiently recognized in terms of its importance and extent; also that too little attention has been paid to the concrete effects it has on Swiss legal practice and the country's legal system in the international practice of law. This phenomenon has not been investigated sufficiently widely and deeply to reflect its significance. Such an investigation is made all the more necessary by the effect on the law of the information society, itself both induced and largely controlled by the United States. In our view, the affinity for the United States and American law that had originally existed emotionally and in terms of mentality, in the period from the Second World War to the turn of the millennium, has been negatively affected by recent legal disputes. This is true despite the fact that in Switzerland the legal system, the legal professions and – admittedly to an ever lesser degree – legal education have been far more "internationalized" or "Americanized" and open to external influences than in many other

[44] The author found the title "Amerika gibt es nicht" ("America doesn't exist") at the beginning of the month of May 2000 in his mailbox on an invitation for a theatre event in Zurich. The well-known Swiss writer Peter Bichsel has used this title for one of his famous short stories.

[45] See JENS DROLSHAMMER/MICHAEL PFEIFER, Der Beitritt zur Europäischen Union als Herausforderung für die schweizerische "International Practice of Law"? – Lagebeurteilung und Thesen, in: Th. Cottier/A.R. Kopse, Der Beitritt der Schweiz zur Europäischen Union, Brennpunkte und Auswirkungen, Zürich, 1998, p. 887-924.

places. However, Swiss legal culture is more affected by, and to some extent dependent on, the state of the relationship and relations between the two legal cultures than are the legal cultures of some other countries. Nevertheless, within the network of those affected, there is a lack of communicative, competent and assertive behavior in dealing with the effects of American legal culture, even though the changes[46] currently occurring in Switzerland would in principle make this easier. However, for this reason especially, we argue that we believe the time has come to undertake an inquiry into the situation in Switzerland with a view to what steps might be taken, and that this should extend particularly to the question of the professional role of the international lawyer and to education and training in the field of law and management.

The text is limited mainly to the more abstract level of an initial understanding and concentrates on identifying what scope for action and for changing attitudes there may be in the field of legal, professional, educational and communication policy. It is limited to sketching out the outlines of possible new attitudes and approaches in Europe and in particular in Switzerland, and the attempt is made, in arriving at a strategy, not to be too easily seduced by what are obvious prejudices about American legal culture. Even if American legal culture is currently having an effect far beyond the sphere of law, we are concerned here chiefly with its effects on the legal system, the legal professions and legal training. The emphasis in the text is on the international practice of law and the often neglected perspective of the international lawyer in his planning and creative capacity. The focus on the effects of globalization – by which we in fact mean a commercialization of international politics – also looks at the effects and the significance of economic issues.

In dealing with the effects of American legal culture, the numerous other interrelationships between "Americanization" and "globalization" as well as the changeover from the Old to the New Economy and its associated changes in the sphere of "cyber space" and "cyber law" have consciously been left out of account; these matters must be dealt with elsewhere.

[46] See the overview on the emerging and imminent changes in the area of legal education and legal professions in Switzerland in: PETER MURRAY/JENS DROLSHAMMER, The Education and Training of New International Lawyer, in Jens Drolshammer/Michael Pfeifer, ed., European Journal of Law Reform, Vol. 2 Issue 4, 2000 and book; regarding the turnaround in the economy, compare Competitiveness by Stephane Garelli, Climbing up the league in Financial Times Survey, Annual Country Report Financial Times May 17, 2000; regarding the change in opinion and belief, see Meinungsumfrage, Die neue Zufriedenheit, Was die Schweiz zusammenhält, Das Magazin No. 30, 2000, Tages-Anzeiger; Zufriedene Schweizer?, NZZ, August 5/6, 2000; see below 3.1.4.2.

Although the author is a professionally informed reader of the Wall Street Journal, the Harvard Law Review and the American Journal of International Law, accustomed to the ways of Wall Street, at times active in international professional bodies and holds symposia on "American Legal Culture", he is continually surprised by this "hyper" professional world. We, therefore recently made two contributions in our log of a working visit to America.

With respect to the organizers, we raised the following issues as an observer of the 1999 annual conference of the American Society of American Law:

> Why is it that on the European continent, for instance in the sphere of professional legal practice of international law, we have to some extent become acclimatized in a neo-liberal imperial way both in terms of language, working output, and the style, quality and the speed of our work to the habits of Wall Street and New York? Why are we represented at professional bodies of the International Bar Association and the various specialized professions and organizations such as the IFA, AIPPI all over the world, while, with few exceptions, American theoretical discussions in the area of law in recent years such as in law and economics, critical legal, studies, feminist legal theory, law and literature and critical race theory are not known even to the "professional groups" and "intellectuals" at the universities? Is it true to say that after 1945 the United States developed its own way of thinking about the significance of law in international relations? To what extent has the (increasingly) isolated position in foreign policy in strategic terms of the United States brought about a weakening of the "centrality of law" and increasingly so after the end of Cold War in 1989? To what extent has this also led to the loss of an international perspective in the discussion about international law and to a certain US-hegemony in the way the United States applies law to situations where there are points of international contact? If we are "in the wake of empire" then why should we not also raise questions at conferences such as this about the disassociation between law and power in the external relations of the United States? Who is showing any concern for issues such as the increasing alienation between American and continental European law, which is concerned with more than simply problems of information and training and has taken on elements of a latent anti-Americanism in legal matters? One fresh scar that Switzerland bears in this legal tension with the United States and which was discussed in Washington, is the question of who there is to take up issues of international law that arise when American class actions are harnessed in such a way that facts and situations are adjudicated that are of an international and not mainly American character and raise questions of sovereignty and the legal significance of foreign policy relations between two friendly nations, when at the same time pressure exerted in the American litigation process on the government, regulatory authorities and media leads to early settlements without the courts having the opportunity to make formal decisions on the substantial issues in the case? *Restitution for Historic Wrongs, World War II Last Chapter or Litigating the Holocaust?* [47]

The following additional questions were raised in a professional journal on returning to Switzerland and to working as a lawyer; from the greater distance with a view to the effects of American legal culture on the international practice of law in Switzerland they are being discussed here:

> What is our response here in Switzerland in terms of attitude, knowledge and communicative behavior in the everyday professional sphere to the far reaching and ever present effects of American legal culture? Has an engagement with Anglo-Saxon law become, as has been suggested elsewhere,[48] less of a hobby and a more of a duty? Is the balance right in the study of comparative law as it is practiced here by Swiss universities and professional bodies? Are we paying enough attention to our own communicative ability and to communication about Swiss law in the English language? In what way and with what purpose are we, as the affected parties, dealing with the hegemonial challenges to the competitiveness and compatibility of Swiss legal culture? Are we prepared to bring about the necessary conditions for a mental "interoperability" ourselves, at least in the international practice of law, and to maintain or indeed increase our ability to deal with this Anglo-Saxon challenge? Would it help us if in Switzerland we had a similar body to the very successful German-American Jurists Association? Would it be sensible to create improved and systematic access to Swiss Law in the English language – for example, through official translations of the major federal laws? Have we already come to realize that there will be no easy going back to the much desired but now largely absent quality of fairness, and that professional dealings with Anglo-Saxon legal culture call for constant and very demanding efforts on our part? What is to be done to ensure that we do not end up in professional still waters, but instead end up swimming with and not against the tide? [49]

Of what significance are these developments to teaching and research for international lawyers engaged in commerce and management in Switzerland?

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[47] JENS DROLSHAMMER, 93. Jahrestagung der American Society of International Law (March 24-27, 1999, Washington D.C.) "On Violence, Money, Power and Culture: Reviewing the Internationalist Legacy" – ein Tag nach Pinochet und Kosovo – Bericht, Beobachtungen und Fragen zum Stand der Internationalität der amerikanischen Befassung mit internationalem Recht, in AJP August 1999, 1030-1036.

[48] OLIVER F. SCHILTZ/MICHAEL PFEIFER, Ausbildung im angelsächsischen Recht: Hobby weniger oder Notwendigkeit für immer mehr?, AJP/PJA 1/2000, 73-75.

[49] JENS DROLSHAMMER, Internationales Recht aus amerikanischer Sicht – Dissonanzen in der transatlantischen Kommunikation – die USA auf dem Wege zur rechtlichen Grossmacht? in Anwaltsrevue 11-12/1999, 9-12.

2.2.1 The Elements of the accelerated Change – from Pax Americana to Lex Americana?

We will first illustrate what effects the trend for a hegemonial position of the United States has.[50] Of course, not all effects of an increasingly internationalized world, particularly in the information society, are determined exclusively by the trend for a hegemonial influence of the United States. Leading commentators also believe that many of the effects will remain in any event, whether or not this dominant influence is later reversed.[51] We shall limit our inquiry to a number of representative areas, looking at them from a Swiss point of view. Without necessarily arguing for a causal link between "increasing hegemony" and "Americanization", these are all subject to a "tendency for Americanization" the complexity and extent of which was noticeably accelerated by the spread of the information society.

From a strategic point of view the current American dominance is manifested in three ways. Firstly the values propagated by the United States, such as liberalism and democracy, have spread almost all over the world since the end of the Cold War. They form a significant part of the current system of international nation states. Secondly, only the United States is currently able to project its power on a worldwide scale, and this military superiority is likely to increase further in the sphere of high technology. Finally, the United States also enjoys superiority in the area of "soft power" and has a controlling influence over substantial parts of the

[50] C. FRED BERGSTEN, America and Europe; Clash of the Titans?, Foreign Affairs, March/April 1999, 20-34; ZBIGNIEW BREZINSKI, Out of Control, Global Turmoil on the Eve of the 21st Century, New York 1993; the same, The Grand Chessboard American Primacy and its Geostrategical Imperatives, New York 1997; ASHTON B. CARTER, Adapting US Defence to Future Needs, 101-123; CHALMAN JOHNSON, Blowback: The Costs and Consequences of American Empire, Little Brown, 2000; RICHARD N. HAASS, The Reluctant Sheriff, The United States After the Cold War, A Council of Foreign Relations Book, 1997; FRANÇOIS HEISBOURG, American Hegemony? Perception of the US Abroad, 5-19; STANLEY HOFFMANN, World Disorders, Troubled Peace in the Post-Cold War Era, Landham Boulder New York Oxford 1998; SAMUEL P. HUNTINGTON, The Lonely Superpower, Foreign Affairs, March/April 1999, 35-49; the same, The Clash of Civilizations, New York 1996; W. MICHAEL REISMAN, The United States and International Institutions, 62-80; GARRY WILLS, Bully of the Free World, 50-59; American Power and Global Security, Survival, The IISS Quarterly Winter 1999-2000; compare already JOSEPH S. NYE, JR., Bound to Lead, The Changing Nature of American Power, New York 1990, and JOSEPH S. NYE/WILLIAM A. OWENS, America's Information Edge, Foreign Affairs, March/April 1996, 20-36; vgl. auch PAUL KENNEDY, The Rise and Fall of the Great Powers, Economic Change and Military Conflict from 1500 to 2000 (1987), and Preparing for Twenty-First-Century, London 1993; ARTHUR M. SCHLESINGER, JR., The Cycles of American History, Boston 1986; SAMUEL SCHLOSSSTEN, The End of the American Century, 1987; JOSEPH S. NYE, JR., The Paradox of American Power, 2002.

[51] See PAUL KENNEDY, Preparing for the Twenty-First Century, London, 1993.

international political agenda. It is precisely this combination of law and power in foreign relations that has raised fears of increasing arrogance on the part of its leadership. The American position here is already being described as ambivalent after the United States has in recent times repeatedly paid little heed to international treaties and, according to ANDREAS WENGER and DANIEL MÖCKLI,[52] it has noticeably failed to practice the virtue of combining power with cooperation. The two writers cite in this connection the United States' failure to participate in the International Criminal Court and the land mine treaty, its failure to pay its debts to the United Nations, the manner in which the NATO intervention in Kosovo was initiated and how American courts are being instrumentalized to set a national agenda for international conflicts, not to mention the manner in which the issue of the Holocaust has been treated.

