# ONE

*The Fact of Television: A Theoretical Prologue*

## The Fact of Television

The philosopher Stanley Cavell once described something he called "the fact of television." The "fact of" television, Cavell suggested, was not the same as "facts about" television: facts about its economic structure, its technology, the size of its audience, and so forth. Rather, he was talking about "something like the sheer fact that television exists," which he took to be on the one hand obvious but on the other among "the most mysterious facts of contemporary life."[1] Most of this book is devoted to discussions of the laws and policies that shape and constrain commercial television and radio in the United States. But the goal is to inquire into the "fact of" television and radio, not simply to provide facts about television and radio or facts about media law.

This book is about the fact of television because, like Cavell, I find there to be something mysterious about the sheer fact of the existence of television, about its presence in our lives. Unlike Cavell, however, I do not approach television primarily as a collection of texts or programs, as something that is simply watched. I am interested in television as a *practice*. Television is something people do. It is not just a thing or a collection of symbolic works. This book approaches the fact of television, then, from the perspective of television as a set of social activities. And it focuses on the large degree to which these social activities involve law and politics. A central thesis of the book is that television as a practice is usefully understood, not just as a technology, not just as a cultural form, but as a kind of legal inscription on technology.

This chapter explores the conceptual implications of looking at television and radio this way—in terms of the "fact of" instead of "facts about," and as a practice, not a thing. In doing so, it lays out a theoretical foundation for the chapters that follow, and situates this book within contemporary theoretical discussions. After discussing the implications of approaching broadcasting as a practice, the chapter makes the case

1. Stanley Cavell, "The Fact of Television," *Daedalus* 111 (fall 1982): 75.

for the centrality of law and legal liberalism to the practice of broadcast-
ing, and then elaborates the relevance of this kind of analysis to contem-
porary critical and cultural theory.

The American system of broadcasting is almost seventy years old. As
we will see, the basic structures developed in the 1920s at commercial
broadcasting's birth—advertising, the network system, government
licensing in the public interest—remain in place today. Those structures
have survived the Great Depression, a world war, and at least one com-
plete technological metamorphosis (the shift from radio to television).
Most of the same corporations that dominated its creation continue to
shape its activities today: General Electric, RCA, NBC, CBS, Zenith, and
Westinghouse are still prominent names both inside and outside the
industry. The institution of U.S. commercial broadcasting has outlasted
the average twentieth-century nation-state.

Yet in our culture, talk about so stable an institution is peculiarly
unstable. It's often asserted in almost the same breath, for example, that
television is "simply" a commercial product, no different from any other
item available in stores, yet also a special public institution akin to a
school or a New England town meeting. A chair of the FCC once said for
example that "television is just another appliance. It's a toaster with pic-
tures." Yet he also felt it necessary at times to claim for television a spe-
cial role in embodying hallowed constitutional principles of free speech
and democracy—hardly the kind of claim one makes for toasters.[2] Aca-
demics often only add to the confusion. Some academics have discussed
television as if it were a kind of literature, even if only to demonstrate that it
is literature of an inferior sort. And it has become fashionable of late to coun-
ter such negative comparisons by drawing alternative analogies: television is
a new art form that supersedes literature, or television is countercultural
much like medieval carnivals. Carnival, artwork, town meeting, commod-
ity: taken together, these characterizations don't add up.

There are two ways to respond to the incoherence of our common-
sense ways of describing broadcasting. One is to assume that the prob-
lem lies in a lack of facts *about* television. "We don't know what televi-
sion is, therefore we need to conduct research that will give us a better

2. For the "toaster" quote, see Richard Stengel, Peter Ainslie, and Jay Branegan, "Evan-
gelist of the Marketplace: The FCC's Mark Fowler Wants to Strip Away TV Regulations,"
*Time*, November 21, 1983, 58; for the reference to hallowed constitutional principles, see
Fowler's statement of August 7, 1985, printed in FCC, "In the Matter of Inquiry into Section
73.1910 of the Commission's Rules and Regulations concerning the General Fairness Doc-
trine Obligations of Broadcast Licensees," Docket 84–282, 102 F.C.C. 2d 145, 58 Radio
Regulation 2d 1137, Release Number FCC 85–459 (released August 23, 1985, adopted
August 7, 1985).

idea." Most of the academic literature on television and radio adopts this admirably modest, careful stance. It is in this literature that many of the facts about television can be found.

But there is another, equally reasonable, response to our confusion: to explore the possibility that the mysteriousness of television is a mystery of our own making. Television is a human construct. Much of the discussion of television talks about it, however, as if it were something natural, outside of human purview, as if it were as inevitable as it is inscrutable. There is an everyday version of this: you go to the store, buy a box, put it in your living room, and you have a television—a commodity, a technology, in any case, an object, a thing. But this objectification happens on an intellectual level as well. Academics are quick to suggest that television affects society, politics, psychology, but rarely remember that the medium is itself an effect of human actions. We explore how people do things *with* television—they "read" or interpret it, use it, manipulate it, find gratification in it—but rarely think of television as itself something that people *do*. We find it hard to remember that radio and television are not fixed objects to which people react; they are themselves collective human actions.

