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## Book Reviews

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## BOOK REVIEWS

EXPLORATIONS IN AEROSPACE LAW, Selected Essays by John Cobb Cooper,  
Edited by Ivan A. Vlastic, McGill University Press, Montreal, 1968, pp.  
vii, 480. \$11.50.

John Cobb Cooper, deceased in 1967, wrote this book. There are 28 articles (5 of which appeared in this *Journal*) selected from the 83 he wrote during his professional career. The editor or collector, Ivan A. Vlastic, sought to concentrate on areas where Professor Cooper's "contribution was most significant." The editor opines these were the three areas of air law history, the fundamental principles of air law, and space law. Professor Cooper submitted an author's note set down before each essay. He died before publication.

Professor Cooper's history is one of theoretical greatness tempered by a world of reality. He fits a now current observation of people changing careers. He also made a steady northward march from his native southern climate. In his career change and in his geographical change his visions went from earth to air to space. A Florida native, and a lawyer there, he was followed by the world of business. His business took him north and upwards, into aviation law and a Vice-Presidency of Pan American. When most people look to retirement he went into scholarship. Suffice it to note that not only the Institute of Advanced Studies, but McGill University, were his bases.

John Cobb Cooper was among the small band of space law writers who are not impractical, nor visionary without ground roots, nor committed to thoughts that could not be maintained. As the collector notes, Professor Cooper was capable of changing his mind, a quality lost in many men of prominence as well as among lesser mortals.

In connection with the last remark as to change, it is a personal regret that the editor did not include Cooper's letter to *The London Times*. Before the first satellite went aloft, Cooper, in 1956, advanced the tri-zonal theory. The first zone was where sovereignty of the State below was absolute, a "territorial zone"; the second was a "contiguous zone" where ascent-descent into and from space was permitted, being a semi-sovereign area; and the third zone was where sovereignty was absent. Cooper thought this second zone should be 300 miles high. With practical developments he changed this to a 600 mile height. He did this in a letter to *The London Times*. From a historical viewpoint, this paper should have appeared. One of Cooper's singular contributions to space-law thought may prove to be his concept of three zones. Most space advocates concentrate on a sovereign zone and where its boundary ends, followed by free space. Although Cooper did urge a boundary fixing, his tri-zonal theory cannot be dis-

missed as historical thought. Vitality remains. It can be adapted if needs require.

A caution is urged in reading this collection, or in referring to it after considering the editor's foreword. The editor summarizes Cooper's "aero-space law," the term alone indicating Cooper's belief that all flight, air or space, should be governed by one law. This belief is noted in Cooper's essay on *The Manned Orbiting Laboratory*, a likely future development, and in his review of *The Chicago Convention—After Twenty Years*. Some maritime lawyers would urge that maritime law is correct for space and air law is not. (There was even a historical urging of radio law for space, but nothing is heard from that quarter now.) In this reviewer's opinion, what will develop, slowly but surely, will be a body of law applicable to the peculiar needs of space. How and if the line will be drawn between "airplanes" that can reach "space" altitudes, and "space" craft that can travel in "air" levels is to be determined. With technological advancement perhaps a law of space will overwhelm air law, much as the horse-drawn cart is subject to laws designed for mechanized speed machines. The law of aviation will serve. It will serve historically and in part functionally, as will the law of the sea, and as will other aspects of the laws of nations. Nevertheless, Cooper's view, being expressed in lucid English (sometimes a rarity in the academic environs) must be considered, weighed, and adapted.

Cooper's book discusses "Who Will Own the Moon?" Emphasis is placed on the role of the United Nations, and the editor, in a note at the article's end, notes the adoption by the UN of a resolution urging the signing and ratifying of a "Treaty of Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies." The significance of this should not be overlooked. Cooper was wise enough to see the practical. He noted objections to UN resolutions as such, and recognized rather that a treaty could aid, even though "treaties can be and have been broken." He did not fall into the error of many who have urged UN resolutions as law; and apparently, even the UN itself now recognizes its limitations by now suggesting for adoption as treaties positions it has argued to a conclusion. The situation now as to the moon is that barring a treaty *clearly* setting forth rights and duties, "it cannot be stated with certainty whether or not the victor in the race to the moon may claim territorial sovereignty over occupied areas." Note the adjective "occupied"; symbolic possession is not enough.

