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To say that the growth of civil aviation in this country has been incredible is a platitude but like all platitudes it is only such because it is true. The epic civil and military flights of American aviators, like the recent flight of Hughes and his crew, flash across the horizon and capture our imagination, but we do not see behind them the undramatic steady day-by-day, month-by-month, and year-by-year forward march of a great industry until suddenly we look about and discover that the aeroplane is no longer a freak, it is no longer a toy. It has attained its majority and is entitled to a full place in the council of man's great mechanical carriers. It has transcribed the air with paths. It has done for that element what railroad, motor vehicle, and vessel have done for land and water.

Let us go back, not thirty years, not even twenty years, but scarcely more than ten to a time when there was no Federal regulation of civil aviation. In 1925, in reporting on the bill which became the original Air Commerce Act, a Senate committee stated that commercial aviation had not advanced as rapidly in the United States as had been hoped; that our commercial aviation had lagged far behind that of the other great nations of the earth. This was attributed largely to the failure of the Federal Government up to that time to provide machinery to encourage and regulate the use of aircraft in commerce. The Air Commerce Act was, therefore, enacted into law in 1926. It marked a great stride forward in the promotion of civil aviation but it did not and could not have been expected to solve a problem the ramifications of which were as

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yet only dimly visible. This was well indicated in a statement made by a member of Congress when the 1926 Act was being debated on the floor of the House. "I confess," he said, "that we have attempted to anticipate the growth of aviation in the United States. We have attempted to meet conditions that are sure to arise . . . This bill assumes we are going to have air navigation of important proportions in the United States."

The day to which the Congressman referred has come. Aviation is still a young industry but it is one of large proportions and it is growing apace. Today the United States stands in the forefront of the nations of the world in aviation. The Act which was drafted in 1926 in anticipation of something to come is no longer adequate. Aviation needed a new organic charter framed in the light of existing conditions as well as with an eye toward the future. The Civil Aeronautics Act of 1938, passed in the closing days of the last session of Congress and signed by President Roosevelt on June 23, was designed to fulfill this need. Earnestly sought by the aviation industry and strongly recommended by the President, the enactment of this law was the culmination of long-continued efforts by members of Congress, the Administration, the aviation industry, and private citizens interested in the future of aviation. The Act meets the need for coordinated Government regulation of this fast-growing branch of our transportation system.

Until the enactment of the Civil Aeronautics Act, Federal regulation of aviation was very limited and was divided among several different Government agencies.

The Bureau of Air Commerce of the Department of Commerce regulated aeronautics from a safety standpoint and established, operated, and maintained airways which are the roads over which air traffic moves.

On the other hand economic regulation of aviation, in the sense that such regulation, as, for example, rate fixing and service requirements, is imposed upon railroads and motor carriers, was to a large extent nonexistent, and in so far as it did exist was merely incidental to the awarding of air mail contracts and the protection of the Government's interests in the carriage of air mail.

Two Government agencies participated in such economic regulation as existed under the old law. The Post Office Department awarded contracts for the carriage of air mail and enforced certain provisions of the air mail laws, while the Interstate Commerce Commission fixed the rates to be paid to air mail contractors for the carriage of air mail. No provision was made for the regulation

of passenger and express rates. No economic regulation of non-mail carriers was provided. Air mail contracts were awarded not upon the basis of the need of the public for passenger and express service, but solely upon the requirements of the air mail service.

This divided and piecemeal jurisdiction over aviation, this absence of adequate governmental economic regulation of air transportation, have brought about a lack of coordination and great gaps in the efforts of the Government to regulate and develop civil aviation with a resulting impairment of the financial stability of the air transportation industry. It is believed that the new Civil Aeronautics Act will correct these deficiencies in the Federal scheme of aviation regulation. The Congressional hearings and reports on this legislation confirm the fact that this view is shared by the entire aviation industry.

The Act creates a new Federal agency known as the "Civil Aeronautics Authority," composed of five members. It also creates the office of Administrator of the Civil Aeronautics Authority and an Air Safety Board of three members.

The Act provides for the economic regulation of commercial air transportation which is similar to that provided by the Interstate Commerce Act with respect to railroads and motor carriers, except in those respects wherein the peculiar nature of air transportation requires different treatment.

The Act forbids the operation of an airline unless the operator holds a certificate issued by the Authority known as a certificate of convenience and necessity. These certificates will authorize operations over particular routes and will define the service to be rendered.

Certificates will be granted to new airlines or to existing airlines for services over new routes only when such additional services are required by the public and wasteful duplication of services will thereby be avoided. When once granted, however, a certificate will give the airline a permanent right to the particular operation, subject only to revocation for a violation of the Act.

Prior to the enactment of the new Act, the Post Office Department provided for air mail service by awarding contracts. Under the new Act this contract system is abolished, and airlines will carry the mail whenever they are required to do so by the Post Office Department, just as do the railroads.