That we think of television as a thing instead of as a practice is reflected in the fact that we have no television equivalent to the film world's "Hollywood," understood as both a kind of film and the institutions that produce it.[3] So far I largely have been using the word "television" to describe my object of inquiry. In doing so, however, I have risked confusion, because my object of inquiry is really the system that was constructed and pioneered in the early days of radio, and then transferred to television in the late 1940s and early 1950s. Technically speaking, this book is about the historically embedded ensemble of social relations that make possible the production, distribution, and "consumption" of the majority of commercial American television programs in the United States. But our culture lacks a precise term for that ensemble, a condition that is in turn a part of what makes the ensemble the way it is.

So we speak and think of television as a thing, as if it were contained within that box in our living rooms, even though without the intricate and spectacularly collective set of activities that makes the box in our living rooms come alive as an integral part of our culture, that box wouldn't be much more than an oversized doorstop. "Television" includes the people in Hollywood and New York devoting their lives and careers to making programs, people in Washington making, changing,

3. Douglas Kellner, *Television and the Crisis of Democracy* (Boulder: Westview Press, 1990), 75.

and enforcing laws that enable and shape the institutions in which programs are produced and distributed, and elaborate international systems of manufacturing, marketing, and distribution that make the boxes available to audiences. And of course it involves the activities of audiences themselves: millions of people sitting down with millions of boxes all at the same time, and the cultures and patterns of daily life among those millions that provide the ability and motivation to buy boxes and tune in.

In a little noted but striking passage in his book on television, Raymond Williams argued that traditional research on the medium excluded questions of purpose. As he put it, what research has "excluded is *intention,* and therefore all real social and cultural process." A focus on the purposes of media would "direct our attention to the interests and agencies of communication."[4] Williams, the cultural neo-Marxist, was certainly not talking of authorial intention or of uncovering underlying "interests" of either the utilitarian or class-determinist variety. Rather, he was seeking to restore a broad sense of agency, a sense of collective human choice, to our understanding of television.

In this book I describe American broadcasting as "corporate liberal." The point of doing so is to provide a vocabulary that helps restore a sense of intentionality, of agency, of purpose, to discourse about the electronic media. If we are going to discuss broadcast structure, we need an effective way to grasp what the existing structure is. One of the principal impediments to public discussion of media structure is the belief that commercial broadcasting was born and is sustained by natural, impersonal forces, that it is something that happened, not something that is done. American broadcasting, it is said, is simply the product of the marketplace, or interest group pressures, or of a conspiracy on the part of the powers that be, or simply of greed run rampant.

My argument that broadcasting is corporate liberal, then, is intended to emphasize the ways in which the institution is the product of social and political choices, not of accident or impersonal economic or technological forces alone. "Corporate liberalism" is meant to breathe life into our vision of the electronic media, not to lock it up within a rigid framework. The concept is not meant to suggest underlying mechanical forces, elite conspiracies, or a mesmerizing false consciousness. Corporate liberalism is not so much a strict set of principles or formal ideology as it is an expression of values and hopes. It is a set of goals as well as a worldview; it expresses intention, agency—a policy. In this book I argue

4. Raymond Williams, *Television: Technology and Cultural Form* (New York: Schocken, 1977), 120.

that it is a deeply contradictory policy, but one need not be a critic of the policy to see the justice in making it explicit.

The epistemological principle at stake here is this: A distant planet or an exotic microorganism is indeed mysterious principally because of a lack of facts *about* it. But the electronic media did not fall from the sky or emerge fully formed from a test tube; they are the product of knowledgeable people doing things in a concerted, organized way, with certain purposes in mind. When people describe a distant planet as a wandering god, their guesses about the unknown object do not change the planet itself. But if people describe television alternately as an artwork or a commodity, in the right circumstances their talk can help shape it. The FCC chair who described television as a toaster with pictures, for example, did so as part of a successful effort to change the way television is regulated, which in turn noticeably changed the medium. And this is just a particularly obvious example; executives, employees, politicians, voters, audience members all have habitual ways of thinking about and acting toward the medium that together make the medium what it is. In at least one sense of the verb "to know," the people who collectively "do" television certainly know what they are doing. The activity of television is conditioned on certain kinds of knowledge, what sociologist Anthony Giddens calls "practical" knowledge.[5]

If there's something mysterious about the electronic media, therefore, it need not be the product of a simple lack of knowledge, a lack of "facts about"; it may very well be an aspect of the "fact of." The experience of incongruity we encounter in hearing television characterized alternately as a commodity, town meeting, and art form is itself part of the phenomenon in question. The fact is that television and radio have been constructed by people who talk about them in ways that don't seem to add up. The "mysteriousness" of the fact of television, in other words, is as much a product of the hopes we invest in it as it is a product of a lack of facts about the medium. The sense of worry, disappointment, and plain perplexity generated by television may tell us as much about ourselves as it does about television itself.

This book thus focuses on the electronic media as a set of imaginative activities, as something that people do out of hope and conviction. It starts from the simple premise that before radio and television can be businesses, public institutions, or technologies, people must have ideas and hopes about them and seek to implement those ideas and hopes.

5. Anthony Giddens, *Central Problems in Social Theory: Action, Structure, and Contradiction in Social Analysis* (Berkeley: University of California Press, 1979), 73.

