

ONE HUNDRED YEARS OF AIRPORT LAW IN THE UNITED STATES

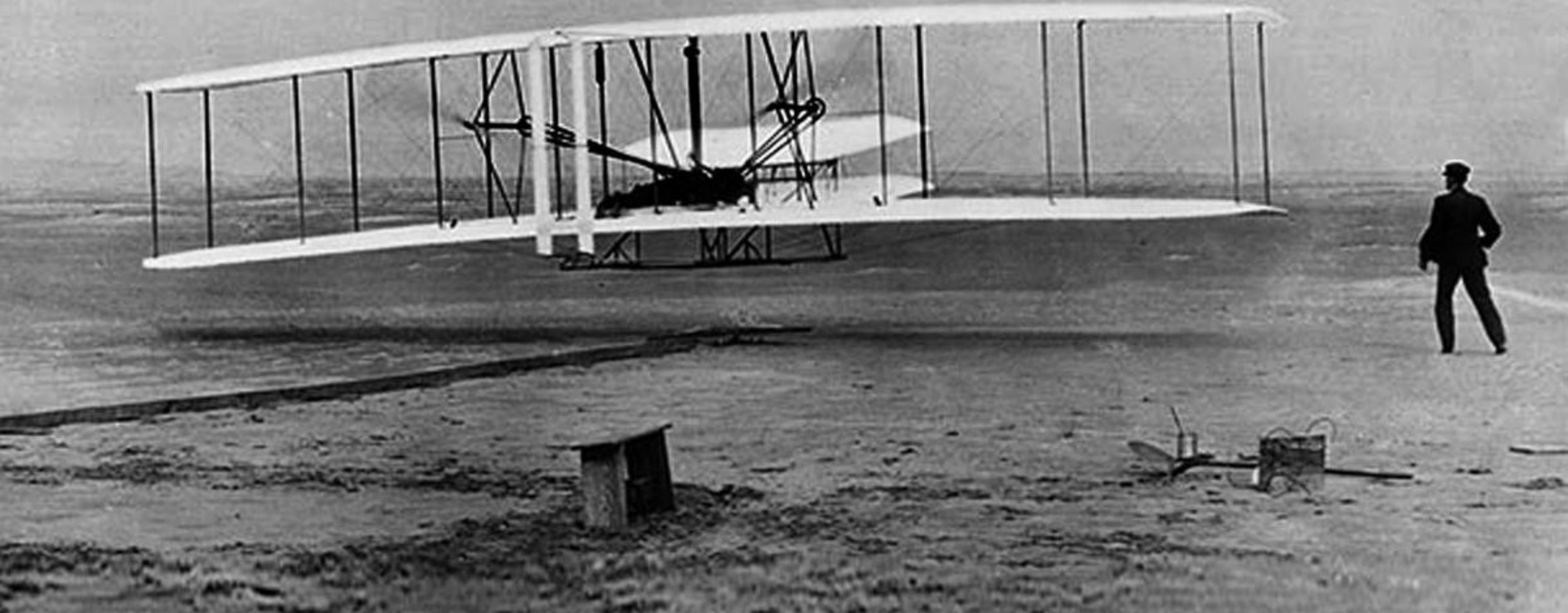
Peter J Kirsch

27 May 2025

Worldwide Airport Lawyers Association Conference

Honderd jaar luchthavenwetten in de Verenigde Staten

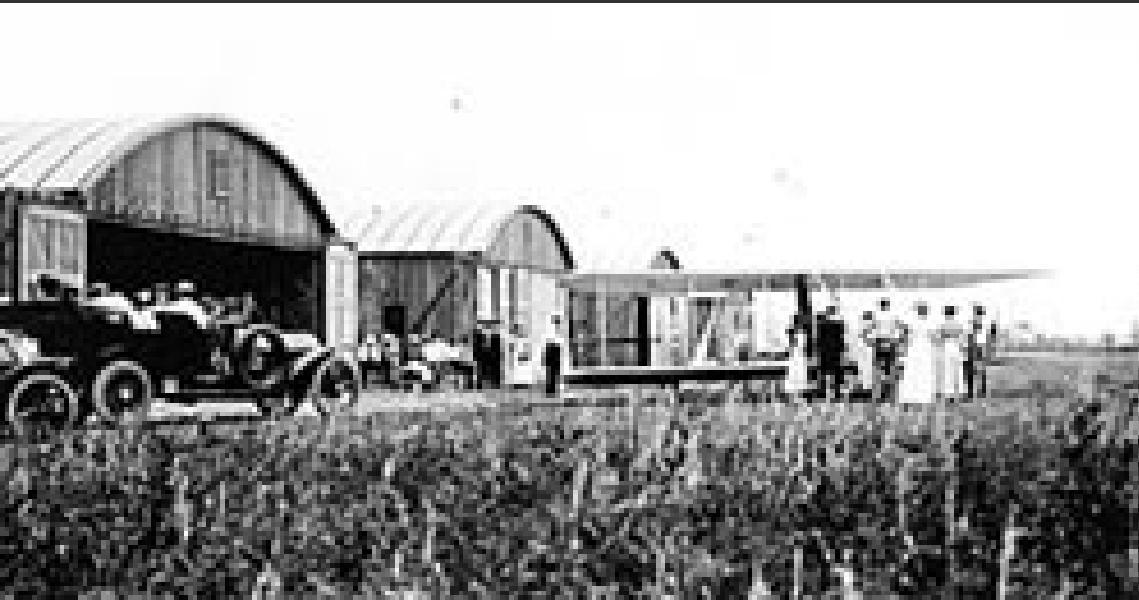
First Flight – December 1903



A lot has changed . . . But a lot has *not*



The evolution of airports



College Park, MD (1912)

Atlanta – Hartsfield-Jackson International (2020)



College Park Airport c. 1911-1912, with the Wright Model B airplane Photo courtesy of College Park Aviation Museum



<https://www.nps.gov/articles/college-park-airport.htm>


https://commons.wikimedia.org/wiki/File:Atlanta_Airport_Aerial_Angle_%2831435634003%29_%282%29_%28cropped%29.jpg

