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William A. Jordan

Erin Bain Jones

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Current Literature

BOOK REVIEWS

AIRLINE REGULATION IN AMERICA: EFFECTS AND IMPERFECTIONS. By William A. Jordan. Baltimore: The Johns Hopkins Press. 1970. Pp. 352. \$12.00.

During the years 1946-1965, common carrier air transportation within the state of California was provided under a scheme of economic regulation much less restrictive than that governing comparable interstate services, the most important difference being the absence of strict direct entry control over the intrastate carriers. On the basis of a thorough and well-documented comparison of the California operations with their interstate counterparts, Professor Jordan argues that certain major contrasts between these groups can be attributed primarily to this dissimilarity in the applicable regulatory frameworks; he thus arrives at generalizations regarding the effects of economic regulation and the probable structure and performance of the interstate air transport industry if it were not restrictively regulated.

The most striking contrast is afforded by the levels of passenger fares: those authorized by the Civil Aeronautics Board for interstate air transportation were substantially higher than those charged for comparable intrastate services. In late 1965, Professor Jordan finds that "the coach fares in the major California markets were as much as 47 percent lower than what they would have been under CAB policies and authorizations" (p. 226). On the other hand, if "quality of service" is to be judged mainly by the type of flight equipment offered, the certificated trunk carriers have performed generally "better" than the intrastate lines, although the latter ranked above the certificated local service carriers. In general, the author concludes, the interstate air transport industry would be radically transformed if its regulation were made comparable to that exercised in California during the period under review (confined largely to price control) (pp. 242-43):

It is safe to predict that the market structures for major interstate city pairs would quickly change from an imperfect cartel to an oligopoly with some degree of price rivalry, that there would be substantial decreases in general fares and a reduction in the number of promotional fares, and that service quality would be decreased in these markets. The law of diminishing marginal returns would insure that service would not be limited to major markets. Small and medium-sized markets would be served, but by only one or two carriers, and they too would have lower fares and a reduced quality of service. For some of the smallest markets,

direct subsidies would be required for service to be provided, just as is now the case for most markets served by the local service carriers. The comparative advantages of each carrier would determine where it would provide service. There would probably be more specialization by each of a large number of carriers (more homogeneous routes and fewer types and numbers of aircraft at any given time). Efficiency would be increased, the rate of adoption of innovations decreased, and, overall, the cost of air transportation substantially reduced.

Professor Jordan does not expect, however, that his regulatory retrenchment and industrial transformation on the interstate level will take place. Indeed, in view of the authorization of entry control in California during the latter part of 1965, he believes that the interstate pattern may well be repeated on the intrastate scene.

In opposition to the author's main thesis, it is possible to raise questions regarding both the comparability of the California and interstate operations and the long-run viability of the former. Some major questions, however, appear to be satisfactorily dealt with in the work under review. For example, it is pointed out that technological conditions "were essentially the same for all U.S. airlines from 1946 through 1965" (p. 10); for "a substantial part of the period . . . identical aircraft types were operated by both the certificated and the intrastate carriers" (p. 11); and average on-line passenger trip lengths and average stage lengths for the two groups were not extremely far apart. The relatively low operating costs achieved by the California firms resulted largely from better aircraft utilization, which in turn arose from such managerial decisions as the installation of larger numbers of seats per aircraft and scheduling to achieve higher load factors. Managerial decisions also accounted in part for higher employee productivity; however, this result was also partially due to relatively simple route structures requiring fewer aircraft types which, together with simple fare structures, helped to reduce direct employment and training costs per unit of output. Although the statistical fatality rate for the certificated carriers was far lower than that for the California firms, the latter experienced only two fatal crashes, one of which caused 93 percent of total passenger fatalities. The airline involved accounted for only one-half of one percent of all revenue passenger-miles for the group; if this line is excluded from the record, the fatality rate for the group becomes far less than that of the certificated trunks. Fourteen of the sixteen intrastate carriers had terminated operations by the end of 1965. This might be taken to indicate that their fare levels had been too low for survival. But Professor Jordan points out (p. 178):

this high rate of attrition must not be allowed to detract from the fact that two carriers did manage to survive while charging low fares, that some of those who terminated service did so because of noneconomic fac-

tors, and that one of the terminating carriers did provide a substantial amount of service for over six years. These examples of economic survival would seem to be more important than the many failures, since the surviving carriers demonstrated that success was possible under the conditions existing within California during this period. It follows that such service could also be successful outside of California under similar circumstances (including the relative lack of regulation).