And it looks at the incongruities, gaps, and blind spots in those works of imagination we call radio and television as historical encounters with the limits of our ideas and hopes. As a piece of scholarship, therefore, this book is as much an inquiry into our collective imagination as it is a study of a particular mass medium; it looks at the electronic media first and foremost as a kind of social philosophy in practice.

## Law

Law is many things, but it is perhaps foremost a way of turning forms of knowledge into action, of making manifest collective ideas and hopes. One of the primary arguments of this book is that the American legal and political system is a principal but too often ignored arena for the practice of broadcasting, for "doing" the elaborate set of ongoing activities we call television and radio. Broadcasting, in other words, is to a large degree a legal activity. Although the importance of the constitutive character of law will be argued primarily by way of the history and social relations of broadcasting, it can also be defended on theoretical grounds.

In media, as in other fields, we tend to think of law as at once mechanical and arcane: its details are complex, and thus best left to experts, but its workings are straightforward and limited in scope, so the rest of us can trust the experts to tell us about the few details that are important, particularly those that constrain behaviors. It's helpful, after all, for the textual critic to know that stations are prohibited by law from broadcasting obscene programming, or for the economist to know that owners are prohibited from owning more than twelve broadcast stations. Law thus becomes simply a tidy subcategory of the collection of "facts about."

Law, however, even if arcane, is hardly mechanical, and its interpretation anything but straightforward. As this book will show, law is fluid both in meaning and in boundaries: its interpretation shifts dramatically from context to context, and its relevance flows in unexpected ways into areas normally thought of as remote from law. In the case of the electronic media, law flows into the "fact of" principally by virtue of its key role in the *creation* of radio and television. This book will show that law is not just an occasional constraint on the behavior of broadcasting, it *creates* broadcasting. It even creates broadcasters: to a large degree it defines who they are and what they do. Law, then, is a key to understanding the media as a product of meaningful habits of thought and action, as socially constructed.

This book will explore, for example, the ways that commercial broadcasting is a child of the collection of habits of thought some scholars

call liberalism, understood not as a point on the political spectrum, but as a form of dominant social consciousness. On the one hand, liberalism involves ideas about markets, property, and private ownership; hence the idea of *commercial* broadcasting, the idea that broadcasting can and should be a process of buying and selling. But liberalism also involves ideas about freedom, communication, individuals, and democracy; in particular, it involves the hope that the process of buying and selling can complement or help create freedom and democracy for individuals, especially when integrated through the rule of law. Television as we know it is a product and expression of these ideas, of this hope.

Of course, though the electronic media are born of imagination, they are not simply blueprints come alive. Making broadcasting commercial, for example, involves taking the practice of broadcasting — the reproduction of disembodied sounds and pictures for dissemination to vast unseen audiences — and constituting it as something that can be bought, owned, and sold; it involves turning broadcasting into property. A large portion of this book is devoted to analyzing the tenuous and labyrinthine legal, political, and institutional processes by which this act of commodification is accomplished.

One reason for focusing on property is simply that it allocates control over the electronic media, and it does so in ways much more consequential than much-debated legal constructs such as free speech and the public interest. The creation and definition of property establishes the ground rules for market exchange in broadcasting, shapes who gets what and thus the distribution of power over the institution, and by framing broadcasting as a "free market" delimited more by rights than by privileges, helps legitimate the control by a few of an institution that affects the lives of millions.

But property also helps to underscore the profoundly imaginative character of the institutions of the electronic media. The creation of property in broadcasting is not simple. On the contrary, it involves a massive, tension-ridden effort of abstraction, an ongoing effort to make a kind of collective sense of broadcasting from within the liberal framework.

Property is just one of the liberal categories that illustrate a striking pattern in the encounter between broadcasting and liberal thought: although commercial broadcasting is in many ways a spectacular example of liberal principles put into practice, it often seems profoundly antiliberal. The encounter between liberal principles and broadcasting involves far more than a simple mapping of liberal concepts onto electronic technologies and practices. Our broadcast system is intended to foster a diverse "marketplace of ideas," for example, yet its programming is organized according to rigid formulas, and commercial broadcasters

are notoriously unwilling to take political and aesthetic risks. Much of the political legitimacy of commercial broadcasting rests on the principle of free speech, yet its all-embracing dependence on entertainment values appears to enfeeble the political dialogue that free speech is supposed to foster. The commercial system is the historical product of a strenuous antistatism applied to radio and television, yet it is thoroughly dependent on regular and active forms of government intervention for its very existence.

In part as a result of the antiliberal effects of these liberal efforts, from the early days of broadcasting onward, there has been constant political and legal struggle over the proper place of broadcasting in our social and political systems. For reasons traceable to liberalism itself, the debate accompanying this struggle typically centers on the activities of government regulators, and is framed in such terms as freedom, fairness, and the public interest. In this book, my conclusions about this debate and its accompanying scholarly literature are skeptical: I argue that it can be usefully seen as an attempt, characteristic of twentieth-century liberalism, to regain the footing lost in the shifting sands of one set of liberal contradictions—the incoherence of atomistic individualism and of its industrial correlate, laissez-faire business principles—by shifting weight in the direction of another set of (equally contradictory) liberal principles—a faith in the power of expertise and objective scientific knowledge to make manifest a transcendent, reified "public interest." But the values and hopes to which the debate gives voice are nonetheless vital; it is one of my hopes that this book will help rescue these crucial issues from sterility by suggesting a way of reframing the debate in new terms.