WALA
WORLDWIDE AIRPORT
LAWYERS ASSOCIATION

**Why does
legal
history
even
matter?**



History matters, to understand --




PURPOSE
of the
statutory
scheme



DIVISION of
legal
authority



SHARED
responsibilities

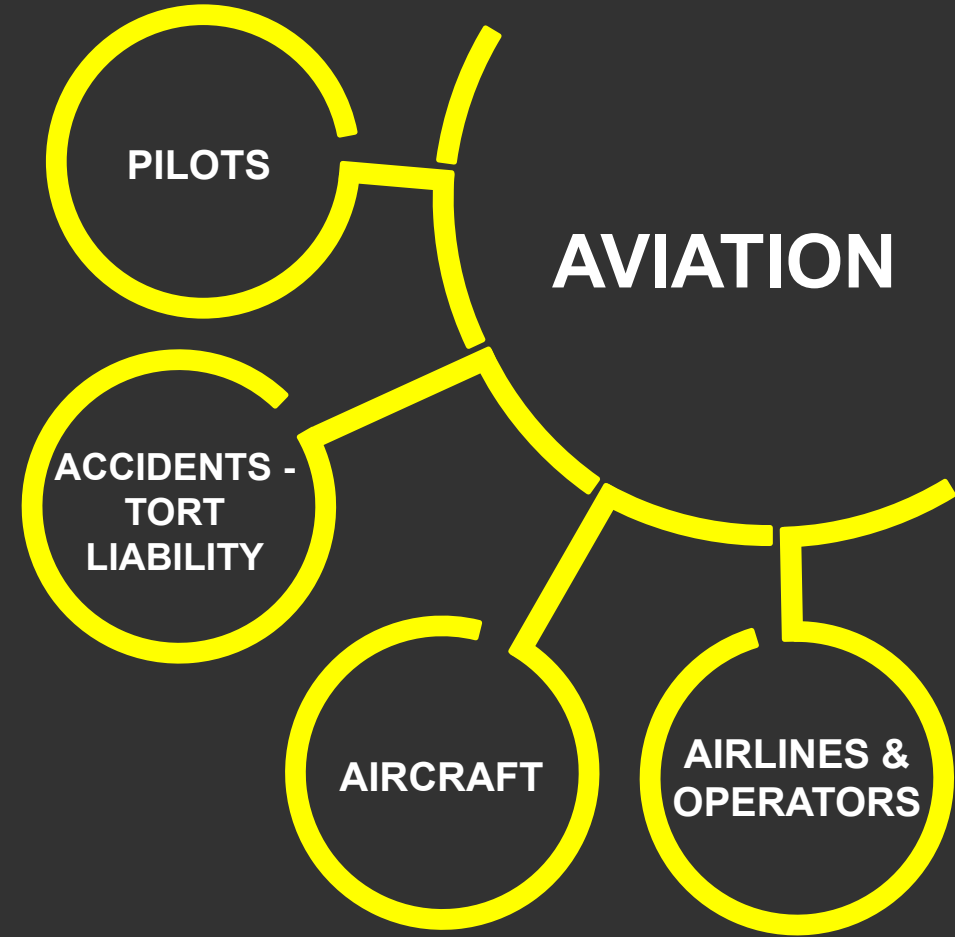