In certain respects, the author's interpretation of his findings seems, to this reviewer, open to legitimate criticism. Generally, he regards them as supportive of the hypothesis that "[r]egulation protects producers by helping them form a cartel to obtain monopoly benefits," as opposed to two competing hypotheses: "[r]egulation protects the consumer from exploitation by producers" and "regulation has no significant effect on the regulated firm or industry" (p. 4). There can be no doubt however, that the paramount intent of the economic regulation set up by the Civil Aeronautics Act was precisely to protect the revenues of the interstate air carriers from competitive inroads; the regulation's effectiveness toward this end hardly can be taken to indicate any inherent general tendency of the genus, "regulation."

Again, Professor Jordan's formulation appears to over-emphasize the cartel-like aspects of the organization as well as functions of the interstate air transport industry and thus obscures the more direct effects of the regulatory process. Perhaps a more realistic formulation would run as follows: The existing form of regulation of interstate air transportation serves to protect certificated carrier revenues both directly (by hampering competitive initiatives) and indirectly (by tending to stabilize the oligopolistic quasi-agreement. Thus, the certification process protects carriers not only from outsiders, but also from new competitive routings by other certificated carriers where the CAB concludes that excessive "diversion" of revenues would result. Price-making under the Act is effected only in exceptional cases by overt cartel-like inter-carrier agreement, and then only under CAB supervision. The absence of traffic allocation and profit-pooling is also more characteristic of oligopoly than of the cartel form of organization.

It is true, as Professor Jordan points out, that the typical form of exit from the business of certificated air transportation has been merger rather than bankruptcy (in sharp contrast to the situation in California, where *no* carrier left the scene by the merger route. This result, however, stems directly from the regulatory framework rather than from any cartel-like activity that the framework generates. From Professor Jordan's point of view, exit by merger is analogous to the "sharing out" among remaining cartel members of the business of a departed fellow-member. What actually takes place, however, appears to be the "buying out" of

a certificate or certificates, which owe their value entirely to the protective regulatory framework.

Finally, even if the proposition that the target rate of return set by the CAB was in excess of the cost of capital is accepted, it is hard to believe that this excess has played any part in the creation of over-investment and excess capacity in the airline industry. The obvious, immediate effect of this over-investment is to produce actual returns far below the target rate; in view of past experience, it seems unlikely that any airline management would incur these losses in the expectation of reaping larger benefits when the target is hit at last. Since 1960, when the CAB designated the 10.5 percent target, average domestic trunkline rates of return have fallen short of this figure in all but two years, and the 1960-69 yearly average was under 7 percent. During the twenty-four year period 1947-1970, the domestic trunkline rate of return fell short of the target in sixteen years, the average again being in the neighborhood of 7 percent.

But these objections—some of which are indeed explicitly acknowledged by the author—are essentially matters of interpretation and emphasis. They do not detract at all from the real value of Professor Jordan's major contribution: the collection and careful analysis of an important, and otherwise largely inaccessible, body of data regarding California intrastate air transportation.

Lucile Sheppard Keyes*

EARTH SATELLITE TELECOMMUNICATIONS SYSTEMS AND INTERNATIONAL LAW. By Erin Bain Jones. Austin: The University of Texas Press. 1970. Pp. 167. \$7.50.

In a concise and readable volume, Dr. Erin Bain Jones has examined some of the manifold problems brought about by man's emergence into space after having been earth bound for centuries. The legal and scientific communities, as well as non-scientists and non-lawyers, will find this study a highly useful introduction to the evolution of space activity and the world community's struggle to establish, concomitant with scientific advancement, a legal framework to regulate space activities with their vast potentialities for good or evil. To this end, the study is divided into three major portions: (I) Space and Man in Space; (II) The General Regime for Outer Space Activities; and (III) Aspects of Communications Cooperation Among Nations.