If any conscious, significant changes are to come, however, they will come only by acknowledging the depth and breadth of the dilemmas. Solutions will not come from treating the dilemmas of broadcast law and policy as isolated problems amenable to solution by clever regulators. Broadcast law, however confused, is still a patterned confusion, shaped by the structures of history and contemporary social life, particularly those associated with liberalism. The contradictions of broadcast policy exemplify the tensions within our most fundamental beliefs and ways of acting; tensions revealed in the way we use terms like "individuals," "freedom," "fairness," and "public." No new law, policy, or bureaucratic structure can make those tensions disappear overnight. Precisely because the debated details of U.S. broadcast policy gain their meaning from the complex and varied framework of liberalism, most of the contemporary regulatory struggles and dilemmas must be understood as rooted in dilemmas within the larger liberal belief system.

## Theory

This book is driven in the first instance by an intellectual encounter with the real historical experience of television and radio, not by a desire to prove one or another academic theory. Yet the idea that scholarly work can be intellectually neutral or theory-free is simply another theory; there's no escaping the fact that one comes to any inquiry already shaped by theoretical assumptions and habits.

### Liberalism and Totality

It is fashionable these days to be suspicious of "totalizing" generalizations such as liberalism and corporate liberalism. Such generalizations, it is said, oversimplify and obscure contradictions, complexities, and resistance from the margins. True, the practice of imagining systems of thought as unified and coherent too often involves a simplifying projection on the part of the analyst, and can obscure important complexities. Although it is useful to speak of a totality called liberalism, it is dangerous to imagine that totality to be overly coherent, whole, and solid.

Yet, as Frederic Jameson puts it, "it is diagnostically more productive to have a totalizing concept than to try to make one's way without one."[6] The effort to identify and analyze general patterns in social life, moreover, is productive for more than analytic reasons. In the case of broadcasting, pointing to general patterns also has political value: too often, critics and apologists alike treat major historical decisions about media as if they were inevitable, a product of the inexorable workings of economic forces or struggles among interest groups. A concept like corporate liberalism helps keep in focus the fact that there is a general pattern of thought underlying the way the institution has been organized, that its character reflects collective human choices.

The idea of a broad pattern called liberalism, therefore, is a way into the changing complexity of social life, not a way to escape that complexity, and it is intended to call attention to human agency, not to obscure it. It is an empirical observation more than a philosophical one. The point is not to criticize liberalism as a philosophy in the abstract but to show how the sheer fact of broadcasting simultaneously brings attention both to liberalism's power as an imaginative system and to its contradictions. The key questions here, therefore, are not those of traditional philosophy or the history of ideas. They involve the interaction of ideas with social practices and structures, ideas in the trenches, so to speak.

6. Fredric Jameson, *Postmodernism; or, The Cultural Logic of Late Capitalism* (Durham, NC: Duke University Press, 1991), 212.

## McLuhan, Postmodernism, and the Shock Effect of Media

There are some similarities, therefore, between this project and that of Marshall McLuhan and his successor Jean Baudrillard. Though McLuhan's optimistic, transcendental modernism ("The Global Village") is quite distinct from Baudrillard's darker postmodern denial of transcendentals, both scholars share an interest in the shock effect of the electronic media, in the ways that television and radio force us to reconsider some of our most basic assumptions about human life. To an extent, I agree with McLuhan that the medium of television—its organization, structure, and placement in contemporary social life—is "the message"; at least I believe that the medium is as interesting and perplexing as the particular programs the medium transmits. And like Baudrillard, I suspect that there's something important to the widespread feeling (common to both postmodernist scholars and my undergraduate students) that our electronically mediated world is one in which "all that is solid melts into air," a world in which life seems to be characterized by the dizzying manipulation of words, signs, and symbols, a world in which we no longer deal with things themselves, but with "simulations."[7]

Both McLuhan and Baudrillard, however, tend to speak of the media as primarily a technology, and thus obscure the legal and organizational formulas that clothe the technology.[8] And those two scholars tend to frame matters in millennial or apocalyptic terms. Postmodernists seem to speak of "simulation," for example, in terms of a nostalgic suggestion that we are at the end of an era or the "end of history," as if all signs had obvious meanings at some time in the past and only today have lost any connection to their referents.[9] Whether things were ever all that solid,

7. Within social and cultural theory, too much is made of the modernism/postmodernism distinction, which works best when applied to specific categories of art such as architecture. While there are important moral issues at stake in the distinction (particularly the value of authenticity), as a pattern of social life what most people mean by postmodernism seems to be merely a version or extension of the general trends discussed under the heading "modernism" by, for example, Marshall Berman in *All That Is Solid Melts into Air: The Experience of Modernity* (New York: Simon & Schuster, 1982). See also Jean-François Lyotard, *The Postmodern Condition: A Report on Knowledge* (Minneapolis: University of Minnesota Press, 1985); and Jean Baudrillard, "Simulacra and Simulations," in *Selected Writings,* ed. Mark Poster (Stanford: Stanford University Press, 1988), 166-84.

