pursues "prerevolutionary policies with the fanaticism and irresponsibility of desperation" (p. 336). It follows that a Republican President, to be elected, must identify himself with the outlook supported by a majority of the people, and that after election he can expect the opposition of an important part of his own party in Congress.

Mr. Morgenthau writes that a Republican President who thinks and acts in terms of party discipline and looks at the Republican party as his own and the Democratic party as the opposition completely misreads the lines which divide both Congress and the people with regard to foreign policy. And a Republican President who, like Mr. Eisenhower, conducts foreign policy with a view to maintaining the unity of his own party can do so only at the price of his own paralysis or of his own surrender. That paralysis and that surrender have been the history of our foreign policy under his presidency.

If in fact the President and Mr. Dulles have had a rational foreign policy, possibly their misunderstanding of the American system explains their inability to carry it out. But any presumption that Dulles and Eisenhower have had a rational foreign policy would be difficult to prove. The presumption that the Democratic party is capable of carrying out a rational policy would be nearly as difficult to prove. Nevertheless the dilemma of a hypothetical Republican President who had a rational foreign policy is brilliantly described. And Mr. Morgenthau's plea that the executive must fulfil the role in foreign affairs which our Constitution assigns him, that he must show initiative and leadership, if we are to have a public opinion capable of guiding and supporting rational foreign policy would seem obviously true.

RICHARD HOWARD POWERS*

* Associate Professor of History, Southern Methodist University.

The Transfer of Chattels in the Conflict of Laws. By Pierre A. Lalive. Oxford: Clarendon Press, 1955. Pp. xix, 200. 30s. net.

The end of private international law is frequently said to be international uniformity of decision. This end, of course, cannot be attained unless there is international uniformity of private international law. It is well known how far away we are from such uniformity. In the book under review, the author, now a member of the faculty of law of the University of Geneva, Switzerland, has chosen one of the few topics with respect to which the choice-of-law rule appears to be the same throughout most of the world. The rule that problems concerning the transfer of title to a particular chattel are to be determined in accordance with the *lex rei sitae* has come to be adopted in nearly every country. It looks as if the once dominating rule of *mobilia sequntur personam domini* has been abandoned everywhere except in Spain, Puerto Rico, and perhaps other countries where the Spanish Civil Code of 1888 is still in effect.

In chapters 3, 4 and 5 of his book, Dr. Lalive describes how and why the old rule was abandoned and the present uniformity achieved. In this lucid presentation he shows that the older rule was hardly ever applied without exceptions in any country.

From this presentation one can derive a conclusion of significance for the entire field of private international law. Judicial practice often finds itself confronted with a great variety of cases which superficially have one common feature. Among these cases a particular group is of special frequency and significance. A choice-of-law rule is developed which is well suited to take care of this group. Theoretical writers seize upon it, christen it with an attractive name, and articulate it in the form of a maxim which is simple but also too broad. It covers cases for which it is inappropriate, and when such cases actually arise a counter-maxim is coined which, while it is well suited for the new cases, does not fit the old ones. A controversy is carried on as to which of the two maxims is the right one until at long last it is perceived that the controversy is meaningless unless it is resolved by developing a distinction which applies each rule to that group of cases for which it is appropriate.

The rule of *mobilia sequntur personam domini* was developed to take care of transfers of a total collection of assets such as occurs *uno actu* upon the death of the owner, in the case of bankruptcy or by virtue of marriage. It is practical and conducive of legal certainty that in such cases the problems connected with the transfer are determined by one single law for all the assets concerned, and as such law it is hardly practicable to choose any other than the personal law of the owner. The situation is different, however, where some particular chattel is sought to be transferred by such a transaction inter vivos as a sale or a gift, or in the case of the alleged acquisition of title to some particular chattel by way of occupation or prescription. In those cases the only law that can be ascertained with certainty, and which is thus apt to enable everyone concerned—quite particularly third parties such as prospective purchasers and creditors—to determine title, is that of the situs of the chattel in question.