From an economic point of view – "the causes of Americanization of the economy" – the influence of the United States began to make itself felt at the turn of the last century, when American methods of production began to spread. During the 1920s, Europe started to adopt US methods and attitudes under the general heading of "rationalization". Without actually adopting US management methods, European companies employed both concentration and cooperation in order to obtain greater economic and political influence. After the Second World War, the United States for the first time pursued a specific policy of reshaping European states after its own image, or at least to influence them as far as possible in this direction. The preconditions for obtaining aid under the Marshal Plan led to political and regulatory change. The United States was responsible for the creation of GATT (now WTO), the OEEC (now the OECD), the Bretton Wood System and other institutions conceived in accordance with the economic and legal values of the USA. Apart from the introduction of, let us merely mention them in passing, Coca Cola, Lucky Strike, Ford and nylons, there then followed the transfer of American organizational structures, for instance through the EPA (European Productivity Agency), as well as a specific influence on the curricula for European management training, which was particularly strong in Scandinavia and the Netherlands. Hand in hand with rising economic prosperity came the widespread view that competitive behavior was preferable to cooperative behavior. In terms of the Americanization of the economy, the most crucial change was the changeover to mass production and thereafter mass distribution, as well as extensive direct investment from the United States in the 1960s and 1970s. Whereas in the 1970s and up to the mid 1980s there was, relatively speaking, less influence coming from United States, a lasting wave of Americanization has since the start of the

[52] ANDREAS WENGER/DANIEL MÖCKLI, Internationale Sicherheit im 21. Jahrhundert, Fünf Trends – und viele Fragezeichen, NZZ, February 29, 2000, Nr. 50; see also e.g.: Wochenbericht Nr. 13, March 30, 2000, Bank Julius Bär; usually the authors write anonimously but are well known.

1990s brought about a change in Europe from the Old Economy to the New Economy. If there are any lingering doubts about the need to take stock of the status quo, then one need look no further than the reason given by Carl Christian von Weizäcker. He believes the Pax Americana will be perpetuated for demographic reasons alone: "Europe in its wider sense now has 500 million inhabitants, whereas the USA has 275 million. In the year 2100, Europe in its wider sense will have 275 million inhabitants and the USA will have 500 million inhabitants. The Pax Americana will remain in force, for Europe at least for a further 100 years and longer."[53]

From a university perspective Americanization can be seen first of all in the changes that have taken place since the 1980s through an even greater adaptation to the US system of higher education and its competitiveness.[54] This competitiveness is based first of all on the enormous openness of US academic institutions towards society. American science and academia actively seek an exchange with the industrial and commercial sector by offering their goods, products and innovations on an increasingly global market place. Secondly, the course credit system has increased the worldwide flexibility and attractiveness of the US higher education system. Students receive a certain number of points for completing certain parts of their course, but are at liberty to choose where and when they carry out the work demanded of them. The opportunity to choose from a menu of options is an important pre-condition for US institutes of higher education being able to reach out to their students anywhere in the world. Thirdly, the international reach of American institutes of higher education is favored by the pace of progress they have made in integrating the new information and communication technologies into their teaching. Increasingly, even Ivy League universities are offering some of their courses via the Internet and are increasing their potential by setting up virtual community spaces for teaching and research. This enables them quite consciously to build up partnerships with academic and increasingly private sector institutions that are either in a similar situation or can offer special facilities in terms of administration and infrastructure. Fourthly, in terms of teaching, efforts are focused on bringing about the success of students, on maximizing their achievement as well as on "learning by doing". A shorter period of training focused on vocational relevance also responds to the increasing need for further education and the paradigm of lifelong learning. In the discipline of international relations, the output and methods being introduced through this Americanization also present a challenge through *increasing fragmentation and specialization of academic discourse*. In an age of globalization the economy is the dominant factor, so that greater importance is being attached to national rather than foreign policy. The era of grand strategy in the style of George F. Kennan or Henry Kissinger would seem to be over and has been replaced by the paradigm of muddling through. This trend partly reflects the increasing complexity of issues in international politics. However, it is also a reflection of the fragmentation of teaching and academic life in the United States, which is focused ever less on an overall view of international relations.

In the spheres of international relations, international history, international law, international economics, international organizations etc. there is a spread of methodological pluralism and new approaches – from structuralism to constructivism to post modernism. At the same time new areas of research, from gender, to cultural and identity studies, are a source of interest for some and dismay for others. There is a tremendous emphasis on interdisciplinary working; associated academic subjects are often included in the curriculum even at the level of undergraduate studies and it is no longer rare to find academics holding two PhDs in associated disciplines. In practice, however, most academic careers are characterized not so much by being interdisciplinary as by specialization, and academic groupings are becoming increasingly separated and more specialized in their subject. Overall, it is difficult for the European observer to avoid the impression that not only is transatlantic political dialogue becoming more difficult but also that academic discourse in the field of international relations is marked ever less by a "mental interoperability" in the sense of a true international dialogue. Four factors are especially significant here. Firstly, academic discourse in the USA within the subjects mentioned is turning ever more into a discourse among sub-cultures. The consequences of this trend can be seen, for example, where traditional associations are split up into competing organizations. Secondly, academic debate in the USA seems to be focusing increasingly on a national perspective and leaving out of account any international dimension. This specifically American domestic view in turn increasingly comes to dominate the whole of transatlantic communication. And thirdly, this isolationist trend is made all the greater by the dominance of English as the language of discourse, because it increases the predominance of Anglo-Saxon terminology and ways of thinking. Fourthly, although interdisciplinarity is in fashion, the necessary attention is not being directed to the development of the theories and methodologies it would require.

[53] Executive Summary of the presentation at the Innsbruck Symposion 2000 from March 9-11, 2000.

[54] These arguments are contained in an essay, which the author has written with Professor Andreas Wenger of the Swiss Institute of Technology on the challenges of tendencies for Americanization in international relations, international history, international law, international economics, international organizations etc. under the title "Go Public or Perish? Amerikanisierung als hochschulpolitische Herausforderung". The text has been published in Neue Zürcher Zeitung, June 9/10, 2001. The author thanks his co-author for his consent to make reference to these jointly developed ideas.

This neutrally observed increasing US hegemony in international relations in both foreign and defense policy, the economy and the information society[55] *against the background of globalization is having a decisive influence on the law, legal training and the legal profession. This can be seen in the dominance of Anglo-Saxon and, most of all American thinking in the legal professions in the international practice of law and in the legal education associated with it.*

The intention here is to explore what US hegemony means for legal culture and in particular for the international practice of law, for research and teaching. There are many factors to look at. The growing hegemony in legal culture is made easier by the establishment and spread of English as the lingua franca of international relations and international trade.[56] This phenomenon, which has also not yet been much researched, may turn out to be one of the "globalization traps" in the law because it introduces a regulatory, institutional and terminological framework born out of a nation state and endows it with a confusingly binding force. The increasing importance of multimedia communication through the establishment of the Internet, methods of knowledge management and distance learning also in the sphere of the law, has made the tendency for Americanization even stronger through the influence of the English language.[57] One should note that in the current stage of globalization its effects on legal systems, legal professions and legal training remain systematically under-researched – certainly less attention has been paid to this than to the effects of the growing European influence on Swiss legal culture.[58]

We suspect more extensive research would show that the effects of this hegemony in the law are in several respects selective. In economic terms they are likely to be seen most strongly in the geographic area of influence of the OECD nations; in terms of legal activity they are likely to occur in more proactive, creative activities, and in terms of legal professions mostly within the international practice of law. Law making will probably be more strongly affected than the application of law, and the training of an international lawyer sooner than traditional legal education. In part, this process is being consciously steered and coordinated, in part it is simply occurring of its own accord. Apart from the growth of the information society, it is surely also the spread in the media of legal knowledge, with the help of modern communication technology, that has played an important role in the spread, not only of the knowledge base, but also of a more emotive approach to knowledge about legal processes, which in turn has furthered the process of Americanization. And yet the lack of awareness in the private sector, in part also in the United States, about the significance that law has for the continuity of social and particularly economic processes is another factor favoring the trend for American law to have its effect invisibly. The fact that there is an American tendency to limit oneself to one's own view of the world, which goes hand in hand with growing US hegemony, has in recent times made it more difficult for Americans to communicate about their own legal culture. An overall theoretical framework, terminology and a systematic approach have all got lost as a result of a pluralizing of different areas of law and a tendency to embrace other social sciences.[59] A repositioning and loss of significance of comparative law [60] and inter-

[55] See among others JOSEPH S. NYE, WILLIAM A. OWENS, America's Information Edge, Foreign Affairs, March/April 1996, 20-36.

[56] We are of the opinion, that the effects of the dominant position of the English language in the area of "International Practice of Law" have not been sufficiently analyzed. Compare PETER M. TIERSMA, Legal Language, Chicago and London, 1999, also selected Bibliography, 293-298, and Recht und Übersetzen, Gérard-René de Grod/Reiner Schulze (ed.), Baden-Baden 1999; see also from a more general perspective GEORGE STEINER, After Babel, Aspects of language and Translation, 3rd edition, Oxford, New York, 1998; STEVEN PINKER, Words and Rules, the Ingredients of Language, New York 1999; ROBERT SCHOLES, The Rise and Fall of English, New Haven and London, 1998; parallel to the translation of this book, the author has pursued his interest on the topic of the relationship between law and language and on the role of the English language for the international practice of law based upon the working document of the Fellowship at Harvard Law School. Two publications will appear towards the end of 2002 in co-authorship. NEDIM PETER VOGT/JENS DROLSHAMMER, Swiss Law Bibliography, English Language Materials on Swiss Law, Zurich 2002 and JENS DROLSHAMMER/NEDIM PETER VOGT, English as the Language of Law?, an Essay on the Legal Lingua Franca of a Shrinking World, Zurich 2002.

[57] Distance Learning at Harvard Business School, Harvard Business School, N2-898-238, March 1, 1999; College Online and the New School, Newsweek April 24, 2000; RICHARD SUSSKIND, The Future of Law, Facing the challenges of Information Society, Oxford 1996; JAMES BOYLE/SHAMANS, Software and Spleens, Law and the Construction of the Information Society, Harvard University Press, 1996; LAWRENCE LESSIG, Code and other Laws of Cyberspace, New York 1999; PAUL JACOBSON, Net Law: How Lawyers use the Internet, Sebastopol 1997; see also JAMES STEVIN, The Internet and Society, Oxford, 2000; DAVID BERLINSKI, The Advent of the Algorithm, the Idea that Rules the World, New York, San Diego, London, 2000; ANDREW SHAPIRO, The Control Revolution, New York 2000; CHARLES PETZOLD, Code, The Hidden Language of Computer Hardware and Software, Redmond, Washington, 1999; JOHN SEELY BROWN/PAUL DUGUID, FAST FORWARD, The University's Digital Future, in Change, July/August 1996; JOHN SEELY BROWN/PAUL DUGUID, The Social Life of Information, Harvard Business School Press, 2000; JOHN S. DANIEL, Mega-Universities and Knowledge Media, Technology Strategies for Higher Education, London 1996; Information Technology and the Future of Post-Secondary Education, OECD Publication 1996, Part I, STEPHEN C. EHRMANN, Responding to the Triple Challenge Facing Post-Secondary Education: Accessibility, Quality, Costs, 9-41; WILLIAM L. RENWICK, The future of Face-To-Face and Distance Teaching in Post-Secondary Education, 45-81; GORDON BOLL, Student Owned Company, The Issues for Higher Education Management, 85-137.

[58] See FN 65 with references to texts of authors working in Switzerland, partially on the effects of American law; with respect to topics dealt in this book, Wolfgang Wiegand and Peter Böckli are exceptions.

[59] As regards international law, see American Journal of International Law, April 1999, Vol. 93, Nr. 2, Symposium on Method in International Law, 291-423.