BASES for
different
types of
regulation



ADAPTING
to new
technologies

Airport law vs. aviation law

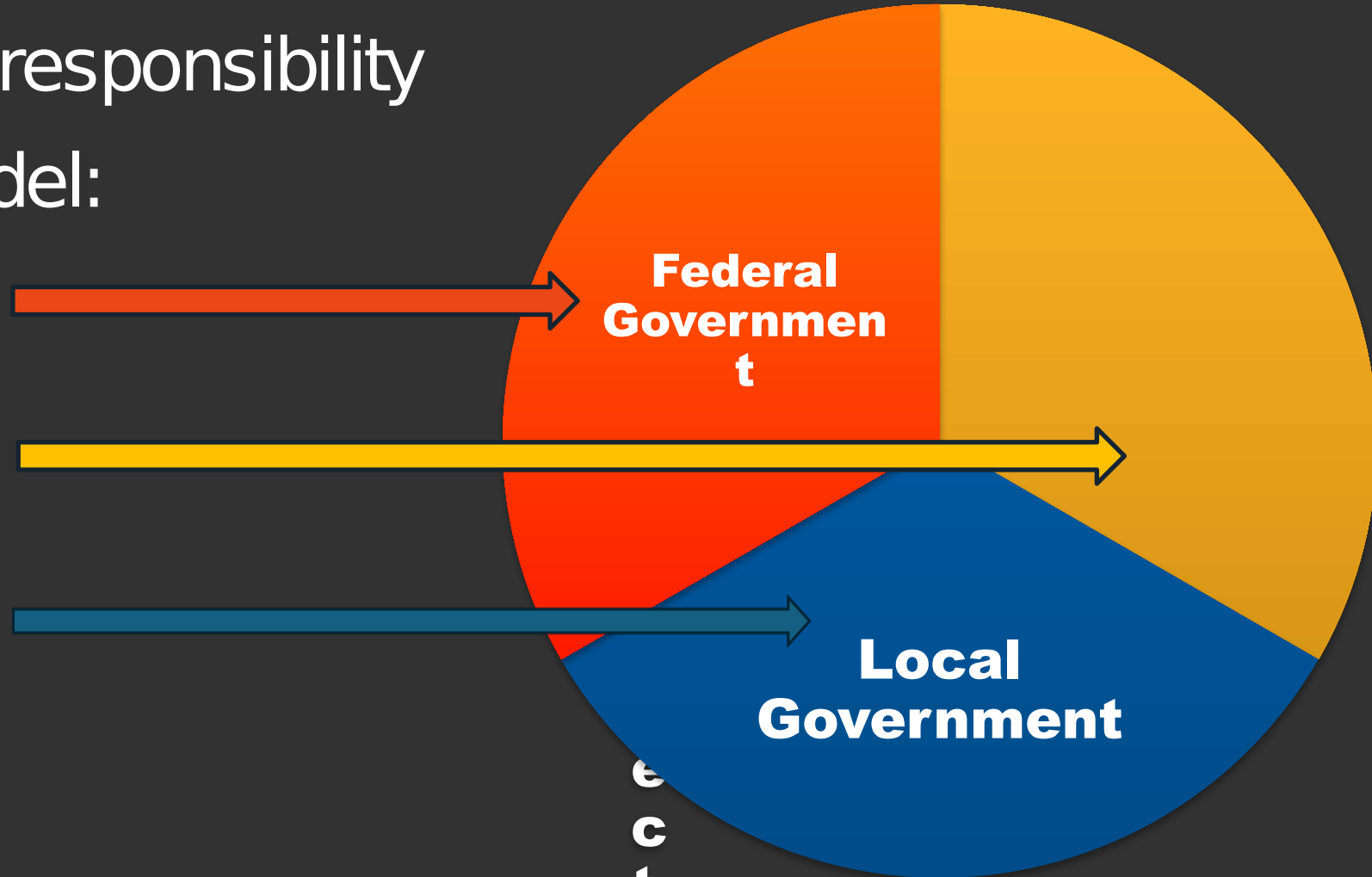


Evolution of airport laws

Divided legal responsibility

The early model:

