

# English in Switzerland – is it legal?

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Die meisten JuristInnen in der Schweiz verwenden in ihrem juristischen Alltag Englisch als Rechtssprache noch nicht häufig. Die rechtswissenschaftlichen Fakultäten bieten nur selten Kurse für Englisch als Rechtssprache an und führen kaum Lehrveranstaltungen in Englisch durch. Es gibt aber Hinweise dafür, dass die Bedeutung des Englischen für viele JuristInnen in der Schweiz wie in anderen Ländern zunimmt. In diesem Artikel untersuche ich diese Veränderung, indem ich die Fragenbogen aus mehreren Kursen "Englisch für JuristInnen" auswerte. Ich gehe der Frage nach, wieso das Englische viel langsamer in die Rechtswissenschaften eingedrungen ist als in andere Fachgebiete. Dann beleuchte ich die Faktoren, die bewirkt haben, dass neuerdings viele schweizerische JuristInnen Englisch für ihre Karriere als notwendig erachten. Weiter zeige ich einige Arbeitsgebiete auf, in denen schweizerische RechtswissenschaftlerInnen regelmässig Englisch verwenden. Schliesslich werden mögliche Entwicklungstendenzen besprochen.

## 1. Introduction

The spread of English in Switzerland has recently been the subject of much discussion, as the range of articles in this volume and the book edited by Watts & Murray (2001) indicates. Besides being a popular language in youth culture and business, English is increasingly affecting other walks of life in Switzerland (Franzen 2001). For example, in our investigations into the use of English at Swiss universities (Dingwall & Murray 1999, Murray & Dingwall 1997, 2000), we found that English has been widely used for reporting on research in the life sciences for at least twenty years. Swiss natural scientists have also been feeling the pressure to communicate their findings in English for some time, whereas in the humanities and social sciences English still plays a comparatively minor, albeit, increasingly important role (see also Murray 2001: 92). In particular, English has only very recently begun to penetrate the field of law as it is taught at Swiss universities and as it is practised in most Swiss law firms (with the exception of a few specialist areas). This pattern is typical in other non-English-speaking countries as well. For instance, in Sweden law courses are generally held in Swedish (Gunnarsson, 2000: 305), while in Switzerland they are usually taught in German or French (see 2.1).

In this paper I address first the question of how law students and lawyers in Switzerland are in practice being affected by the spread of English, and then consider some reasons why the field of law may be particularly resistant to its

spread. Notwithstanding this almost requisite resistance, various recent developments, ranging from within Swiss law itself to the more global, mean that English will continue to make itself increasingly felt within Swiss legal circles. I try to spell out what some of these developments are, drawing on discussions with students and their written work. Finally, I undertake some crystal-ball-gazing and attempt to predict how Swiss lawyers will use English in future.

## **2. English use among Swiss lawyers**

How have lawyers in Switzerland been affected by the spread of English? In 2.1 I discuss the presence of English in the law faculties of Swiss universities, with a special focus on Zurich University. 2.2 is devoted to an analysis of questionnaires and letters supplied by practising lawyers attending “English for law” courses I have taught in which they report on how, if at all, they use English at work. When quoting from their written comments, I have left them unedited as they give an indication of the writers’ English skills.

### *2.1. English in Swiss law faculties*

My experience as a teacher of “English for law” at the University of Zurich for over ten years indicates that English for Legal Purposes (ELP) used to be restricted to a small group working with foreign clients and/or in international law. Not surprisingly, then, none of the Swiss universities teaching law<sup>1</sup> apart from Zurich appears to offer an English course specifically for students of law (i.e. an ELP course) as an official part of their program<sup>2</sup>. Most Swiss universities offer these days a range of English for Special Purpose courses, but not ELP. However, the new Law Faculty at the University of Lucerne plans to offer an optional “English for law” course and Zurich University has had an optional ELP course for just one semester per year for many years.

English is very rarely used as the medium of instruction in undergraduate courses in law in Switzerland. Generally the lectures and seminars organised

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1 There are law faculties at the Universities of Basle, Bern, Fribourg, Geneva, Lausanne, Neuchâtel, St.Gall, and Zurich. Lucerne used to be purely a theological college, but set up two new faculties (Law and Social Science) in autumn 2001.

2 Data taken from the timetables for the undergraduate courses and optional courses in law (winter semester 02/03) listed in <http://www.webtechnology.ch/f/studentsinn/stundenplaene.asp> and from telephone calls with university law faculties. At St.Gallen “English for Law, Management Studies and Economics” is one course offered, but it is not purely ELP.

by the law faculties are in German or French, with the occasional guest lecture or block seminar on an international topic held in English (e.g. the only course held in English during the winter semester 2002 at Zurich University was on Japanese law given by a visiting professor). Some law faculties actively encourage their students to do part of their studies (usually one so-called *Mobilitätssemester*) in universities in another language area in Switzerland. For example, the Law Faculty at the University of Geneva stresses the importance of German in law-making in Switzerland<sup>3</sup> and the University of Lausanne offers a “German for law” course and two courses taught in German. At Zurich University, two courses in “Italian for law” are taught, but there are no courses in “French for law” or lectures in French. Traditionally, the other Swiss languages have been more important in most Swiss lawyers’ daily work than international languages like English as most of the cases they handle are quite local, and less often national or international<sup>4</sup>. But many students today are highly mobile, and increasingly exchanges with other universities in Europe are being encouraged through, e.g. the ERASMUS program. The Law Faculty in Zurich is part of the programme “Law with Languages” run by universities in different European countries (e.g. one university in the UK and three in Greece). On the basis of the courses given and on the information provided to students, it would seem, then, that the Law Faculty in Zurich is more oriented to Europe than to the French part of Switzerland, whereas at the University of Geneva law students are encouraged to spend a semester studying law at a German-speaking university in the country.

