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.

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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.
sphere of influence of trade unions in the Western states, or subsidies for farm prices in the Middle West. Professor Golay's careful study should, therefore, merit widespread attention among Americans who have an active interest in public affairs.

I

Professor Golay's excellently documented work deals with one of the examples—of which there are perhaps only a few—in recent history in which the initiative of American policy succeeded in bringing about a stable reorganization of a foreign nation. In but a few years there has been created a relatively sound political state, the Federal Republic of Germany, out of an area plagued with severe economic depression, spiritual and moral decomposition, and dangerous and nearly hopelessly entangled political confusion. Everyone with an opportunity to compare the present situation in Germany with that existing in 1945 must conclude that truly a phoenix has risen from the ashes. The Marshall Plan, which affected Germany most of all the participating countries because its economy was in the worst shape, contributed greatly to economic and financial reforms. Today West Germany is hard to recognize for those who observed it shortly after the war. It is physically reconstructed, bustling with brisk economic activity, intellectually productive, and well-ordered politically and administratively.

The reconstruction of West Germany contributed effectively to the consolidation of that part of Europe west of the Elbe and south of the Alps. The consolidation prepared the way for the later European co-operative agreements, the customs and currency agreements, NATO and the human-rights convention.

What the German currency reform, undertaken with the help of American guidance, and the Marshall Plan, contributed to the economic rebirth, the drafting of the Bonn constitution accomplished for the development of the German Republic into an amazingly smooth-functioning state. Professor Golay has paid special attention to this political recovery process.

Although a series of historical and legal monographs about the Bonn constitution have already been published, Professor Golay's fresh approach has filled in many gaps. The inter-allied relations respecting Germany have never before been shown as lucidly, probably because the earlier writers did not have at their command the same wealth of details. Professor Golay's book has special value because it contains the first exact description of the inter-allied relations which formed the background for the successful work of the German constitutional assembly of 1948–1949. Detailed for the first time are the points of view on specific problems of the French, British, and American governments. Professor Golay shows clearly to whom and to what motives can be traced some of the many ideas which were brought up in the constitutional assembly.

The reviewer, himself a member of that assembly, learned many facts from Professor Golay's book which he had not previously known. After studying the book, the reviewer concluded that the genius of the three Western powers lay in
the fact that though they assisted in the birth of the constitution, they left to
the Germans the responsibility of shaping it. In short, the allied powers were not
the parents of the constitution but only its midwife. Moreover, to the expert it
would be clear after reading Professor Golay's description, that the constitution
probably would have looked quite different had it been created under the direc-
tion of any one of the three Western powers. Conditioned by the historical
matrix, the influences of the three powers—with very divergent political and
constitutional ideas—in the main practically cancelled out one another. This is
shown in Professor Golay's book, though the author does not himself express
that conclusion.

Professor Golay's accurate study details the events leading up to the founding
of the German Republic. It carefully delineates not only the differences between
the three Western powers and Russia but also the special policies which France
separately had for Germany. France's approach led in early 1948 to the danger
that only a "Bizonia," a federation only of the American and English zones
would be possible. But in Spring, 1948, the differences with France were over-
come and a fundamental agreement of the three powers about the formation of
a "Trizonia" was reached.

Out of the general agreement emerged the well-known "three documents"
which provided for the prompt calling of a German constitutional assembly.
The "three documents" were presented to the prime ministers of the states, at
that time the highest existing German officials. After some hesitation and negoti-
ation, an agreement was reached on July 26, 1948, providing for the convention
of a constitutional assembly. The sixty-nine members of this group were elected
by the legislatures of the eleven states. It was evident that the delegates, conven-
ing in Bonn on September 1, 1948, had a much clearer mandate than that
possessed by their illustrious predecessors in Philadelphia in 1787. Practical
work could be started immediately because a special study-committee, ap-
pointed earlier by the state governments, had prepared a working draft, the so-
called "Chiemsee draft." By the twenty-fourth of February, 1949, the first draft
of the constitution was completed. Earlier differences which had existed between
the allied powers and the assembly, some of which were expressed in the inter-
allied Document No. IV, appeared more serious when they arose than they ac-
tually were. The differences were resolved, usually in favor of the constitutional
assembly. The constitution was finally approved by the allied powers on May
12, 1949, and became effective on May 23. These events are all systematically
and lucidly presented with a multitude of details by Professor Golay who has
given as careful attention to the differences existing among the various German
parties as to the tensions among the Western powers.