- Airspace
- Air Service
- Airports



Other nations' models – discrete legal authority or separate legal entities

- Operator of airline
- Operator of airports
- Regulation – airports, pilots, airlines, manufacturers
- Funding
- Navigation
- Advocacy

Different model in USA

Single federal agency

Regulator +

Funder +

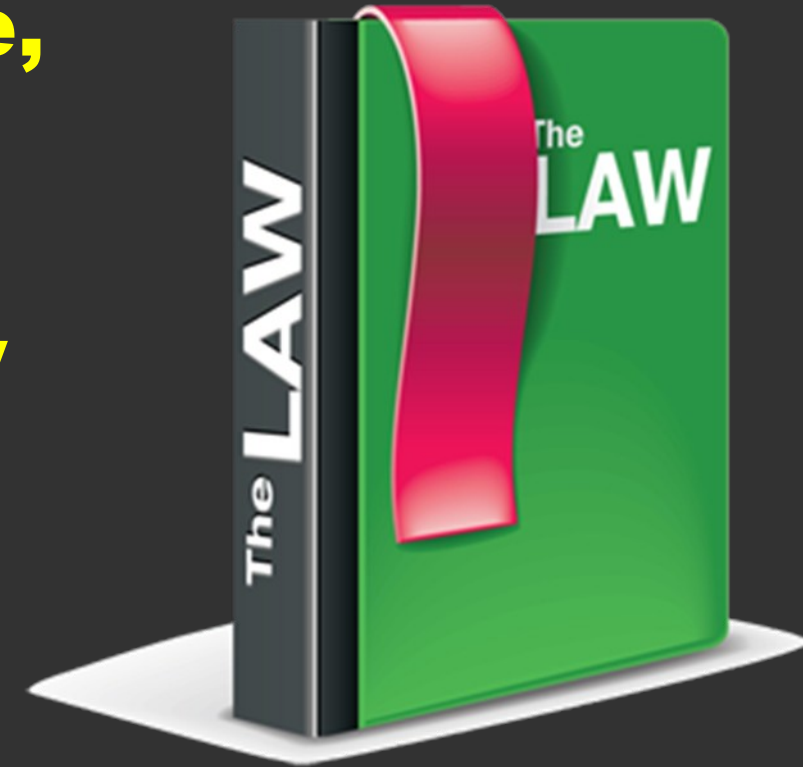
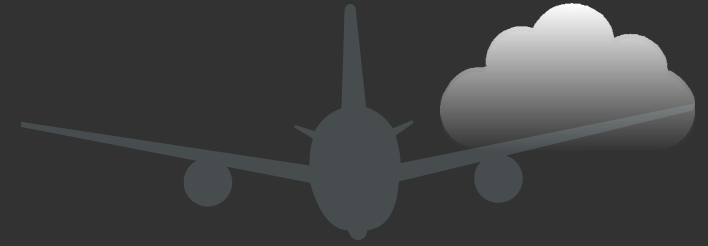


