

## Book Review

DEREGULATING THE AIRLINES: Elizabeth Bailey, David R. Graham, and Daniel P. Kaplan. London: MIT Press, 1985, 1986.

by ROBERT M. HARDAWAY\*

The better part of Bailey *et al*'s recent study of airline regulation is dedicated to documenting the history of airline regulation,<sup>1</sup> the transition to deregulation,<sup>2</sup> and the economic consequences of deregulation.<sup>3</sup> It may well be remembered as a final shot in the "Great Deregulation Debate" which, unfortunately for this very competent work, coincidentally ended in the airline industry about the time of this book's publication.

The problem, of course, is that economic deregulation of the airlines is now, very simply, not the issue. While it is true that one sometimes still hears of reports of speeches about the great disaster of airline deregulation<sup>4</sup> (particularly from representatives of airline unions),<sup>5</sup> the fact remains

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1. E. BAILEY, GRAHAM, & D. KAPLAN, DEREGULATING THE AIRLINES 11-26 (1986) [hereinafter cited as BAILEY]. For other excellent reviews of the history of airline regulation, see P. BIEDERMAN, THE U.S. AIRLINE INDUSTRY 77 (1982); Dempsey, *Rise and Fall of the Civil Aeronautics Board - Opening Wide the Floodgate of Entry*, 11 TRANSP. L.J. 91 (1979).

2. BAILEY, *supra* note 1, at 27-37. For other reviews of the transition to deregulation, see Levine, *Revisionism Revised: Airline Deregulation and the Public Interest*, 44 LAW & CONTEMP. PROBS. 179 (Winter 1981); Hendricks, *Regulation, Deregulation, and Collective Bargaining in Airlines*, 34 INDUS. & LAB. REL. REV. 67 (1980); Bailey & Panzar, *The Contestability of Airline Markets During the Transition to Deregulation*, 44 LAW & CONTEMP. PROBS. 125 (Winter 1981); Keeler, *Airline Regulation and Market Performance*, 3 BELL J. ECON. & MGMT. SCI. 399, at 421 (1972).

3. See, e.g., Hardaway, *Transportation Deregulation (1976-1984): Turning the Tide*, 14 TRANSP. L.J. 101 (1984); Graham & Kaplan, *Airline Deregulation is Working*, AEI J. ON GOV'T & SOCY, May-June 1982, at 26, 27; J. MEYER, C. OSTER, I. MORGAN, B. BERMAN & D. STRASSMANN, AIRLINE DEREGULATION: THE EARLY EXPERIENCE 71 (1981).

4. See, e.g., Dempsey, *Deregulation: The Great American Aviation Catastrophe*, AIR CARGO WORLD, Mar. 1984, at 44; Davis, *The Great Airline Disaster*, Den. Post, Feb. 7, 1982, at D1, col. 1; Dempsey, *Transportation Deregulation-On a Collision Course?* 13 TRANSP. L.J. 329 (1984); Serrin, *Deregulation Called Disaster for Airline Industry*, N.Y. Times, Oct. 5, 1983, at B7, col. 1.

5. See, e.g., Duffy (President of Airline Pilots Association), *Airline Deregulation: More Harm Than Good*, Den. Post, Dec. 31, 1983, at 11A, col. 1; Sawyer, *Six Air Unions Urge a Return to Regulation*, Wash. Post, Oct. 5, 1983 at A1, col. 1, *Air Unions to ask for 'Re-Regulation' of Ailing Industry*, Wall St. J., Oct. 5, 1983, at 14, col. 1.

that the deregulation genie has escaped from its bottle, and is not likely to be returned to its former comfortable abode. As the book itself points out, early industry opposition to deregulation disintegrated in the mid 1970's.<sup>6</sup> United Airlines' defection from the ranks of the opposition in 1977 turned the tide,<sup>7</sup> and the industry trade association (ATA) in that year did not testify against airline deregulation as it had done but two years earlier.<sup>8</sup> In 1978, President Carter, who had trouble getting Thanksgiving Day Addresses approved by a cantankerous Congress, enjoyed the supreme luxury of signing the Airline Deregulation Act which he had supported, and which had been passed in the House by the unheard of vote of 363 to 8, and in the Senate by a vote of 83 to 9.<sup>9</sup> By the time of Bailey *et al's* published study, the only remaining vocal dissent to deregulation was coming from the unions,<sup>10</sup> and even they were learning to at least adjust to the dawning of the new age, and in some cases even prosper.<sup>11</sup>

With the exception of the airline unions, Bailey is thus preaching to two groups: 1) the already converted, and 2) those who see airline deregulation as a *fait accompli*, and therefore take the view that efforts would be better expended on learning how to adjust to deregulation than on patting ourselves on the back by proving how wise we were in deregulating the airlines ten years ago.