[60] MATHIAS REIMANN, The End of Comparative Law or an Autonomous Subject, in Tulane European and Civil Law Forum, Vol. 11 1996, 49-72; see in that context the Symposium "New Di-

national law, particularly in the United States, even though comparatists are continuing to investigate the relationship between civil and Anglo-American law,[61] [62] [63] do not make this communication any easier. A generation of jurists trained on both sides of the Atlantic, who had an international perspective, is no longer alive or has gone into retirement.[64] The Americanization of international sets of facts

rections in Comparative Law", which was organized under the direction of Ugo Mattei and Mathias Reimann at the Law School of the University of Michigan and which is reported on in The American Journal of Comparative Law, Vol. XLVI, Fall 1998: UGO MATTEI/MATHIAS REIMANN, Introduction, 597-606; I. Comparative Law in the United States Today: Distinctiveness, Quality, and Tradition: JAMES GORDLEY, Is Comparative Law a Distinct Discipline? 607-616, JOHN C. REITZ, How to Do Comparative Law, 617-636, MATHIAS REIMANN, Stepping Out of the European Shadow: Why Comparative Law in the United States Must Develop Its Own Agenda, 637-646; II. A New Orientation: Towards Recognition of Difference: NORA V. DEMLEITNER, Challenge, Opportunity and Risk: An Era of Change in Comparative Law, 647-656, VIVIAN GROSSWALD CURRAN, Dealing in Difference: Comparative Law's Potential for Broadening Legal Perspectives, 657-668, L. AMEDE OBIORA, Toward an Auspicious Reconciliation of International and Comparative Analyses, 669-682; III. New Methods and Approaches: Jurisprudence, Interdisciplinary Study, and Systems Analysis: GEORGE P. FLETCHER, Comparative Law as a Subversive Discipline, 683-700, WILLIAM EWALD, The Jurisprudential Approach to Comparative Law: A Field Guide to "Rats", 701-708, UGO MATTEI, An Opportunity Not to Be Missed: The Future of Comparative Law in the United States, 709-718, DAVID J. GERBER, System Dynamics: Toward a Language of Comparative Law?, 719 ff.

61 Concerning the transatlantic and comparative analysis of the American and European culture in private law, compare among others REINHARD ZIMMERMANN (ed.), Amerikanische Rechtskultur und europäisches Privatrecht, Impressionen aus der Neuen Welt, Tübingen 1995: REINHARD ZIMMERMANN, "Common law" und "civil law", Amerika und Europa – zu diesem Band, 1-10; JOACHIM ZEKOLL, Zwischen den Welten – Das Privatrecht von Louisiana als europäisch-amerikanische Mischrechtsordnung, 11-44; SHAEL HERMAN, Schicksal und Zukunft der Kodifikationsidee in Amerika, 45-86; REINHARD ZIMMERMANN, Law Reviews – Ein Streifzug durch eine fremde Welt, 87-131; MATHIAS REIMANN, Amerikanisches Privatrecht und europäische Rechtseinheit – Können die USA als Vorbild dienen, 132-185; the same, Towards a European Civil Code: Why Continental Jurists Should Consult Their Transatlantic Colleagues, Tulane Law Review, Vol. 73 1999, 1337-1346.

62 With regard to the similarities or dissimilarities of both of the legal systems, see BERNHARD ZIMMERMANN "Common Law" und "Civil Law", Amerika und Europa – zu diesem Band, 1-11, in Amerikanische Rechtskultur und europäisches Privatrecht, Impressionen aus der neuen Welt, Tübingen 1995, with contributions by JOACHIM ZEKOLL/SHAEL HERMAN/REINHARD ZIMMERMANN/MATHIAS REIMANN; also JOHN MERRYMAN, On the Convergence (and Divergence) of the Civil Law and the Common Law, in The Loneliness of the Comparative Lawyer, 13-17.

63 MATHIAS REIMANN, Comparative Law and Legal History in the US, Report for the XVth International Congress of Comparative Law Bristol 1998, 46 American Journal of Comparative Law 1 (1998 Supplement with Alain Levasseur); the same, Rechtsgeschichte und geschichtliches Recht in Common Law, in G. Dilcher and P. Caroni (ed.), Norm und Tradition 1998; the same, Continental Imports: The Influence of European Law and Jurisprudence in the US, 65 Tijdschrift voor Rechtsgeschiedenis 391, 1996; the same, The End of Comparative Law as an Autonomous Subject, 11 Tulane European and Civil Law Forum, 1996, 49-72.

64 Many American Law Schools such as Berkeley, Chicago and Michigan hosted foreign teachers and researchers, victims of the Nazi-Regime. This generation of legal scholars provided invalu-

following extensive interpretation of jurisdictional and conflict rules continues to challenge the sovereignty of different national legal systems. The prestige and economic advantage attached to training at American elite colleges remains an important factor for its students, so that there is a tendency to be trained within the United States, which leads to an indirect and pre-emptive Americanization. In many areas of commercial law, particularly financial services, the highly technical nature and lack of specific national qualities of the subject matter favors the rules being made at financial centers in London and most of all in New York. Wherever the American legal system imposes regulators, their influence is felt far beyond the geographical borders of the area of jurisdiction being claimed. Recently this Americanization has lead to the increasing attractiveness of the American social model on the European continent. So will we be moving from a Pax Americana to a Lex Americana?[65] What would be an appropriate Swiss or even European position?

able contributions to the institutions in which they taught, the comparative law thinking in the United States as well as the theory of international law in general, see e.g. Professor Richard M. Buxbaum zum 70. Geburtstag am 16. April 2000 by HANS-PETER ACKERMANN, in DAJV-Newsletter, Zeitschrift der Deutsch-Amerikanischen Juristenvereinigung e.V., March 2000, 30; Professors Daube, Ehrenzweig, Kessler, Kultner and Riesenfeld e.g. worked at Berkeley; Ernst Rabel, Hessel Yntema, Vera Bolgar and Eric Stein were teachers and researchers at Michigan Law School; Max Rheinstein at Chicago Law School; see MARCUS LUTTER, ERNST C. STIEFEL, MICHAEL H. HOEFLICH, ed., Der Einfluss deutscher Emigranten auf die Rechtsentwicklung in den USA und Deutschland, 1993.

65 In the Swiss legal community, among others, the following authors have analyzed and published on the effects of American law: GUNTHER ARZT, Amerikanisierung der Gerechtigkeit, die Rolle des Strafrechts, Vortrag, Heft 7, Infointerne Sommer 1996, ed., vom Bernischen Obergericht unter der Mitarbeit der Generalprokuratur und der kantonalen Justiz-, Gemeinde- und Kirchendirektion; Verfahrensgerechtigkeit – ein hochtheoretisches Thema und seine praktische Bedeutung, in Festschrift für Otto Triffterer, ed. Kurt Schmoller, Wien, New York 1996, 527-549; CARL BAUDENBACHER, Some Remarks on the Method of Civil Law, Texas International Law Journal, Vol. 34 (1999), 334-360; PETER BÖCKLI, Droit des marches de capitaux – La vie se resserre, Schweizerische Zeitschrift für Wirtschaftsrecht 67 (1995), 218; Osmosis of Anglo-Saxon Concepts in Swiss Business Law, in The International Practice of Law, Liber Amicorum for Thomas Bär and Robert Karrer, ed. Nedim Peter Vogt et al., Basel, Frankfurt, The Hague, London, Boston 1997, 9-30; Corporate Governance auf Schnellstrassen und Holzwegen, Folgerungen für die Schweizer Praxis auf internationalen Verstössen, NZZ 26./27. February 2000, Nr. 48; ROBERT E. HERZSTEIN, The Effect on Switzerland of the Extraterritorial Application of United States Laws, in Einblicke in die schweizerische Aussenpolitik, zum 65. Geburtstag von Staatssekretär Raymond Probst, Zürich 1984, 153-170; HEINRICH HONSELL, Amerikanische Rechtskultur, in Der Einfluss des europäischen Rechts auf die Schweiz, Festschrift für Roger Zäch, Zürich 1999; REGINA KIENER/RAPHAEL LANZ, Amerikanisierung des schweizerischen Rechts- und ihre Grenzen, "Adversarial Legalism" und schweizerische Rechtsordnung, ZSR (119) 2000, I, 155-174; FRANZ RIKLIN, The Death of Common Sense – kritische Gedanken zur gegenwärtigen amerikanischen Kriminalpolitik, in Strafrecht und Öffentlichkeit, Festschrift für Jörg Rehberg, Zürich 1996; WOLFGANG WIEGAND, Reception of American Law in Europe, American Journal of Comparative Law 39 (1991), 229; the same, Americanization of Law: Re-

2.2.1.1 Theses of Analyses

We postulate that the growing influence of American legal culture on Switzerland at the end of the 20th Century makes it necessary to take stock of the status quo, for otherwise, as time goes by, the scope to bring about change will be increasingly limited or in some cases disappear altogether in areas which could and should be tackled. Unlike the Swiss approach to the European legal system, which has grown up historically and been characterized by a large-scale direct and indirect adoption of some of its norms through political decisions, or the imposition of Euro-compatibility on the Swiss commercial legal system in particular, the attempt to deal with the phenomenon of increasing Americanization of the Swiss legal system, its legal professions and legal training is unsystematic, usually opaque and, with respect, backward. The term backward is not employed here in any moral sense, but to encourage the use of what possibilities exist to preserve and enlarge the scope for action and freedom, to shape matters in various branches of Swiss legal culture.

Unlike in the case of EU law, Swiss law makers are unaccustomed to taking account of the effects of American law in the course of the legislative process.[66] Switzerland does have legal practitioners, officials and judges who are better trained than those in many other countries to deal with international questions,[67]

ception or Convergence? in Legal Culture and the Legal Profession, Lawrence M. Friedman/Harry W. Scheiber (ed.), Boulder (Colorado) und Oxford 1996, 137; Die Rezeption amerikanischen Rechts, in Die schweizerische Rechtsordnung in ihren internationalen Bezügen, Festschrift zum Schweizerischen Juristentag 1988, Bern 1988, 229; Europäisierung – Globalisierung – Amerikanisierung, Jahrbuch Junger Zivilrechtswissenschaftler 1998, Vernetzte Welt – Globales Recht, Stuttgart, München, Hannover, Berlin, Weimar, Dresden, 9-17; Europäisierung, Globalisierung und/oder Amerikanisierung des Rechts? und Amerikanisierung des Rechts, insbesondere des Bank- und Wirtschaftsrechts, THEODOR BAUNS, KLAUS J. HOPT UND NORBERT HORN (eds.), Corporations, Capital Markets and Business in the Law, Kluwer Law International, 2000, 601-615; WOLFGANG WIEGAND/MARCEL BRÜLHART, Die Auslegung von autonom nachvollzogenem Recht der Europäischen Gemeinschaft, Schweizer Schriften zur europäischen Integration Nr. 23, Bern und Zürich 1999; Niklaus Schmid, Das angelsächsische Strafverfahrensrecht – Vorbild für eine künftige eidgenössische Strafprozessordnung, Farewell Lecture of July 1, 1999, Universität Zürich.

66 As regards the legislative process see ULRICH HÄFELIN/WALTER HALLER, Schweizerisches Bundesstaatsrecht, Zürich 1998, 198 ff.; see also the proposal to complement the compulsory paragraph in the Messages of the Federal Council to Parliament for statutory bills "Relationship to European Law" by a paragraph "Relationship to Anglo-American Law" in JENS DROLSHAMMER/MICHAEL PFEIFER, Beitritt zur europäischen Union als Herausforderung für die schweizerische "International Practice of Law"? – Lagebeurteilung und Thesen, 908 f.