Operator (Navigation) +

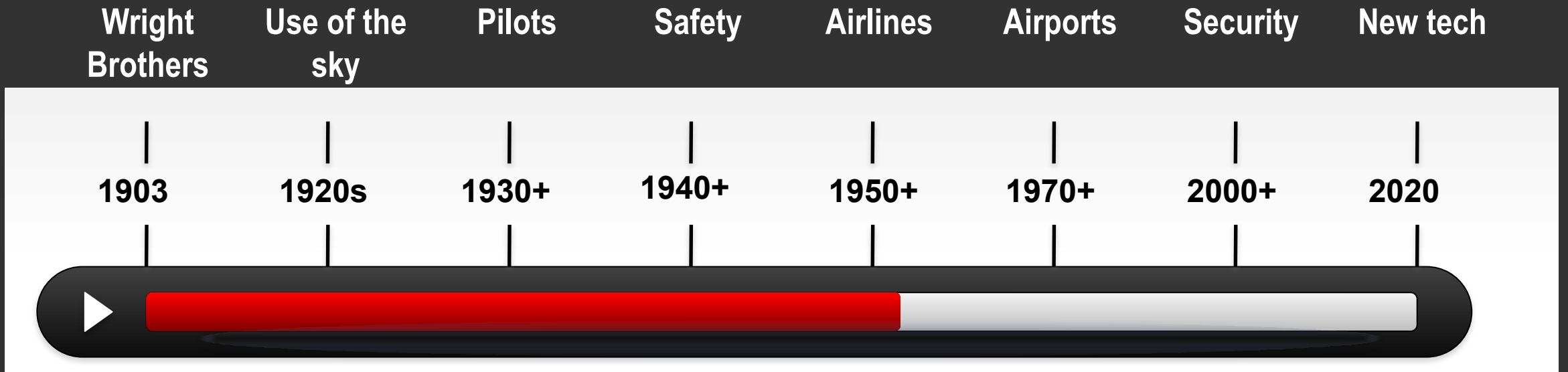
Advocate

Airport law

- Distinct from **aviation** law
- Rules and legal principles to **public-use, federally-obligated** airports -about 3000 of 20,000 airports
- Rules derive primarily from **federal law** and **federal contracts**
- Constitutional federalism principles of preemption prevail
- State laws generally follow from federal law



Evolution of airport regulation



Early airport law – through 1940s

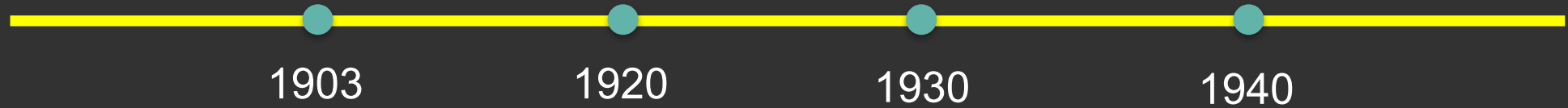
Who owns the sky?

What is the federal government's role?

Who should own airports?

Who pays what?

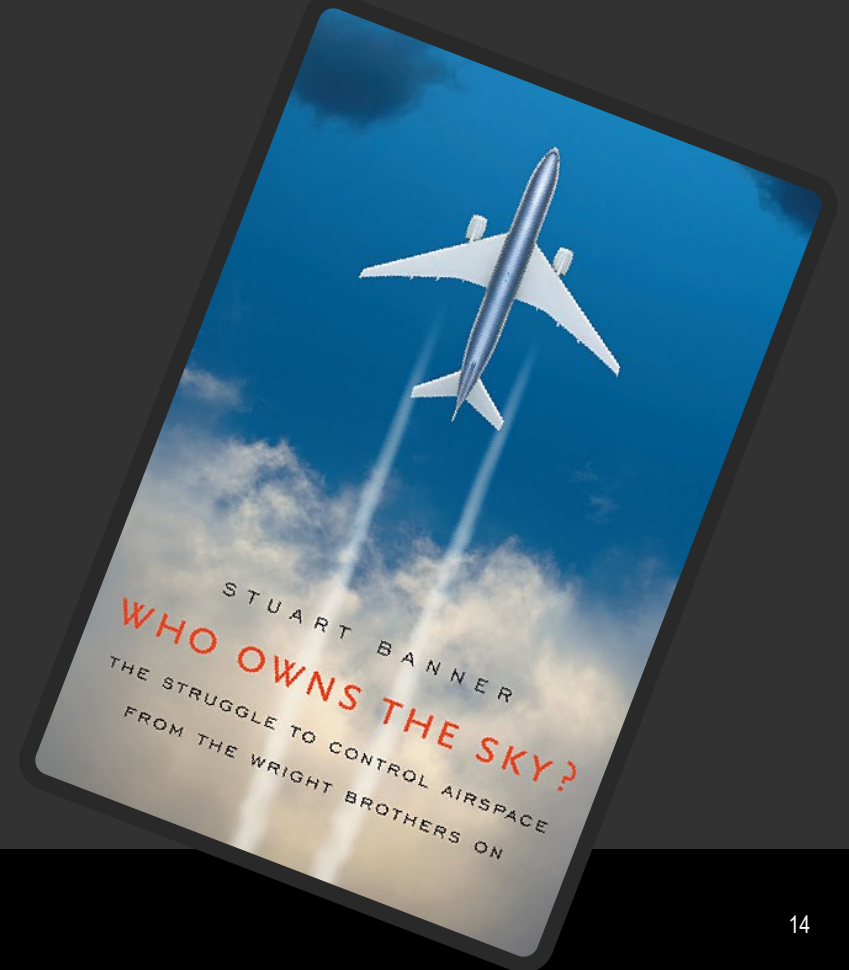
Who is responsible for impacts?