In this review, stress is placed on the space law portion of Cooper's writings. His essays on the historical air law matters will appeal to many, but duplication in their content appears. The challenge of Cooper is the ability to project, to seek, to think and, while his mind sought answers up high, his feet were on the ground.

Cooper urged the fixing of a boundary for airspace, or sovereignty-freedom. This is common to many. On the other hand, consider the words of Morris L. Ernst in the book he co-authored with David Loth, "All law

is a conflict of desires, and men's desires change from era to era. The pace of that change is what makes law so romantic in this century. . . . The people within our system decide what kind of law they want to live under. The decision they can make, of course, either by omission, not caring or paying any attention, or by actively bringing about changes . . . ."<sup>1</sup> At this time, omission by the people, and by extension of this truth, by their nations, seems the guide. A boundary will come when and as needed. All the facts are not yet in.

Cameron Kingsley Webringert†

THE LAW OF AIRSPACE, by Robert R. Wright. Bobbs-Merrill Company, Indianapolis, 1968, pp. vii, 575. \$17.50.

Property rights in airspace is the subject of this law textbook. The law of airspace, from an Anglo-American standpoint, received its initial vitality at the hands of Sir Edward Coke early in the seventeenth century, and its essence was expressed by Coke in a Latin maxim; *Cujus est solum, ejus usque ad coelum*. Loosely speaking, this maxim meant that the owner of the land owned the space above it up to the sky; wherever that was.

Lord Coke never took an airplane ride and fortunately no judicial decision has ever really held that the ownership of airspace extended indefinitely upward otherwise air transportation would not be as advanced as it is today.

As Professor Wright points out the law changes as times change and the principle of law which has evolved is that the space above a tract of land, which is capable of utilization, belongs to the surface owner. Thus, the original concept that airspace was real property in the corporeal sense because legally it was simply an upward extension of the land itself, has been modified. However, in a sense the maxim is still true today although not in the sweeping, unlimited upward dimension once attributed to it. The author utilizes several chapters to trace the history of the maxim and its relation to the concept of property but he does so with just the right amount of reference to old but interesting cases. An 1874 case recognized the existence of rights in airspace by sustaining a judgment involving a trespass by the head and foot of a horse, which reached over into plaintiff's airspace and bit and kicked his mare.

The relation of airspace and the condominium concept is traced by the author and he demonstrates its logical development. Just as the owner may sell 20 of his 40 surface acres, so may he also do the same with the airspace immediately above it. He can divide the usable space and sell it layer by layer, just as he can divide his forty-acre tract into smaller parcels.

Although the author did not intend that the book be primarily a book on aviation law, it is this section of just over 100 pages that is perhaps the best in the book. It is clear that aviation cases have had a substantial im-

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<sup>1</sup> D. LOTH & M. ERNST, *HOW HIGH IS UP?* 28 (1964).

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pact on the modern law of airspace. The author traces these cases sensibly and in perspective and includes the best analysis of the *Causby* case and its after effects that I have encountered. The equally famous *Griggs* case is also treated fully. We see that the law today is that the landowner owns the airspace so far as he can take effective possession. These chapters are an indispensable starting point to a lawyer consulted by a client owning land close to an airport bothered by what he considers an infringement on his right to peaceful use of his land caused by low overflights.

There is adequate discussion of the existing case law relating to sales or leases of airspace and the aviation cases are distinguished. They are concerned with the right of an object to pass temporarily through the airspace over private property whereas the sale and lease of airspace, for example over railroad tracks, is aimed at the acquisition of airspace for a permanent or limited period of time for the purpose of utilizing such space in much the same manner as land is utilized. In addition to the legal problems in airspace utilization there is included a worthwhile chapter on the problems of appraisal and the determination of market value of airspace. There is description of the various arrangements to make airspace transactions and conveyances. Concluding the main body of the book is a most general discussion, or "potpourri," as the author puts it of the various views, policies and problems of airspace utilization in relation to the increasing urbanization and still accelerating industrialization of America. Although not strictly a part of a legal treatise on airspace this section may be useful as general background to lawyers dealing with an airspace legal problem. After this slightly abstract discussion the author returns to the basic law and concludes his fine book with a very practical appendix that includes examples of leases, ordinances, conveyances and aviation easements relating to airspace.

Perhaps the general practitioner may not often encounter the legal aspects treated in this book, but it is very well written and will prove to be of interest just to read about what I view as a fascinating branch of law. For those who are fortunate to be retained in an airspace case this book is a basic necessity.