When we turn to postgraduate courses in law in Switzerland, the place of English in teaching appears to be quite different. Several universities run Masters programs where English features prominently in the course description. At the University of Zurich, the two-year part-time course in “International Business Law” leading to an LL.M. was launched in 1996. It is

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3 “...l'allemand n'est pas seulement la langue la plus parlée en Suisse, elle est aussi la langue dans laquelle paraissent la majorité des décisions du Tribunal fédéral ou dans laquelle sont publiés la plupart des ouvrages de doctrine. L'allemand est ainsi pour le juriste suisse un outil indispensable dès qu'il est confronté à une recherche nécessitant plus que la simple relecture d'un photocopié.” (webpage: <http://www.unige.ch/droit/mobilite/>).

4 As one lawyer (HB) put it: “As a Swiss lawyer, I had not very many cases so far in which I could use my knowledges in English. Most of my clients are from Switzerland, Austria or Germany. Most of them speak German. Some of them, from the western part of Switzerland, have French as their mother tongue. At the moment I use the English language only to communicate with a Czech colleague”.

taught in English and German, and opens with a preliminary 30-hour “English for lawyers” course. On the other hand, there is no such preparatory course for the “Master in International Law and Economics (M.I.L.E.)” run by the World Trade Institute, a joint centre of the universities of Bern, Neuchâtel and Geneva. Course participants are expected to have mastered a sufficiently high level of English to be able to participate actively in the program and the application form for the course correspondingly requests detailed information about the applicant’s background in English (TOEFL score or equivalent, etc.). Similarly, participants in the “Executive Master of European and International Business Law” program in St. Gallen receive no special instruction in “English for law”. Rather they are expected to build up an appropriate specialized English vocabulary through reading the English texts recommended in the course. The motivation to do this is, presumably, high, as part of the course takes place in the United States and other parts in different locations in Europe.

Such postgraduate programs in law are a recent development in Switzerland and most of these courses date back to the mid nineties or later. In contrast, writing a dissertation to obtain a doctorate in law can look back on a much longer tradition. A search through lists of dissertations accepted at the law faculties in Swiss universities indicates that prospective Swiss doctors of law very seldom write up their research in English. At the University of Zurich, the regulations permit dissertations in English (and also French and Italian), but since 1996 only five (out of 428 = 1%) have been submitted with English titles, of which at least one was by a native speaker<sup>5</sup>. Thus it appears to be still standard practice in Zurich to write dissertations in German. This is in striking contrast with the policy in some other fields, such as economics, where writing up a dissertation in English is the norm, if not the requirement (Murray & Dingwall 2001: 97). The tendency for doctoral dissertations in the field of law to be written in the local language is evident in some other European countries as well. For example, while Haarmann and Holman (2001: 246) report that 14% of dissertations on law were written in English in Finland between 1990-1997, Gunnarsson (2001: 299) found none written in English in Sweden. In summary, then, undergraduate and doctoral students of law at Swiss universities have little call to use English for their studies, whereas most of the

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5 I am grateful to R. Bollinger from the Faculty of Law at Zurich University for searching out this information for me.

modern masters programs (or at least those with an international orientation) expect participants to have a very good command of English.

## *2.2. Reported use of English by Swiss lawyers: data from questionnaires and letters*

Since 1996 it has been possible to do a two-year part-time postgraduate masters degree in International Business Law (LL.M.) at the University of Zurich, in which up to a third of the lectures are held in English. At the beginning of the course, which takes place every two years, students attend an intensive 30-hour course in English for Law, of which I teach part. To date, over 200 students have attended this course. In addition, it proved popular enough for the Europa Institute at the University of Zurich (Competence Centre for European Law) to start offering similar English courses for practising lawyers in 2000. Over 100 lawyers have since completed the course. This development suggests that a number of lawyers in Switzerland now feel the need to improve their English for professional reasons.

When they enrol for these courses, participants have to complete a questionnaire about their background in English. They have to specify whether and how often they use English at work for, e.g., telephoning, meetings, correspondence, Internet, or drafting contracts. They are also asked to say which areas of English they would like to focus on in the course (reading, legal vocabulary, writing letters, etc.). As well as returning the questionnaire, applicants write a brief letter explaining how they currently use English at work, if at all, and whether they envisage this changing in the future. The products of this enrolment procedure provide both quantitative and qualitative data on how English is being used by a large, but admittedly rather special, group of Swiss lawyers. They cannot, of course, be said to be representative of all lawyers in Switzerland since they are a self-selected group mainly from the German-speaking part of Switzerland, who are either already interested in learning ELP or in working in a more international context, or both.