8. For a classic critique of the reduction of media to technology and technological determinism generally, see Williams, *Television,* 9-19.

9. There is a danger in interpretations of Baudrillard, if not in Baudrillard himself, that "simulation" is taken to mean that there was once a time when words and symbols all had solid references to things, whereas in our time they have come to refer just to each other. This interpretation is encouraged by Baudrillard by his use of certain metaphors, such as the map and the territory. ("Simulation," he writes in "Simulacra and Simulations," "is no longer

whether they are "melting into air" more now than before, is uncertain. In this book, radio, television, and simulation are interesting insofar as they embody specific historical configurations of events and trends. The concern here is with the specific historical circumstances that lead to a sense of certain "solid" things "melting into air" in certain conditions. The peculiarity of the electronic media, in other words, does not serve me as evidence for grand metaphysical (or antimetaphysical) claims, but as a way to explore the historical specificity of events we tend to experience as metaphysical.

### Cultural Materialism, Bernard Edelman

If there is a predominant theoretical precedent or framework for this book, then, it is not so much the overly ahistorical McLuhan and Baudrillard, but a set of interrelated traditions that in different ways integrate the intellectual practices of critique, interpretation, and attention to historical complexity. These traditions sometimes have been divided into two competing camps, with the historically inclined poststructuralists such as Foucault or Gayatri Spivak on one side, and critical humanists and pragmatists such as Cornel West, E. P. Thompson, and Raymond Williams on the other. Yet it is possible to view the important differences between these traditions more as productive tensions than as competing positions. This is the strategy advocated, for example, by legal scholar Duncan Kennedy. Kennedy argues that a useful critique of legal practices should adopt a pragmatist or legal realist attention to the details of the ways that legal rules concretely operate to shape socioeconomic processes, but should combine that with a Foucauldian skepticism about categories like "interest" and the subject.[10] The combination of poststructuralism with a kind of pragmatist humanism is also characteristic of Stuart Hall.[11]

It is in this integrative sense, then, that I must mention the importance of the work of the French poststructuralist Bernard Edelman. After many years in relative obscurity, Edelman's book, *Ownership of the Image,* is now beginning to get the attention it deserves.[12] As the book's

that of the map . . . no longer that of a territory" [166]) The implicit idea here is that signs and symbols in general relate, or once related, to reality in the same way that maps relate to territory, by reference. Of course, as Baudrillard is certainly aware, it is a premise of most twentieth-century theories of language and signification, from Saussure onward, that signs and symbols *don't* work this way, and never have.

    10. Duncan Kennedy, "The Stakes of Law, or Hale and Foucault!" in *Sexy Dressing Etc.* (Cambridge: Harvard University Press, 1993), 83–125.

    11. Stuart Hall, "Cultural Studies: Two Paradigms," *Media, Culture, and Society* 2, no. 1 (1980): 57–72.

    12. Bernard Edelman, *Ownership of the Image: Elements for a Marxist Theory of*

French title, *Le Droit saisi par la photographie,* suggests, Edelman is interested in how photography "seized" or surprised legal thinking in the nineteenth century by creating possibilities that did not readily fit into existing categories of property law, and to an extent threatened to undermine those categories. Is there property in the symbolic content of a mechanically produced photograph? More particularly, is there a liberal individual analogous to an author, a creative originator or "subject" entitled to ownership, of a photograph? If so, what exactly about a photograph is "original"? Who (or what) is the originator, the subject of a photograph, who or what its object?

By offering only nonobvious, arbitrary answers to these questions, Edelman suggests, the problem of photography threatened the underpinnings of the traditional law of property, which in various ways is premised on the belief that there must be something obvious, natural, and nonarbitrary to definitions of owner and owned, originator and originated. And this in turn touched on profound questions of what it means to be an individual, a legal and social subject. Hence, in the late nineteenth century, the technology of photography augured a reconsideration of basic social assumptions, in much the same way that McLuhan suggests television has done in the twentieth.

In sharp contrast to McLuhan, however, Edelman acknowledges that traditional thought is capable of responding to such profound challenges. He explores the mixture of intellectual, social, and political processes—ideological processes, in the Althusserian sense—by which the legal system was able to avoid that reconsideration and incorporate photography, successfully (if awkwardly) into its purview.

Though less ambitious and markedly different in tone, method, and emphasis from Edelman, this book nonetheless undertakes a parallel project: my interest, in a sense, is in how radio and television have "seized" or challenged American law and the liberal habits of thought that underpin it, and in how the legal system has responded to those challenges. Like Edelman, I believe that analysis of the encounter between media technology and legal thought helps reveal both moral and intellectual weaknesses and sociological strengths—that is, the resilience of structures of power—in contemporary American life.

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*Law,* translated by Elizabeth Kingdom (London: Routledge & Kegan Paul, 1979). For remarks on the lack of attention to Edelman, see Jane M. Gaines, *Contested Culture: The Image, the Voice, and the Law* (Chapel Hill: University of North Carolina Press, 1991), 2-3.