First basic problem – *ad coelum doctrine*

Cuius est solum, eius est usque ad coelum et ad inferos

*Whoever owns the soil,
it is theirs all the way to Heaven
and all the way to Hell*



Legal structure

- Early regulation focused on
 - Aircraft
 - Pilots
 - Airspace
- Little attention to airports – not thought as a significant legal issue for federal government

Early *aviation* statutes – part 1

- Air Commerce Act of 1926 – no airport regulation
- Civil Aeronautics Act of 1938 – first airport safety regulation
- Surplus Property Act of 1944 – property for airports
- Federal Airport Act of 1946 – increased federal regulatory role



Air Commerce Act of 1926

“The Secretary of Commerce is authorized to designate and establish **CIVIL AIRWAYS.**”

“Air navigation facilities owned or operated by the United States may be made available for public use under such conditions and to such extent as the head of the department or other independent establishment having jurisdiction thereof deems advisable and may by regulation prescribe.”

“The Secretary of Commerce shall grant no exclusive right for the use of any civil airway, **AIRPORT**, emergency landing field, or other air navigation facility under his jurisdiction.”

Sec. 5



Civil Aeronautics Act of 1938

“NO EXCLUSIVE RIGHTS SHALL BE GRANTED for the use of any civil airway, landing area, or other air navigation facility.” Sec. 302(a)

“[T]he ADMINISTRATOR SHALL NOT ACQUIRE ANY AIRPORT by purchase or condemnation.” Sec. 302(a)

“The Authority shall make a field survey of the existing system of airports and shall present to the Congress definite recommendations as to **WHETHER THE FEDERAL GOVERNMENT SHOULD PARTICIPATE** in the construction, improvement, development, operation, or maintenance of a national system of airports.” Sec. 302(c).



Airspace regulation



Early case law – private property

“We have said that the **AIRSPACE IS A PUBLIC HIGHWAY**. Yet it is obvious that if the landowner is to have full enjoyment of the land, he must have exclusive control of the immediate reaches of the enveloping atmosphere. Otherwise, buildings could not be erected, trees could not be planted, and even fences could not be run. . . . The landowner owns at least as much of the space above the ground as he can occupy or use in connection with the land.”

U.S. v. Causby, 328 U.S. 256 (1946)



Early case law – private property

“Aviation has added a new dimension to travel and to our ideas. The ancient idea that landlordism and sovereignty extend from the center of the world to the periphery of the universe has been modified. Today the landowner no more possesses a vertical control of all the air above him than a shore owner possesses horizontal control of the sea before him. **THE AIR IS TOO PRECIOUS AS AN OPEN HIGHWAY TO PERMIT IT TO BE ‘OWNED’** to the exclusion or embarrassment of air navigation by surface landlords who could put it to little real use.”

Northwest Airlines v. Minnesota, 322 U.S. 292 (1944)

J. Jackson, concurring



Early poetry

“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 in 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, and protection, so far as transit is concerned, it owes to the **FEDERAL GOVERNMENT** alone and not to any state government.”