67 With moderate approval among others WALTER A. STOFFEL, Les Professions Juridiciaires et le droit comparé en Suisse, Revue Internationale de Droit Comparé, 1994, 761-773; compare WOLFGANG WIEGAND, Die Rezeption amerikanischen Rechts, in: Festschrift zum schweizerischen Juristentag 1988, Bern 1988, among others 236-239 under the heading "Symptomatische Fakten und Beobachtungen".

but, with few exceptions, these individuals are unable to provide an informed counterweight in the international practice of law. One thing that would make it easier to engage with the tendency for Americanization of the Swiss legal system would be if communication about that legal system could take place in English. This is another area where the Swiss legal system has failed to recognize sufficiently the dominance of the English language and has therefore not sufficiently encouraged communication about Swiss law.[68] This is also noteworthy because the effects of international law are such that increasing numbers of foreign, often English speaking, legal subjects are obliged to deal with Swiss law, which with the situation as it stands they can do only with difficulty.

Unlike in the humanities, particularly in the study of literature, academic law does not recognize a field of American studies. American law is only rarely taught at Swiss Universities and, if at all, in subjects dealing with comparative law.[69] There are no university institutes or libraries specializing in American Law. The Swiss Institute for Comparative Law has no obvious specialization in the field of American law. Experience shows that Swiss legal practitioners often overestimate their abilities in the English language, particularly in English legal language. There has been no increase in opportunities for Swiss lawyers to study in the

68 The author together with Nedim Peter Vogt is the editor of the Swiss Law Bibliography on English Language Materials on Swiss Law, Zurich 2002, with lists of printed publications as well as links and websites; the respective research has been done by Anne M. Wildhaber, Jaro Zuzak and by Rita Arnold Haas, Michele Bernasconi, Jasmin Djalali, Urs Lehmann, Angelica Picenoni and Urs Watter at Harvard Law School, the University of Chicago Law School, the Library of Congress and at the Swiss Institute for Comparative Law in Lausanne and has been made electronically accessible by Urs Watter. A first analysis of the searches shows that despite the high number of publications found, the access to the Swiss legal system in English is incomplete and haphazard and that the access in new media needs to be further developed. Jens Drolshammer and Nedim Peter Vogt have attempted to get a better grasp of the role of English and the legal profession in English as a Language of Law? an Essay on the Legal Lingua Franca of a Shrinking World, Zurich 2002.

69 Questionnaires circulated in 1997 at the Law Faculties of Swiss universities show the following: Special courses on Anglo-American law are taught in Geneva and St. Gallen; in part American law is taught as part of a general course on comparative law, e.g. at the University of Zurich. It is striking, that in the western, French speaking part of Switzerland, as part of the general course on comparative law, there is more emphasis on English than on American law; in general, the courses on foreign and comparative law at Swiss universities are not compulsory; in general they are conceived as courses in comparative law in the area of private law; the block seminars at the University of Fribourg, in which guest professors frequently teach on topics of American law, partially even in so-called "Joint Offerings", merit special mentioning; the University of Fribourg provides for a structured study at the University of Alabama on American law for its students; compare in that context also WALTER STOFFEL, L'enseignement du droit comparé en Suisse, Revue Internationale de Droit Comparé, 1998, 728-735 und Les Professions Juridiciaires et le Droit Comparé en Suisse, Revue Internationale de Droit Comparé, 1994, 761-773; see also 3.1.4.2.3 with regard to the answers to the extended questionnaire of summer 2000.

United States. There are also almost no Swiss professors of law who have carried out post-doctoral research in American law or at American universities;[70] there is an even smaller number of Swiss law professors who teach as visiting professors at American law schools.[71] Even if the editorial boards of some Swiss legal journals include American correspondents and even occasionally publish texts in English,[72] it is rare to find any direct discussion of the effects of American law on the Swiss legal system, its legal professions or legal training. However, there have been repeated writings about American law,[73] particularly in the context of work about comparative law in Switzerland.[74] In order to encourage familiarity with

[70] Various habilitation theses of Swiss university professors have American law as a topic, are partially or fully written in the United States and/or are heavily influenced by Anglo-American legal thoughts, compare e.g. LUZIUS WILDHABER, Treaty-Making Power and Constitution, An International and Comparative Study, Basel und Stuttgart 1971; WALTER HALLER, Supreme Court und Politik in den USA, Bern 1972; ANTON SCHNYDER, Wirtschaftskollisionsrecht, Zürich 1990; ROLF H. WEBER, Wirtschaftsregulierung im wettbewerbspolitischen Ausnahmebereich, Baden-Baden 1986; HANS CASPAR VON DER CRONE, Rahmenverträge, Zürich 1993; ROMEO CERUTTI, Das U.S. amerikanische Warenkaufrecht, Veröffentlichungen des Schweizerischen Instituts für Rechtsvergleichung, Zürich 1998.

[71] Swiss lawyers are rarely guest professors in the United States; compare among others Carl Baudenbacher, Permanent Visiting Professor, Law School of Texas University; Frank Vischer, Visiting Professor, Harvard Law School; Eric Homburger, Visiting Professor, Parker School of Foreign and International Affairs, Columbia University; Franz Werro, Visiting Professor, Law School of Georgetown University.

[72] See Schweizerische Zeitschrift für Wirtschaftsrecht.

[73] Examples of academic analysis of questions of American law by Swiss authors are: J. F. AUBERT, The United States Constitution and Switzerland, unveröffentlichter Beitrag; A. AUER, The Supreme Law of the Land, Eléments du droit constitutionnel des Etats-Unis, Basel 1990; W. HALLER, Supreme Court und Politik in den USA, Bern 1972; E.C. PERRUCHOUD, Introduction au droit commercial des Etats-Unis, Zürich, 1990; P. SALADIN, Grundrechte im Wandel, Die Rechtsprechung des Schweizerischen Bundesgerichts zu den Grundrechten in einer sich ändernden Umwelt, Bern, 1970; N. SCHMID, Das amerikanische Strafverfahren, 2. überarbeitete und wesentlich erweiterte Auflage, 1993; A. SCHNYDER, Interessenabwägung im Kollisionsrecht – zu Brainard Curries "governmental interest-analysis", ZSR N.F. 105 (1986) I, 101-119; ditto, Wirtschaftskollisionsrecht, Zürich, 1990; J. THORENS, Les traits caractéristiques de la property law anglo-américaine, Bern 1986; R. H. WEBER, Wirtschaftsregulierung im wettbewerbspolitischen Ausnahmebereich, Baden-Baden 1986; L. WILDHABER, Treaty-Making Power and Constitution, An International and Comparative Study, Basel and Stuttgart 1971 and various publications of Eric Homburger on US antitrust law.

[74] Examples of academic publications by Swiss authors on comparative topics, taking into account American law, primarily published in the nineties are: E. BERNASCONI-MAMIE, Das russische Produktehaftpflichtrecht – Versuch einer rechtsvergleichenden Standortbestimmung, unter besonderer Berücksichtigung der Rechtslage in der Schweiz, London, der Europäischen Union und den USA, St. Gallen 1994; D. JENNY; United States and the Swiss Constitutions in Times of Turmoil, unveröffentlichtes Manuskript einer Master-Arbeit an der University of Michigan (Professor R. Friedmann) 1989; A. LANGHART; Rahmengesetz und Selbstregulierung, kritische Betrachtungen zur vorgeschlagenen Struktur eines Bundesgesetzes über die Börsen und den Effektenhandel unter Berücksichtigung des amerikanischen und englischen Börsenrechts, Zürich,

Swiss academic study of law in other countries, publishers should seek to increase the distribution of Swiss specialist journals and literature.[75]

There is generally no attempt, even in leading organs of the economic media, to portray American law and its associated transatlantic communication either systematically or critically.[76] Commentary is generally restricted to fascinating anecdotal matters, scurrilous peculiarities or failings of American legal culture and tends to focus on those parts of the American legal system that are also portrayed in the American media.

Swiss multinational companies have in part been involved in controversial cases before American courts and regulatory authorities and have, to put it mildly, made their own contribution to developments in modern commercial law.[77] Given the market oriented re-structuring of these international companies with English as their corporate language and the importance to them of the American market, legal advice tends to be obtained locally, in other words directly in the United States, which is hardly conducive to furthering understanding of American law at the companies' Swiss headquarters. The market-orientation and specialization of certain legal services has also meant that even in Switzerland itself, not only Swiss but also Anglo-Saxon and in particular American legal advisors have become active. Even if there has been slow change in the career prospects that exist outside Switzerland, only few Swiss legal practitioners work in the United States for any length of time. So the opportunities there for Swiss nationals have recently become more limited, even in the only sphere where they have any realistic chance of finding work, namely working as an attorney. One element of a dialogue about the tendency for Americanization of the Swiss legal system would be communicating about that legal system in English. Here too, not enough has been done in the main areas of the Swiss legal system to reflect the trend for the domi-

1993; CHR. LENZ; "Amerikanische" Punitive Damages vor dem Schweizer Richter, Zürich 1992; R.M. MÜLLER; Anerkennung und Vollstreckung schweizerischer Zivilurteile in den USA, Basel 1995; A. NUSSBAUM, Amerikanisch – schweizerisches internationales Privatrecht, Übersetzung der zweiten (erweiterten) amerikanischen Auflage, Bern, 1959; R. R. PROBST, "Good" Offices in the Light of Swiss International Practice and Experience, Dordrecht/Boston/London, 1989; F. RAYROUX; Amerikanisches Civil Jury Trial und Antitrust, Products Liability- und Derivative Suits, Vergleichende Aspekte, Zurich 1994; P. SUPINO, Rechtsgestaltung mit Trust aus Schweizerischer Sicht, St. Gallen 1994.

[75] It will be interesting to learn how the most recent changes of ownership structures of the publishing houses Stämpfli and Helbing & Lichtenhahn, as well as the international marketing cooperations of these publishers and of Schulthess Polygraphischer Verlag will affect the communication in Swiss academic publications on Swiss law.

[76] At the Neue Zürcher Zeitung, the reporting on legal matters in general is done by the resident correspondent in Washington; in the specialized group of journalists in economic matters, there are presently no lawyers.

[77] See also the Swiss Watchmakers Case.

nance of English, so that there has been a lack of communication and lack of ability to communicate about Swiss law.[78] This is all the more noteworthy because, in the view of the effects doctrine in conflicts of law, there will always be foreign, often English-speaking legal subjects, who are forced to engage with Swiss Law and because of this, can only do so with difficulty. There is also an absence in Switzerland of legal policy motivated by foreign policy or foreign trade policy considerations that would lead to a systematic and pragmatic attempt to increase communication, acceptance or actual attention paid to Swiss law. The fact is that there have been repeated legal tensions in the post war period between the Unites States and Switzerland.[79] The mutual knowledge of and respect for each other's legal systems has suffered recently as a result of the controversies about the Holocaust in the American courts and media; this may also negatively affect discussions of the relevance of American legal culture in training and research.

2.2.1.2 Purposes of Analyses

One of the purposes of this discussion is simply to know and recognize the causes, effects and interrelationships. Legal practitioners, judges and civil servants in Switzerland are themselves called upon in a number of situations to apply American law or to explain Swiss law to an American legal practitioner in English and in an appropriate form for the person to whom this is addressed. Swiss practicing lawyers particularly are often confronted in their everyday working lives with American, in other words English, styles of contracts, of editing, negotiation and working; they will in part be working primarily in English and have daily contact with American colleagues. Swiss legal officials working at the interfaces that provide judicial assistance in civil and criminal matters are left to "translate" American ideas and concepts; Swiss lawyers also conduct the relevant proceedings. Swiss regulators are strongly influenced by American regulators and Swiss lawmakers take their cue, whether they like it or not, as PETER BÖCKLI has described for the area of business law, from American models or at least partly take account of these. In claims of extraterritorial equivalence by the United States, law makers are necessarily involved in introducing American concepts into Swiss law. English, as the dominant language of international trade, is accelerating this legal process and also communication about it and is creating a completely new need for understanding and action in this respect. Leading American schools with

[78] See 2.2.2.4.

[79] See cases like Swiss Watchmakers in the area of antitrust law, Vetco in the area of criminal law on the divulging of economic secrets, Santa Fe in the area of insider law and March Rich in the area of tax law; the sequence of those cases as a chapter of the history of legal relationship between the United States and Switzerland has not been written yet.

their distance learning methods made possible by the information age are having an influence on our own educational system. Freedom of establishment and provision of services have created new competitive conditions for the liberal professions in Switzerland, and the high status that law enjoys in the American hierarchy of values is also reflected increasingly in Switzerland. Perceptions of the legal professions essentially created by the media have become reality.

