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Revolution in the Wasteland: Value and Diversity in Television

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REVOLUTION IN THE WASTELAND: VALUE AND DIVERSITY IN TELEVISION. By *Ronald A. Cass*. Charlottesville: University Press of Virginia. 1981. Pp. viii, 240. \$10.

This, the purported age of deregulation, could hardly be a more opportune time for a critical assessment of the history and rationale for government control of the media. *Revolution in the Wasteland*, authored by Ronald A. Cass, provides just such a study — important and insightful in its historical analysis, yet flawed in the crucial juxtaposition of those historic elements with emerging technologies of the televised media.

Replete with citations ranging from media trade papers to Supreme Court opinions, Cass' examination of the history and traditional criticisms of broadcasting centers on the perceived failure of program quality and the failure of government attempts to improve this quality through program regulation and access requirements.

Cass presents this compendium against a strong backdrop of the real-world workings of network television, guiding the reader through both the world of corporate programming decisions and the labyrinthine requirements of broadcast regulation. He also presents a brief examination of the more technical elements of television technology in concepts and terms within the understanding of most lay people.

A general consensus among commentators and regulators maintains that traditional broadcast regulation has, to the extent it seeks to improve qualitative programming standards, failed. Cass supports this view, showing first the shortcomings of content requirements (*e.g.*, the prime-time access rule, p. 32) and then addressing the more recent regulatory philosophy which encourages diverse media ownership in its quest for diverse programming (*e.g.*, cross-ownership bans, pp. 29-30, 42).

While the author presents myriad and largely cogent reasons for the failure of regulation to provide "quality" programs, his characterization of the Federal Communications Commission as protector of network television is most pertinent to his assessment of new technology's impact on regulation. Cass sees the FCC as "[a] regulating octopus . . . reaching out to grab passing industries that venture within its range, save only those that are too small to seem worth the effort" (p. 51). Illustrative of the FCC's power-grabbing, according to Cass, are the intrusions of the agency into regulation of cable and pay-TV media, either of which bears only the most remote relation to the Commission's appointed supervision of airwaves in the public interest. The recent retreat from this omnipotent assertion of control over viewing is not so important to Cass as its original genesis and philosophy.

When the FCC found within itself the power to assert control over such kindred non-broadcast television media, it reasoned that it could regulate those media which *affect* the over-the-air broadcasts; it did not require any independent justification for control.¹ To be sure, the courts may be ac-

1. This idea has been explored at length in a number of scholarly journals, most notably:

cused of — at the least — complicity in this *carte blanche* approach to media regulation. Retreating into the familiar mantra of “public interest,” the courts have generally supported the FCC’s protectionist policies when dealing with intrusion by the new technologies into traditional broadcast turf. Cass never ascribes blame for this judicial following of FCC assertions. Rather, he implies that judicial acquiescence results from confusion over new technologies and reluctance to undertake an independent evaluation of the propriety of regulation. Nor is Congress ready to take the initiative; Cass finds Capitol Hill stymied by “logrolling” and apathy (pp. 37-55).

But the tide of regulation has apparently turned. Cass credits the courts with finally causing the FCC to face up to inherent limits on its authority (pp. 90-91). The consequences of this administrative retreat, however, have only begun to emerge.

“Freed now from the more constraining FCC rules,” writes Cass, “cable television should do much to provide the amount of programming desired by the public” (p. 92). Contrary to the failed assertions of broadcasters that pay-TV should be used only to fill gaps in the diversity of broadcast programming (*e.g.*, through arts programming and more sports events) (pp. 94-99), Cass sees the mere presence of more televised entities as supportive of value and diversity in programming.

