AMONG the multitude of conflicts principles that, according to various claims, should determine the law applicable to all contracts, only two have resisted the test of critical analysis. These, indeed, form an adequate groundwork. First, the freedom of parties to choose the law applicable to their contract must be recognized as a general rule without petty restraint. Second, in the absence of such agreement, a contract should be governed by the law most closely connected with its characteristic feature.

The first proposition is essential to the second. To deny party autonomy means rigid conflicts rules created by some superior authority. A scholastic doctrine may invest the law of the place of contracting with ineluctable force; a state may forbid stipulations for a foreign law. However, our modest task requires but a reasonable choice of law advisable for average use by courts and legislatures. This cannot aspire to ascertain more than subsidiary rules. It is not possible to achieve anything practical by attempting to coerce the parties into an inexorable law of our creation. This conception is perfectly consistent with a considered regard to the large significance of public law at the present time. It even allows and facilitates a line of thought leading to the subsidiary application of the private law of that state which, by its administrative law, preponderantly regulates certain kinds of business. This will appear in such contracts as maritime carriage of goods, employment, and insurance.

It has been further explained, in virtual agreement with a growing volume of authority, that, for our purpose, more
specific conflicts rules should be devised with local connections corresponding to the different types of transactions. The usual types, especially of business contracts, therefore, must be studied one by one. The characteristics of these contracts should be ascertained by comparative investigation of their economic and legal structure in the various countries and of their function in international life.

Part Nine is an attempt to demonstrate that this method leads to some definite and many suggestive conclusions. In a few matters such as money obligations, sales of goods, and workmen's compensation, excellent work has been accomplished by treatises, drafts, and even treaties, establishing a new range of observation on the international level. In others, much confusion must be cleared up, and some topics are full of difficulty. It may be well to re-emphasize that merely partial research is submitted here. The method followed in this work requires strict avoidance of the generalizations which are all too familiar in this branch of law. In the very first topic of this volume, it will only be possible to state that no sure conflicts rule can be formulated.

In such and in atypical cases, the courts must refer back to the general principle and weigh the individual circumstances and stipulations of the contract. Categories of transactions insufficiently treated here ought to find more competent and detailed consideration than I have been able to devote to them.

Whether localizing an individual contract or a type of contract, we do, of course, survey the multiple territorial connections involved (domicil, place of contracting, place or places of performance, etc.) and decide which is the most important. But, as said before,¹ scarcely any of these "criteria" from which courts have deduced in particular

¹ Vol. II p. 432.
cases specific choices of law, command respect in themselves, and no general evaluation of them, hence, will be undertaken.

But should not one exception be advisable with respect to a criterion almost unchallenged in the civil law countries? I am referring to the contracts baptized by Saleilles as "contrats d'adhésion." Carriers, banks, insurance companies, warehouses, manufacturers, traders, buying departments and many other enterprises establish standard forms or use forms drafted by organizations, for contracting with an indefinite number of persons. In these cases, the enterprise offers a ready-made contract, which the other party simply accepts by "accession."

The customer has little opportunity to bargain for conditions and none at all when the enterprise, by its own resources or through a cartel, enjoys a monopoly. This well-known fact of modern commercial life, the object of many discussions, leads in conflicts law to the conclusion that the customer who simply "adheres" to the offer, ought to understand that the contract has to serve its purpose on a single legal basis, irrespective of nationality and domicil of the customer. Hence, the law of the domicil of the enterprise, or of the branch concluding the transaction, is regarded as tacitly agreed upon, or at least presumably intended. The German courts have constantly argued to this effect, the French courts often, and the Código Bustamante has formally adopted this as the rule.²

² Saleilles, De la déclaration de volonté (Paris 1901) 229. For a survey of the rich French and Italian literature on the nature and interpretation of these transactions, see Di Pace, "Il negozio di adesione nel diritto privato," 39 Riv. Dir. Com. (1941) 34-47. For a comprehensive theory, Ludwig Raiser, Das Recht der allgemeinen Geschäftsbedingungen (Hamburg 1935).

³ Germany: For a list of cases, see Nussbaum, D. IPR. 231 n. 2; Batiffol 102 §§ 115-119 adopts the German view. Switzerland: BG. (Nov. 2, 1945) 71 BGE. II 287. Código Bustamante, art. 185: in the absence of an express or tacit intention, in contracts of adhesion the law of the party offering or preparing them is presumed to be accepted.
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No such rule, however, exists in the United States. American courts rather seem inclined to react against the preponderance of one party by protecting the other and granting him the privilege of his own domiciliary law, directly or in the guise of the law of the place of contracting. On the subject of carrier's liability and life insurance, this phenomenon is particularly strong. We are thus warned not to presume generally that the law of the party issuing a form should govern.

Of course, the Continental argument is not valueless. Obviously, an enterprise of the kind mentioned is vitally interested in a secure, uniform basis on which to deal with an international public, and the latter profits by the more favorable conditions offered on such basis.

Also, the Supreme Court of the United States has recognized that a finance corporation in Pennsylvania lending funds in other states on standard terms at a rate of interest permitted at its place of business was not guilty of usury. Precisely for small loans issued in mass, the argument has an inevitable bearing. A good case may further be made out for the law of the business place where a bank provides professional services of all kinds to private customers, and an especially strong case for the law of the business place from which an insurance company delivers its policies. But in contrast to the sweeping statements in Europe and Latin America, we should not acknowledge an automatic subject of mass contracts to the domiciliary law of the enterprise.

In Part Ten, the questions concerning modification and discharge of obligations are selected with regard to the interest they enjoy in conflicts law. Accordingly, the problems of performance do not appear in this Part, their relevant topics having been treated in Chapters 30 and 35.

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On the other hand, the conflicts of law respecting negotiable instruments are too complex and important to be investigated before property law will be examined in Volume Four.

In sending out the present volume, I do not ignore the fact, emphatically stressed by some writers, that in this postwar period the organization in which international business thrived before and even after the First World War, has undergone very conspicuous changes. No one knows how much of the transformation is unrepealable, and where it will end. But after as much inquiry of American trade experts as was feasible, I am fairly satisfied that at this time our critical survey of past and present conflicts doctrines and the outlook for their reasonable progress ought not to be disturbed by the fear that it may shortly become obsolete.