A third group could perhaps be added, i.e., those who are concerned that whatever benefits have been gained from deregulation are now threatened by three ominous trends: 1) mergers by existing carriers into mega-carriers<sup>12</sup> (mergers which are now almost being routinely rubber-stamped by a complacent Department of Transportation over frequent ob-

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6. BAILEY, *supra* note 1, at 33. For an excellent history of this period, see *Dempsey, supra* note 1.

7. *Bailey, supra* note 1, at 33.

8. The author was advised in a telephone interview with William E. Jackson, Vice-President for Public Information of the Air Transport Association, on Jan. 20, 1984, that only Republic Airlines would favor re-regulation, and that even Republic did not express this view at the last ATA directors meeting.

9. *See supra* note 1, at 34.

10. *See supra* note 5.

11. It is true, of course, that airline unions can no longer maintain the high wage differential they commanded during regulation, by which typists were paid 41% more than their deregulated counterparts, computer operators 38%, and even janitors received 82% more than their hapless counterparts unable to enter the elite ranks of airline employees. *Office of Economic Analysis, Civil Aeronautics Board, Competition and the Airlines: An Evaluation of Deregulation* (1982) at 114. (Bailey cites U.S. Bureau of Labor Statistics 1980 published data to show that in 1980 keypunch operators at airlines earned "31 percent more than the average wage for all keypunch operators"). However, the economic challenge of new entrants has made several of the airlines more vulnerable to union demands for a voice in management, and even part ownership of the airline itself, as revealed by the stock ownership plans incorporated into recent agreements.

12. *See Hardaway, Airline Mergers Threaten Public*, Den. Post, March 28, 1986, at 7B, col. 4.

jection of an apparently impotent Department of Justice);<sup>13</sup> 2) restrictions on access to major airports which are creating increasingly anti-competitive effects on airline entry; and 3) bias in computer reservation systems which are controlled by a few major carriers.<sup>14</sup> Unfortunately, Bailey *et al* dedicate only 7 pages to mergers,<sup>15</sup> and 7 pages to the problem of airport access, including computer reservation systems.<sup>16</sup>

But back to whether deregulation was good or bad: yes, with a profusion of charts and tables from CAB and Industry reports, Bailey *et al* not only beat the poor horse dead, they cremate and bury its charred remains. Yes, the competitive environment of deregulation did indeed result in lower fares,<sup>17</sup> and greater efficiency;<sup>18</sup> the airline's financial woes during the 1980-83 recession were indeed caused by high fuel prices and a slackening of demand,<sup>19</sup> routing options for the consumer have expanded,<sup>20</sup> small community service has on balance improved,<sup>21</sup> and "the ability of airlines to enter and exit easily should prevent fares from exceeding the cost of service."<sup>22</sup> Of course the post-Kahn CAB has been

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13. See Dempsey, *Antitrust Law & Policy in Transportation: Concentration and Deregulation in the Air, Rail and Motor Carrier Industries*, to be published in the *Ga. L. Rev.* (1987) (copy on file with the Transp. L. J., address: University of Denver Law School, 1900 Olive Street, Denver, Co. 80220).

14. See Shrifin, *Justice Will Weigh 'Suit Challenging Airlines' Computer Reservations*, *Av. Week & Space Tech.*, March 25, 1985, at 105; *United Appollo Ticketing System Shapes Tactics in Air Fare Battle*, *The Den. Post*, Feb. 18, 1986, at 2C, col. 1; *CAB Sunset Ends Antitrust Immunity for Ticket Agents, Airlines*, *Av. Week & Space Tech.*, Nov. 12, 1984, at 50.

15. BAILEY, *supra* note 1, at 173-179.

16. *Id.* at 187-193.

17. BAILEY, *supra* note 1, at 61: "Airlines rose substantially less rapidly than costs and inflation through the second quarter of 1979. . . Average industry fares trended down were after the first quarter of 1981 but firmed as the economy recovered in 1983." Fare increases between 1976 and June 1983 were less than both increases in the CPI and increases in airline costs. *Staff of the Civil Aeronautics Board*, 1984 *CAB Draft Report* (Fig. 2.1), [hereinafter referred to as 1984 *CAB Draft Report*].

18. BAILEY, *supra* note 1, at 150: "Both the trunks and the locals have made operational changes that have increased productivity since deregulation. . . load factors rose to the highest levels in the late 1970's, following the liberalization of discount air fares." See also, *Hardaway, supra* note 3, at 137-141.

19. BAILEY, *supra* note 1, at 63: "[T]he rapid increase in fuel prices and the prolonged economic slump of 1980 through 1983 would have adversely affected industry profits regardless of the regulatory climate. . . In fact the reductions in industry fares beginning in the first quarter of 1981 stimulated traffic and may have thereby ameliorated the effect of the industry slump." Fuel price increased by 105% between March 1979 and March 1980, alone. MEYER, *supra* note 3, at 103.

