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## Introduction

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## INTRODUCTION

BY PAUL B. LARSEN

The current symposium, which focuses on the United States Department of Transportation, revolves around the value of coordinated transportation and involves the philosophy of comparative law. By publishing articles dealing with similar transportation problems in the countries of Canada, Germany, and the United Kingdom, the *Journal* seeks to do what legislators generally avoid: projecting the problem as one fragment on a wide screen.<sup>1</sup> Indeed, the nature of transportation is international so that once problems of domestic coordination are raised, the international aspects of coordination become apparent. Dean Roscoe Pound observed: "What has called for comparative method throughout the world is general economic unification and new means and methods of transportation and communication which have been making the whole world one neighborhood."<sup>2</sup>

The problems of coordination and administrative reorganization have been brought to a head in the last several years as emerging nations struggle to take their place in international transportation while the transport giants continually attempt to untangle the population, technology, and economic strands of the transport rope and to weave them into larger regional patterns. In the United States alone population statistics indicate that not only will more transportation be needed, but that surface transportation will become increasingly difficult and transportation by air or subsurface will become more imperative.<sup>3</sup> Without undue optimism the United States air carriers predict that they will carry six hundred million passengers per year in 1985 and thirty-five times more freight than the present level.<sup>4</sup>

Few would question our ability to meet these transport problems, but an effective and demanding central agency will have to supervise the technical projects to prevent a loss of resources. The aerospace industry has been a leader in the field of transport technology, partially because it has fewer miles of obsolete systems to transcend. However, the other transportation means have not been entirely lax in utilizing technology

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<sup>1</sup> Lepage writes that legislative draftsmen have psychological barriers which prevent them from questioning local habits which may have been created by accident, or which may find justification only in an environment which now has changed or has ceased to exist. These draftsmen must be able to remove themselves from the local arena and to see things in a large perspective. Therefore, education in comparative law method is essential for those who draft the laws. Lepage, *The Function of Comparative Law*, 35 HARV. L. REV. 838, 858 (1922).

<sup>2</sup> Pound, Introduction to VON MEHREN, *THE CIVIL LAW SYSTEM* vii-viii (1957).

<sup>3</sup> *Aerospace in the City: Some Questions*, paper delivered by Rouse at Hartford, Connecticut, 7 Dec. 1966 (reprint available from Connecticut Gen. Life Ins. Co., PR230.1).

<sup>4</sup> President Johnson's Message on Transportation to Congress, reprinted in *Hearings on H.R. 13200 Before a Subcommittee of the House Committee on Government Operations*, 89th Cong., 2d Sess. 37 (1966) [hereinafter cited as *House Hearings*].

in order to regain revenues lost to air transport, *i.e.*, the development of high speed trains.

Although technology has improved transportation services, one shortcoming is evident: safety has not improved as rapidly as the service. Significantly, President Johnson's Message to Congress on Transportation was primarily concerned with the search for improved safety in "every means of transportation." One of the keynotes of this address was that the different modes of transport can gain valuable information from each other about accident prevention and that safety efforts should be pooled within a coordinated program. Furthermore, noise and air pollution developments and experience, which are side effects of our technological progress, may be shared and applied.

Full coordination concerns not just a legislative move to bring the different forms of transportation under one authority but also the more dramatic problem of greater economy through technical coordination. If, then, we realize the logic in coordinating the various modes of transportation in order to produce the most efficient transportation at the lowest cost and the increasing need for coordination because of the demand, and if we know that such coordination is technically feasible, it is necessary to examine what kinds of coordination are possible.

The purpose of *economic* coordination is principally to produce the lowest feasible cost for transporting persons and merchandise from one point to another regardless of what means of transportation are used. Such economic coordination is not in effect at present except in a form of coordination imposed by the users who select the most economical means consistent with their needs from among competing transporters. If a systematic economic coordination were attempted by the federal government, it would of course have to be protected by tariff regulations. Economic coordination would also mean that the carriers would have to contribute a fair share toward the cost of certain services offered by the government in the form of highway construction, air traffic control, etc., and be compensated for transportation furnished as a public service, such as carriage to unprofitable points.

The purpose of *technical coordination* is to connect the different means of transport in order to facilitate a smooth transition from one means to another. In addition, the different modes of transportation should be adapted to each other by the introduction of a degree of uniformity, such as the development of standard freight containers which would fit into all transportation forms.

*Coordination of the "terms" of transportation* would follow. The shipment of goods by all forms of transportation would thus require only one type of document. Ultimately, it might mean that all forms of transportation would be subject to one system of liability. This in turn could lead to more standardized insurance costs for the entire carriage. A coordination of "terms" might also mean that passengers would be subject to the same terms of carriage regardless of their mode of travel.

*Administrative coordination* involves a streamlining of governmental control agencies. In this case one asks whether separate administration of various transportation means is the most feasible, or does a centralized administration have the most to offer? At this point, the *Journal's* comparative study becomes most useful because Germany, Canada, and the United Kingdom all cite a history of an evolutionary struggle over the coordination problem. None of these countries have completely centralized their transportation administration although in the densely populated countries of Germany and the United Kingdom central coordination has necessarily been going on for sometime. Recently, a combination of the policy influencing factors of the population explosion, economic expansion, and technological developments have exerted particular pressure on the United States and Canada to enact national transportation laws to promote efficiency and coordination.

The four articles in the symposium give detailed explanations of these efforts. Mr. Nerbas describes how the Canadian Transportation Act of 1967 brings all the different means of transport under the regulation of one agency, the Transportation Commission, which consists of subcommittees for each mode of transportation. Since Canada had a central Ministry of Transport prior to 1967, it is economic coordination rather than administrative coordination which the new law seeks to promote. The act leaves technical coordination to the carriers themselves and does not attempt to coordinate the "terms" of transportation by streamlining documentary requirements. In the United Kingdom, Mr. Kean suggests that the major change has been the 1966 liquidation of the separate Ministry of Aviation and its inclusion within the Board of Trade. He feels, however, that coordination of transportation in the United Kingdom takes place on several levels without the presence of a centralized authority. Although Germany already has a central Ministry of Transport, there has been a gradual realization that efficiency must be the goal of transportation. Mr. Schwenk points out that this philosophy has encouraged Germany to integrate with the European transportation system. Creation of the new cabinet-level Department of Transportation in the United States is a major change towards coordination of transportation. Unlike the Canadian act, the main purpose of the United States legislation is coordination of the government's administrative transportation functions. Secretary of Commerce, John T. Connor, made it clear at the beginning of the hearings on the Transportation Bill that the new Department of Transportation "will not deal with economic regulation and will not include any of the economic regulatory functions of the Interstate Commerce Commission, Civil Aeronautics Board, and the Federal Maritime Agency."<sup>5</sup> Like Canada, the technical coordination of transportation is chiefly left to the transportation carriers. The Department of Transportation is, however, given duties to engage in research to stimulate technological advances in

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<sup>5</sup> Testimony of Mr. Connor, *House Hearings* at 62-63.

transportation, and in time some technical coordination studies might be performed.

The comparative analysis presented herein certainly reveals that although the United States has more available transportation than the three countries to which it is compared, it lags behind the others in coordination of that transport and fails to reap the attendant economic benefits.

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