## Media, Culture, Text

Today it is rare to discuss the mass media in combination with Continental theorists like Edelman without also mentioning the word "culture." Under the rubric of "cultural studies," the concept of culture has become the focus of an interdisciplinary movement. One central theme of this diverse field is a reinvigoration of the interpretive sociological principle that human "reality" is socially constructed in processes of symbol use and interpretation. The logic of this well-known axiom encourages attention to the subtleties of interpretation, both as an aspect of social life to be analyzed—human action is fundamentally mediated by patterns and processes of interpretation—and as a central problem of inquiry; as Anthony Giddens puts it, inquiry into human life is conditioned by the "double hermeneutic," by the circumstance that scholarship is inevitably an interpretation of interpretations and just as inevitably an intervention into ongoing social processes.[13]

Law is a highly symbolic, interpretive activity; its raw materials are documents, rhetoric, and rituals. Law also shapes the distribution of resources and controls behavior; any discussion of it is necessarily political in that it involves us in debates and struggles over values and the distribution of power in society. Law thus forces us to look simultaneously at the textual quality of power and the powerful quality of texts.

Yet, for the most part, law does not happen in the sustained interaction between an individual and a distinct work that we think of when we think of literature or art. Law is a set of lived social relations; law happens when bargains are struck, hierarchies are enforced, and conflicts are initiated and resolved. Even law students diligently at work in libraries rarely read a book cover to cover the way one reads a novel; they concern themselves largely with the chains of cases, principles, and argumentative strategies of which casebooks and records contain only pieces. Intertextuality is no revelation to the law; in at least one sense of the word, it is one of the law's overt working principles.

Cultural studies is quick to assert the political character of scholarship, and is rife with discussions of symbols, intertextuality, power, and lived social relations. Yet cultural studies has devoted very little scholarly attention to law. In part this may be because the language and tone of the law might seem antithetical to the iconoclastic, mercurial, and populist spirit of cultural studies. The details of broadcast law and policy are matters of concern and fascination to those inside the corridors of power—

13. Anthony Giddens, *New Rules of Sociological Method* (London: Hutchinson, 1976), 155–69.

high-paid media executives, Washington insiders, and entertainment lawyers—whereas cultural studies is best known for calling attention to the importance of ephemeral, marginal, and informal phenomena in the lives of common people. The mass media may be important to cultural studies, but only because of their role as a key source of symbols and interpretations in the everyday life of audience members. It seems more in the spirit of contemporary cultural studies to analyze previously reviled cultural forms like television situation comedies than to dissect arcane legal terminology or behind-the-scenes machinations of industrial corporations and governments.[14]

Most practitioners of cultural studies give some credit to the argument that culture is embedded in social contexts that are shaped by structures of control and power; hence the grudging respect given to some forms of Marxism in a field that otherwise puts such importance on matters as ephemeral as symbols and ritual. Yet in cultural studies the question of control over production is traditionally segregated into the discipline of "political economy," and thus framed as a matter of industrial control and structure best subject to economic analysis. And once this act of segregation is accomplished, most students of cultural studies will be quick to assert, correctly, that a handful of executives in Hollywood and New York can hardly control how the many millions of audience members interpret and use the programs whose production the executives oversee. Power, particularly in matters of culture, is rarely if ever such a one-way, top-down affair; this is why, in most versions of cultural studies, political economy is considered a necessary but never suffi-

14. There are many exceptions to this trend in cultural studies, but a particularly articulate one can be found in the Australian "cultural policy debate." Beginning in the late 1980s, several major figures in cultural studies based in Australia focused their scholarly efforts toward influencing public pôlicies, particularly in government agencies. Rather than merely criticizing culture from a safe, romantic distance, they argued, cultural studies should learn to deal more directly with policy-making apparatuses. This is in many ways in concert with the approach of this book. However, as will be discussed in chapter 4, in the U.S. context at least, the word "policy" carries the weight of specific technocratic connotations: "policy" is part of the set of practices by which government intervention on behalf of private corporations is reconciled with the liberal legal principle of the separation of public and private. In the United States, in other words, we have no generally accepted language for directly addressing "private" or corporate policies. In an effort to forge such a language, this book generally works with the terms "law" and "politics," emphasizing the material and legitimatory interconnectedness of the two terms. For a sample of the cultural policy studies argument, see Tony Bennett, "Putting Policy into Cultural Studies," in *Cultural Studies,* ed. Lawrence Grossberg, Paula Treichler, and Cary Nelson (New York: Routledge, 1992), 23–37; and Stuart Cunningham, *Framing Culture: Criticism and Policy in Australia* (Sydney: Allen & Unwin, 1992).

cient component of any full analysis.[15] Perhaps in reaction to the grim, reductive determinism of some forms of political economy, cultural studies has focused on the point where political economy is weakest: on the point of reception, on programs and the ways that audience members make sense of them. The problem is that, although television texts and television audiences are given the subtle attention they deserve, references to the media organizations themselves are fleeting—better to be brief and vague, it seems, than to be taken for a vulgar, economic reductionist—and thereby the reified monolith of economic structure is left intact, waiting in the wings.

