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The Information Revolution--Culture and Sovereignty--A Canadian Perspective

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This session is unusual in at least two respects: it is a rematch from 1997, and it is your entertainment for today. We are going to do it in a debate/drama style. You have heard of the “Thrilla from Manila,” and there was the “Rumble in the Jungle.” Well, this is the “Clash in Cleveland on Culture.”

Belligerence in the United States on this subject seems to be rather popular these days. I noticed in the newspaper a couple of days ago that Dick Cunningham’s former partner, Charlene Barshefsky, the United States Trade Representative (USTR), has gotten on the belligerency bandwagon. She characterized the United States as a seven trillion-pound gorilla in terms of some current trade negotiations. The idea was that, if someone wanted to negotiate with the United States, they are like a seven-trillion-pound gorilla. I do not think a gorilla that big could run very fast in the hundred-yard dash. Anyway, I hope Charlene will back off from that sort of posture, but it did get quite a bit of coverage in the Canadian press.

I am both a free trader and a cultural protectionist, and that dichotomy is very hard for our American colleagues to understand. Kim Campbell, the Consul General of Canada, is similarly bifurcated. She is a former Prime Minister of Canada. In an address to the U.S. film industry out at a university in southern California, she made that apology (or boast, depending on your point of view) and said she used to try to apologize to Bill Clinton. He did not understand her either because, from the Canadian prospective, Americans characterize culture as a business. Canadians characterize it as quite a bit more. Whether that characterization is merely self-serving by my American colleagues, I do not know. In the case of Mr. Jack Valenti it is, but there are others who I am sure have more genuinely objective views on this subject.

Let me tell you a little bit of a vignette about Ms. Barshefsky that serves to illustrate the problems Americans have in understanding Canadians. When Charlene was made Assistant USTR, I dropped her a note and asked her to

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1 Jack Valenti is the President and Chief Executive Officer of the Motion Picture Association of America.
come up to Toronto for a Canadian culture sensitization weekend. I offered to take her to Stratford, to the Shakespeare Festival, perhaps also to Niagara-on-the-Lake for the Shaw Drama Festival, and generally look around Toronto, which the United Nations has said is now the most polyglot, multicultural city in the world. She said she would love to, but now that she had this official position as Assistant USTR, she was sure she would be up before the Senate and the House and everybody else if she was seen taking a free meal from or being driven in a car by some Canadian lawyer. So again, we have the continuing barrier between the United States and Canada in a lack of sensitivity on culture, which I was unable to overcome in that informal way.

Let me rattle off the usual statistics. The United States controls ninety-five percent of Canadian movie screens. That does fluctuate. Some say it is ninety-two percent; some say it is ninety-six percent, but let us say it is ninety-five percent. The United States controls eighty percent of Canadian news and television broadcasts. U.S.-published books take up sixty percent of Canadian bookshelf space, and U.S. magazines make up eighty percent of the English-language market.

(What I really wanted, for a personal reason, when we defined culture in the Canada/United States Free Trade Agreement, was for football to be added to the definition of culture. I could not get anywhere with that proposal. I am from Hamilton, Ontario, a dirty steel town down the lake from Toronto. It is like your Pittsburgh; it has steel mills and rough, tough football. The town’s football team is over 120 years old. Of course, we invented the game in Canada and sent it, by way of the annual Harvard-McGill rugby match, to you in the United States. Now Canadian football needs protection from the inundation of this degraded, four-down, small-field version that you play in this country. But my friends in Ottawa said we were going to have enough trouble with this cultural exemption, without putting football in it.)

I think it is important to realize when we start this discussion that this is not a legal issue; this is a socio-political issue. There is an exemption in the Canada-United States Free Trade Agreement (FTA) which was carried over to NAFTA. When it comes to culture, we do not have to give Mexicans or Americans anything in the nature of national or most-favored-nation (MFN) treatment. It is not covered by the law. Of course, there are some exceptions, like the Periodicals case, which ultimately defined magazines as goods under the WTO. In essence, however, this is not a legal issue. Let us not get bogged down on this. Canada has the right to discriminate all it wants. Saying that this is a legal issue is a red herring.

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In John Ragosta’s article last year, he talked a good deal about balance. I feel that it is helpful to understand the issue to appreciate that there is no balance between the Canadian and American markets for culture, and by that I mean things that are particularly Canadian as contrasted with pop culture.

What is an example of that? We have a company in Toronto called LiveEnt, Inc., which was controlled until two days ago by a Canadian named Drabinski. He builds and operates live theaters in New York, among other things. People might say that Canadian culture has been successfully marketed in the United States because Drabinski has a theater in New York and is building a theater in Chicago. What are Canadians complaining about? (Drabinski was just taken over by Michael Ovitz two days ago, so that will be end of it as a Canadian company.)