The international practice of law – which has been essentially influenced as a discipline by the United States[80] and goes hand in hand with increasing legalization, use of information technology, interdisciplinary working, professionalization, specialization, market orientation, proceduralization, institutionalization and organization – is establishing itself as a multi-causal and multi-dimensional trend here in Switzerland. The fact that change is occurring quickly may make it harder to conceptualize, but does not remove the need to do so. A more in-depth analysis would be expected to show that the change there has been in terms of content, techniques and style in the provision of certain legal services is marked. Some of the elements in this relative change of emphasis would include the changeover from activities based on court and administrative decisions to planning and structuring; the change of perspective from "content" to "process", from the giving of legal advice to the solution of legal problems and from the solution of legal problems to the treatment of issues in a wider context; a significantly increased importance of the whole dimension of communication in dealing with law; an increased need to work together with other service providers in an integrated and interdisciplinary form; the gradual development of strategic legal advice given as the consequence of new management methods and new legal trends; the widespread and far-reaching use of information technologies; the development of new skills and tools in the methodology for the solution of legal problems; the increased importance attached to emotional intelligence in the giving of legal advice; the increased significance of attitude-related elements such as legal ethics and a general trend to move from legal consulting to legal management and from legal management to business consulting in general.[81] [82] [83] [84] [85]

[80] See also literature in English, FN 101.

[81] In the area of management science, again American books in English language are leading: JAMES L. HESKETT, Managing in the Service Economy, Harvard Business School Press, Boston 1986; JAMES L. HESKETT/LEONARD A. SCHLESINGER, Out in Front, Building High Capability Service Organizations, Harvard Business School Press Boston 1997; JAMES L. HESKETT/W. EARL SASSER JR./LEONARD A. SCHLESINGER, The Service Profit Chain, New York 1997; DAVID H. MAISTER, Managing the Professional Service Firm, New York 1993; DAVID H. MAISTER, True Professionalism, The Courage to Care About your People, your Clients and your Career, New York 1997, STEPHEN MAYSON, Making Sense of Law firms, Strategy, Structure and Ownership, London 1997); MARK C. SCOTT, The Intellect Industry, Profiting and Learning from Professional Service Firms, New York 1998; see also G. MÜLLER-STEWENS, J. DROLSHAMMER, J.

In view of the overwhelming complexity involved, certain minimum conditions must be met for any method of dealing with the effects of American legal culture. Any such method should be closely judged by how rooted in reality and effective it is and be able to encompass, in an integrated and interdisciplinary way, the effects American legal culture is having on the legal system, legal professions and legal training. Within these spheres, it should aim to equip legal practitioners with greater skills at the point where "knowledge", "skills" and "attitude" meet. The aims pursued should include issues not only of recognition and knowledge but also of behavior and action. Any new reality-oriented approach must therefore begin at a meta-level, as there is a need first of all to clarify certain preconditions for behavior and action without knowledge of which the current effects of Ameri-

KRIEGMEIER, Professional Service Firms – Branchenmerkmale und Gestaltungsfelder des Managements, in Professional Service Firms, Frankfurt 1999, 11-153, and the cited literature therein.

82 The most current reports on developments relevant to practice are contained in specialized English or American publications: International Journal of the Legal Profession; Lawyer International, The Legal Business Briefing on International and Emerging Markets; Legal Business; The American Lawyer; European Corporate Lawyer; European Counsel; Commercial Lawyer, London; International Legal Practitioner, International Bar Association, London; International Business Lawyer, International Bar Association, London; the New York Times, The Wall Street Journal and The Financial Times are at the forefront in reporting on the international practice of law on a daily basis.

83 Various contributions on the effects of globalization on the "International Practice of Law" are contained e.g. in The International Practice of Law, Liber Amicorum for Thomas Bär and Robert Karrer, ed. Nedim Peter Vogt et al, Basel, Frankfurt a.Main, The Hague, London, Boston, 1997; in the table of contents the reader may find texts like PETER BÖCKLI, Osmosis of Anglo-Saxon Concepts in Swiss Business Law, 9-30; KLAUS BÖHLHOFF, The International Practice of Law: Globalization or Regionalization, 31-40; ROBERT BRINER, The Evaluation of Evidence: Some Observations Based on the Practice of the Iran – United States Claims Tribunal, 41-52; WILLEM J.L. CALKOEN, Internationalisation of the Legal Profession, 53-58; JON H.I. GROUF, United States Trusts: Setting the Stage for Potential Litigation, 59-86; HEINRICH HONSELL, Liability of Professional Advisors under Swiss and German Law, 87-108; ANDRE NEWBURG, Implementation of the Environmental Mandate of the European Bank for Reconstruction and Development to Further Nuclear Safety in Eastern Europe, 167-182; PHILIPPE NOUEL, The International Practice of Law, 183-206; ANDREW SOUNDY, UK Aspects of International Legal Praxis, 207-121; ERNST STIEFEL/JAMES R. MAXEINER, Why Are U.S.-Lawyers not Learning from Comparative Law?, 213-236; PETER D. TROOBOFF, Maintaining Professionalism in International Legal Practice – Challenges for the Future, 237-246; DETLEV VAGTS, Bär and Karrer: Connecting Two Legal Systems, 247-262.

84 See the collection and selection of texts of literature in English, especially as regards the developments in the Anglo-Saxon world, FN 101.

85 JENS DROLSHAMMER, The Future Legal Structure of International Law Firms – Is the Experience of the Big Five in Structuring Auditing and Consulting Organizations Relevant?, in Jens Drolshammer/Michael Pfeifer, ed., European Journal of Law Reform, Vol. 2 Issue 4, 2000 and book; Special Issue Global Boom, The American Lawyer, November 1998; Lawyers Go Global, The Battle of the Atlantic, The Economist, February 26, 2000; Surviving in the New Europe: Strategies for European Firms, in European Counsel, March 1998, 31.

can legal culture can only be encompassed in a less than optimal way. This goes beyond an approach to American law as such; we are dealing with a multi-layered interaction between American and Swiss legal culture. There is no place here for the kind of arrogance and touchiness that would stand in the way of such an engagement, any more than for the potentially negative influence that excessive criticism or the naive lack of it would exert on the quality of insights and steps taken. The determination of the aims of debate should encompass concrete areas capable of being influenced and shaped. There is, therefore, no place here either, for a top-down management-imposed master plan; instead, it is much more a matter of bringing about steps and changes of attitude in certain areas, within a particular network of interested and affected parties, that would lead to an integrative and interdisciplinary approach to American legal culture as well as a greater facility for understanding, action and communication within the whole network of the Swiss legal system, legal training and legal professions. Our general assumption is that any engagement with the American legal system is not simply seen as a matter of fate or "cosmopolitan interest" but can serve as an impetuous for entirely self-interested steps taken as part of a "legal, professional and educational duty" on the part of all those concerned. It is probably true to say that the possibilities for action and change in this area are greater than the current state of understanding and willingness to take action. In what follows we seek to identify areas for greater awareness.

2.2.2 Proposals to Generate a Strategy for a New Approach to American Legal Culture – a prerequisite for European answers

Following on from what was said in the article *"Amerika gibt es nicht"* in the St. Gallen commemorative texts published for the *Juristentag 2000* we are arguing for a conscious and action oriented engagement with the effects of American legal culture on the legal system, the legal professions and legal training in Switzerland. This engagement must be sophisticated enough to reflect the complex causal relationships existing between the American and Swiss legal cultures. *The following proposals remain on a meta-level and are intended as an agenda for the formation of strategy. The individual proposals have generally been left without further explanation in the form of a list of elements for a possible strategy that is yet to be determined. The aim is effectively to establish a network of affected parties that can co-operatively plan a Swiss approach to American legal culture. The terms "public-private partnership" and, more appropriately, "international public-private partnership" are used here to describe an extended association for the purposes of action and reaction. This is aimed at various aspects of legal policy,*

educational policy, professional, information and communication policy and. in part, also at foreign and foreign trade policy. This is an emphatic call for strategic approaches that assumes that, within certain limitations, there is some room for manoeuvre –in case the will is there to take action. For the moment, we can enjoy the luxury of not having our initial advocate's enthusiasm dampened by the doubts of others.

2.2.2.1 Elements of Strategy in the Area of Teaching and Research

Teaching and research are key areas for the determination of any strategy dealing with American legal culture, because it is here that the formative conditions for international lawyers are created. Despite the practical and reality-oriented focus of the approach suggested here of concrete intercultural interaction, research as well as training will be required. A look at the current situation will show a certain loss of the educational monopoly of universities as part of the public-private partnership. This is because of the growing importance of lifelong learning and also a certain change of emphasis in the network in favor of a prospective increased integration of professional organizations into the educational process.

The following list sets out essential elements of a strategy:

- Anglo-American or American law should be taught in relation to European law through separate courses. The manner in which comparative law is taught at legal faculties should be examined; there should be a move away from pure comparison of private law and from some exclusive attempts to compare systems. In its place there should be an engagement with American law that focuses on effectiveness and the concrete consequences of American law particularly insofar as it touches on the Swiss legal system and affects the content of its laws. Alongside this it should be considered whether it might not be better to internationalize all legal subjects, so as to be better able to encompass the relationships between the Swiss legal system and its foreign equivalents. American law would be just one aspect of this. This would be associated with a change of emphasis in favor of trends in public international law and its interdependence with Swiss law.[86] Suggestions to expand legal skills in the spheres of "cognitive intelligence", "emotional intelligence" and "cultural intelligence" should be favourably taken up; these should be augmented with skills areas such as "knowledge", "skills" and "attitudes". As a result of the decisions taken in Bologna, there has been a call to consider harmonizing the structure of continental European and Anglo-Saxon higher education in terms of adopting the equivalents of the Bachelor and Master stage, even though the appropriateness of this is not immediately obvious in the area of law. It is worth looking at the adoption of the "credits system" as a way of allocating points for optional subjects and at a change in the system of examinations by limiting students to final exams in respect of whatever course they have followed in a particular term. Even if the pluralism of areas of law and legal methods currently prevalent in America is enough to turn some people away, it is worth investigating the idea of interdisciplinary and integrative forms of teaching. English legal language should become a compulsory subject and English should be more widely adopted as a language of teaching. It would also help us to have a little more of the sense of cohesion characteristic of a campus university and the lifelong association with alumni organizations.
- One strategic element of legal training could be the increased use of transactional methods of teaching, following the example of the Case Method employed at Harvard Business School for management training.[87] Courses that adopt this method adopt a completely different principle for communicating knowledge in teaching and perhaps also further professional training; this method is complementary to the traditional imparting of knowledge. The starting point is the real-life situation to be dealt with; knowledge is broken down according to the problems to be resolved, which in turn are generally independent of the areas of law involved. At the same time, planning and shaping real-life legal situations is included in the teaching process by means of actual examples. One of the main aims of this approach is that in their final years at university, students are introduced to a different view of reality and of professional life. The underlying principle is that the knowledge to be imparted is introduced into the teaching process in a networked and interdisciplinary manner, through the example of a complex transaction based in real life, with the personal involvement of the principal players in this transaction and by reference to the original case files. The students take on the roles of the decision makers and, most of all, their advisors. In this way, the teaching will actually include all the procedures that form a part of attempting to realize the aim of the transaction in the actual project and that are all part of one process. This method includes the kinds of strictures involved in this process such as time limits and incomplete information. The author has come to the conclusion that in a period of what is said to be increasing complexity of life in terms of facts and procedures, this type of teaching is a suitable means to portray this complexity and to have the students shown by the players involved, how that complexity can in reality be reduced and contained within the available time. Methods used at leading American schools are surely easier to introduce in

[86] See THOMAS COTTIER, Die Globalisierung des Rechts – Herausforderungen für Praxis, Ausbildung und Forschung, ZBJV 1997, 217-241.

