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Television: in Areas Aside  
from Program Content

by Les Brown

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# Self-Regulation in American Television: in Areas Aside from Program Content

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## TELEVISION SELF-REGULATION AND OWNERSHIP REGULATION: THE AMERICAN EXPERIENCE

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SELF-REGULATION IN AMERICAN TELEVISION  
IN AREAS ASIDE FROM PROGRAM CONTENT

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From the earliest days of television, and indeed dating to the advent of commercial radio in the U.S., there was a tension within the industry between broadcasting as a profession and broadcasting as a business. For the first three decades, most television practitioners considered their field to be something of both. Station and network operators were determined to make money and increase their profits every year, but always within the professional parameters and in accordance with the industry ethos.

Most owners and managers spoke proudly of being professional broadcasters in the service of their communities, though most produced very little locally, beyond newscasts, in the normal course of things. They meant they do not shirk their responsibilities in a time of social crisis or natural catastrophe. No company prided itself on professionalism more than the CBS network in the 60s and 70s, while at the same time boasting of being "the world's largest advertising medium."

To a great extent federal regulation dictated professional behavior. Licenses were awarded on the promise of serving "the public interest, convenience and necessity," and they were renewed on evidence that the

screen the Seal of Good Practice.

The Code was adopted in 1952 as the industry's response to Congressional concerns about the crime shows on television and their possible contribution to juvenile delinquency. In 1982 a federal court outlawed the Code on antitrust grounds. The 30 years between marked the period in which broadcasters might rightfully have considered themselves professionals.

The abolition of the Code coincided with the Federal Communications Commission's determination during the Reagan Administration to deregulate broadcasting. In the Washington mood at the time, Republicans and Democrats alike embraced the principles of a market economy that viewed democracy in consumer terms. With the emergence of cable and other video technologies, television was perceived as a cultural democracy in which people regulated the medium for themselves by means of the dial or the remote-control tuner.

"Let the market rule" and "Get Government off of business's back" became the shibboleths of the 80s. Their effect was to transform the citizen into the consumer, which was necessary to facilitate deregulation. It became possible then to define the public interest as what the public is interested in. The assumption was that people would tune out and thus kill off whatever programs they deemed offensive or excessively exploitative. It followed

## TELEVISION IN THE REGULATED MODE

Television grew out of radio and inherited most of the regulation that was created for the older medium dating to the late 20s. As with radio, U.S. policy was to have a system based on localism built by private industry. Regulating these media was a delicate matter in light of the First Amendment -- the free speech/free press Constitutional provision that is a most distinguishing feature of American democracy -- and the FCC was prohibited from creating rules that bore directly on content or that were in any respect censorial.

Public service content was of course a consideration in granting and renewing licenses, but in the main it was looked at quantitatively by the commission, rather than qualitatively. The agency has adhered to a policy of trusting the licensee to determine what is best for his community. While the FCC has no regulatory authority over the networks, since they are independent program services and not licensed entities (in theory anyone can start a network, as Paramount and Warner Bros. now have), it has historically dealt with them through their owned stations.

That broadcasters did not share the full First Amendment freedoms of print publishers was defended by the scarcity of spectrum and the argument that the airwaves belong to the public. Broadcasting was differentiated from print as a privilege differs from a right. Because

to meet the public trust or with an egregious violation of the regulations. The petitioning groups did not seek the license for themselves but only to cause the operator to lose the privilege of broadcasting.

The most spectacular such petition was that filed in 1964 against WLBT in Jackson, Miss. for openly discriminating against African-Americans and proponents of the civil rights movement. The Office of Communication of the United Church of Christ had monitored the station to accumulate evidence that the station used its airtime to promote a segregationist philosophy while shunning the viewpoints of the African-American community, which comprised 40% of the city's population.

Five years later the case was won, and Lamar Life Insurance Company, owner of the station, was forced to sell WLBT. The effect was to propel the broadcast reform movement by establishing the right of citizens groups to have their views made part of the license-renewal proceedings.

Much of FCC regulation was intended to bolster localism and ensure the integrity of the license. Character was an important criterion in awarding licenses; the FCC would reject applications from persons with criminal records and could revoke the licenses of companies or individuals convicted of wrongdoing. Among other things, the character criterion served to keep organized

audiences and to substitute programs of their own. They were not to enter into contracts under which the networks effectively controlled their airtime. These restrictions gave the stations a small but not insignificant voice in network programming, since substantial rejection by the affiliates could doom a new series.