Airlines are required by the Act to charge reasonable rates for the carriage of passengers and property and must file with the Authority and make public tariffs showing the rates charged by

them. The Authority is given power to alter the rates charged if it finds that such rates are unreasonable. The Authority also will fix the rates of compensation which the airlines will receive from the Government for the carriage of air mail.

The Authority is empowered to supervise the business practices of airlines and to prevent use of unfair business practices and unfair methods of competition. The new law also enables the Authority to prevent such interlocking corporate relationships in the aeronautical field as it finds to be contrary to the public interest.

These are the broad outlines of the economic regulations provided in the Civil Aeronautics Act. Under the new Act the public will be assured of adequate air transportation service at reasonable rates. The airlines themselves will be assured, through the issuance of certificates of convenience and necessity, of permanence of operation and freedom from undue duplication of service and will be protected against the use of unfair business practices.

In addition to economic regulation, the Act contains extensive provisions regulating aviation from the standpoint of safety. Thus, it is made unlawful for a person to serve as a pilot or member of the crew of an aircraft, or as a mechanic engaged in supervising the overhaul of aircraft unless he holds a certificate issued by the Authority authorizing him to perform such work. Before issuing such a certificate the Authority must examine the applicant and find that he is properly qualified as to experience and skill and is physically fit to perform the type of service involved.

Provision is made for the issuance of various kinds of safety certificates for aircraft. There are two primary certificates issued: type certificate, certifying that the specifications for the particular type of aircraft are suitable as a basis for the manufacture of airworthy aircraft, and airworthiness certificates, issued for each individual aircraft, certifying that the aircraft is airworthy when operated and maintained as provided in its certificate. An airworthiness certificate will be subject to revocation whenever the Authority determines that the aircraft for which it is issued is no longer in condition for safe operation, and the Act makes it unlawful to fly an aircraft in interstate or foreign commerce unless an airworthiness certificate has been issued for the aircraft and is currently in effect.

Additional powers over safety are found in those provisions of the Act which empower the Authority to prescribe air traffic rules, regulations governing the maximum working hours of pilots and other employees of airlines, minimum standards governing re-

serve supplies of fuel, and similar regulations. I will not discuss in detail these additional powers because they are mostly concerned with powers and regulations that have been carried over from the old Air Commerce Act. However, they have been enlarged and revised to meet the advancements in the art of flying by airlines and miscellaneous and private flyers.

The Act specifically provides that in performing its duties, the Authority shall take into consideration the essential differences between air transportation and miscellaneous and private flying. You may be assured that those interested in the administration of this new legislation are fully aware of, and sympathetic to, the problems of the private and miscellaneous flyer.

As a further step in bringing about the highest possible degree of aviation safety, the Act creates a permanent Air Safety Board of three members. This Board is charged with the duty of investigating accidents in air commerce and reporting on the causes thereof. Under the old law no such permanent board existed. Separate investigating boards were appointed by the Secretary of Commerce each time an accident occurred. Under that system the members of these boards, except for advisory members, were subordinates of the Secretary of Commerce and the Director of the Bureau of Air Commerce, who were themselves officially responsible for the efficacy of the safety regulations.

The new Act in the creation of the Air Safety Board makes the Board independent of the Authority, and gives the Board power to choose its own personnel. This assures impartial investigations of accidents. In addition to its accident investigating work, the new Board is directed to assist the Authority in studying matters relating to aviation safety.

The Act continues under the jurisdiction of the new agency the work heretofore performed by the Secretary of Commerce relating to the establishing, operating, and maintaining of airways, air navigation facilities, weather reporting services, and communication systems.

Up to this point I have devoted my time to explaining briefly the nature of the regulation of aviation provided for in the Civil Aeronautics Act. In the few minutes remaining I shall discuss the method of organization of the Civil Aeronautics Authority, which is an innovation in the organization of Federal regulatory commissions.

To appreciate fully the significance of the method of organization of this new agency, it is first necessary to understand certain

principles of constitutional administrative law which are fundamental in our form of government and to be familiar with certain phases of the history of the Independent Federal commissions. In these principles and in that history lie the reasons for the method of organization of the Aeronautics Authority.

It is an inherent principle upon which the Federal Government is based, known as the separation of powers doctrine, that the executive, legislative, and judicial branches of the Government shall operate independently of each other and that neither shall exercise control over the other. The Constitution provides that "The executive power shall be vested in a President of the United States," and also requires that "he shall take care that the laws be faithfully executed." It is by virtue of these two general grants of power that the President is the chief executive officer of the Government, and the doctrine of separation of powers protects his exercise of those powers from control by the legislative and judicial branches.

