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BOOK REVIEWS

AIR LAW†

BY PROFESSOR DEFOREST BILLYOU, SCHOOL OF LAW
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This volume is the first significant work encompassing the broad field of air law in recent years. As the author has pointed out in his introductory material, recent developments, technological and legal, demand that the bar and the law schools of this country pay greater attention to developments in this area. This work is an effort to provide all but those few members of the bar who are already experts in the field with a broad survey of the present state of the subject, and it is also an effort to provide those professors of law who have an interest in teaching a course in air law with a single volume in which the landmark cases have been collected, the leading articles extracted and literally all other significant literature in the field in the English language footnoted. Whether the volume will suffer from the author's effort to serve the practicing lawyer, as well as the teacher and students in a law school course in air law, remains to be seen. I feel that if the practitioner will look at the volume as an integrated effort to encompass the significant developments in all facets of air law from their inception down to date he will find it more than readable, it will be downright intriguing. The expert in the field will doubtless find omissions. He may even dispute some of the author's theses and have some questions about organization of materials, but at the same time a reading of the materials may afford even the expert a new perspective of his field.

If I read the author accurately, he is demonstrating that developments in air law are at the frontier of the evolution of our law, both substantive and procedural, and in the presentation of the materials he does a telling job of demonstrating our lack of foresight in forecasting the difficulties that confront us in accommodating legal concepts grounded in ancient Anglo American common law to the changes wrought by the jet age. Chapter II, Airports, is probably the best example of the problems we face. Here the author traces, through landmark cases, writings and governmental reports, the effort to accommodate the rights of the individual to the rights of the society as a whole. In the current cases centered around the Supreme Court's decision in *Griggs v. County of Allegheny*, 369 U.S. 84 (1962), we have a graphic picture of the struggle we face in attempting to accommodate our concepts of property law (*i.e.*, the rights of individual land owners to the demands of the society as a whole for high speed jet transportation with all of its attendant problems of noise, discomfort, sonic boom, etc.). The tragedy I see pointed up in the materials found in the author's Chapter II is the realization that the bar really does not seem to recognize that here is one of the few points at which the greatest evolution in property law of several centuries is taking place, and too few of the best minds of the profession are offering a contribution to solution of the problem.

† New York, New York, Ad Press, Ltd., 1963, pp. 590 \$16.00.

What has been said of developments in the field of airports is also true of the materials found in the chapters on international law, aviation and agriculture, taxation and crime. One wonders how our legal system can long survive when we attempt to accommodate our ancient views of criminal procedure to crimes committed aboard high speed aircraft, and yet how many of our principal law enforcement officers are participating in the policy discussions going on within ICAO respecting matters of criminal jurisdiction. Or for that matter, how many of them know what the initials ICAO represent?

By way of contrast, a review of the chapters dealing with liability in tort and contract to interests on the ground, passengers, shippers and employees, and the chapter of dealing with insurance, demonstrates that here the evolution appears to be proceeding at a more orderly and logical pace as a rather easy extension of doctrines that have been developing since the earliest times in the movement of individuals and commodities via sea and land. It is interesting that as one reads these chapters, one is inclined to say there is not much new or startling here.

The chapters on air transport, taxation, national defense and air warfare and the future (supersonic transport and space) bring us back to those areas in which we are ill prepared to cope with the legal problems laid at our doorstep by technological developments. The author makes a straightforward presentation of materials that most of us are familiar with and it is only to be regretted that he did not offer some expression of opinion and provide more of a sense of direction as a policy guide. By way of illustration, the material on taxation discusses only those facets of taxation particularly applicable to air transportation. The carriers, engaged in interstate commerce, should naturally be closely watching the decisions of the Supreme Court dealing with the taxation of corporations engaged in interstate commerce who have no more connection with a particular state than the sending of a salesman into the state to solicit business. It would be interesting to speculate whether the Supreme Court has considered the possible impact of its decisions in those manufacturing-sales representative cases to the air transportation industry. Would that the author had included *Scripto* and one or two other cases to again remind the reader that new developments in all facets of the law should be brought to bear on developments in air law.

As one who has taught a course in air law, I believe this volume will serve as an excellent teaching tool for any professor and for students who have an interest in the subject. As pointed out earlier, the utility of the volume to the practitioner will in large measure depend upon how he approaches it. I think the specialist may use it only because it is a ready reference to many source items that are otherwise buried in obscurity. But, I would hope that he would read it from cover to cover for perspective. To the practitioner who has had no experience in the field, I commend the book as an excellent one volume "text" on the subject. If he will read it as such, he will be able to go forth with the assurance that he can at least begin to handle air law problems intelligently and with vision.