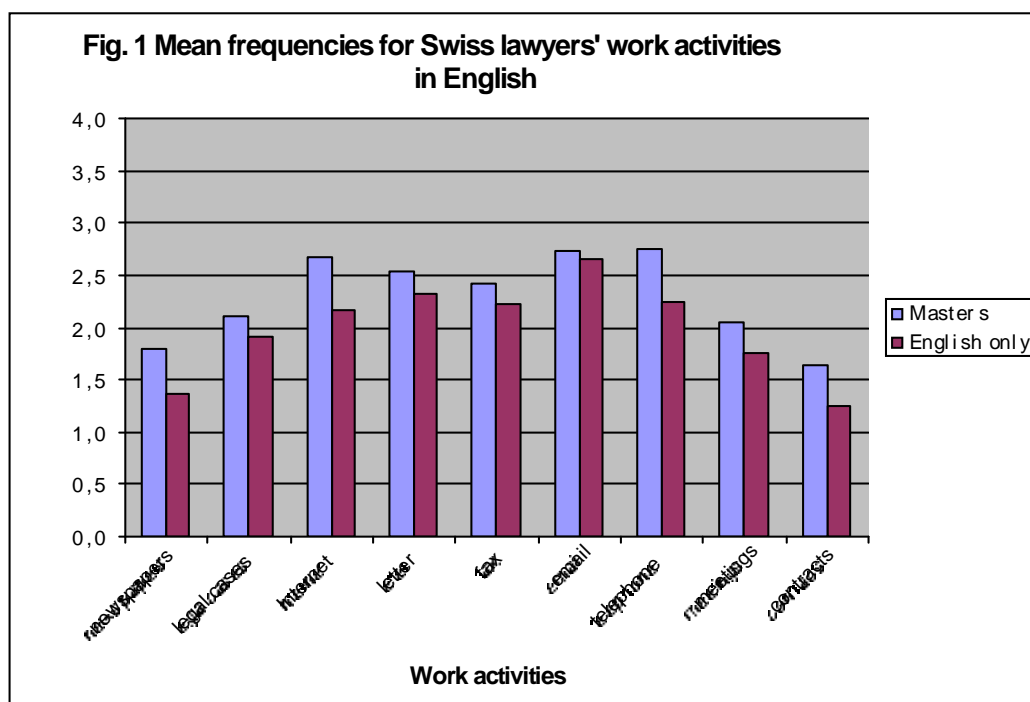
In 2002 we ran an English course for lawyers in the spring where 37 completed questionnaires (the “English only” group). The autumn marked the beginning of the LL.M. course, and 52 questionnaires (the “masters” group) were obtained from participating lawyers from Switzerland or Liechtenstein (participants from other countries were excluded). Most of the participants also wrote letters explaining how (if at all) they used English at present and how they envisaged using it in the future. When quoting from these letters,

participants are identified with code letters only to ensure they remain anonymous and care is taken to avoid mention of specific companies or positions.

The two groups were counted separately as their motivations for doing the course were different. The “English only” group were practising lawyers who had enrolled to attend a short English for law course, whereas the “masters” group were attending the English course as part of their part-time masters programme. In other ways the groups were rather similar. Women made up roughly 40% of each and, without having recorded ages, my impression was the age range was also comparable in each, with an average age of roughly 28. In both groups over half work as lawyers in a bank, an insurance company or a large multinational company; around 30% work in small to large law firms, some on a self-employed basis; and fewer than 20% work for the government in some capacity like a cantonal court or a federal office. Over 85% in both groups reported that they used English for work, with a slightly higher proportion in the “masters” group (88%). This contrasts markedly with the situation in 1996, where fewer than 50% of the “masters” students reported using English regularly at work<sup>6</sup>. What has led to this change? If we look at how often the two groups use English for particular activities, we can begin to answer this question. Other factors that have led to English becoming more important in Swiss law are discussed in section 4.

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6 It is not possible to compare the replies to the 1996 and 2002 questionnaires directly as the questions were phrased rather differently.



### 2.2.1. Work activities in English

Fig. 1 shows how frequently those who require English at work report using it for different activities (mean values are given on a scale where 0 = “never”, 1 = “seldom” (a category added by some), 2 = “sometimes”, 3 = “often” and 4 = “used every day”)<sup>7</sup>. These clearly provide only rough indications of the extent to which English is used for different activities as people’s perceptions of frequency differ. Moreover, different categories of activity type could have been chosen. But when these figures are analysed in conjunction with the open-ended letters that course participants sent me before the course started, then they do give a picture of English use among two different groups of lawyers. The “masters” group use, on average, English more frequently for all

7 This data was obtained from replies to question 5 on the pre-course questionnaire:

Do you use English for your work: YES / NO

If yes, which of the following do you use English for and how often

(please note down **never**, **sometimes**, **often**, **every day** as appropriate):

Frequency

Reading newspapers

Reading legal articles, cases, etc.

Reading on the Internet

Correspondence - letter - fax - e-mail

Telephoning

Meetings with clients / colleagues

Drafting contracts

Other

activity types than the “English only” lawyers, which may partly reflect where they stand in their careers and the “masters” group’s commitment (in terms of time and money invested in the postgraduate course) to international law.

One obvious change over the past six years is the increase in the use of email. Fewer than 20% of course participants claimed they used email and the Internet regularly in 1996, whereas all those who attended the courses in 2002 had email addresses. On average, both groups in 2002 communicate quite often in English via email (mean frequency = approx. 2.7, i.e. between “sometimes” and “often”), with some, particularly those working in companies where the company language is English, handling English emails daily. For example, SL, who works for a multinational holding company, wrote:

Reading in English on the Internet, reading and replying to English-language E-mail is a daily fact in our firm. We also subscribe to a number of journals and newsletters in English that are required reading.

Speaking English on the telephone is also a frequent activity, particularly among the “masters” students, whose overall level of English was higher than the “English only” group. The “masters” students also report using the Internet more than the second group, but most consult it regularly (mean frequency = 2.4). One factor that may have contributed to the increase in Swiss lawyers’ use of English at work is the much more widespread use of computers in offices today. Computers in the workplace have led many professionals to take on some of the text work themselves that they might previously have passed on to secretarial staff. Moreover many lawyers today may carry out part of their correspondence via email, where tolerance of error is fairly high. But even when they draft traditional letters, computers can also provide extra assistance (in particular, spelling and style checkers and on-line dictionaries). One lawyer (MM) wrote:

When I have to use English, I write my letters with a dictionary and correct the grammar and spelling with the computer.