As to problems concerning title to single chattels as such, the rule of *lex rei sitae* is demanded by the needs of commerce. Yet it took more than a century for that rule to be transformed from an ill-defined and controversial exception from the rule of *lex personalis domini* into a fully recognized choice-of-law rule of autonomous standing. As demonstrated by Dr. Lalive, this transformation was first achieved in Germany—where the trail was blazed by Wachter's and Savigny's careful inquiries into the interests at stake—while it is, or perhaps only seems to be, lagging behind in the United States. In England the spell of the old maxim was definitely broken by *Cammel v. Sewell*,[1] but cases expressly concerned with the problem have been exceedingly rare. They have also been

[1] [1860] 5 H. & N. 728.

infrequent in those three Civil Law countries whose laws are given the most extensive treatment by Dr. Lalive, namely France, Germany, and Switzerland. In the United States reported cases are not quite so rare, and neither are they numerous save for a rash of recent cases dealing with automobile titles. Dr. Lalive seeks to explain the paucity of decisions by the very uniformity of the choice-of-law rule. Another reason may perhaps be found in the comparatively low value of the majority of chattels, a factor which may deter parties from litigating or at least from bringing a case up to those courts for which decisions are reported. Perhaps the practical significance of private international law is not quite so great as we, its priests, are inclined to believe. Trade flourished even in those days in which the rule of *lex rei sitae* was not so fully recognized, and it flourishes today in spite of the confusion still existing in the law of contracts.

Even the uniformity of the rule of *lex rei sitae* may be more apparent than real when we scrutinize its application in detail. Does the rule refer only to the substantive law of the situs or to its total body of law including its private international law? How is the domain of the rule of the *lex rei sitae* to be demarcated from the domain of the contract which almost invariably accompanies the transfer of a chattel? Where is the exact borderline between problems concerning the passing of title to a universality of assets, and those concerning the transfer of title to a single asset as such? What is a chattel? When is it to be treated as an immovable? Where is its situs when it is "represented" by a bill of lading or some similar instrument? How is the rule of *lex rei sitae* to be applied where a transfer requires a sequence of events of which some occur in one jurisdiction and some in others? Shall a jurisdiction, in order to protect the holder of a security title, modify its own internal law of *bona fide* purchase when the chattel has been brought into the jurisdiction without the consent of the holder of the security title? Shall exceptions from the rule of *lex rei sitae* be made as to personal wearing apparel, or, more important, as to *res in transitu,* or as to such peculiar chattels as ships, aircraft, rolling stock, or automobiles?

Most of these questions are dealt with on a world-wide scale by Dr. Lalive. His general approach is that of claiming the widest possible application for the law of the place at which the chattel was physically located at the time of the event which is alleged to have affected title to it. Generally this attitude is unquestionably in tune with the practical needs of business. But at times these needs may require distinctions even finer than those drawn by the author. The line between problems of the law of contracts and problems of the law of property can hardly be drawn without a detailed analysis of the rules of substantive law of the several systems of national laws. While the line can be drawn clearly in the German system in which the transfer of title is treated as being independent of the underlying contract, it is blurred in French and

Anglo-American law where the sale is treated as just one transaction containing both contractual and title elements. While even in these systems these two elements can be separated from each other, an intricate analysis would seem to be appropriate, especially as to cases of rescission or annulment. With respect to German law on the other hand, these and similar problems cannot be handled without reference to the way in which the party who loses his title by virtue of the abstract nature of the transfer can find compensation by means of a claim for unjust enrichment. Attention to this supplementation of the title rules is all the more important in private international law as the limitation of the rule of *lex rei sitae* to the title problem may easily result in the application of a different law to the problem of compensation by way of a claim for enrichment and thus to an incongruous result. It also seems that the various tendencies, observable in Anglo-American and French law, of treating matters which are unquestionably title problems as contract problems have their root in the failure to recognize that the injustice which would follow from treating a life situation as constituting solely a problem of title can and must be supplemented by recognizing that it also contains a problem of unjust enrichment.