The FCC also maintained strict rules for contests and lotteries and imposed fines and even more severe sanctions for promotions and programs that intentionally deceived their audiences. It also discouraged program-length commercials (advertisements masquerading as full-blown programs) especially in the children's sphere.

Rules for political advertising were extensive, ranging from a provision that candidates must be charged a station's lowest rate for airtime to one that prohibits the broadcaster from interfering with the content of a political commercial, even if it contains profanity the station would not otherwise allow on the air.

Central to this set of rules is the Equal Time Law, which requires broadcasters giving free or paid airtime to a political candidate to afford equivalent opportunities and time to all qualified candidates for that office.

Despite the FCC's efforts to foster localism, the three networks became the dominant force in television during the 60s, claiming some 60% of the affiliates' airtime and exercising such control over the program market

lease the programs they commissioned from Hollywood for only a first and second run, and not to share at all in the after-markets. A companion rule barred the networks from owning cable systems in order to allow that emerging industry to grow freely.

In 1971, a year after the adoption of the rules, CBS spun off its syndication and cable units into a new company called Viacom, which has grown to become one of the most formidable players in the field. ABC sold its syndication business to its employees, who named it Worldvision; it too has flourished, especially internationally, and has changed hands several times. NBC sold off its syndication properties to a number of distributors, so that NBC Films has no successor.

The Prime Time Access Rule proved a great boon to the syndication industry in opening a whole new market for original production. It also added greatly to local station profits, since a non-network half hour can carry more commercials than a network half-hour is allowed. But the FCC's hope that it would foster exciting new works for television died when the choice time period wrested from the networks was given over predominantly to gameshows stripped over five or six nights a week (Wheel of Fortune, and Password, notably) and in latter years also to tabloid news-magazines like A Current Affair.

Fin-syn served to transfer the power over programs

controversial and beleaguered rule by far was the Fairness Doctrine, whose origins date to the commission's Editorializing Report of 1949. It was codified in 1959 and became an actual instrument of the FCC in 1962. In essence the Fairness Doctrine was intended to serve the First Amendment ideal of robust, wide-open debate, yet it was opposed by avid First Amendment adherents because it imposed a duty on what they believed should be media of free expression.

The Fairness Doctrine was two-faceted. First it required, as a condition of keeping the license, that broadcasters actively involve themselves on air with controversial issues of public importance. Then, in dealing with those issues, that broadcasters behave fairly, affording reasonable opportunity for all opposing viewpoints to be heard. A companion was the personal attack rule, which required broadcasters to notify people who were severely criticized by speakers on air and give them opportunity to respond.

The Fairness Doctrine played a part in the success of the civil rights, women's rights, and gay rights movements. It became the cornerstone for citizens' rights in the broadcast media. That was why it was so unpopular with broadcasters.

The latter made it possible for speculators to buy and sell stations as rapidly as real estate.

But by far his most significant act was to revoke the concept of public trusteeship, which had provided the justification for broadcast regulation for 50 years. Fowler called the public's ownership of the airwaves a myth and argued in virtually every speech that the public interest would be better served by market forces than by bureaucrats in a federal agency.

Fowler was not completely successful at deregulation. He was thwarted in his attempt to do away with rules giving preference to minority and female applicants for new stations. Nor was he even-handed in abolishing outdated regulations. Fowler allowed the Prime Time Access Rule to stand undisturbed, for example, apparently because it was favored by most broadcasters, having developed into a lush profit center for them.

After starting to attack the Financial Interest and Syndication Rule, Fowler suddenly backed away from it. His change of heart came after a private meeting with President Reagan, which raised the suspicion that the White House had intervened in behalf of the Hollywood production industry, the prime beneficiary of the rule and, of course, Reagan's former milieu. But in broaching fin-syn's possible elimination, Fowler touched off a heated battle between the networks and the studios on the issue which took a decade

those related to elections, station editorials and personal attacks.

It is worth noting that the category left virtually untouched was the one concerning political broadcasting and advertising, though the First Amendment arguments for abolishing the Fairness Doctrine would apply equally to them. It was as if market principles could be trusted for all but what the lawmakers themselves live by.

#### THE EFFECTS OF DEREGULATION

The easing of the ownership rules, coming at a time when the founders of local stations were of age to retire, transformed the broadcast landscape. In the permissive climate, companies that would have eschewed an industry that was subject to the vagaries of regulation found television an attractive business to enter.