Several respondents volunteered the information that they use templates for some of their correspondence or relied on existing contracts in drafting new ones, e.g. MB1, working for a Swiss-based multinational:

All meetings are held in English and practically all agreements drafted in English. The latter is only possible due to the existence of numerous standard agreement templates which can be adapted to special needs.

A couple of older participants also told me that they rely less on traditional translating facilities today than they used to and are expected to be able to conduct more legal correspondence in English (the mean for letter-writing in

2002 was around 2.5, i.e. most write letters quite often). Fewer respondents claim to be regularly handling contracts in English (mean frequency = 1.4), where accurate language usage is essential. Those that marked this box sometimes qualified it by specifying that they had to read and check contracts, but not draft them from scratch. One task that some informants often have to perform with clients is explaining and giving informal translations of important documents, such as contracts, written in German.

### 2.2.2. Reluctance to use spoken English

Some lawyers reported that they only used English in writing but not in speaking. One (PD) noted that:

This is something I would like to change in the future, because English is the very first business language in international relations. If you are interested in economic law – like I am – you can't practice it without knowledge of English.

While another (MK) confessed:

I tend to avoid direct oral confrontation (sic) with clients and prefer to delegate this duty to someone else. This is because I do not feel confident enough when forced to speak without preparation. As soon as my speaking ability improves, I plan to take an active role in negotiating and finalizing contracts with clients.

Lack of confidence in speaking English is particularly inhibiting in ELP where a good choice of words may be so important, and, as discussed in 3.2, there are so many words to choose from. MW notes that:

One of the difficulties regarding the communication in English is that clients are expecting the same level of English language skill which they have<sup>8</sup>. Further, the English language allows one to express himself in a very detailed manner, which requires that one knows for certain the particular vocabulary of the various topics of law. Since I do not have reached yet such a level, this work is very time consuming.

Another lawyer (RST) stressed that:

The use of a language is very important in law. Sometimes the meaning of a whole sentence can change by using another word. It is important to choose the right terms to explain your point of view properly.

Or, as SN put it:

There is a significant need to know the appropriate vocabulary and to use the relating legal terms in order to communicate effectively with the counterpart.

This pressure to communicate effectively meant that NK found:

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8 This comment surprises me as anecdotal evidence suggests that native speakers of English are usually fairly tolerant of non-natives' errors.

In a conversation I often neglect the content of what I want to say because I have to concentrate so much on how I am going to express it.

Another lawyer (CR) said he avoided using both written and spoken English as much as possible:

It's a pity but at the moment I really try to avoid to use English at work as good as I can. There are two reasons: On the one hand, I have almost two times as long to write a legal opinion in English than in German; on the other I feel very insecure in legal conversations.

Active use of legal English is demanding, as more than one respondent noted. For example, AB, who works for an insurance company and uses English frequently at work to give legal advice to her colleagues, write letters to clients, and so on, complained:

Whereas I understand most English legal terms and have no difficulty in following conversations, I find it difficult to find the exact, appropriate legal terms in English.

### 2.2.3. How frequently English is used depends on the type of work and whether English acts as a lingua franca

As expected, most lawyers working in Swiss courts said they needed little English as they dealt mainly with local cases. However, some government offices have become involved in negotiating or implementing international agreements, even though their main work may be within Switzerland. This move usually means employees find it difficult to avoid using English (this point is taken up again in section 4). One person working in tax law said he needed English more now than seven years ago because he was involved in negotiating agreements with the OECD, the EU and the USA. Another said that she (MBI) was in regular contact with colleagues from EEA and EFTA states, so that:

English is absolutely inevitable for me at work. I use it every day. ... In fact, nearly all information we receive from abroad is in English. Finally, one should not forget to mention the Internet which is also a very important source of information for me. And there, too, lots of documents are in English, even though there is a German ... version, it is sometimes better to read the English version or to read both versions in parallel. From my point of view, this is especially indicated with EC directives and regulations.

Her last comment illustrates how working in a multilingual environment may have some benefits. Being able to consult two or more versions of the same law in different languages could be useful in interpreting important documents. Here a bilingual lawyer has an advantage over a monolingual colleague.

One lawyer (SW) described her work with the cantonal social services. She said that most of her clients (in Spring 2002) were German-, French- or Italian-speaking, but that this was likely to change when the bilateral agreement on

freedom of movement of persons between Switzerland and EU countries came into force in June 2002.

The right to freedom of movement includes the coordination of security. Our institution will have direct contact with the social securities of the EU. So my work will become much more international. In the future English will be essential.

Working in an international company does not necessarily mean everyday business is carried out in English. RS works for the Swiss section of a multinational, which officially has English as its company language, but he hardly ever uses English at work:

I'm working as a legal counsel in a Swiss group. Nearly 30 companies belong to the group, but all are Swiss. Our national languages are our group languages: so German, French and Italian, but no English. That's why I can hardly use my English during the daily business. But because our Swiss group is part of a worldwide operating group, all the official informations and guidelines from the group mother are published in English. Also the official homepage and the Intranet from our worldwide operating group is written in English.

Similarly ES explains:

I'm working as a legal counsel in a Swiss domiciled, globally operating bank. The part of our company that is mainly providing investment services has its headquarters in New York. Bearing in mind all the before mentioned facts would lead to the conclusion that I use English in my daily work. Well this is not reality. I use English from time to time in order to write e-mails to some of my colleagues in England or the United States, or I use it orally in order to attend a conference call, or an ordinary telephone call. From time to time I get the opportunity to draft a contract in English, respectively to read and amend it so it is compatible and in line with Swiss laws and regulations. But all the before mentioned opportunities of usage of the English Language happen to be rather seldom. I would say around [once] every three weeks in the average.