[87] See also part 4.7.

Switzerland for legal training with a commercial emphasis. The seed corn for this has to some extent already been put down. For example ERNST HÖHN, in his valedictory lecture given in 1994 at St Gallen University, "Wie grau ist die Theorie? Gedanken zum Verhältnis von Doktrin und Praxis in der Jurisprudenz" (How dull is theory? Thoughts on the relationship of theory and practice in the study of law)[88] sketched out what possibilities exist for a paradigmatic change through a new definition of the relationship between theory and practice, even if this was not directly with a view to developments at American universities.

The focus on American legal culture could also form an impulse in the field of education to get away from the "decision-oriented legal education" approach which generally determines the structure and style of legal studies and to change the emphasis in favor of a complementary approach, "creation-oriented legal education", which is also nowadays of importance. It would also increase the ability of the educational system to adapt to changed conditions if, following the example of leading American schools, the process of imparting knowledge were treated from the point of view of methods employed and the subject "legal professions" were introduced for study at universities, making various aspects of professional life the subject of teaching and research.

- There should be a careful attempt to look at what is happening in terms of "the internationalization of legal training" that was partly induced by leading American schools and is occurring as a part of globalization.[89] [90] [91] [92] It is only

[88] ERNST HÖHN, Wie grau ist die Theorie? – Gedanken zum Verhältnis von Doktrin und Praxis in der Jurisprudenz, AJP/PJA 1994, 411-423.

[89] With regard to the American discussion on the necessity of an internationalization of legal education, see the literature contained in Toni Fine: ELIZABETH AMON, Law Schools in the Future Will Become Global And Professional, 3/22/96 Nat'l L.J. A16, col. 2, 1996; BENJAMIN R. BARBER, Global Democracy or Global Law: Which Comes First?, 1 Ind. J. Global Legal Stud. 119, 1993,119; JOHN A. BARRETT, JR., International Legal Education in the United States: Being Educated for Domestic Practice While Living in a Global Society, 12 Am. U J. Int'l L. & Pol'y 975, 976, 1997, 991-93; ALBERTO BERNABE-RIEFKOHL, Tomorrow's Law Schools: Globalization and Legal Education, 32 San Diego L. Rev. 137, 1995, 148; ADELLE BLACKETT, Globalization and Its Ambiguities: Implications for Law School Curricular Reform, 37 Colum, J. Transnational Law 57, 58; DAVID S. CLARK, Transnational Legal Practice: The Need for Global Law Schools, 46 Am. J. Comp. L. 261, 1998, 273; MARY C. DALY, Thinking Globally: Will National Borders Matter to Lawyers A Century from Now?, J. Inst. For Study of Legal Ethics 297, 1996, 307; JOSE DELBRUCK, Globalization of Law, Politics, and Markets – Implications for Domestic Law – A European Perspective, 1 Ind. J. Global Legal Studies 9, 1993,11; JACQUES DE LISLE, Lex Americana?: United States Legal Assistance, American Legal Models, and Legal Change in the Post-Communist World and Beyond, 20 U. Pa. J. Int'l Econ. L. 179, 1990, 308 note 74; TONI M. FINE, The Globalization of Legal Education in the US, in Jens Drolshammer/Michael Pfeifer, ed., European Journal of Law Reform, Vol. 2 Issue 4, 2000 and book; ALI KHAN, Internationalizing the Law School Curriculum, 22 Syllabus 8, 8, 1991; KEN MYERS, NYU's International Approach is Education on a Global Scale, 8/22/94 Nat'l L. J. A18 Cl 2, 1994; PETER

possible to make a constructive contribution to what is in effect a cooperative joint enterprise on a global scale by actively engaging in it, which is of particular importance if the aim is to introduce a European position in the formation of a trans-national legal order and of the new international lawyer. In view of globalization and the tendency for Americanization, any strategy should include the introduction of appropriate infrastructures at universities and legal

MURRAY/JENS DROLSHAMMER, The Education and Formation of a New International Lawyer – from a Global Perspective? in Jens Drolshammer/Michael Pfeifer, ed., Global Perspective, erscheint in European Journal of Law Reform, Vol. 2 Issue 4, 2000; GLORIA M. SANCHEZ, A Paradigm Shift in Legal Education: Preparing Law Students for the Twenty-First Century: Teaching Foreign Law, Culture, and Legal Language of the Major US American Trading Partners, 34 San Diego L.Rev. 635, 1997, 635; JOHN EDWARD SEXTON, The Global Law School Program at New York University, 46 J. Legal Ed. 329, 1996; PAUL B. STEPHAN, The New International Law – Legitimacy, Accountability, Authority, and Freedom in the New Global Order, 70 U. Colo. L. Rev. 1555, 1999, 1564.

[90] Internationalization of Higher Education, OECD Document, 1996, among others MARIJK VAN DER WENDE, Internationalising the Curriculum in Higher Education, 35-90; DAVID THROSTY, Progress Report on Financing and Effects of Internationalised Teaching and Learning, 91-112; John Mallea, The Internationalisation of Higher Education – Stakeholder Views in North America, 113-128; Bibliography 130-135; Bildungspolitische Analyse 1999, OECD 1999; Knowledge Management in the Learning Society, Education and Skills, OECD 2000.

[91] MICHAEL JOACHIM BONELL, Legal Studies in Today's Europe: Towards a European Lawyer, 41 American Journal of Comparative Law, 1993, 488 ff.; HELMUT COING, Europäisierung der Rechtswissenschaft, NJW 1990, 939 ff.; BRUNO DE WITTE/CAROLIN FERDER (eds.), The Common Law of Europe and the future of legal education, 1992; Roy Coode, The European Law School, 13 Legal Studies 1994, 1 ff.; HEIN KÖTZ, Europäische Juristenausbildung, Zeitschrift für Europäisches Privatrecht 1993, 268 ff.; BERNHARD GROSSFELD, Europäisches Recht und Rechtsstudium, Juristische Schulung, 1993, among others 710.

[92] We note that only recently authors have started writing on the internationalization of legal education; see e.g. DAVID LEEBRON, "The Internationalization of Legal Education; The Comparative Advantages (and Disadvantages) of American Law Schools", Newsletter of the Deutsch-Amerikanische Juristenvereinigung, Nr. 2, 29 (1997); JOACHIM ZEKOLL, Die Juristenausbildung in den U.S.A. – ein Modell für deutsche Reformen?, Newsletter of the Deutsch-Amerikanische Juristenvereinigung, Nr 4, 87 (1998); THOMAS COTTIER, Die Globalisierung des Rechts – Herausforderungen für Praxis, Ausbildung und Forschung, Zeitschrift des Bernischen Juristenvereins, 1997, 217-241; JOHN HENRY MERRIMAN, Legal Education There and Here: A Comparison, in The Loneliness of the Comparative Lawyer, The Hague/London/Boston, 1999, 53-75; see various publications of DETLEV VAGTS: Are there no International Lawyers anymore? American Journal of International Law, January 1981, 134-137; The Impact of Globalization on the Legal Profession, in Jens Drolshammer/Michael Pfeifer, ed., European Journal of Law Reform, Vol. 2 Issue 4, 2000 and book; MARY C. DALY, The Ethical Implications of the Legal Profession: A Challenge to the Teaching of Professional Responsibility in the Twenty-First Century, 21 Fordham International Law Journal, 1241-1251, 1988; as well as PETER MURRAY/JENS DROLSHAMMER, The Education and Formation of a New International Lawyer – from a Global Perspective? in Jens Drolshammer/Michael Pfeifer, ed., European Journal of Law Reform, Vol. 2 Issue 4, 2000 and book; Toni M. Fine, The Globalization of Legal Education in the US, in Jens Drolshammer/Michael Pfeifer, ed., European Journal of Law Reform, Vol. 2 Issue 4, 2000 and book.

faculties in Switzerland. There is no inescapable need for every institute of commercial law to be called "Institute for European and International Commercial Law". This trend could also have an effect on the acquisition policies of law libraries and the use of information technologies in teaching and research. It is almost certainly mistaken to believe that the imparting and generation of knowledge in the light of the tendency for Americanization will be restricted to teaching. It is particularly at times of rapid change that the need for theory and hence research is relatively great, even though the striking demand for practical application in today's globalized world, in which the information society is having a revolutionary effect, often appears to be hostile to theory. In accordance with the spheres of application of American law and globalization, it should be considered whether research activity ought not to be given a new direction.[93] Leading American schools in particular show a marked tendency to adopt a more academic approach to university activity, with a correspondingly high proportion of research being carried out.

- In educational terms, one attempt to come up with a creative answer to the tendency for Americanization and globalization would be to introduce a parallel and complementary course of studies as a new international lawyer or an international commercial lawyer. This course of studies would be supported by the use of the Internet and access to a student organization appropriate to a modern international lawyer; in the same way as the exchange program operated by the Community of European Management Schools (CEMS), it would offer theoretical training at foreign universities, practical training at legal firms, legal departments of institutions, training in specialist language skills and other tools, international management training and lead to the acquisition of a qualification acceptable in the market. In order to take account of modern mobility needs, these special programs could be divided into an extra-mural and an intra-mural part; access to them could be by means of open competition, supported by corporate sponsoring schemes; more generally they could subject themselves to international benchmarking of this specialist training in cognitive, emotional and cultural intelligence for an international lawyer. This would render a law faculty internationally accessible and, in a way, compatible and draw it quite naturally and in a structured manner into an international network of cooperation (cf. 3.3.2).
- Any existing attempts to formulate a strategy to deal with the tendency for Americanization can be found chiefly in the fields of graduate and postgraduate study. Noteworthy examples are the Master of European and International Business Law (M.B.L.-HSG) at St. Gallen University, the first mainly Internet-based course of further professional study in continental Europe, and the

[93] Compare 4.

Master of International Economic Law of the World Trade Institute at Bern University. The fact that a strategy of internationalization also calls for a particular approach for universities, and faculties can be seen by looking at the situation at leading American universities where visiting professors, exchange programs, introductory courses to civil law, lecture series etc. are accepted everyday phenomena. In the long term it may be possible to bring about a strategically successful position if certain European universities, at least one of which should be Swiss, offered a special semester of study for Anglo-Saxon students that gave an integrated introduction to the civil law system and continental European legal structure. One further element in such a strategy would be the optimal networking in this sphere of the "public-private partnership" both within and outside Switzerland with all the players within the network. It goes without saying that this would have consequences for the governance of the university and its legal faculty in order to arrive at a new form of professional and integrated networking. In terms of timing, the elements to be identified as part of the strategy should already include and provide for the next generation of internationalization of legal training in response to internationalization and globalization. The existing approaches followed by CEMS, the M.B.L-HSG and the Master of International Economic Law should be pursued in greater depth. The fact that this entry into globalized networks means that certain obstacles in terms of accreditation or foreign benchmarking have to be overcome may well have its positive sides.

2.2.2.2 Elements of Strategy in the Area of Legal Policy

Within the abovementioned networks of parties affected by American legal culture, the state will also have a role to play within the suggested international public-private partnership. We believe it is one of the chief tasks of legal policy at state level and of its associated political spheres to introduce appropriate measures to respond to the effects that internationalization and globalization are having on legal affairs.

Such a strategy could consist of the following elements:

- The repositioning or refocusing of the Swiss legal system will, to the extent that it is determined by the state, require a strategy to be formulated and published by the the administration (Bundesverwaltung) and the executive (Bundesrat) of the Swiss Federation. For example, in an equivalent area of policy, the Bundesrat drafted and published a report for the Federal Parliament about security policy in Switzerland in report 90 on 1 October 1990[94] entitled

[94] Schweiz. Sicherheitspolitik im Wandel, Bericht 90 des Bundesrates an die Bundesversammlung über die Sicherheitspolitik der Schweiz.