However, Congress, since the founding of our Government, has created subordinate executive offices and vested in those offices the initial responsibility for executing the laws. Under such circumstances the constitutional powers of the President have customarily been exercised by him through the power, likewise vested in him by the Constitution, to remove Government officials from office. This means of exercising executive supervision was recognized as early as 1789, when, after lengthy debate, the first Congress in which sat many of the framers of the Constitution construed that instrument as granting to the President the power to remove Federal officers as a necessary incident of his executive power and his duty to take care that the laws be faithfully executed.

The principle was affirmed in 1925 by the Supreme Court of the United States in the case of *Myers* v. *United States,* in which that Court held that an unrestricted removal power being inherent in the office of the Chief Executive, the doctrine of separation of powers would not permit Congress to place restrictions upon that power.

From time to time during the past fifty years independent regulatory commissions have been created by Congress to administer laws regulating various phases of the nation's business activities. Examples are the Interstate Commerce Commission, the Federal Trade Commission, the Securities and Exchange Commission, and the Federal Communications Commission. It was at first generally thought that commissions of this character were upon

substantially the same footing as ordinary executive agencies with respect to the President's removal power. Consequently, in creating commissions, executive as well as regulatory powers were placed within the jurisdiction of some of them.

In 1935, however, the Supreme Court in the case of *Humphrey* v. *United States* held that Congress could place restrictions upon the President's power to remove a member of the Federal Trade Commission. The Court based its decision upon the fact that the Federal Trade Commission exercised no purely executive functions and was an agency of Congress rather than an executive agency, since it was given broad discretion to regulate the conduct of private individuals within the limits of general standards prescribed by Congress. These functions, the Court said, were not executive, but legislative, and concluded that with respect to officers exercising functions solely of the latter nature the Constitution did not give the President unrestricted power of removal.

As a result of the *Humphrey* decision those commissions which exercise both types of functions are in an anomalous position. With respect to their legislative functions such commissions are entitled under that decision to have the independence of their decisions protected against the President's power of removal, but at the same time in so far as they exercise executive functions such protection would result in preventing the President from discharging his constitutional responsibility for the faithful performance of those executive functions.

It was this problem which arose in connection with the organization of the Civil Aeronautics Authority, because part of the governmental functions relating to civil aviation are legislative and part are purely executive. It was considered essential, however, that all these governmental functions be vested in a single agency.

As finally enacted, the Civil Aeronautics Act solves this problem in the following manner. The Act creates an Authority composed of five members. In this body are vested all of the legislative functions prescribed in the Act, such as the issuance of certificates of convenience and necessity and safety certificates, the fixing of rates, and the regulation of business practices. The independence of the members of the Authority in administering these matters is protected by providing that they may be removed from office by the President only for inefficiency, neglect of duty, or malfeasance in office. The Authority is required to report annually its work to

Congress and transmit recommendations for necessary additional legislation on such occasions, or more frequently if necessary.

While thus protecting the exercise of the legislative functions of the Authority, the Act also provides for the appointment of an "Administrator of the Civil Aeronautics Authority" and in this officer, who is independent of the members of the Authority, are vested the executive functions. These functions involve the construction, operation, and maintenance of airways and lights and other signals along the airways and at airports, the enforcement of the air traffic rules, the conduct of development and planning work, the promotion of air commerce, and similar activities. The constitutional responsibility of the President for the faithful execution of these executive functions is preserved by placing no limitation upon the power of the President to remove the Administrator from office.

The constitutional principles which I have discussed were not, however, the only reasons which led to the adoption of this method of organization. It has frequently been stated that one of the difficulties in the practical operation of regulatory commissions is that the mass of incidental detailed work of an administrative character which such commissions must perform tends to impair the effectiveness of the discharge of their broader legislative functions. The provisions of the Civil Aeronautics Act creating the office of Administrator are intended to furnish the machinery whereby similar difficulties will be avoided in the case of the Aeronautics Authority.

I could not conclude without voicing a thought which is uppermost in my mind. Aviation is moving fast into a new era. The days of barnstorming at county fairs in flying box crates held together with baling wire are over. Today, high competence, thorough planning, and businesslike administration are the keystones to success in aviation as in every other great industry. A large part of the glamour and romance has gone out of flying and as romanticists we may deplore this, but as practical persons we know that a dependable new mode of travel is not permanently built on romance. Aviation has survived the excitement of childhood, the fevers of adolescence. It has attained mature years and with them it has acquired the undramatic responsibilities that accompany maturity. Today our airliners traverse the United States from east to west and from north to south, span oceans, and carry on our commerce with foreign countries, transporting thousands of

passengers and great quantities of mail, express and freight. It is no mere coincidence that the enactment of the Civil Aeronautics Act should be contemporaneous with the advent of this new period in the history of American aviation. The Act goes into effect late next month. On its effective administration are rested the hopes of those interested in the future of aviation for a new era in the development of aviation. I am confident that those hopes will be fulfilled.