Her experience contrasts somewhat with that of SN's, employed by an insurance company, who writes:

Our group's head office is in Zurich. Here in the legal department our working languages are both German and English, while in team meetings we usually speak German. Most of the incoming correspondence is written in English, especially emails and fax messages. We often deal with business people from abroad that all use English as common business language. No telephone conference without at least one participant with another mother tongue than German! In that case the whole conversation has to be in English.

In a similar vein, JT, working for an American insurance company, uses English for a whole range of activities:

Minutes, email, contracts with affiliated companies, answering customer complaints or a simple chat on the phone. English is always present and part of our job.

MB, working for a pharmaceutical company, explains that:

I have to talk and write English every day. This is very challenging especially in meetings with English spoken people. Fortunately I had only a few of such meetings until now. Further I have to read a lot of English contracts and e-mails, letter and memos, and at the beginning I struggled more with the language than with the legal work. But slowly I make some progress and ... it does not take me 15 minutes to write a one-sentence e-mail anymore.

LP, employed by a US-based computer firm, confesses that English is used as the common language among German- and French-speaking colleagues. It is also the lingua franca with non-German-speaking clients:

Big companies in Switzerland, which are our customers, employ people from abroad and again English is the basic language for contacts and communication. Although I use English on a daily basis, my counterparts mother tongue is usually not English.

SL notes a similar trend to use English as a lingua franca in the multinational holding company where he works:

Within the firm we bridge insufficient proficiency in French by using English. Also we accept foreign students as interns. With them I use English as a working language in projects.

Another lawyer (EL), working for an international bank, makes it clear that how much English he uses regularly for his job has varied according to which department he is in, even though English is the corporate language of the bank. For example, a shipping department will focus on the international shipping business where English is the main operating language, whereas a department doing business mainly with small- and medium-sized Swiss companies will probably need English very seldom. One person also pointed out that how much English she needed varied according to the task at hand:

The last three months I was involved in the public takeover offer of ... and therefore I practiced English almost every day. However, in my regular day-to-day job I do not use English but German.

#### 2.2.4. Summary

In summary, then, this survey of 89 Swiss (and Liechtenstein-based) lawyers has shown that the majority (more than 85%) do use English regularly at work today, compared with a minority in a similar group six years ago<sup>9</sup>. Exactly which tasks English is used for tends to vary with the job and according to how proficient the individual lawyer feels he or she is in the language. Even within the same organisation a lawyer's need for English will vary depending on, among other things:

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9 Andreas Kellerhals (personal communication) believes I may be underestimating the extent to which practising Swiss lawyers use English. Clearly I can make no claim that the two groups investigated here are a representative sample of all Swiss lawyers, but their descriptions of their uses of English at work show that this varies tremendously even among those working for international companies. While some lawyers may use more English at work than a Swiss language (and would normally not attend an "English for law" course), others, particularly those working in small law firms, may not have to use English at all. Quantifying language use is never easy and in the case of English used for legal work will depend very much on where you look and who you talk to.

1. whether or not English is the corporate language of the firm;
2. whether or not the lawyer is working in an area like shipping or on tasks like negotiating international agreements where English is the main language of documentation and negotiation.
3. whether or not the lawyer is working with a mixed language group which finds that English is the easiest language for the whole group to work with.
4. whether or not email and the Internet play an important role in the work environment.

This last factor was hardly an issue in 1996 when only very few lawyers were regularly using emails and the Internet. The development of the electronic office is likely to have affected many aspects of the practising lawyer's working environment, including language use, but this topic will not be developed further in this paper. Rather, section 4 will explore changes within the field of law that appear to have led to the marked increase in demand for English among Swiss lawyers during the past few years. This pressure to use English began to be felt in the field of law much later than in many other fields. Section 3 focuses on two aspects of law that make it rather resistant to the spread of English. These relate to comments made by several lawyers cited above about some of the special problems that arise when working with legal language where a good choice of words may be crucial. Some clearly felt very insecure speaking English in a professional legal context, and preferred to restrict their use of English to writing, where they could take time to find the right expressions and get more help. Section 3 also tries to explain why ELP can be particularly demanding for learners.

### **3. Why has the field of law in Switzerland been so resistant to the spread of English?**

#### *3.1. Legal English: a special case of English for Special Purposes (ESP)?*

Most lawyers are trained to work in a particular country with its own special legal system. A country's legal terminology develops hand in hand with its law, which in turn reflects the country's culture. For instance, there is a well-known difference between the legal systems based on Roman law that are widespread in Europe and the English common law system. The continental civil law systems rely as much as possible on codified laws mulled over and drawn up by legislators, whereas in the Anglo-American systems a greater

role is played by case law, i.e. judgements made on points of law as they became issues in particular cases in the past. If we focus on this difference, European civil law can be said to be pro-active and the English common law system re-active. Such differences reflect and reinforce not only differences in legal procedure and culture, but also intrinsically different legal concepts and legal language. Rossini et al. (2001) are exploring some ways in which features of the legal systems are indicated in language use by comparing word collocations of key terms like *duty* and its near equivalent in Italian, *tassa*, in large corpora of English and Italian legal texts. They claim that the different patterns of collocation for the words in the two languages reflect differences between the civil and common law systems. Thus learners have to find out not only what the best translations are, but also how they should be used in context. Of course, this applies to “ordinary” language use as well, but in law using the appropriate terms in the appropriate way is essential, and is one reason why bilingual legal dictionaries without good examples of how specific terms are used are generally not to be recommended.