Northwest Airlines v. Minnesota, 322 U.S. 292 (1944)

J. Jackson, concurring



Early case law – public policy

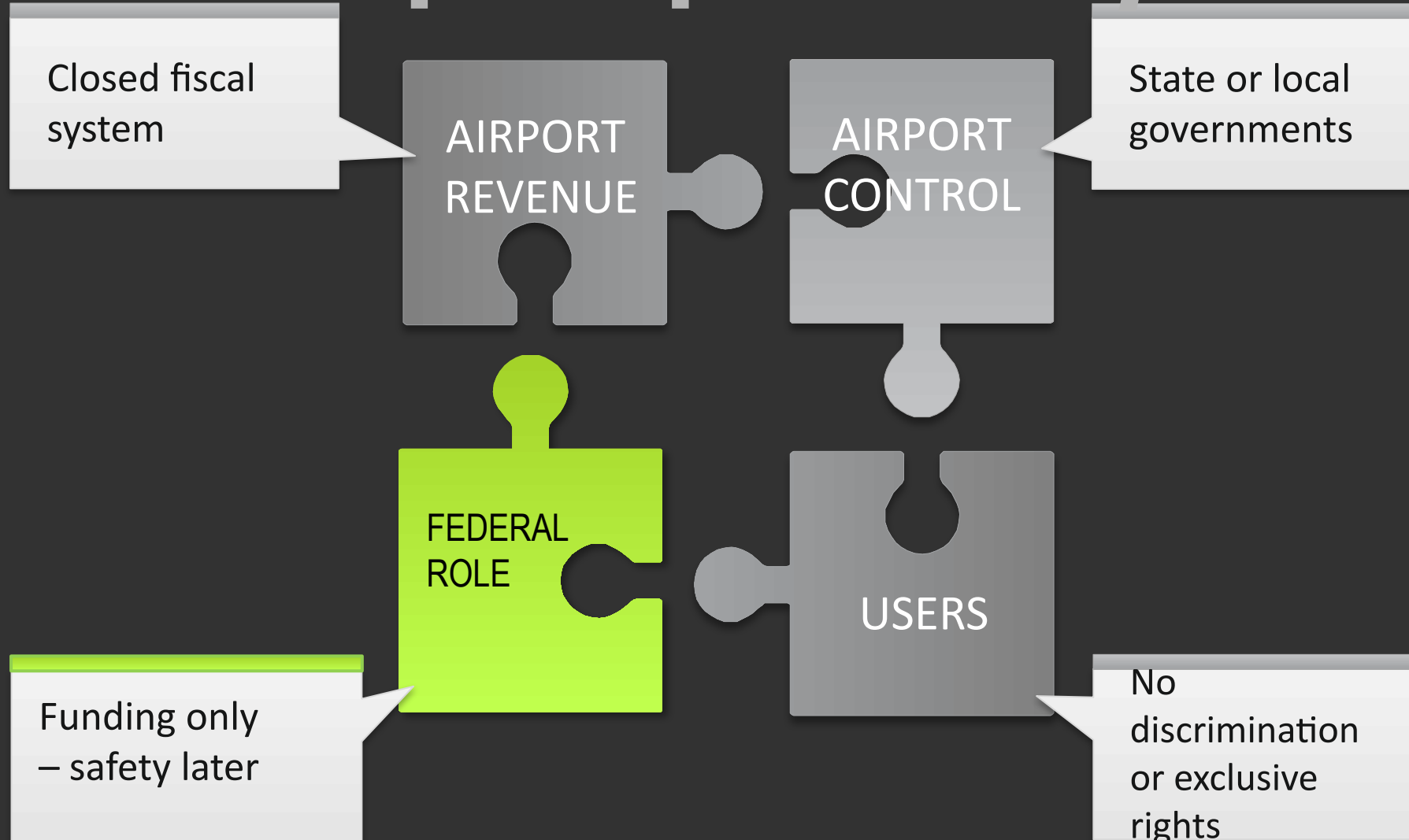


“In our business of judging in this case, while sitting as a court of equity, we must not only weigh the conflict of interests between the airport owner and the nearby landowners, but we must further recognize the public policy of the generation in which we live. We must recognize that the **ESTABLISHMENT OF AN AIRPORT OF THE KIND CONTEMPLATED IS OF GREAT CONCERN TO THE PUBLIC**, and if such an airport is abated, or its establishment prevented, the consequences will be not only a serious injury to the owner of the port property but may be a serious loss of a valuable asset to the entire community.”

