

***Cultures in Collision: The Interaction of Canadian and U.S. Television Broadcast Policies*, New York: Praeger Publishers, 1984. Pp. 207, \$24.95 (U.S.) (cloth).**

During March 1983, in an effort to improve the rather strained relations between their two countries, Canadian and American representatives convened a conference to examine the interaction of their respective television broadcasting policies. The fuel of much of the controversy was two unilateral regulatory initiatives adopted by Canada to protect and enhance the cultural objectives of its broadcasting system. During the previous decade, Canada had approved the policy of delegation of commercial messages from U.S. television broadcasting signals carried by domestic cable companies. This country had also passed amendments to the *Income Tax Act* which limited the deductibility of the expense of advertising on American stations if the ad was directed at Canadian audiences. The conference provided a forum to explain policy positions, air grievances and to begin new understandings.

Cultures in Collision is a collection of eight of the principal presentations and reaction commentaries provided by regulators, private broadcaster representatives, international regulations experts, and economics, legal, political science and communications academics who spoke at the conference. The text addresses four principal topics: a historical comparison of the means and objectives of the broadcast policy of the two nations; national sovereignty, and content and access regulation; the dispute with U.S. border stations over commercial deletion and the deductibility of advertising expenses, and the impact of emerging technologies on the Canada-U.S. broadcasting relationship and on domestic regulation.

In the text, each major contribution is listed and entitled as a chapter; the reaction commentaries immediately follow their respective presentation. The book begins with a contextual introduction provided by Ambassador Goodwin Cooke and ends with a detailed index and a short biography of each contributor.

Generally speaking, this text is not an easy one to read. Much of it is like following the transcripts of an international debate orchestrated to present the widest range of perspectives on the principal controversy.¹ In addition, not only is a significant portion of the book's factual material repetitious, but very divergent views of its interpretation are offered. The reader must commit himself to the entire text and work through all the factual and policy interpretations proffered in order to come to an understanding of the interaction between Canadian and American television broadcast policies and objectives.

Essays one, two, three and five provide a historical, legal and philosophical comparison of the broadcast policies of each country. In analysing the comparison, the underlying principal relied upon by the contributors seems to be that Canadian and American broadcast policy differences exist

¹The widest perspective is provided by Theodore Hagelin and Hudson Janisch who describe this controversy as just one of many bilateral trade and service disputes to be settled by Canada and the United States. The narrowest and most entrenched view is proffered by those representing U.S. border broadcast interests. They feel that accepting border broadcast signals while discouraging the flow of revenue to pay for their generation is tantamount to broadcast piracy.

because different engines drive each system: American regulation is premised on commercialism and consumerism, while Canadian regulation ostensibly exists for the purpose of cultural protection and enhancement.

Allen Gottlieb, a Canadian ambassador, provides a general overview of the interaction of commercial and cultural objectives in "Words and Space: Culture and Communications in the 1980's". He explains that (i) the U.S. free market philosophy has "produced and marketed a popular culture that is the most extensive and attractive in the world" and (ii) technology, whether it involves off-air reception, cable, microwave or satellite assistance, has made vast amounts of this attractive material available to virtually all Canadians. Given the choice between this material and Canadian productions, the great majority will watch American programs.² He feels that concern for our national and cultural identity has forced regulators to set Canadian content quotas, control market entry and employ other incentives to stimulate Canadian production.

In chapter two, Frank Peers provides a "stone age to spage age" view of the comparative origins and approaches to broadcast policy in each country. He begins his argument by acknowledging that the market system is the chief determinant of U.S. broadcast policy, but quickly expands his list of policy determinants to include cultural values such as the liberal tradition, consumerism and a fear of big government.³

After tracing the history of Canada television regulation, Peers concludes that while counter-measures have been frequently attempted to protect our culture, Canadian broadcasting has been allowed to carry on in the best interests of private entrepreneurs, advertisers and a consumer society just as it has in the U.S. This situation, he speculates, is due to the inability of Canadian regulation to dislodge popular U.S. programs as our central viewing fare and as the standard by which we measure our own productions. As a result, the Canadian broadcasting system does not have coherent principles.

While setting out the full context of the border broadcast dispute, Theodore Hagelin and Hudson Janisch explain that the rationales for broadcast regulation in Canada and the U.S. are multi-dimensional. After distinguishing between the political means and ends of each nation, the authors complete their study by accentuating the similarities in broadcasting policy. They stress that both countries subject private sector broadcasters to content regulation in order to promote the needs and interests of the licensee's local audience; both nations have promoted the development of public broadcasting systems in order to fulfill educational and cultural objectives not sufficiently addressed by private broadcasters, and both now face an uncertain regulatory environment due to recent technological advances.

²Gottlieb states that during peak viewing hours on English television, foreign programs account for 85 per cent of viewing. He calls this a "cultural crisis". *Cultures in Collision: The Interaction of Canadian and U.S. Broadcast Policies* (New York: Praeger, 1984) 9.

³In the reaction commentary, *Ibid.*, at 35, provided by Barry Cole to Peers' remarks about American policy factors, he states that much policy development defied rational treatment and that:
many of the significant policy developments in American broadcasting resulted from a piecemeal, ad hoc decision-making approach and depended on timing, the presence and strong predictions of a single government official, or dubious judgment.