Unlike the products of science and technology, laws are largely made through language, and can seldom be explained visually or mathematically. The words used to express laws are often crucial to their application and the resolution of a dispute may hinge on interpreting how a law is formulated and what the words in it mean. This interdependence of law and words means it is difficult to get to grips with legal terminology in a language without some understanding of the underlying legal system. It follows, therefore, that the learning load when trying to become competent in legal English (or some other language with a very different legal system) is greater than it is for other forms of ESP like scientific English.

An additional burden on the learner of legal English is the fact that there are considerable differences between American and English law, as well as between Scottish and other English-based legal systems. This adds not only to the complexity of legal English and the sheer quantity of terminology involved, but also to some potentially confusing differences in the meanings of expressions. Thus *enjoin*, according to Garner (1987: 215), normally means “prescribe” in a positive sense in British English and “prohibit” in American English. As if this was not complicated enough, the recent reform of civil law in England has led to many traditional legal terms, such as *plaintiff* or *writ* being replaced by so-called plain language equivalents (in this case *claimant* and *claim form*). While this reform may well make English law more accessible to

laypeople, such a proliferation of legal terms does not make the ELP learner's task easier.

### 3.2. *Law in Switzerland: a linguistic challenge*

The serious learner of "English for law" faces a challenging task (see above). In multilingual Switzerland the challenge may be even greater than in some other countries. All authoritative legal texts in Switzerland have to be formulated in each of the three official languages, which have equal legal value<sup>10</sup>. For those dealing with Swiss law at the federal level, e.g. the lawyers working for the Swiss Federal Railways, it is traditionally the three Swiss official languages, and not English, that are needed most in their everyday work. And it used to be French, too, that played the greater role in European and international law:

In the nineteenth century, French was considered the language par excellence of international treaties and conventions. This was a function associated with its status as a preferred language in the world of diplomacy. For instance, the original language of the Berne Convention of 1886 on copyright is [...] French.

(Haarmann & Holman, 2001: 246)

For Swiss lawyers who already work in two or more languages, a requirement to master legal English as well may understandably not be very welcome. So why are so many Swiss lawyers learning ELP today?

## 4. Why English is being used increasingly by Swiss lawyers

Several of the lawyers who wrote letters describing how they used English at work claimed to have noticed a marked increase in the amount of English they were expected to use over the past five to seven years. For example, LB, working for a law firm, said that around 20% of the cases they dealt with involved using English and:

The importance of English has grown dramatically in the past five years, mainly in connection with corporate law.

Replies to a small questionnaire I distributed in one course of the "English only" group indicate that company law (or, in American English, *corporate law*)

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10 Normally the language in which the law was originally formulated is considered the authoritative one, but occasionally a translated version may be treated as the 'true version' (see Dessemontet & Ansay 1995: 11f.) as it comes closer to expressing what the legislators wanted. That this is possible serves to illustrate how difficult it can be to find translations of terms that are exactly equivalent in meaning.

is not the only field of law that has been penetrated by English<sup>11</sup>. Seven (out of sixteen) said they thought English was now necessary in all fields of law, mainly as a lingua franca, for example, to communicate with Greek and Swedish lawyers<sup>12</sup>. And three maintained that the need for English depended more on the origin of the clients than on the field, so that even if your area is, say, public law, English may still be required in a firm dealing with many foreign clients. Over half (nine out of sixteen), however, thought it did depend on the area of law. For example, two mentioned that English is rarely needed in matrimonial law, but it is in commercial law (four mentions), international law (three mentions), intellectual property, banking law and contracts (two mentions each). All these respondents said Swiss lawyers needed a good knowledge of English in at least some fields (i.e. no one said it was “not necessary”).

Some of those who did not have much opportunity to use English expressed the hope that they would be able to use it more in the future, and at least one (HM) seemed to think he was missing out because he hardly ever had work requiring English:

To use more English I will have to change my job.

So where does this pressure to use more English come from? First, of course, is the very fact that, as McArthur said (2002:115):

The English language is used more, and more widely, than any other language, past or present.

But other factors, some of them interrelated, have certainly played a role. I describe some of these below.

#### 4.1. *Globalisation in law, business and academia*

“Globalisation will continue” predicts one lawyer from the “English only” group, “and the most used language will be English”. One symptom of this process is the increasing important role played by international law in national law, which Wiegand (2002a: Rz 18) refers to as “die Globalisierung des Rechts”. This

11 I am very grateful to the 16 who returned brief questionnaires. They were asked:

1. *How necessary do you think it is for Swiss lawyers today to have a good knowledge of English?*

Possible answers were: *Necessary in all fields – Only necessary in some fields (specify) – Not necessary.*

2. *Is Swiss law being influenced by American law?*

Possible answers were: *Yes in all fields – Yes, but only in some fields (specify) – No.*

12 This claim is made even more strongly in a recent essay by Drolshammer and Vogt (2003).

theme is taken up again in 4.2. Another is the spate of company mergers<sup>13</sup> that started in the nineties and continues to take place. Very often these mergers involve the mixing of business cultures and employees from different countries with different mother tongues. In this environment English has proved popular as a lingua franca and as a seemingly “neutral” language (McArthur 2002: 123). Lawyers working for such companies are, then, naturally affected by a general move to use English for business, although to what extent this influences how much English they use at work varies, as described in Section 2. Another outcome of globalisation in commerce is that multinationals are no longer bound to stay in a particular location. A factor that may have considerable influence on a company’s choice of headquarters is the local legal system. In competing to offer desirable locations, countries may well find it advantageous to have English versions of the local laws that affect companies, and may even feel under pressure to change some of these laws in the bid to compete.