Antonik v. Chamberlin, Ohio Ct. App. (1947)



Foundational principles of *airport law*



Early efforts at airport law – 1940s

- World War II – enormous federal investment in airport infrastructure
 - Surplus after the War
- Recognition of gap in regulatory structure
- Federal system presented opportunities and limits
 - One aviation system (nationwide)
 - Local government control over facilities
 - Limited federal authority to tell local governments what to do



Surplus Property Act of 1944

- 500 airports declared surplus after War ended
- Provided for the orderly transfer of excess or surplus federal property
 - Included airports
 - Airport-specific provisions now found at 49 U.S.C. Sections 47151–47153
- War Assets Administration (1946-49) to oversee transfers of surplus property



Surplus Property Act of 1944

- Deed restrictions
 - Public use
 - Reasonable conditions
 - No unjust discrimination
 - No exclusive rights
- Penalty – reversion to federal government



Federal Airport Act of 1946

- Grant program
 - Federal-Aid Airport Program
 - \$520 million over seven years
- Key features of aid program remain today
 - Federal assistance with local match
 - Apportionment and discretionary funds
 - Federal approval based on inclusion in National Airport Plan
 - Grant Assurances
 - **Regulation by contract**



Evolution of Airport Law – part 2 – 1950s to today

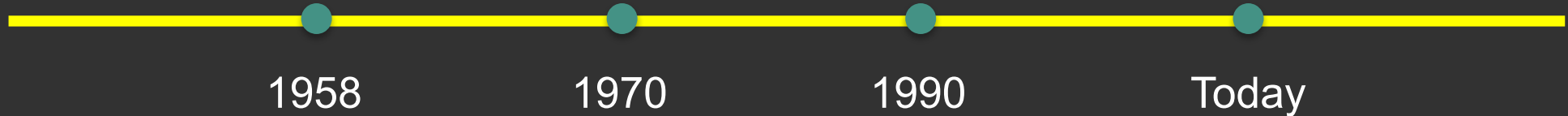
How should airport users be regulated?

How should airport revenue be used?

Who is responsible for security?

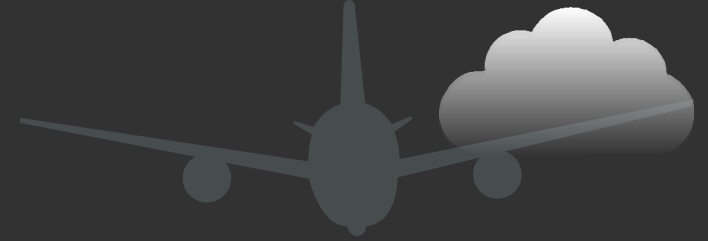
How can airports minimize impacts?

How far should FAA's reach extend?



Modern airport laws

- Federal Aviation Act of 1958
- Airport and Airway Development Act of 1970
- Anti-Head Tax Act of 1973
- Airline Deregulation Act of 1978
- Airport Noise and Capacity Act of 1990
- Aviation and Transportation Security Act of 2001
- FAA Reauthorization statutes through 2024



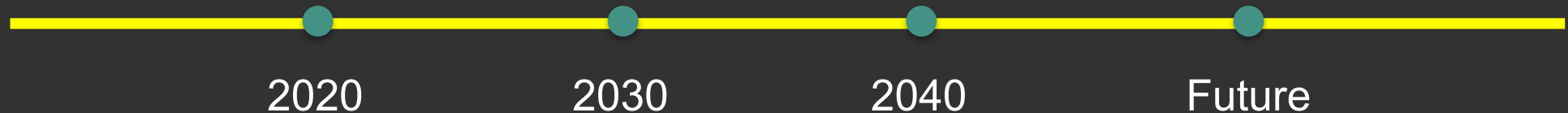
Evolution of Airport Law – part 3 – 2020s and future

How should new tech be integrated into airspace?

How should drones, air taxis be regulated?

Who can operate drones, air taxis?

What is an airport?





Helicopters



Drones



AAM or UAM



Small propeller general aviation



Large transport-category jets

Future of airport law in USA

- What is an airport (should definition change?)
- Who should be allowed/required to use an airport
 - Fixed-wing aircraft
 - Helicopters
 - Drones
 - Advanced Air Mobility (Air Taxis)
- Does the historical structure of airport law work for new technology

Congestion- on and off-site



Open questions of airport law

- Are vertiports airports?
- Should the public ownership and control model apply?
- What should be the federal role and investment?



Thank you. Bedankt.

Peter J Kirsch

) **pkirsch@kaplankirsch.com**



+1 303 898 1665