But in any event, what LiveEnt sells is pop culture, nicely packaged. Ragtime is a perfect example. It has nothing to do with Canadian culture. So, in that sense, one has to realize that things particularly Canadian — and my definition of Canadian culture is Canadians talking to Canadians about things Canadian — have no market in the United States. Why is that? Because Americans do not care what goes on in Canada.

I am not criticizing my American friends for that; it is because we Canadians are too quiet. We are not a squeaky enough wheel, and we do not make enough trouble. You have enough trouble with Saddam Hussein and many others, so nobody really knows or cares what goes on in Canada. That genuinely is not a criticism, it is a matter of taste and de gustibus non disputandum.

My point about balance is that there can never really be free trade or fair trade in culture between the United States and Canada if you accept my assumption that culture is not a commodity. If that is the case, that our distinctive Canadian culture can never be sold south of the border, even though the U.S. popular culture can be and is sold north of the border, then my thesis is that we Canadians have to take some steps to protect that small market of twenty-five million people spread out over three thousand miles who are going to receive the inundation of U.S. culture. They will receive it because of our geographical proximity, one of our languages is in common, and there is a relative absence of trade and investment barriers between our two countries.

I have heard representatives of the U.S. movie industry, like Mr. Valenti, ask, why don’t Canadians just make movies that people want to see and stop complaining? You may or may not know that the most financially successful

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4 RAGTIME (Frank Galati, dir. 1997).
Canadian movie ever made was *Porky's*.\(^5\) I do not think many of you have seen *Porky's*. I have not, but I know a bit about it. I gather it is sort of a semi-soft-porn-coming-of-age-teenage-peek-through-the-keyhole movie. It was a hugely successful movie financially. It had one of those unidentifiable settings, one that could be anywhere, but it certainly was not Canada. But, it was made in Canada with Canadian money, and it made quite a profit. That is not Canadian culture, thank God, and we do not want to make more of those movies in an attempt to sell Canadian culture to the U.S. market, our largest and most natural market, because it is not Canadian culture.

One can argue forever about what is distinctive about Canada's culture. Is there a distinctive Canadian culture? Canadians debate this as a blood sport. The three things people can get into bar fights about in Canada are Quebec's sovereignty, hockey, and the question, are we really a culturally distinct people? The secondary issue is, assuming our culture is distinctive, is it worth protecting?

These issues are not relevant to this debate, I submit, because it is simply not open to Americans to question the existence of a distinctly Canadian culture. If Canadians believe they have a Canadian culture which needs protection, that must be the end of the discussion.

My submission is that, to have a genuine belief in one's own separate cultural identity carries with it the right to defend that belief, which is an entirely legitimate use of sovereignty.

John talked last year about particular inequities and illegalities, and I submit that he has no case on illegality from Canada. My view is that you can turn that argument on its head and say that the limited number of Canadian protectionist activities shows, in fact, that Canada has made a limited and a reasonable response to the U.S. dominance of Canadian film distribution, television, television news, radio, and print. I think we can all agree that this domination does exist.

John talked about Country Music Television and *Sports Illustrated* last year. Well, he is a two-trick pony. Now this year he is going to talk about Polygram,\(^6\) so he becomes a three-trick pony; but it is still not a big deal. We are not closing the borders to U.S. culture; we could not do that.

I am sure John will make the point, and I will have to agree with him on this one, that all of the Canadian efforts to protect culture may be futile because of what is happening technologically. He would then say, so why bother? I would say we have to try harder. We will just have to invent

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\(^5\) *Porky's* (20th Century Fox 1981).

\(^6\) See John Zarcostas, *EU Takes Canada to WTO Over Film Dispute*, J. COMMERCE, Jan. 28, 1998 (reporting that Polygram, a Canadian company that distributes films in Europe, is in breach of global trading rules on services).
something like radar, as the British did just before the Second World War to protect themselves from the Luftwaffe.

I do not think the American people or the U.S. Congress would tolerate for a nanosecond the level of domination of its cultural industries by foreigners that Canadians are forced to tolerate. Congressmen speaking in the House complained that the Japanese were buying the U.S. movie industry when Sony brought its business to the United States. They lamented that it would be horrible if foreigners owned U.S. industries. Well, in this case, the foreigners are you. You own our cultural industries. The Canadian government is attempting to put up some minimal protections to keep what we Canadians have. We are not trying to chase it all away.