Something is being missed here, in part because American cultural studies tends to rely on literary criticism as a model for understanding the process of interpretation. Stuart Hall has recently observed that "[o]ne of the problems just now is that everybody nowadays is, surprisingly after thirty years, a literary critic."[16] Cultural studies is tending to become a new brand of literary criticism: instead of writing about reading Dickens or James Joyce, one writes about "reading" television; instead of searching for eternal values in symbolic works, one looks for signs of social life. Interpretation thus tends to be understood in terms of an analogy with the literary model of a reader engaged in the interpretation of a novel or a poem. Mass media become understood principally as a kind of literature. Television is no longer an inert box, but a collection of symbolic works. From within this framework, law has little relevance. The broad power and effects of law are not constituted in isolated acts of reading of the kind we associate with works of literature.[17]

The goal of the interpretive tradition, however, is not simply finding social life in symbolic works, but finding the work of symbols in social life. As Grossberg puts it, "cultural studies does not need . . . theories of authors, texts, or audiences. Cultural studies needs theories of contexts

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15. See, for example, Richard Johnson, "What Is Cultural Studies Anyway?" *Social Text* 16 (winter 1986/87): 38–80.

16. He continues: "We have made a surreptitious return to the undisciplined literary reading which this whole exercise [i.e., cultural studies] was designed to firm up. . . . in a funny kind of way, . . . we've gone back around to people trusting their intuitive understandings of the text and giving that a kind of authenticity, a kind of validity" ("Reflections upon the Encoding/Decoding Model: An Interview with Stuart Hall," in *Viewing, Reading, Listening: Audiences and Cultural Reception*, ed. Jon Cruz and Justin Lewis [Boulder: Westview Press, 1994], 273).

17. For recent critiques of the law/literature divide, see Stanford Levinson and Steven Mailloux, eds., *Interpreting Law and Literature: A Hermeneutic Reader* (Evanston, IL: Northwestern University Press, 1988); and Costas Douzinas and Ronnie Warrington with Shaun McVeigh, *Postmodern Jurisprudence: The Law of Texts in the Texts of Law* (New York: Routledge, 1991).

and of the complexity of cultural effects and relations of power."[18] If reality is indeed constructed in processes of symbol use and interpretation, then organizations, institutions, and social relations—such as those that bring the box in our living rooms to life—are themselves constituted in symbol use. The literary model draws our attention to one part of that life, the life of the stream of images on the screen, but at the same time it draws our attention away from the fact of the box itself; our attention stops at the boundaries of the moving image.[19]

Contemporary literary criticism itself offers a critique of this tendency to draw boundaries between social life and symbolic works: the call, first made by Roland Barthes, for a move from work to text.[20] A work, Barthes argued, is imagined as a finite object, delimited by, say, the obvious physicality of the book on the shelf (or, one might add, by the box that constitutes the borders of the television screen).[21] This delimitation, however, this drawing of boundaries, is arbitrary, and has the effect of obscuring the social context of the work's interpretation, which is constitutive of its meanings. As an alternative to the concept of the work, Barthes offered the concept of the text, which transgresses boundaries instead of creating them, whose boundaries in a sense extend into culture as far as the eye can see.

One need stretch the concept only a little bit to argue that the perspective of law leads to an understanding of television as text, as a process, as what Barthes called "an activity of production."[22] For relatively straightforward reasons, law cuts across or transgresses the imagined coherence of the boundary between the box and the images it displays. Television's structure and organization are as much a matter of symbolic process as its content. Television does not just provide symbols for the social construction of reality, it is itself socially constructed. And television, as text, is to a large degree constructed in the textual system of the

18. Lawrence Grossberg, "Can Cultural Studies Find True Happiness in Communication?" *Journal of Communication* 43 (autumn 1993): 93.

19. There are good reasons to borrow from literary criticism in cultural studies. If life is constructed by the interpretation of symbols, then widely interpreted symbolic works such as novels or television programs are likely to be of more importance than the traditional economist or positivist sociologist might expect. Literary theory, moreover, offers the most developed and nuanced sense of the complexities of the interpretive process. My point here is that, like most useful models of intellectual practice, literary criticism can conceal at the same time that it reveals.

20. Roland Barthes, "From Work to Text," in *Image—Music—Text,* translated by Stephen Heath (New York: Hill & Wang, 1977), 155-64.

21. A work can also be delimited by other devices of literary criticism, such as the imagined unity of the life of the author who wrote a work.

22. Barthes, "From Work to Text," 157.

law. Television as text is thus not constrained by the boundaries of the television screen; it extends into the box itself, and into the social relations that make it what it is.

### Interpretation and the Construction of Subjectivities

This argument might not be so unusual to cultural studies if the critical community had taken to heart a point made many years ago by Edelman concerning the construction of the subject. Edelman at the time was responding to an early version of what has come to be called "*Screen* theory," which focuses on the ways that cinema operates by creating the spectator's subject position—in a sense, the ways that film defines the audience's sense of self.[23] A camera inherently constructs a point of view and in a sense puts the audience "inside the head" of an ideal single viewer. This, in combination with editing techniques and viewing practices, requires the audience to imagine themselves to be a particular kind of isolated individual—a subject—if they are to make sense of the film. From this imaginative process of viewing it is sometimes suggested that basic structures of film narrative have the profound effect of helping to create or reinforce the "bourgeois subject," the abstract, isolated sense of self characteristic of and necessary for contemporary capitalist social relations.