Long-established broadcast groups such as Storer, Taft, King, Wometco, Field, and Metromedia vanished in the buying spree, their knots of stations broken apart and sold to various new group entrants in the field.

Acquisition activity went into high gear in 1985, the year the FCC expanded ownership limits from seven stations to twelve, provided that the full complement covered no more than 25% of the country's population. Stations were usually acquired on borrowed money with confidence that

the field in the 80s, the Act III stations provide no local news.

News, however, is an important staple of most of the larger and long established stations, because it has become both a profitable form of programming and the key to a station's overall popularity as the expression of its personality. Local news programs were offered as loss leaders for the sake of the license in the early years, but by the mid-60s the top ten ratings in most midwestern markets (where prime time network service ends at 10 p.m.) were dominated by the leading station's evening news. Studies of local markets found that stations with the most popular newscasts tended to be first in the ratings generally, regardless of network affiliation.

It remains a given, then, that local markets will be amply served with news, even without regulation that in effect demands it, because local news gives TV stations an edge on cable channels and other competitors, and in fact has become the essential business of local television. Because that is the case, and because the idea of localism has come down to merely providing a news service, the FCC is able to consider currently another expansion of ownership limits, allowing coverage of around one-third of the country.

From its desire to encourage competition for the three networks, the FCC gave various kinds of special

program genre the critics dubbed "trash television." In programming generally, Murdoch's network took the low road, and in the permissive post-regulatory climate much of the industry followed.

Late in 1994, Murdoch became a more troublesome competitor of the networks by staging a raid on their affiliates, many in major markets. One of his tactics was to provide financial backing for outside companies to buy the stations and switch their affiliation to Fox. His raids created such turmoil in the industry that the other networks, to secure their national infrastructures, made costly long-term deals with their key affiliates.

These arrangements would not have been permitted in the era of strict regulation, because they involve guaranteed carriage of the entire network schedules with no preemptions except in times of emergency. Thus the stations give up their autonomy to the networks -- another blow to localism. That the FCC did not object to the terms signifies that the easing of the rules no longer holds licensees responsible for all they put on the air.

#### **THE FLAW IN THE MARKET APPROACH**

If Mark Fowler and his Reaganite colleagues had understood the true nature of the market they might not have acted in such haste to dispose of rules that had been created with good reason after lengthy debate by honorable

population -- networks, TV stations, radio stations, cable networks, motion pictures, record companies, and even the online computer services. The very audience that television pursues is the one that most often goes to the movies, listens to rock or country radio stations, and buys popular recordings. In all earlier times, culture was handed down to the young by the older generations. Today, because they are commercially the arbiters of popular entertainment, the young hand up culture to the old.

So the market is not as open and all-encompassing as it is thought to be by anti-regulators, and television is by no means a cultural democracy in which, as Fowler and others imagined, viewers vote with the dial or remote-control tuner. Not when the only votes that really count are those of persons in the 18-49 age range or, better, in the 18-35 group.

In the mid-60s the radio industry, battered by television, appealed to the FCC to relieve radio stations of the obligation to serve the entire public and allow each to provide a single consistent daylong service for a particular audience. In agreeing, the FCC imagined that each station would select an audience niche, so that horizontally across the dial each segment of the public would be served. Instead, virtually every station sought a format to reach young adults. In markets like New York and Los Angeles, with upwards of 50 stations on AM and FM, the

long since given way to "paid religion," air time purchased by evangelical and fundamentalist showmen to raise money for their electronic ministries. Educational and cultural programming have been abandoned with impunity to public television and such cable networks as A&E, Bravo, The Learning Channel, and Mind Extension University.

But some social issues persist and, if anything, have been heightened rather than resolved by market forces. Sex and violence, which have haunted television since the 50s, remain such a problem that Congress has once again called upon the industry to police itself or risk some manner of intervention by government.

Public outrage over television's exploitation of the child market has revived regulatory activity in that sphere and led to recent rules requiring stations to provide programs that nourish the minds of the young. Only a few years after cable was deregulated, Congress, responding to the din of complaints from their constituents over poor service and constant rate increases, ordered the FCC to re-regulate the industry.

While Americans readily accept their political designation as consumers, they cannot help behaving at times as citizens. And when they do Congress and the FCC will always respond. Regulation has a future.