

AIR LAW. Compiled with Comments by DeForest Billyou. New York: AD Press, Ltd., 1963. Pp. xxvi, 608. \$16.00.

THE first question that must certainly come to a lawyer's mind on seeing the title to this book is: "Is there such a thing as Air Law?" My first impression is that there certainly must be. The Federal Aviation Agency's legal organization of almost one hundred lawyers is a very busy group of people, as is also the legal staff of the Civil Aeronautics Board, practicing what I had always supposed was "Air Law" or something of the kind. These people, too, represent only a fraction of the lawyers, in government and out, who are engaged in a similar venture.

More seriously, perhaps the question is whether the advent of the airplane has required the development of a substantial and distinctive body of legal principles such as comprises, for example, the law of Admiralty. Here, I am not so certain that there is such a thing as "Air Law." A reader of Professor Billyou's work will brush against many familiar legal doctrines which have been fitted to aviation problems and in most cases it is not a bad fit. There are the usual rough edges (as there are, for example, in the adaptation of tort law to automobile cases) but I think the law, in its contact with aviation, has substantially confirmed our faith in the promise of case-by-case adaptation.

Even if one concludes that a field of "Air Law" does not exist in the usual sense, however, the decisions, statutes, reports and comments collected in this volume all have in common a relation to aviation. Those studying and working in any given problem area should welcome a treatment of the use to which existing legal principles have been put in that area. This is what Professor Billyou has attempted in the field of aviation, and the attempt is certainly long overdue.

To the reader looking for a Wigmore-like textual analysis and synthesis of the law relating to aviation and space, this book will be disappointing. The author is candid, however, in telling us, both on the title page and in the Preface, that this is not so much a book he has written, as one he has compiled. What lies between the book's covers, the author says, are "Constitutional documents, judicial opinions and statutes . . . reports of government and industry groups, accounting and statistical information . . . criticism and commentary by qualified persons . . . [and] many bibliographical notes . . ." ¹

The chapters range over a wide variety of fields: the sources of law affecting aviation, airports in relation to their neighbors, international law, liability to various interests, commercial air transport, insurance, taxation, labor relations, and national defense. In cases where the material covered in the chapters is perhaps more suggestive than encyclopedic, the presentation of full bibliographies will facilitate deeper probing.

The practitioner looking for a procedural handbook for use in his CAB practice will not find one.² But the materials do include general descriptions of the economic philosophy, and the institutional mechanisms by which the

1. P. v.

2. See particularly Ch. 7, "Air Transport."

community regulates the supply of air transport services and the rates those services may exact.

The treatment of many subjects principally through judicial opinions,³ not only makes these areas less tractable for the practitioner, but may also be less useful as a teaching device than might be expected. At the third year level, where specialization in such subjects as Air Law may be possible, the case method may not be an economic teaching mode.

The organization of the book is puzzling, and this is an important failing if it is destined for classroom use. As a teacher, I would prefer that chapter titles describe a group of coordinate categories in order that the materials could be presented within a systematic framework. Professor Billyou's titles, however, refer sometimes to a particular branch of aeronautical activity (Chap. 2, "Airports," Chap. 7, "Air Transport"), sometimes to the interests affected by aviation (Chap. 5, "Agriculture"), sometimes to the arena within which the legal problems arise (Chap. 3, "International Law"), and sometimes to the legal consequences of a particular aeronautical activity (Chap. 4, "Liability").

An example of the kind of disorder this must produce lies in the arrangement of materials on liability to interests on the ground. The materials in Chapter 2 ("Airports") relate to the liabilities of one aeronautical activity to one category of ground interests—the interests of the airport's neighbor. Similarly, Chapter 5 ("Aviation and Agriculture") deals with the liabilities of another aeronautical activity to another ground interest—the interest of those affected by crop spraying or cloud seeding operations. In a more tightly organized book, both these topics could have been put in Chapter 4 which discusses generally the liability of those engaged in aviation and which has a section devoted to "Liability to Interests on the Ground."

There is, unquestionably, a need for books of this type. While it is clear to all that progress in aviation is a function of technological innovation, it is not so often recognized that these innovations are beneficial to the community only to the degree that they can be integrated within the existing social scheme. Such integration usually requires alteration and adaptation of the existing formal authoritative prescriptions we call law. The ability of our lawyers, legislators, and judges, themselves, to innovate is critical.

A climate in which this kind of social inventiveness flourishes presupposes a literature—that cultural phenomenon which allows the work of one man to be added to the work of others, facilitates the germination of ideas and alternatives, and provides the medium for the abrasive contact of opinion necessary to polish and perfect solutions to new problems. The remarkable fact is that in aviation, where the pace of technology is so swift, such a "social" literature does not exist, save in scattered periodicals. Professor Billyou's book is a basic and necessary entry in that literature. One can hope that this general compilation will be followed by further and deeper research, writing, and discussion of the tasks aviation continues to set before our legal system.

NAJEEB HALABY†

3. *E.g.*, "Airports" (Ch. 2) and "Liability" (Ch. 7).

†Administrator, Federal Aviation Agency.