If you look at the market shares of Canadian cultural industries held by Americans, the United States has a clearly dominant position which is certainly open to abuse, if not abusive in itself. Now, if you took your own standards of the Sherman Act\(^7\) and the Clayton Act\(^8\) and applied them, would this conduct be legal? I suggest it might not be. They used to call the big Hollywood studios the seven thieves. Now it is the six sisters. The film industry is a pretty tightly controlled business in the United States, let alone in Canada, where the six sisters totally dominate.

John says there is too much rhetoric about this market share in Canada. If we are going to get into a rhetoric counting contest, one does not have to get far into the speeches of Mr. Valenti. I have one here, and it is quite wonderful. This is from a speech he gave in 1991 in response to a proposed GATT restriction. “I don’t want there to be ambiguity. If those quotas exist, it is Armageddon time in the United States. I am on the Hill in a New York minute, bringing out every Patriot missile, every F-16 in our armory, leading whatever legions we can find opposing this agreement. Any GATT accord that allows the TV quota to stay in place would be totally unacceptable to us. I would fight it to the death.”\(^9\)

In 1996, Mr. Valenti said before a Senate committee on international trade, when commenting on then-proposed Canadian measures, “we are confronted with unscalable trade walls.” (This is the guy who controls ninety-five percent of the movie screens in Canada.) “We are exiled many times

from the marketplace. We are hobbled. We are caged and confined, and [we are] not allowed to compete with native industry.10

In addition, I was told by a source who should know that some U.S. congressman actually said that, with the end of the Cold War, if the United States continues to have trouble with Canada, it should just re-target those Minutemen missiles in the silos out in North Dakota, and tell the Canadians that they are aimed at Canadian cities. If we are going to get in a rhetoric counting contest, John, you are going to be made to blush.

There is another U.S. practice that is not often talked about. I am sensitive to it because I have an adult daughter who is a professional ballerina. I also have some good friends in the acting and music industries. It is very difficult for a Canadian artist to get a work permit in the United States, very difficult for dancers, for example. There is a union in the United States that has been so successful in lobbying the Immigration and Naturalization Service (INS) that even if a Canadian dancer has a green card, that Canadian dancer cannot get an audition with a major ballet company in your country. Over twenty percent of the dancers of the National Ballet Company of Canada are from the United States. The same non-reciprocity applies in many entertainment industries.

I know this is not dealt with formally in the NAFTA, but it is a clear inequity, and we in Canada have no clout in complaining about it. By the way, the Canadian dancers are well-trained, partly because of our subsidization. We do not have the size of the market or the number of ballet companies that there are in the United States. One of the reasons why the Canadian dancers are excluded is merit. They would get a lot of the contracts with U.S. companies and beat out U.S. dancers. But unless you are Evelyn Hart or Karen Kain, forget it. You are not dancing in the United States.

Another way to look at the issue is by analogy to competition law. The market shares of Canadian cultural industries held by Americans represent a clearly dominant position, which may be abusive, or open to abuse. How would that stand up if the United States’ own Sherman Act or Clayton Act tests were applied to it?

One more thing, and I will sit down. There is an interesting additional argument that I heard recently. English language dominance in Canada is being aided and abetted by U.S. dominance of films, print, and television in Canada, and this is encouraging Anglo-phobia in Quebec, which is furthering the separatist cause. I think there is some merit in that analysis, and even more merit in Canada being allowed to use its perfectly legal right to throw up cultural protectionist barriers.

In the final analysis, I believe the best way to look at the issue is simply this; our countries share the world's largest (maybe the second largest, if you count the E.U. as one entity) bilateral trading relationship at one billion dollars a day. We have heard for centuries that we share the world’s longest undefended border, and that is not a small thing. We have supported each other in war, peace, and foreign policy since the War of 1812, which was the last time we had to chase you Yanks back south of the border. Ever since then, it has been sweetness and light between us. We have also been shoulder-to-shoulder with the United States in peaceful pressures right up until the latest confrontation with Iraq, where we sent a couple of tiny boats, which is about half of our Navy, to the Persian Gulf.

Why is it that many Americans cannot see the forest of this outstanding relationship for the trees of this relatively minor trade barrier and just back off? Surely, you have enough serious trade problems with other countries. Canadian culture is a peanut in terms of U.S.-Canada and U.S.-world trade and political relationships. Since Canadians feel strongly about this issue, and John certainly acknowledges that they do, and indeed complains that they shout about it too much, and since the United States already has such a large, dominant (some would say abusively dominant) share of Canadian cultural industries in the business sense, why not have a little more common sense and common courtesy in this area and just leave it alone?

Canadian culture is no threat whatsoever to U.S. cultural industries. Canadian culture is already mainly in the hands of U.S. business, and excessive greed is a poor basis for continuing our trade relations in the good state that they are now, and have been in for a long time.