Edelman's criticism of this argument to a large degree anticipates later criticisms of *Screen* theory. *Screen* theory not only attributes improbably profound power to the "cinematic apparatus"—in its logical extreme, the theory suggests that people walk out of a film a different person than when they walked in—but it also assumes that the "bourgeois subject" is a monolithic, obvious, and predetermined construct; it unquestioningly assumes, in other words, the bourgeois definition of individuality that it purports to critique.[24] Unlike subsequent critics of *Screen* theory, however, Edelman made these criticisms in the context

23. See Edelman, *Ownership of the Image*, 62–67.

24. Edelman makes this criticism by arguing that the theory of bourgeois subject construction in the cinematic apparatus implies that a film of a workers' strike would have an antiworker effect simply because it reproduced the "humanist code of perspective" that favors the dominant order. This absurdity, he argues, is not simply the product of "determinism," but of a false understanding of determination. Being a Marxist, he puts this in terms of misdirected blame: the ideology of the individualist bourgeois subject—an effect of the capitalist system of social organization—is reified and thus mistaken for a cause, and the real culprit, capitalism, is let off the hook (ibid., 64–65). Being an Althusserian structuralist, however, he is not simply arguing the primacy of one linear cause against another, but using the word "capitalism" to stand for a social formation in which cause is not linear but structural. Edelman can be accused of reifying capitalism in the same way that his opponents reify the ideology of the subject, but it is certainly not his goal to do so.

of an alternative approach to the problem of subject construction, an approach centered on the problem of the subject in law.

On the one hand, there is a blunt materiality to law that makes the argument of subject construction more persuasive. In contrast to film, the construction of bourgeois subjects in law is both necessary and coercive. It is necessary because legal precedent and argument require it; when a judge is faced with a copyright dispute, he or she is bound by the system to settle the case in terms that at least give lip service to the notion that all copyrightable works are the unique creations of isolated individuals. And it is coercive for the obvious reason that law is enforced by the legitimized violence of the state; one need not believe in film or the law, but law, unlike film, coerces one to act according to its dictates. We all live our day-to-day lives within a coercively enforced web of legal constructs—contractual, financial, workplace, and family relations—that profoundly shape both our relations to others and, one suspects, our sense of who we are.[25]

On the other hand, Edelman's focus on law as a way into the problem of subject construction also helps point the way to an alternative to the literary model of interpretation in cultural studies. Novels, films, and laws all in their own ways contribute to the social construction of reality, to the collective enactment of values, ideas, hopes, and prejudices. But law illustrates the embeddedness of symbol use in ongoing social activities in a way that novels and films, considered in isolation, do not. Clearly, it was not the intention of the original *Screen* theorists to suggest that film viewing mechanically imprints a monolithic, undifferentiated bourgeois subject on viewers; yet the prevalence of a literary model tended to hypostatize the subject position suggested by the isolated individual interpreting a unified symbolic work, simply because, in practice if not in theory, it separated the moment of interpretation from the rest of social life. By bringing a critique of law into the equation, Edelman provides a model of analysis that addresses the relations among interpretation, media, the construction of subjectivities, and power in a way that cuts across symbolic works and their contexts. The problematic of the law, in other words, helps put the process of interpretation back into the stream of social life.

Analyzing broadcasting as a legal practice, then, is arguably consis-

25. Of course, Edelman's argument can be taken too far as well, and he has been criticized in terms similar to those he directs at the precursors of *Screen* theory. Law may be everywhere, but not everything is law; the law imagines a unified bourgeois subject, but in practice creates a bewildering variety of different, sometimes conflicting subject positions. Edelman certainly attempts to account for these facts; whether he succeeds is the subject for another essay.

tent with the theory of the text, even if it does not involve textual analysis in the conventional sense. Looking at law in broadcasting from a critical view cuts across the boundary between symbolic works and their social context; it is a transgression of boundaries, a questioning of conventional categories. Considering television as the product of a set of legal relationships, furthermore, offers a way to analyze it as a kind of social philosophy in practice, as a strategic enactment of ideals, hopes, and values. And this approach to television as a practice is consistent with the project of moving from work to text, of understanding the media as a process instead of an object, as value-laden instead of neutral.

## Conclusion: Television as a Legal Inscription on Technology

To summarize, this book considers the activity of broadcasting as something not merely constrained by, but constituted in, a set of legal relationships. The tools of broadcasting, even the boxes in our living rooms, are to a large degree legal constructs. A television set itself is made practical, made into a practice, by its internal organization in concert with the elaborate social relations that make broadcasting possible, including everything from government regulation of the spectrum to a consumer economy. Those relations, in turn, centrally involve law and politics, that is, lawyers, judges, legislators, and a polity interpreting, making, changing, and enforcing laws and regulations that enable and shape both the equipment of broadcasting and the institutions that make the equipment come alive. So a television set is not just a technology; it is a collection of tubes, wires, and microchips whose organization is determined by, or inscribed with, law; it is a legal inscription on technology.

Part of the fact of television, however, is that its organization and social context obscure the process of inscription. We tend to see television sets, network structures, advertising, and all the other elements of the system as fixed in technological imperative, incontrovertible legal principle, and economic necessity; the fixity of broadcasting is part of its mystery. It is the hope of this book to show that fixity is historical, not inevitable, and thus, in the larger scope of things, subject to change.