Another development is the growth of multinational law firms, many of which, according to Wiegand, are based on the Wall Street model. In these firms much of the legal work may be conducted in English, and this is likely to have a knock-on effect on smaller firms, which have, until recently, mainly had to use English only with English-speaking clients.

English has also become the language in which to publish scientific research in most fields (see the articles in Ammon 2001). Haarmann and Holman (2001: 247) predict that, at least in Finland:

the language choice of doctoral dissertations, and of writings on legal problems in general, will tilt to give English the edge among the foreign languages in the future.

To what extent this happens in Swiss law faculties remains to be seen, as at the moment very few dissertations are written in English, but Wiegand (2002b: Rz 17) predicts that the Swiss literature on law will increasingly be in English<sup>14</sup>. Certainly for those writing on a topic likely to interest international readers, it makes sense to publish in English so as to reach as large an audience as

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13 Such mergers are not, of course, restricted just to multinational companies. For example, in 1999 the Swiss Federal Railways and Italian Railways merged their freight operations.

14 Wiegand states: “Dass, nachdem in anderen Wissenschaftsbereichen die englische Sprache schon seit langem dominiert, nunmehr auch zunehmend juristische Literatur in englisch erscheint, dass Dissertationen und Handbücher in englisch verfasst werden, ist ... eher eine Selbstverständlichkeit.” (2002b: Rz 17). But at least as far as the largest law faculty in Switzerland, namely that at Zurich University, is concerned, still very few dissertations are written in English (see 2.1), so Wiegand may be overstating the case.

possible, a point often made by researchers in other fields (e.g. those surveyed in Murray & Dingwall 1997). Law has, however, been more resistant than many fields to these global trends, as noted in section 3.1.

#### *4.2. The influence of international law and international institutions*

Switzerland is party to many international treaties and agreements, as well as a member of many international organisations, including, at long last, the United Nations. For the Swiss lawyers directly involved in negotiating new agreements or working on committees to revise existing international law, proficiency in English is clearly an advantage not only so as to be able to use the language as a lingua franca, but also because so much international law today, unlike one hundred years ago, is formulated in English. Similarly, English is very often in practice the main working language of many international institutions like the World Trade Organisation or the International Chamber of Commerce.

Another aspect of the internationalisation of law affects, however, a larger number of legal professionals, namely the tendency for national law to adopt and implement international law. Global laws that can take precedence over national laws or even supplant some are on the increase. Examples are the rules of the World Trade Organisation or the Uncitral Model Law on International Arbitration.

This has resulted in an ongoing process of unification of laws throughout the world, fostering more similarity between the legal systems in different countries (Wiegand 2002a), although it is unlikely that these differences will ever disappear completely. What it does mean for the practising lawyer, though, is that international law may, in some circumstances, even be relevant for local cases. The infiltration of international law into national law in Switzerland necessarily brings English with it in its wake, a fact that some of the respondents to my survey also commented on.

#### *4.3. Europeanisation of law*

The internationalisation of law is taking place at both a global and a regional level, leading some experts to talk about the regionalisation of law. Switzerland, even though it is not yet a member of the European Union, belongs regionally, of course, to Europe. It has made various moves to harmonise its laws with those of the EU, as well as negotiate bilateral agreements. These are having considerable impact on Swiss law, as SW

pointed out in 2.2.3. For the Swiss lawyers involved in implementing these agreements, English may well serve both as a lingua franca and as an important medium for understanding legal texts.

#### *4.4. Americanisation of law*

In response to the question “Is Swiss law being influenced by American law?” two (out of sixteen) of my informants said “yes, in all fields”, eleven said “yes, but only in some fields”, and 18% said “no”. One mentioned a plan “to implement the institution of “forum non conveniens” in Swiss and European law”, which would affect procedural law and a court’s right to decline jurisdiction. Another listed: liability law (also mentioned by four others), including the notion of “due diligence”, the form of contracts, and the law regulating accounting and money laundering. Yet another specified international traffic, banking, and tax evasion. The latest example, according to one, is “the pending revision of the Swiss criminal statutes” to deal with terrorism. One informant claimed, however, that US and Swiss law are:

...two completely different systems. Therefore, and as most Swiss lawyers are not familiar with US law, the US influence on Swiss law is minimal.

And another maintained:

American law is influenced by European law as common law’s reliance on precedence will prove too complex to keep pace with the change and increasing complexity of modern law.

These, though, are very much minority views. Most of my informants did think, like Wiegand (1998, 2002a,b), that Swiss law is being influenced by American law, one even going so far as to say:

we are not far away from a more or less unfriendly take-over by rules and habits that do not belong to our continental (and Roman) legal tradition.

One informant maintained that the US influence is largely indirect and the impact of EU law is greater. Indeed it is difficult to identify the source of influence in many cases, but Wiegand (1998, 2002a, 2002b) discusses various ways in which he believes American law has influenced and is likely to continue influencing international, EU and Swiss law. Many new laws at the international level have adopted, he claims, American legal concepts and methods of legislation, for example, the Uncitral Model Laws on International Credit Transfers and on Arbitration. Even EU law has taken on board some US legal practices, such as the technique of supplying definitions in the first

part of the formulation of a law and in contracts<sup>15</sup>. At the national level too, Swiss law-makers have sometimes followed American models recently, e.g. in drawing up the law to do with the Swiss Stock Exchange which came into force in 1995 or in legislation on money laundering.