J. W. Riehm

THE ROAD TOWARDS A EUROPEAN COMMON AIR MARKET CIVIL AVIATION AND EUROPEAN INTEGRATION†

BY E. A. G. VERPLOEG

This volume, a doctoral thesis submitted to the University of Utrecht, tells of the role of civil aviation and European integration, and of the halting movement towards the development of a common air transport market in Europe. In doing this, the author describes:

(i) The development of international air law in Europe during the years 1900-39, and of ICAO and IATA (Chs. II, IV and V);

(ii) The political and competitive aspects of European air transport (Chs. III and VI);

(iii) The various developments looking towards cooperation in European air transport, including operational cooperation (Ch. VII), the SAS consortium among the Scandinavian countries (Ch. X), the European Civil Aviation Conference established in 1955 and the activities leading to its creation (Ch. VIII and IX), the steps looking towards the combination of the commercial air transport resources of several nations in the form of Air Union (Ch. XI), the relationship to Air Union of the so-called European Common Market (Ch. XIII), and the role of Eurocontrol, established to achieve unified control of air traffic over and in the vicinity of Europe similar to that achieved in the United States by the Federal Aviation Act of 1958 (Ch. XII). While many of these elements have been discussed in earlier works,¹ no other single work has attempted to cover so much in considering the legal and political aspects of European air transport.

The basic problem of air transport in Europe arises from the application of the sovereignty principle (each nation's sovereignty extending to the air space over its territory), to approximately twenty nations having numerous commercial and economic inter-relationships. The problem may be illustrated by considering the situation that might exist in the United States of America if each of the forty-eight continental states could assert sovereignty to the air space over its territory so as to control commercial air transport. That could result in air lines operated or controlled by those states having a burning desire to control a segment of air transport it

† Published by Uitgeverij Kemink en Zn. N.V., Utrecht, 1963. 242 pp., Guilders 15.

¹ Tombs, *International Organization in European Air Transport* (1936); Van Zandt, *European Air Transport on the Eve of War* (1940); Nelson, *Scandinavian Airlines System Cooperation in the Air*, 20 J. Air L. & Com. 178 (1943); *Existing Forms of Commercial and Technical Cooperation Between European Airlines in Regional Air Services*, ICAO Circular 28-AT/4 (1952); *Report on the Scandinavian Airlines System*, ICAO Circular 30-AT/5 (1953); Weld, *Some Notes on the Multilateral Agreement on Commercial Rights of Non-scheduled Air Services in Europe*, 23 J. Air L. & Com. 180 (1956); Wheatcroft, *The Economics of European Air Transport* (1956); Goedhuis, *The Role of Air Transport in European Integration*, 24 J. Air L. & Com. 273 (1957); Nylén, *Scandinavian Co-operation in the Field of Air Legislation*, 24 J. Air L. & Com. 36 (1957); Dutoit, *La Collaboration entre Compagnies Aériennes* (Lausanne, 1957); Coulet, *L'Organisation Européenne des Transports Aériens* (Toulouse, 1958); Dutoit, *L'Aviation et L'Europe* (Lausanne, 1959); *European Civil Aviation Conference Opens New Multilateral Agreement for Signature*, 15 ICAO Bull. 81 (1960); *Comment, Article 77 of the Chicago Convention: Joint Ownership and Operation of International Air Services*, 27 J. Air L. & Com. 290 (1960); Bahr, *The Scandinavian Airlines System*, 1 Arkiv for Luftrett 199 (1961); Johnson, *Civil Aviation (Eurocontrol) Act, 1962*, 25 Modern L. Rev. 573 (1962); *European Civil Aviation Conference: Historical Review*, 28 J. Air L. & Com. 78 (1962); Cheng, *The Law of International Air Transport* (1962).

could call its own (the prestige factor),² and practices restricting frequency and capacity of flights. We in the United States are, happily, not confronted with this problem. The theory which precludes this was well stated nearly twenty years ago:

Congress has recognized the national responsibility for regulating air commerce. Federal control is intensive and exclusive. Planes do not wander about in the sky like vagrant clouds. They move only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands. The moment a ship taxis onto a runway it is caught up on an elaborate and detailed system of controls. It takes off only by instruction from the control tower, it travels on prescribed beams, it may be diverted from its intended landing, and it obeys signals and orders. Its privileges, rights, and protection, so far as transit is concerned, it owes to the Federal Government alone and not to any state government.³

The story of attempts, successful and unsuccessful, looking towards the attainment in European civil air transport of something closer to what we in the United States enjoy, is interesting, and it tells much about the ability and the imagination of those responsible for the destiny of the European air transport companies. While the volume would have been aided by more elaborate contemporary statistics, reflecting, particularly, the jet revolution that commenced in 1958, the volume is a worthy contribution to air law literature.

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New York Bar

² To quote Verploeg at p. 5:

. . . the post-war European network . . . was built by as many carriers as there are countries and it was built starting from the premise that every country's capital should have its own direct connection with the capitals of each of the other countries. In other words, the very shape of the European network bears the imprint of national privilege and its air transport is organized on an artificial basis.

³ Jackson, J., concurring in *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 303 (1944).