20. BAILEY, *supra* note 1, at 11.

21. *Id.* at 123: "[S]mall cities that retained larger carrier service are receiving an increased number of departures to large and medium hubs. Communities dropped by these carriers experienced sharp increases in flights, albeit with smaller aircraft than before. Since 1981 service to small communities has improved further as the economy has recovered."

22. *Id.* at 171.

saying this all along,<sup>23</sup> as have a host of other commentators.<sup>24</sup> But while there are still those who oppose the theory as well as practice of airline deregulation, they are not likely to be swayed by this book, which fails to meet the arguments of its likely opponents. Even those with no particular axe to grind still argue that, whatever the economic benefits of deregulation to the consumer, these benefits are outweighed by such social costs as the loss of jet service to communities where jet service is no longer economical.<sup>25</sup> There are of course strong arguments rebutting these views, but they are not set forth in Bailey *et al's* study.

At a time when the deregulation of motor carriers and railroads is far from complete, the experience of airline deregulation nevertheless provides an excellent case study and blueprint for deregulation of the other transportation modes. Bailey's study is a viable tool in this context, not so much for its application of economic theory to the actual state of a transportation mode (Breyer,<sup>26</sup> Friedlander,<sup>27</sup> and MacAvoy<sup>28</sup> have already done this along similar and traditional party lines), nor even as a deregulator's version of the "Little Red Book". Rather its prime use will be as a compendium of previously scattered statistics, tables, and studies supporting airline deregulation, spiced with interesting historical anecdotes, if not deep analysis. As Bailey *et al* tells it, for example, when opponents of airline deregulation at the Kennedy Hearings in 1975 were confronted with the fact that unregulated intrastate airlines operating in such states as California and Texas were able to provide lower fares to consumers, they responded by attributing such results to unique operating conditions such as "good California weather."<sup>29</sup> Zealous Kennedy staffers then investigated this claim and found that "there were 228 hours of poor visibility in Los Angeles in 1974 and 233 hours in Boston."<sup>30</sup> The implication, of course, is that the opponents to deregulation were buffoons reduced in desperation to explaining the substantially higher fares and lower investment returns of the regulated airlines by a 5 hour annual difference in weather conditions. Bailey's breathless conclusion: "The nature of specific evidence in counter-acting opponents' views was enormous. The

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23. See 1984 CAB DRAFT REPORT, *supra* note 17.

24. See, e.g., BREYER, REGULATION AND ITS REFORM (1982); MEYER, *supra* note 3; Jones, *Government Price Controls and Inflation: A Prognosis Based on the Impact of Controls in the Regulated Industries*, 65 CORNELL L. REV. 303 (1980).

25. See, e.g., Klaus, *The Dark Side of Deregulation*, 11 WASH. MONTHLY 33 (May 1979); Meyer, *Section 419 of the Airline Deregulation Act: What Has Been the Effect on Air Service to Small Communities?*, 47 J. AIR L. & COM. 151 (1981); Havens & Heymsfeld, *Small Community Air Service Under the Airline Deregulation Act of 1978*, 46 J. AIR L. & COM. 641 (1981).

26. BREYER, *supra* note 24.

27. A. FRIEDLANDER, *THE DILEMMA OF FREIGHT TRANSPORT REGULATION* (1969).

28. P. MACAVOY AND J. SNOW, *RAILROAD REVITALIZATION AND REGULATORY REFORM* (1977).

29. BAILEY, *supra* note 1, at 31.

30. *Id.*

dramatic newspaper coverage of the hearings created a political base of support. . . The evidence showed that consumer benefits were being withheld by the regulatory process, and a different regime was needed to bring the possibility of lower fares to the U.S. public. . ."<sup>31</sup> The reader almost visualizes Bailey *et al* doing a victory dance over the prostrate bodies of regulatory ideologues.

Although probably accurate in most respects, the ideological tone of such conclusions are hardly persuasive to the audience who might benefit most from this work. Even the vast number of facts and statistics included in the text could be more generously documented. Footnotes average less than one per full page of text, and while this gives an admirable uncluttered look (presumably for the benefit of the layman or more casual reader), it detracts considerably from the usefulness of the book to the scholar and researcher, who must make reference only to the book itself in citing a vast array of facts and statistics which are critical to its overall thesis.

The book's cover quotes critics who describe it as "an illuminating description and evaluation of the airline deregulation process,"<sup>32</sup> and "an excellent evaluation chronicle of perhaps the most significant regulatory reform of our time."<sup>33</sup> This reviewer concurs, and will keep this book on his shelf as a handy, and even indispensable resource reference for research on the airline industry. This book could have been much more, however, and with further analysis of its vast data, have made a substantial contribution to the now more pressing problems of airline mergers and airport access.

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31. *Id.*

32. *Id.* (Book Cover).

33. *Id.*