In "An Audible Squeak: Broadcast Regulation in Canada", then Chairman of the C.R.T.C., John Meisel, provides the fifth essay of the text. His contribution is largely repetitive of the legal, historical and philosophical material provided elsewhere in the book. It is a valuable contribution in that one can glean from his writing the sense of frustration generated in a regulator who must pursue the convictions of his mandate while contending with tremendous cultural forces from the south, and a largely unappreciative Canadian audience.

In chapter four, entitled "Consumer Sovereignty and National Sovereignty in Domestic and International Broadcasting Regulation", Mark Freiman explores the role of each sovereignty concept as a broadcast policy determinant for the U.S. and Canada. He provides a very good exposé of the consumer sovereignty myth used to justify market-style regulation and de-regulation for advertiser sponsored television south of the border. This form of sovereignty assumes that a natural marketplace will provide alternative products, and that consumers will select those which best serve their own interests. Consequently, poor quality, overly expensive and inefficient products will not be chosen. The author explains how these assumptions must be dramatically adjusted for television broadcasting. He argues that the real commodity being produced is the audience collected to view the advertising messages which frequently punctuate the programming. The real consumer is the advertiser who pays the broadcaster to produce the audience, and the program itself is merely one of the costs to produce the audience. Under such a market system, the "best product" is a large, attentive audience — an audience that can be delivered only if program alternatives are limited, and their content is neither intellectually complex nor inclined to provoke thought or strong emotional response.

Freiman argues that national sovereignty — the right for each country to negotiate within its borders — is a legitimate exercise of state power when used to control access to foreign cultural material. He insists that culture and communication are important constituents of the stock of knowledge through which citizens acquire their sense of self in their social, economic and political context. He concludes that Canadian regulation of broadcast content is a *bona fide* exercise of state interest, only if it is used to offer diversity of knowledge, information and interpretation.⁴

Chapters three, six and seven are dedicated to Canada's deteriorating relations with U.S. border broadcasters. While Canadian regulatory policy and the revenue of Canadian advertisers are, for the most part, irrelevant to the American broadcasting system, a substantial number of U.S. broadcasters located and developed in close proximity to Canadian population centres. These investment decisions were made assuming that the advertising market for those stations included the Canadian audience and that Canadian and American advertisers would want to reach that audience. The commercial deletion policy and changes to the deductibility of advertising expenses flew in the face of those investment assumptions.

In a 49 page essay entitled "The Border Broadcasting Dispute in

⁴The author makes it clear that the diversity of which he speaks should come in the form of Canadian content, but should not amount either to a preponderance of high brow cultural material or a Canadian produced equivalent of "The Texas Chainsaw Massacre". See, *supra*, footnote 2, at 116-117.

Context", Hagelin and Janisch provide a chronological history of these policies and U.S. reactions to each. The authors also do a credible job of breaking down and examining the programming, advertising and broadcaster interests affected by the trans-border controversy. Although their suggestions were not appreciated by Erwin Krasnow, a private broadcaster representative who offered a reaction to their presentation, Hagelin and Janisch provide two interesting proposals for resolution of the dispute.

The sixth and seventh essays add little to the volume's substance. After covering much detail about the evolution of border relations, one is very interested to learn something about the actual impact of Canadian policy changes on border broadcasters. Neither "The Position of Border Broadcasters" by Leslie Arries Jr., nor "The Economics of Advertiser-Supported Television in Adjacent Countries: Consumer Sovereignty, Advertising Efficiency, and National Policy" by Yale Braunstein and the comment by Ian Parker which follows it, provide any useful detail. Arries' short essay amounts to another recitation of the chronological events which preceded and followed recent Canadian policy initiatives. Chapter seven, and Parker's comment, appear as an economists' debate as to how one could determine the financial impact of a regulatory policy without searching through financial data. The Canadian *Income Tax Act* was amended in 1976 and, as the conference was held in the spring of 1983, one would think that financial data would have been available. Failing that, a border broadcaster should have been secured to talk about how the amending provision has affected economic relations with advertisers, broadcasters and producers on this side of the border.

The final essay in the volume amounts to a lost opportunity to examine the possible impact that emerging technology may have in store for Canada-U.S. television broadcast relations. Thomas Martin's article describes recent technological advances only in general terms, and explores the possible effect of these innovations on bilateral relations by providing three tongue-in-cheek scenarios premised on different technological and policy options and choices.

For the most part, the collision of Canadian and U.S. cultures has been technology based. Technology made our border imaginary. Fiber optics, microprocessors and space services now present a triple threat of multiple outlets, equipment substitutability and distance-insensitive transmission to Canadian cultural and national sovereignty. These same threats may render international borders across much of the globe equally vulnerable to U.S. cultural outreach. A useful examination of the potential impact of new technology on relations above and below the 49th parallel would not only have added immeasurably to the text, but could also have served as a reference for extrapolation of Canadian cultural problems to the global scene.

I cannot strongly recommend *Cultures in Collision* to any legal readership. Its treatment of topics is often repetitious and unbalanced; its debate-like format makes it a very frustrating text to read. On the positive side, the contributions by Peers, Hagelin and Janisch, and Freiman are well written and

researched. The extensive footnoting provided by these authors and the detailed index at the end of the text will prove useful to those with a research interest in the area of sovereignty and broadcast regulation.

DAVID A. TOWNSEND*

*B.A. (St. Mary's), LL.B. (Dal.), LL.M. (Osgoode), Associate Professor, Faculty of Law, University of New Brunswick.