As Kaplan (2001: 17) remarks in connection with countries adopting American sports like baseball:

It is not merely the game that has penetrated Japan. Rather, the whole panoply of activities connected with the game has also been adopted. ... By a similar process, the introduction of any new technology carries with it the language in which the technology was developed; thus the spread of technology facilitates the spread of English if (as is often the case) the technology arose in an English-speaking polity.

Similarly, in law, where the American way has had an impact, it is likely that the English language will also make itself felt. Thus, some concepts may not be translated, e.g. the notion of *due diligence* or *escrow agreement* or commercial concepts like *leasing*, *franchising* or *asset-backed securities*. If such terms are translated, the English original may still be frequently used, at least in oral discussions. Wiegand (2002b: Rz 5) comments on this process as follows:

In den USA werden Vertriebs- oder Finanzierungsmodelle entwickelt, die sich dort als erfolgreich erweisen. Sie werden dann aus betriebswirtschaftlichen Erwägungen übernommen, und zwar inklusive des dazugehörigen juristischen "Ueberbaus". Dies gilt nicht nur für die Terminologie, sondern auch für die rechtliche Konzeption ...

It may seem that American law mainly has an influence in the areas of commercial and financial law. But its impact is more far-reaching than this, including:

- Having a function as a trend-setter in the fields of law concerning not only banking and commerce but also new technologies, such as the Internet, where some terms just "can't be translated", as one informant said.
- Having so-called long-arm reach. This means US courts tend to accept jurisdiction for cases with which the US has little to do in reality, so that Swiss lawyers may find themselves having to fight cases on fairly local Swiss issues in the US courts (as would have, for example, been the case if Thomas Borer, the former Swiss Ambassador to Germany, had carried

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15 "All over Europe, lawyers impressed by their American education or influenced by patterns used by their American counterparts, have adopted the American style of drafting contracts." Wiegand (1996: 139).

out his threat to sue a Swiss newspaper in the US<sup>16</sup>). The “Nazi gold” actions against Swiss banks and other institutions masterminded by Ed Fagan and his colleagues provide other examples.

- Making Swiss professional groups, such as doctors, pay more attention to questions of liability and notions of “informed consent” as patients and other consumers stand up for their rights.
- Raising companies’ awareness of stronger notions of product liability and the fear of being sued in the USA, where sometimes high punitive damages are awarded.
- Leading many drafters of contracts to write more detailed contracts to take care of more contingencies. One respondent to my survey pointed out that defining legal terms is not common in Swiss contracts. Another said that the structure of contracts now often reflects Anglo-American principles.
- Possibly even influencing the implementation of Swiss law in dealing with terrorist suspects and deciding whether to extradite them or not in the aftermath of September 11, 2001.
- Encouraging many Swiss lawyers to study for a “masters” or similar degree in the USA. Indeed, Wiegand (2002b: Rz 7) claims this may even be a requirement for employment in law firms set up according to the Wall Street model. Study in the US, of course, reinforces the whole pattern of influence, as these lawyers are then trained in the US approach to law, and most bring back US legal concepts to Switzerland on their return.

Some aspects of American law, e.g. restricting “insider trading” and ensuring good “corporate governance” in companies, may have been well worth introducing as similar concepts were not available in Swiss law. How much English remains part and parcel of these new areas of law, e.g. in the persistence of English terminology, will depend partly on other developments, such as the globalisation of law firms. Other aspects of the US legal system, Wiegand (2002b) and some of my respondents argue, should not, at any cost, become part of the Swiss system because they do not fit in with Swiss (and European) legal principles. Examples are the “discovery procedure” and the handling of costs in certain types of liability cases, property law and some aspects of contract law. Wiegand sees a strengthening of regional law in Europe as one way for Switzerland to ensure that only “desirable”

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16 Thomas Borer is now threatening to sue various German papers in Dallas, Texas, the home town of his wife, according to the NZZ am Sonntag (8.12.02: 9).

Americanization of Swiss law takes place. In Switzerland, of course, such a claim is controversial, but Switzerland's future stand on Europe, and Europe's stand on the USA will certainly affect the degree of Americanization of the Swiss (and European) legal systems in future.

## 5. Conclusions

To answer the question posed in the title to this paper, "English in Switzerland: is it legal?", it is clearly legal in the sense that, in most circumstances, speaking, writing, and using English for all kinds of purposes in Switzerland is not forbidden by law. "Freedom of language" is at least implied in Article 16 of the Swiss federal constitution (see Dessemontet & Ansay 1995: 11f.). Felber (2001), however, reports on a recent government decision to ensure that regulations are written in one of the three official Swiss languages and not in English:

Das Bundesgericht hält die Eidgenössische Kommunikationskommission (ComCom) dazu an, ihre Verfügungen künftig in einer helvetischen Amtssprache zu verfassen und dafür nicht mehr die englische Sprache zu verwenden.

Thus, the use of English for legal purposes is restricted in Switzerland. But, to continue this play on words, some of the English used in Switzerland is legal English. In this second sense, then, English in Switzerland may even become increasingly legal and the signs are that it will. The proportion of Swiss lawyers who need English for their work appears to be growing, and looks likely to continue to grow. However, the nature of law means that, unlike in some other forms of business in Switzerland (see, e.g. Franzen 2001 and Stotz 2001), the majority of lawyers practising in Switzerland will continue to conduct most of their business in local Swiss languages. But a good command of English legal language and concepts is likely to become an even more valuable asset for Swiss lawyers setting out on their career paths, and they will help English in Switzerland to become even more legal.

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