

normally the first choice of investors seeking to bolster their retirement portfolios.

As a member of a lobbying firm, and eventually as president of the National Association of Investment Companies, Fink actively participated in the formulation of federal legislation involving mutual funds over most of the last thirty years. In detailing the highlights of many congressional battles linked to financial regulation, he carefully outlines the positions of the groups favoring or opposing various legislative initiatives. When offering his own views on an outcome, he switches to the first-person pronoun, thereby enabling the reader to distinguish historical narrative from personal opinion. In comparison with similar “tell-all” books by Washington insiders, Fink is less forthcoming about the identities of members of Congress who blocked various financial-reform movements.

Missing from this study are accounts of the activities of the mutual companies that offered their shares to the general public. We learn almost nothing about the internal operations or business strategies of important issuers, such as American Century and Vanguard, or about the thousands of competitive firms that operate within this expanding financial sphere. I am aware of only one book that is devoted exclusively to the leading firms in this field, namely, *Fidelity's World*, by Diana Henriques, published in 1995.

Finally, Fink must be commended for his focused, wide-ranging bibliography. While he may have begun this project as an amateur historian, he deserves recognition for his accomplishment in training himself as a scholar and for his serious effort to familiarize himself with the existing secondary literature. Through his efforts, he has produced an informative text on the expansion of the mutual-fund sector, particularly its regulatory environment.

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Who Owns the Sky? The Struggle to Control Airspace from the Wright Brothers On. *By Stuart Banner*. Cambridge: Harvard University Press, 2008. 353 pp. Illustrations, notes, index. Cloth, \$29.95. ISBN: 978-0-674-03082-4.

Reviewed by Tom D. Crouch

Stuart Banner, a professor of law at the University of California, Los Angeles, has written a fascinating and useful case study of the relation

between technical innovation and legal change. "Airplanes," he suggests, "were the Forest Gump of legal history." That is to say, the invention and development of the airplane played a key role in deciding some of the "big questions" in twentieth-century law, including attempts to balance individual rights and the needs of society; the shifting role of government regulation; the growing power of Congress over the national economy; the ability of judges to "make" law by interpreting existing statutes or court rulings in the light of technological change; and the evolving attitudes of national leaders toward the freedom of the skies.

At the beginning of the twentieth century, the principle of *cujus est solum ejus est usque ad coelum*, the notion that a property owner controlled the rights to what was beneath his land and to the sky above it, was a fundamental precept of Anglo-American common law. The advent of Count Ferdinand von Zeppelin's airships and the arrival of the first airplanes raised a host of interesting questions in that regard: Would aviators flying over private property be liable to suits for trespass? Would it be necessary to create highways in the sky in order to avoid violating property rights?

Banner leads readers down the jurisprudential path to a legal recognition that the idea of aerial trespass was generally unreasonable in the air age. A landowner would have no means to identify and call to account a high-flying interloper who passed over his property in an instant. Moreover, it was unreasonable to expect that the rights of a landowner who had suffered no demonstrable harm could prevail over the clear public benefit of interstate commerce. "It is impossible," wrote one legal commentator, "that the fabric of our jurisprudence should not exhibit deep traces of the progress of society."

If the courts would not allow a charge of trespass against high-flying aircraft, however, what of a case in which a property owner could prove that his ability to make use of his property had been damaged by overflights? That question was resolved in 1946, when the Supreme Court ruled in favor of a property owner who was forced to give up raising chickens because of low-flying aircraft operating from a neighboring government air base. Writing the majority opinion in the case of *United States vs. Causby*, Justice William O. Douglas explained that the loss of the value of the land to the owner in this case was as complete as if the government "had taken exclusive possession of it." Damages were in order.

The air age presented broader legal problems, as well. What would happen if the laws regulating flying machines in one state conflicted with those in another? Would state borders have to be delineated with tethered kites or balloons to warn aviators that they were passing into another jurisdiction? It was apparent that the need for uniformity re-

quired that the regulation of air commerce be the responsibility of the federal government, rather than of state or local authorities.

Could a nation control access to the sky overhead? What about the legal status of international air commerce? While some legal thinkers attempted to apply the existing principle that no nation could claim exclusive rights to the ocean, it was obvious that, unlike the sea, the ocean of air was directly overhead. The questions were resolved by allowing individual nations to exercise complete sovereignty over their airspace, while framing international agreements that would permit overflights by foreign air carriers, thereby enabling the growth of a network of commercial air routes linking the cities of the world.

And what about outer space? Did a nation control the sky overhead to the far ends of the universe? While the question was debated in legal forums, the launch of Sputnik I in October 1957 established the critical precedent. Far from complaining about the violation of their airspace, Eisenhower-administration officials recognized that the Soviet spacecraft passing overhead opened the way for the development of an effective satellite reconnaissance effort that was the main objective of their own space effort.

Banner also considers the rise and fall of aviation law as a professional specialty, among other topics. The book is well annotated and has a useful bibliography, indicating the author's command of the relevant literature in both law and technology. I recommend *Who Owns the Sky?* not only for legal scholars and historians of flight, but also for anyone interested in the social consequences of technological innovation.

Tom D. Crouch is senior curator of aeronautics at the Smithsonian's National Air and Space Museum. He is author of numerous books and articles on the history of flight technology.

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Mass Motorization + Mass Transit: An American History and Policy Analysis. By David W. Jones. Bloomington: Indiana University Press, 2008. xiii + 268 pp. Tables, bibliography, notes, index. Cloth, \$39.95. ISBN: 978-0-253-35152-4.

Reviewed by Clifton Hood

Why did the United States become the most heavily motorized nation in the world? Why have its mass-transit systems been unable to adapt to the age of mass motorization? These are the questions that David W. Jones asks in this history of the economic and public policy development of American urban and suburban transportation since the late nineteenth century.