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MODERN TRANSPORTATION: SELECTED READINGS, edited by Martin T. Farris and Paul T. McElhiney. Houghton Mifflin Company, Boston, 1967, pp. xiv, 416. \$4.95.

There is a growing feeling among academicians and practitioners in the field of transportation that this field is vast and important enough to justify its establishment as a separate field of study in the nation's colleges

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and universities, and that it should no longer be treated as mere extension of areas such as economics, engineering, management or marketing. This synthesis would allow better direction of our research and development efforts and thus produce more meaningful and thorough answers to the multitude of issues in this field so vital to the health of our industrial society.

Any rapid progress in this direction, however, has been seriously hampered by the availability of needed resources. We need to introduce our college students to the special problems and the issues involved in the field of transportation in the hope that these young intellectuals will find more thorough solutions to them. Unfortunately, there are not many basic text books available that treat the subject of transportation thoroughly and in the light of all its interdisciplinary characteristics.

Professors Martin Farris and Paul McElhiney, who are respectively from Arizona State University and Tri-State College, have made a respectable effort to product a book that could be used by students of basic transportation courses. This book is a collection of readings selected from technical and trade literature, as well as from academic sources. The former category includes sources such as *Railway Age*, *Distribution Age*, *Handling and Shipping*, *Business Week*, *Wall Street Journal* and *Journal of Farm Economics*. The academic sources consist of journals such as *American Economic Review*, *Transportation Journal*, *Journal of Air Law and Commerce* and *Journal of Business*.

The fifty-eight selections comprising MODERN TRANSPORTATION: SELECTED READINGS are carefully arranged in four parts. Part One, entitled "The Carriers", which deals with the subject of various specific modes of transportation, is further divided into four sections under the headings of Railroad Transportation; Motor Transportation; Air Transportation; and Freight Forwarder, Pipeline, and Inland Water Transportation. Representing nearly one-half of the entire book, this part outlines the history of the development of various modes of transportation, their specific problems, their present makeup, and the environment in which they operate.

Part Two is entitled "Industrial Traffic and Distribution Management." Readings in this part emphasize the role played by various modes of transportation in affecting the distribution of our national product. Business logistics, EDP as tool of distribution, freight rates and their break-even points, transit insurance and captive carriers are some of the topics covered.

Part Three, "Transportation Rates and Costs" gives the reader a rough idea of how certain transporters arrive at the rate they charge their customers and the role played by their cost of providing service in the determination of such rates. In a book that is expected to give its readers "a feel" for the subject and the problems of transportation, it is rather discouraging to see such scant attention devoted to an area as vital as this. It is the opinion of this reviewer that the "cost-price squeeze" is the root cause of an increasingly large number of problems faced by the firms in

this industry. Completely lacking in this part is a discussion of the problems faced by the air carriers—a vital segment of our transportation system.

Part Four, entitled "Transportation Problems and Issues" includes several excellent, although somewhat "dated," articles that highlight the complex and multi-faceted problems of this field. Problems of urban transportation, "trailer on flat car" ("piggy-back"), merger movement in transportation, government role, bootleg truckers, competition and monopoly in railroad, are some of the subjects considered in this part.

The editors of this book have thoughtfully provided a short introduction at the beginning of each part and a brief headnote at the beginning of each reading. This, it is hoped, will highlight the significance of the material to follow for the student.

According to its editors, the purpose of this book is to illustrate and supplement the general principles of transportation economics, management, regulation and public policy. The chances of success of this book in meeting this objective would be greatly enhanced if its editors had drawn more fully upon some of the truly fine and valuable resources available on the subjects considered. Moreover, the editors have, for some unknown reason, neglected to make even a token mention of the maritime industry. True, our shipping industry has deteriorated to the point where it is barely alive; but can we solve its problems by ignoring its existence and its vital role in the nation's defense and transportation system? The majority of the readings included in this book are dated 1964 or before. A great deal has transpired since that time, and an updating of these readings in the next edition would help make the book much more useful.

In spite of the above comments and certain other shortcomings such as absence of author or subject index and bibliography (which can be of considerable value to students in basic courses), this book can be a useful tool in introducing our students to the subject of transportation adopting an interdisciplinary approach. Using this book along with *DOMESTIC TRANSPORTATION: PRACTICE, THEORY AND POLICY* by R. J. Sampson and Martin Farris can be particularly rewarding in opening the minds of our students to the burning problems of our various modes of transportation.

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