Schweizerische Sicherheitspolitik im Wandel (Changes in Swiss Security Policy) that posed questions such as "Why the need for a refocusing?" (Security policy in a changing world), "What do we face in the future?" (Opportunities and risks), "What stance do we wish to take?" (Our position, aims of security policy and strategy for security policy), "How can we realize our strategy?" (The means our security policy has at its disposal), "What decisions remain to be made?" (Outstanding matters and assessment of initiatives). A similar procedure could be followed in the present area of policy, so long as the state is willing to recognize the need for analysis and action at state level. The corresponding methodology for arriving at a strategy could helpfully be transferred by analogy from similar areas of policy. Under the heading "International legal policy in a changing world" the question of "Why the need for a refocusing?" should be answered as in the present text. Under "What do we face in the future?" an integral assessment of the current situation would need to be made and under "What stance do we wish to take?" the relevant legal policy goals and strategy set out. These goals would include the competitiveness of the Swiss legal system, its compatibility and acceptance, the ability to communicate and effective communication about the legal system, the optimizing of the present situation to allow room for manoeuvre in respect of the shaping and execution of the legal system etc. A strategy for international legal policy would need to take account of the effects of globalization, foster the compatibility and interoperability of the legal practitioners involved in the network, actively communicate about the Swiss legal system and protect relevant interests by entertaining bilateral and multinational state relations as well as contact with international organizations. Overall, the aim would be to preserve and expand the general competitiveness of Switzerland through the use of its legal system. There would need to be a discussion under the heading "How can we realize our strategy?" about the means to be employed. Such means would include legal policy, foreign and external trade policy, the IT capability of the nation's economy in the legal sphere, educational and research policy, language and cultural policy, the institutions of state legal policy such as administration, law making and the application of law as well as the strategic direction of this legal policy.

- Where they are internationally significant, the principal elements of Swiss statute law and the administrative practice of the federal authorities should be examined in the light of globalization and the need to preserve competitiveness and amended where necessary. Certain strategically successful elements of the legal system should be afforded lasting support and maintenance. The notices published in relation to federal laws should not only set out the effect of European law but also in future that of American law. An official body should be created within the judicial authorities for this purpose and equipped with the necessary means. It is also indispensable for the most significant items of legislation to be translated into English and published in the course of the legislative process. Consideration should be given to introducing the use of the English language as a special official language in certain key areas (on this see also section 2.2.2.4).
- As a part of the federal state's responsibility for the furthering of education, research and technology, the Swiss Institute for Comparative Law should be significantly refocused to deal with American Law and specialized libraries and university departments of American law should be given support. The Swiss National Fund should seek to support work dealing with the effects of globalization, and particularly with the effect of American law. Within the planned network of a virtual campus of Swiss universities, the law faculties should be networked together, both nationally and internationally. Students at high school should be made familiar with the phenomenon of internationalization and the role of law.[95]
- Because of the need for swift action, the measures set out by the executive (Bundesrat) in connection with the development of information technology under the title "Strategie zur Förderung der Informationsgesellschaft hier in der Schweiz" (Strategy for the Support of the Information Society here in Switzerland) should be speedily brought forward. Several indicators would suggest that the speed of change is increasing and the available time to adapt to this is becoming ever shorter.[96] Because of internationalization and globalization, Swiss competency in the field of IT is becoming an important factor that would also be crucial for the success of the Swiss legal system, legal education and those working in the field of law. As a part of the suggested "public-private partnership", an in depth investigation of the competitiveness and compatibility of the Swiss legal system should be carried out and the results of this reflected in professional, high school and vocational training as well as in the program "Virtueller Campus Schweiz" (Virtual Campus Switzerland).[97] It is also necessary to develop e-commerce in the sphere of law and rapidly to pass enabling legislation for this. The necessary investments and knowledge transfers should take place against the background of efficient cooperation between the state, the private sector and academia. This will mean jointly agreeing what possibilities exist, defining priority aims and projects and jointly realizing them through the above public-private partnership, as dis-

[95] Mit Bundesgeld zu besseren Mittelschulen? PASCAL COUCHEPIN vor dem Kongress der Mittelschulrektoren, NZZ 16. Mai 2000, Nr. 113.

[96] PETER QUADRI, Noch kann die Schweiz mithalten, im digitalen Wettstreit riskiert die Schweiz zurückzufallen, NZZ May 25,.2000, Nr. 121.

[97] MAYA LALIVE D'EPINAY, "Switzerland" – Auch eine politische Aufgabe, Aktionsfelder für den Staat bei den Informationstechnologien, NZZ June 13, 2000, Nr. 135.

cussed by MAYA LALIVE D'EPINAY[98]. When dealing with cyber law the question will be, what is to come first – the chicken or the egg: will it be a matter of adapting the law to cyberspace or vice versa?[99]

- Assuming that certain elements of the Swiss legal system, legal education and its legal professions can be regarded as strategic success factors of the country, we believe it should be examined how far the state should be responsible as part of the above public-private partnership to communicate and inform about these success factors through its international law and international trade policies. It must surely be a part of the state's role in protecting national interests to have a strategy of integrating communication about law into the general process of realizing legal purposes. Such communication should be carried out actively, appropriately and in view of the available timescale, in line with the fast-changing state-of-the-art in this field and treated as a continuing task. To this end, Swiss information technology infrastructure and the corresponding representation of the legal system must be compatible with international requirements. The current reticence of the state to engage in information and communication in this area should be re-examined, especially given the insufficient importance that has been attached to legal processes being increasingly carried out in the media and to the effects of globalization. The question of whether there is such a thing as a "government reputation" in need of protection in the area of law, in other words a "legal reputation" by analogy with a "corporate reputation" in private industry, ought to be investigated and, if so, this ought to be regarded as a political duty. An appropriate international information and communication policy in the sphere of legal reputation would have to be planned and realized. American holocaust claims and proceedings against Swiss banks and insurance companies have led to a loss of image for Switzerland, which may be difficult to assess from a Swiss point of view but ought not to be underestimated. Anyone who believes the United States would of its own accord return to the kind of fairness in its dealings with Switzerland that Switzerland and its inhabitants expect is likely to be mistaken. It remains to be seen whether the proposed efforts set out under the title of "Increased Measures to Improve the Image of Switzerland in the USA, Plans and Strategy" will be sufficient.[100] The failure of a large-scale initiative carried out by

[98] Botschaft des Bundesrates über die Förderung von Bildung, Forschung und Technologie in den Jahren 2000 bis 2003, dated November 25, 1998, 1-175.

[99] DIETER GERICKE, Cyberrecht und Pferderecht, ist das Recht dem Cyberspace anzupassen oder umgekehrt? NZZ, April 20, 2000, Nr. 94.

[100] There are various official documents on the increased need actively to deal with the image of Switzerland such as Verstärkte Pflege des schweizerischen Erscheinungsbildes in den USA, Strategie und Konzept, verwaltungsinternes Dokument, dated April 20, 1999; see also MICHAEL AREND/MARKUS LAMPRECHT/HANSPETER STAMM, Schlussbericht zum Projekt Die Wahrnehmung der Schweiz im Ausland, Nationales Forschungsprogramm 42, Zürich, April 1999; HEINZ BONFADELLI/BETTINA NYFFELER/ROGER BLUM (eds.), Helvetisches Stiefkind, Schweizerische Aussenpolitik als Gegenstand der Friedensvermittlung, Institut für Publizistik Wissenschaft und Medienforschung der Universität Zürich, Zürich 2000.

Swiss industry as part of a public-private partnership would lead one to be pessimistic.

2.2.2.3 Elements of Strategy in the Area of Professions and Professional Organizations

In our view, globalization and the tendency for Americanization of the legal system, legal professions and legal education also call for a refocusing and repositioning of professionals and their professional organizations. The public-private partnership may need to be networked in a new way. We would include the following points as elements in a strategy:

- The changes in the international practice of law[101] are of greater significance for practicing professionals in this sphere than for people in positions such as

[101] The literature in that area is growing at a rapid pace; we limit ourselves to a selection in English, in particular concerning the developments in the Anglo-Saxon area as regards the internationalization of the "International Legal Practice": RICHARD L. ABEL, American Lawyers, New York Oxford 1989; RICHARD L. ABEL/PHILIP S. LEWIS, ed., Lawyers in Society, Berkeley and Los Angeles, 1995; RICHARD L. ABEL, Lawyers, A Critical Reader, New York 1997; LINCOLN CAPLAN, Skadden Arps: Power, Money and the Rise of a Legal Empire, USA 1993; M. CHAMBERS, Networks and alliances: strategies of the international law firms, Commercial Lawyer, Vol. 1 1996, No. 7, 17 ff.; SIDNEY M. CONE, International Trade in Legal Services – Regulation of lawyers and firms in global practice, Boston 1993; D.J. COOPER/B. HININGS/R. GREENWOOD/J.L. BROWN, Sedimentation and Transformation in Organisational Change: The case of Canadian Law Firms, Organization Studies, 1996, 17/4, 623 ff.; W.H. DAVIDOW/B. UTTAL, Service companies: focus or falter, Harvard Business Review, July-August 1989, 77 ff.; YVES DÉZALAY/DAVID SUGARMAN, Professional Competition and Professional Power: Lawyers, Accountants and the Social Construction of Markets, London 1995; YVES DÉZALAY/BRYANT GARTH; Dealing in Virtue International Commercial Arbitration and the Construction of a Transnational Legal Order, Chicago 1996; In MARC GALANTER/THOMAS PALAY, Tournament of Lawyers, Chicago 1991; MARY ANN GLENDON, A Nation under Lawyers, New York 1994; JOHN P. HEINZ/EDWARD O. LAUMANN; Chicago Lawyers, The Social Structure of the Bar, rev. ed., Chicago 1994; STEVEN J. KUMBLE/KEVIN J. LAHART, Conduct Unbecoming – The rise and ruin of Finley, Kumble, New York 1990; WILLIAM KUMMEL, A Market Approach to Law Firm Economics: A new Model for Pricing, Billing, Compensation and Ownership in Corporate Legal Services, Columbia Business Law Review, 1996, 379 ff.; V. LEWIS, Trends in the Solicitors' Profession: Annual Statistical Report 1996, The Law Society, London 1996; SOL M. LINOWITZ, The Betrayed Profession – Lawyering at the End of the Twentieth Century, New York 1994; DAVID MAISTER, Managing the Professional Service Firm, New York 1997; the same, True Professionalism, The Courage to care about your people, your clients and your career, New York 1997; G. MALONE/H. MUDRICK, Anatomy of a Law Firm Merger, American Bar Association, Chicago 1992; STEPHEN MAYSON, Making Sense of Law Firms – Strategy, Structure and Ownership, London 1997 (with extensive literature list); MARK H. MCCORMACK, The Terrible Truth

judges or officials in the legal system. It is particularly internationally active law firms that are subjected to and shaped by a strong Anglo-Saxon, i.e. American influence. It is professional organizations and their members who should carry out most of the work in this connection themselves in a timely and appropriate manner, as this is also a context where they have a competitive position to defend. The days are long gone when foreign observers used to know more about the Swiss International Practice of Law than professionals in Switzerland. It has become necessary for strategic reasons that a certain amount of time at law firms is set aside for responding to this international practice of law. This trend will give rise to a number of additional areas of professional activity. Legal practitioners should themselves become actively involved in the law-making process; in particular they should express their interest in the suggested institutionalization of legal policy. New functions being carried out by the law call for developments in the sphere of teaching, be it substantial continuing professional education at a law firm or a greater involvement in teaching at universities by external legal practitioners. Legal practitioners should have an interest in practice-oriented and market-oriented academic training and become actively involved in bringing this about. A further element in the strategy would be for representatives of the professions themselves to consider how the organization of the law firms could be made to be more in line with the state-of-the-art and in accordance with entrepreneurial