II

The major portion of Professor Golay's book is devoted to the legal aspects of
the constitution of the German Republic. The author's knowledge of history and
constitutional law has enabled him to clearly explain the unique aspects of the rather complicated constitutional structure. Those interested in constitutional law, quite particularly those trained in the common law, can find an enormous amount of accurate, critical material about the numerous problems of constitutional law which were discussed in the process of drafting the German constitution. For example, the reader may find detailed the complicated division of powers between the federal government and the states. There is a penetrating analysis of the fiscal arrangements, the status of political parties, and the division of authority between the two houses of parliament. Professor Golay has paid special attention to the unique status of the upper house, the Bundesrat, the historically rooted peculiarities of which are not generally understood outside Germany. In addition, he has brilliantly described the peculiar and novel "constructive vote of mistrust" and the semi-figurehead nature of the office of the president.

Professor Golay's understanding of the political situation in Germany is demonstrated by his description of the legal aspects of the German voting system. When the constitution was being drafted, minor disagreements with the occupation forces arose over both the voting law proposed by the constitutional assembly and a system proposed by the prime ministers of the states. The military governors themselves announced the first voting law in the Summer of 1949. That law contained essential elements of the two German proposals. The voting system finally adopted differs significantly from those used in most of the other countries of the West. It provides for both proportional and plurality voting; in the end more weight is given to the proportional votes. This system seems just and, contrary to the early misgivings of many constitutional lawyers, practical as well. The present voting law will undoubtedly endure for many years, not only because it seems more democratic and just than simple plurality voting, but because of the force of habit and tradition.

III

Professor Golay's last chapter is written from the author's personal point of view. In it he concludes that the Germans have attained political maturity. His opinion is based in large part on the work done by the constitutional assembly. He also finds support in the fact that the Bonn constitution became effective without serious difficulties and the country has prospered under that constitution.

The reviewer, who personally witnessed the development described by Professor Golay, must compliment him upon his remarkable book. His penetrating description of the events during 1948 and 1949 demonstrates astonishingly accurate understanding of the history, constitutional law, and social and political forces. Although Professor Golay set foot in Germany for the first time in 1948, he accurately captured the atmosphere of the formative years of the new Federal Republic of Germany. This unusual accomplishment gives the lie to the belief
prevailed in America and Europe that no American can possibly digest the different and complicated political and intellectual problems of contemporary Europe. Indeed, it would seem that perhaps an outsider can grasp some problems of the political life of Germany more surely than the persons entangled in solving those problems.

Professor Golay’s book belongs more to the field of political science than constitutional law. This, however, enhances rather than detracts from the merit of the book. The German legal experts and the courts, quite particularly the German Federal Constitutional Court, have carefully expounded many of the legal aspects of the constitution. Professor Golay’s book sensibly did not duplicate the work of those jurisprudences. Indeed, discussion of fine jurisprudential points would have obscured Professor Golay’s most valuable observations.

Careful study of the book is recommended for constitutional lawyers and historians. The present newsworthiness of Berlin affairs adds another reason to those already given. The book is particularly recommended for those who must deal with the Berlin problem and, indeed, for all those who apply themselves professionally to the task of solving the many open problems of European politics.

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THE ADMINISTRATION OF CRIMINAL JUSTICE IN ENGLAND:

SOME INVIVIOUS COMPARISONS


The law is not made by judge alone, but by judge and company.—JEREMY BENTHAM.

For Mr. Justice Holmes, the cure “for most of the evil in the present state of the law . . . is for us to grow more civilized.”1 Mr. Justice Devlin, of Her Majesty’s High Court of Justice, has recently provided us with further evidence of that proposition in the form of a small book based upon his Sherrill Lectures delivered at the Yale Law School in September, 1957. The size of the book belies the breadth and depth of its content, for like the younger Holbein, Sir Patrick seems to need little space in which to reveal his great talents. What emerges from this volume for the American reader is a picture which gives rise to feelings of chagrin and hope. Chagrin because we have not achieved in the administration of criminal justice in this country that level of civilization attained by our Eng-