The FCC itself has, for several years, advocated a proliferation of voices as a means of improving the quality of broadcast media,² so Cass’ conclusion is less than remarkable. But even if one accepts his assertion that FCC control has been an historic protector of traditional broadcasters’ interests (and consequent damper on diverse programming), this ongoing realignment will not necessarily loosen the networks’ traditional grip on televised programming. Wholly unaddressed are the potentially radical changes proposed from within the FCC itself.³

It is at this juncture that Cass presents his approach to the more passive of the new technologies: videodiscs and tape cassettes. Seeing these viewer-controlled entities as the first real competition for television *use* (*vis à vis* choice among programs), Cass concludes, rather unremarkably, that these new entries into the programming market are the first to be fully free from regulatory control (p. 139). Neither, one imagines, could the regulatory tentacles of the FCC reach Pac-Man or home computers, but there remains serious doubt that these competing uses do much to enhance programming’s diversity.

Not coincidentally, tape and disc reproductions provide less direct com-

Chazen & Ross, *Federal Regulation of Cable Television: The Visible Hand*, 83 HARV. L. REV. 1820 (1970); Price, *Requiem for the Wired Nation: Cable Rulemaking at the FCC*, 61 VA. L. REV. 541 (1975).

2. Examples of this policy include new restrictions on cross-ownership of television stations by newspapers or other media outlets in the same city, the new low-power TV stations to encourage community programming within a several-mile area, and support of “public TV,” most notably through special regulations affecting only the educational Public Broadcasting Service stations.

3. See Fowler & Brenner, *A Marketplace Approach to Broadcast Regulation*, 60 TEXAS L. REV. 207 (1982) (FCC Chairman arguing, in part, for elimination of government regulation of programming, the reallocation of broadcast frequencies by lottery or auction, and assessment of “spectrum license fees” for frequency use).

petition to networks than do cable and pay-TV. Instead, notes Cass, such technologies allow for increased market penetration by the existing broadcast sources — at least inasmuch as they are used to preserve for delayed viewing those programs which are inaccessible to the viewer during their broadcast time period (pp. 113-14). Thus, Cass sees networks approaching video-tape and disc markets with a supportive bent that is totally contrary to their traditional hostility towards new technologies (pp. 115-16). He does not address the pending issues of copyright infringement and possible video-machine royalties and licensing requirements.⁴

The more crucial aspect of new television technologies which Cass fails to reconcile with his historical portrait of regulation, however, is their support from within network structures. Aside from the anomalous growth of "superstations" through satellite transmissions, the networks should, by Cass' theory, be continuing their hostile attempts to control the impact of pay-TV on their traditional markets. Instead, such ventures as the ABC-Hearst joint cable venture and the recently failed CBS Cable arts channel seek to enhance its appeal and diversity. Thus, one is moved to question Cass' characterization of the networks as routinely inhibiting the venture-some diversity of competing technologies.

Cass' concluding notes of optimism portend good times for those members of the viewing public who seek diverse programming to satisfy their individual tastes. The sheer multiplicity of video voices should serve this function, especially as they are now freed from the traditionally oppressive oversight of a network-oriented FCC.

Revolution in the Wasteland is clear in its presentation of both the technical and substantive aspects of televised programming, and provides a readable and cogent view of its weaknesses and strengths. But for the author's failure to reconcile past trends and an amorphous regulatory future, it would present a significant contribution to further assessment of television programming regulation in the context of emerging technologies. As it is, the book does no more than fulfill its role of overview and historic analysis, leaving the future to others.

4. Popularly known as the "Beta-max" case, motion picture producers have joined to request that some sort of tax, license, or other regulation be imposed on those who use their home videotape machines to tape over-the-air or cable programming. Obviously, this has a potentially devastating impact on the freedom of viewers to employ this new technology for delayed viewing or exchange of other diverse programming culled from broadcast/cable sources. *University City Studios v. Sony Corp.*, 480 F. Supp. 429 (C.D. Cal. 1979), *aff'd*, 659 F.2d 963 (9th Cir. 1981), *cert. granted*, 102 S. Ct. 2926 (1982).

Cass does mention the case, using its statistics to support his view of the medium's proliferation. He does not, however, discuss its crucial ramifications on viewership and the other televised media. For such a discussion, *see, e.g.*, Note, *The Betamax Case: Accommodating Public Access and Economic Incentive in Copyright Law*, 31 STAN. L. REV. 243 (1979).