about Lawyers – How Lawyers really work and how to deal with them successfully, New York 1987; RALPH NADER/WESLEY SMITH, No Contest, Corporate Lawyers and the Perversion of Justice in America, 1996; WALTER OHLSEN, The Litigation Explosion, New York 1991; A. PARASURAMAN/V. A. ZEITHAML/L. L BERRY, A conceptual model of service quality and its implications for future research, Journal of Marketing, Fall 1985, 41 ff.; A.A. PATERSON, Professionalism and the legal service market, Int. Journal of the Legal Profession, Vol. 3, 1996, 137 ff.; ASHLY PINNINGTON/TIMOTHY MORRIS, Power and Control in Professional Partnerships, Long Range Planning, Vol. 29, Heft 6, 1996, 842 ff.; R. POUND, The Lawyers from Antiquity to Modern Times, St. Paul (Mass.) 1953; J. A. RAELIN, An anatomy of autonomy: managing professionals, The Academy of Management Executive, Vol. III 1989, No. 3, 216 ff.; S. S. ROACH, Services under siege – the restructuring imperative, Harvard Business Review, September-October 1991, 82 ff.; DIETRICH RUESCHEMEYER, Lawyers and their society: a comparative study of the legal profession in Germany and in the United States, Cambridge (Mass.), Harvard University Press 1973; M. SALTER, On the idea of a legal world, Int. Journal of the Legal profession, Vol. 1, 1994, 283 ff.; DEBORA L. SPAR, Lawyers Abroad: The Internationalization of Legal Practice, California Management Review, Vol. 39, No. 3, 1997; MARK H. STEVENS, Power of Attorney: The rise of the giant law firms, New York 1987; JAMES B. STEWART, The Partners – Inside America's most powerful law firms, New York 1983; RICHARD SUSSKIND, The Future of Law, Oxford (GB) 1998; D.M. TRUBEK/Y. DÉZALAY/R. BUCHANAN/J. DAVIS, Global Restructuring and the Law: Studies of Internationalization of Legal Fields and the Creation of Transnational Areas, 44 Case Western Reserve L. Rev., 1994, 480 ff.; JEAN E. WALLACE, Organizational and Professional Commitment in Professional and Nonprofessional Organizations, Administrative Science Quarterly, 40, 1995, 288 ff.

professionalization.[102] A continued delay and, at times, arrogance in coming to terms with competition from the international legal network of the Big Five would have unpleasant consequences, particularly if the specialties of international law firms operated by legal practitioners are not publicized by those legal practitioners themselves.[103] Given that the professional organizations have not yet adapted themselves to the latest trends, leading law firms will have to address these issues with their own resources.

- The strategy could now also include a re-appraisal of the sphere of operation of professional and specialist organizations. In view of the different interests being represented within the cantonal and national lawyers' and legal practitioners' organizations, the main focus of each professional organization would have to be determined anew in order to demarcate its interests. This applies to each and every legal profession, so for example to the *Schweizerische Vereinigung für Unternehmensjuristen* (Swiss organization of in-house counsels) or the Swiss associations of judges and legal officials. One element in this strategy for professional organization could also be to create an international network of the various national organizations so as to be actively involved in the next higher level of organizations. In view of the Europeanization and internationalization of numerous specialist organizations, another element of the strategy should be to communicate in a modern form with foreign professional organizations and perhaps to join up with them in cases where the relevant professional association has, for example, become partly a European one.
- The lack of adaptation of the Swiss legal system, legal professions and legal training to the challenges posed by increasing Americanization and, more generally, by the effects of globalization, can be seen in the fact that there is not a single professional organization that is focused on the relationship between Switzerland and the United States in the legal sphere. One substantial element in any strategy would, in our view, be to consider founding a Swiss-American Jurists' Association modelled on the *Deutsch-Amerikanische Juristen-Vereinigung* (the German-American Jurists' Association). The German association is 25 years old and has over 5,000 members drawn from legal practice, companies, the courts, government service and the universities.[104] It is representa-

[102] MÜLLER-STEWENS/KRIEGMEIER/DROLSHAMMER, Professional Service Firms, Frankfurt a.M., 1999.

[103] Preserving the Core Values of the American Legal Profession, The Place of Multidisciplinary Practice in the Law Governing Lawyers, Report of the New York State Bar Association Special Committee on the Law Governing Firm Structure and Operation, Albany, New York, April 2000.

[104] The Deutsch-Amerikanische Juristen-Vereinigung (German-American Association of Lawyers) has been founded 25 years ago. The Association has – among others – organized for many years introductory courses into American law and has published helpful brochures such as: USA-

tive of German interests in this context. It is involved in the legislative process, in training young lawyers, helps with the finding of university places, provides information about developments in American law, acts as a host to American visiting professors and as a point of contact for other interest groups on dealings with American law etc.

The purposes of the *Deutsch-Amerikanische Juristen-Vereinigung* at a time of rapid change is seen by its honorary president as offering a forum to observe, discuss and evaluate all these developments, to engage with them through the formation of planned "specialist groups" of well-known experts to maintain the transatlantic contact of the association with the corresponding organization in America, to work together more closely with legal practitioners from other European states who are interested in the USA and to encourage even greater access to American law, as well as developing its own suggestions for the reform of legal education. The honorary chairman of the association, Professor Reiner von Borries[105] said in a jubilee lecture on the occasion of the 25th anniversary of the organization:

> "The USA is now no longer simply a political and military, a commercial, technological and cultural superpower but also a legal superpower. Whether we like it or not, we must take note of this and maintain a dialogue between Germany, Europe and America in all areas. More than ever before it is true to say that developments in the United States are an enormous legal policy experiment. Dealing with American law will therefore become more, and not less, important for us in future. This engagement will take place ever less from a German-American perspective and ever more from a European-American one. It is possible that in 25 years' time we will have become a European-American Jurists Association…"

The objection that Switzerland is too small or the claim that there is already a plethora of organizations representing the professions and interested parties in Switzerland will have to be examined and can hopefully be dismissed. Starting a corresponding Swiss-American Jurists' Association would have the advantage of bringing together all interested parties in an issue-related regrouping; this may help to avoid fragmentation and encourage a focus on the true issues.

Bewerbungsführer für Juristen, Bonn 1991, Rechtsstudium in den USA, Informationen zu Vorbereitung und Organisation, Bonn 1991 and USA-Studienführer für Juristen, 5th ed., Bonn 1998.

105 REIMER VON BORRIES, 25 Jahre DAJV, special lecture of the founding President of the Deutsch-Amerikanischen Juristen-Vereinigung, held on April 15, 2000 in Bonn at the occasion of the 25th anniversary of the Association, DAJV Newsletter 2/2000.

2.2.2.4 Elements of Strategy in the Area of Information Policy and Communication

The ability to communicate effectively and appropriately about Swiss law must first of all be brought about in the public-private partnership of those affected by American legal culture. There has been little research into the interaction between different legal cultures in a world that is both globalized and characterized by a significant media presence; this interaction must be investigated elsewhere. Having made suggestions on what enabling conditions might be created to encourage competition and interaction, we will identify in what follows possible elements of a strategy to ensure that greater importance is attached to the English language, to the perception of the legal professions as formative agents of international legal relations, as well as to the representation of law in the international financial media.

- In order to make the Swiss legal system better able to communicate, principal Swiss legislation should be officially translated and published in English, both during the legislative process and after it has come into force. Consideration could be given to introducing English as an official language in an, as yet to be defined, part of the legal system. Relevant official notices and decisions of federal authorities dealing with matters of foreign relevance should be published in good time in English. The essential central elements of the Swiss legal system should be reworked in information technology terms to make them accessible in a state-of-the-art way. This would involve the Federal Justice Ministry or the Swiss Institute For Comparative Law operating a constantly updated website on all publications on Swiss law in the English language. Swiss legal publishers would, in cooperation with foreign organizations organize international sales of Swiss legal texts and, with the support of the Swiss National Fund and Pro Helvetia edit and publish summaries of certain parts of the Swiss legal system in English. Swiss legal publications would adopt an additional name in English and only publish articles together with an English abstract of them, the relevant material being made available via the Internet. Every law faculty of a university would introduce English legal language as a compulsory subject and lecturers would have the right to teach in English in certain subjects. This public-private partnership should be made to include the *Schweizerische Anwaltsverband* (Swiss Bar Association), the *Schweizerische Juristenverein* (Swiss Jurists' Association), the *Schweizerische Vereinigung der Unternehmensjuristen* (Swiss Association of In-house Counsels) etc, as professional organizations together with specialist organizations for individual areas of law and the Swiss-American and the Swiss-British Chambers of Commerce. The efforts directed at the English language within the Swiss legal system would be comparable to those undertaken in countries

such as the Netherlands, Germany, Austria, Sweden, Finland, Hungary, and Korea. Altogether a lively culture of writing about Swiss Law in the English language should be encouraged, for it should be possible to undertake doctoral and postdoctoral research at all Swiss legal faculties in the English language (cf. section 3.1.4.2.2).

- Research should be carried out to examine and bring about appropriate changes in the definition of the roles of professions strongly affected by American and English legal culture and that stand at the interface of law and management. In our view this undertaking ought also to form the subject of teaching and research at universities on both sides of the Atlantic. We believe there is too little knowledge, familiarity with, insight into and understanding of the respective functions of those carrying out these roles; they interrelate and must at times cooperate with one another. We suspect this underdeveloped understanding of each other's professional roles makes it more difficult and sometimes impossible for legal practitioners and managers and the corresponding professionals in different legal cultures to work together. Misunderstandings and failures of understanding mean that the underlying initial conception of the kinds of interrelationships and actual co-operation required by current needs is either lacking or misconceived. We believe the effects of this less than optimal mutual initial understanding are underestimated and are therefore not being sufficiently integrated into any overall view of the situation. In this connection reference should be made to the greater significance and relevance of the whole area of communication and the various forms it takes. These failings would seem to us to be becoming all the more apparent, the more the reality being communicated about the professional roles of lawyers and managers on both sides of the Atlantic is derived not so much from private interaction but from public or at least published opinion. This conclusion was reinforced by visits to the ISC Management Symposium at St Gallen University and of the World Economic Forum in Davos. The same applies to the leading economic media such as *The Wall Street Journal, The Financial Times, The New York Times, Le Monde, The Frankfurter Allgeneine Zeitung* and the *Neue Zürcher Zeitung*. Similar conclusions can be drawn from so-called "leading research" in both academic law and management teaching. Forums such as Legal Academics and Corporate Counsels at the annual meetings of the Section for International Business Law at the International Bar Association do little to alter this impression. However, if we proceed on the optimistic working assumption that the interrelationships can be understood, researched, taught and investigated, then it would seem an obvious step to include in education and further professional training a systematic treatment of the whole area of the perception of professional roles, which in turn shapes our vision of reality.

- There would appear to be another subject associated with this lack of familiarity with the reality of how professional roles are perceived, namely the underlying fact of an insufficient understanding of the function of law for the economy and society as a whole, on the part of managers as agents of economically active companies and on the part of entrepreneurs. This would also need to be included in a wider view of the relationship between law and management. This is about more than merely observing a masochistic inferiority complex on the part of lawyers in the well-honed and established division of responsibilities between different professionals within the economy. The question of the essential importance of law and of the understanding of this importance for economic activity has not been sufficiently advocated in the globalized world and should be made the central focus of innovations in knowledge, skills, and attitudes at the interface of law and management. In our view, legal practitioners should arrive at a new understanding of their role and significance and see the communication of this as an integral part of an interdisciplinary and international approach. This would be a sensible first step for what will necessarily come to be a dialectic engagement with American legal cultures.

A broad view of the concrete effects of American legal culture on Switzerland should include a greater ability to communicate, a sweeping away of mutual prejudices and a clarification of the role of law. This phenomenon is not limited to the interaction between Swiss and American legal cultures. As a perspective it is already necessary, from a Swiss point of view, simply by virtue of the conflict and choice of law rules in commercial law, whose criteria are based on effects. Any nation that makes a claim for its laws to be applicable in other countries gives rise to justifiable expectations of communication in the English language. The independent introduction in Switzerland of rules into its commercial law to comply with those of EU countries, will in part introduce foreign law into the Swiss legal system that was drafted in its country of origin in English and which, given the number of member states in the EU, will necessarily be characterized in a complex manner by various different perceptions of professional roles and different ideas of law.