The fact that in private international law one cannot dispense with the analysis of the substantive laws concerned is illustrated also by Dr. Lalive's treatment of the alleged contrast between legal systems in which title is transferred by the mere agreement of the parties, as it is in French and Anglo-American law, and those in which, as in German or Swiss law, tradition of the chattel is required. If these latter laws are looked upon more closely, it appears that tradition does not necessarily mean the physical transfer of possession, but that it also covers the so-called *constitutum possessorium*, the *brevi manu traditio* and what is called in German *Besitzüberweisung*. In the first case the chattel remains in the hands of the transferor, but it is agreed between him and the transferee that the former shall hold it no longer as owner but as bailee for the transferee. In the case of *brevi manu traditio* the transferee holds the chattel as bailee for the transferor, who agrees that from now on the transferee shall hold it as owner. In the last case the chattel is with a third person who holds it as the bailee of the transferor. Title passes as soon as the transferor agrees to be bailee. In actual effect the differences between the "agreement system" and the "transfer system" are of much less practical significance than they appear to be. If these institutions were kept in mind, many of the difficulties which have plagued the courts, both national and international, as well as the writers—including Dr. Lalive—would disappear.

American readers will be particularly interested in Dr. Lalive's lucid presentation of the complicated situation which has arisen in the United States and Canada through the tendency of courts, when determining the title to an automobile, to protect conditional sellers and finance companies standing

in the position of chattel mortgagees. If the car is brought into another state and sold there, the majority of jurisdictions would refuse to protect the purchaser without inquiring into his good faith *vel non*. The author does not seem to like this trend, but he recognizes that it corresponds to the needs of automobile purchase financing. The extent to which the choice-of-law rules may at times be shaped by the needs of some particular line of trade would have been further illustrated by the decisions of the lower courts of Illinois which, while ordinarily protecting the owner of a chattel which has been removed from his state without his consent, are inclined to take the opposite position in the case of cattle. (After all, the stockyards of Chicago are an important center of the cattle trade in the United States.)

Dr. Lalive's plan required that the problem of the *res in transitu* be sketched rather than treated in detail. That plan, in all its aspects, has been carried out with competence and fine understanding. The book, constituting a thesis for the Ph.D. degree at Cambridge University, has been written from the point of view of, and with emphasis upon, the private international law of England. It constitutes, however, a welcome enrichment of the literature of comparative private international law in general.

MAX RHEINSTEIN*

* Max Pam Professor of Comparative Law, University of Chicago.

The Founding of the Federal Republic of Germany. By John F. Golay. Chicago: The University of Chicago Press, 1958. Pp. ix, 279. $5.00.

After World War II there existed a unique and complicated political situation in that area of Europe which had formerly been called the German Reich. The four occupation powers, the United States, Great Britain, France, and Russia established separate military governments for each of the geographic quarters of the *Kerngebiet*.[1] The alliance which had united the four powers during the war deteriorated rapidly; by 1948 Russia and the three western powers stood in pointed opposition. The Western powers came to realize that the formal agreements with Moscow were nearly valueless. Certainly after the events in Czechoslovakia and the Berlin blockade it was apparent that Moscow's policy had to be interpreted as an example of Clausewitz' theory in reverse, that is, that "politics is a continuation of war," the war in this case being the struggle against the West.

Because the world has in effect shrunk during the last few decades, the political situation in Germany is likely to have a significant impact on Americans, indeed perhaps a greater impact than the school situation in Little Rock, the

[1] The term "Kerngebiet" (literally, kernel of an area) is used because Russia had already separated a considerable part of the old German Reich (1919–1937) for the benefit of Poland and had also taken for herself the area around Königsberg in the northeast corner. At the same time, France kept the Saar region separate from Germany.