Part I serves as an introduction to the environment of space, the

* Ph.D., Radcliffe. Economist, Washington, D.C. Member, Board of Advisors, *The Journal of Air Law and Commerce*.

types of vehicles used in space, with particular emphasis on present-day communication satellites, and the scientific, political, military, cultural and educational potentialities of these satellites.

In the second major section Dr. Jones, with engaging incisiveness, traverses some well-trodden but vital ground through a historical legal survey of jurisdiction in aerospace and outer space. Beginning with the acceptance of the concept of freedom of the seas in international law, she traces the failure of attempts to secure a similar legal regime for the governance of airspace and with trenchant *paralepsis* underscores the arguments concerning the nature of the legal order that should be applied. She notes the failure of attempts in the United Nations to determine exactly where the earth's atmosphere legally ends and outer space legally begins—a critical delimitation for the formulation of a universally accepted international law of space. A detailed treatment of the activities of the United Nations on all legal aspects of outer space is, of course, beyond the scope of her work, but selective illustrations shed light upon the controversies surrounding the legal effects of the United Nations' resolutions on peaceful uses and exploration of outer space. Her analysis of the relationship between the 1947 United Nations anti-propaganda resolution and its treaty on outer space affecting future legal regulation of communication satellites directs attention to the significant question of the possible dichotomy between the anti-propaganda resolution and "the right to utilize all new methods of technology in the affirmation of mankind's freedom to disseminate ideas, information and opinions." In her examination of the scope and thrust of the outer space treaty, she offers cogent observations and poses a number of provocative questions. In this regard, she does not make over-expansive predictions for the treaty but rather concludes that it is, at best, "a hesitant attempt toward the acknowledgment that some legal authority is requisite in outer space."

Recognizing that the outer space treaty is only a beginning in the formulation of an adequate international law governing communication activities in outer space, the author in part III reviews various international scientific-legal cooperative endeavors. The history and success of the International Telecommunications Union are used as an example of an effective "instrumentality for international coordination, negotiation and rational usage of all land lines, submarine cables and radio telecommunications." Illustrative is the relationship between various organs of the United Nations and the non-governmental International Council of Scientific Unions. This Council sponsored the highly successful International Geophysical Year which, in turn, led to the establishment of the International Committee on Space Research, the primary cooperative international body dealing with the coordination of scientific space activities.

Turning from the international scene to the domestic scene,⁹ Dr. Jones next outlines how the work of the National Aeronautics and Space Administration demonstrated the feasibility of commercial communications satellites leading Congress to establish the Communications Satellite Corporation, authorizing it to initiate a global private communications satellite system. She notes the defective legislative drafting of the Communications Satellite Act, particularly with reference to the provisions in the Act pertaining to monopoly and anti-trust problems and the delimitation of areas of responsibility of the various governmental agencies involved in the regulation of the Communications Satellite Corporation.

The experiences of the Communications Satellite Corporation re-emphasizes the need for more intense international cooperation. Via an open-ended multilateral treaty, a number of western nations gave birth to a new international organization, the International Telecommunications Satellite Consortium, the main goal of which is to establish a utilitarian, economical, equitable and global commercial satellite communications network. Dr. Jones points out that the 56 states now belonging to the consortium not only have access to the satellite communications system but also participate in its development and operation. The consortium is one of the largest and most functional international joint ventures. Its inception and workings are a pragmatic demonstration of the evolution of international law for outer space. Thus, even though a complete legal regime has not been established for earth satellite communications systems, progress has been made, if on a fragmentary and even tentative basis; this progress is accepted by governments as a present, practical rule of legal conduct.

As Dr. Wernher Von Braun states in his forward, "The author has with commendable restraint refrained from speculation on where we may go from here and from interjecting her own viewpoints or prejudices." Moreover, the book is well calculated to arouse the interest of the reader to explore its subject matter more deeply, and for this purpose, the footnotes are excellent. They also attest to the scholarship underlying the work.

Ann Van Wynen Thomas*

* Assistant Professor of Political Science, Southern Methodist University.