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Standing on Unstable Grounds: A Reexamination of the WLBT-TV Case¹

STEVEN DOUGLAS CLASSEN

During the 1960s, disparate discourses of consumerism intersected with concerns regarding race and civil rights in the realm of broadcast law and regulation. This reexamination of the social and legal struggles surrounding WLBT-TV in Jackson, Mississippi (1964-69), shows how conflicting consumerisms were mediated by legal institutions in an attempt to address social tensions, and reveals how the dominant discourses of liberal consumerism often displaced issues of race.

In 1962, the "Jackson Nonviolent Movement" began to change business as usual in Mississippi. The upstart organization, comprised largely of local teens, targeted prominent Jackson businesses, demanding that basic employment and consumer rights be extended to African Americans.² They insisted that the segregation, degradation, and physical abuse grimly familiar to black consumers in the white marketplace be confronted and addressed. In the spring, when a pregnant African-American mother was verbally and physically assaulted by a white grocer, the Movement called a church meeting, distributed leaflets, and led a successful boycott against the store. Months later, this strategy was reemployed with a massive boycott of downtown businesses and the demand that "Negro consumers ... [be] treated as they ought to be-as first class citizens" (Salter, 1987, pp. 36, 56).

Also in the spring of 1962, hundreds of miles to the north, President John Kennedy returned to a popular political campaign theme, evoking the concerns of a generalized "consumer" in a congressional address. Explicitly, the president allied himself with this abstract American. Implicitly, his speech defined the consumer as individuated, middle-class, moral, and rational. Throughout the 1960s such implicit political definitions and more explicit affirmations of the "American consumer" were common, since pro-consumer rhetoric was regarded as relatively inexpensive and attractive to middle-class voters.³

Although the superficially singular discourse of consumerism was fully engaged in Washington and Jackson, its practices and meanings were multiple, mobilized alongside different contexts, goals, and concerns. And in 1964, with a legal challenge to the racist practices and license of a powerful Mississippi institution, Jackson's WLBT-TV, the disparate consumer concerns articu-

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lated in Washington and Jackson would find themselves in uneasy juxtaposition. Contrary assumptions regarding the free marketplace were brought into focus as the Jackson Movement argued that consumerism entailed matters more fundamental than product safety, truthful advertising or product choice. This paper examines how the multiple discourses of consumerism intersected with the legal struggle over WLBT-TV, and with larger social, and specifically racial, concerns.

Scrutiny of this specific moment suggests that troubling social problems are often elided within the formal language, analysis, and operations of law. Of central concern here is how legal decisions and texts deny their specifically located social construction and rely on the appropriation of liberal discourses to deflect direct encounters with social struggle. With faith in the adequacy of law's formal justifications, traditional analyses routinely ignore the social tensions and assumptions which underlie law and regulation. Frequently the focus is placed on law's formal continuity, its formation in the rarified climate of judicial and governmental institutions, or relative transcendence over everyday life and things political. Instead, this essay foregrounds the disjunctures and social contingency of law and legal processes by reexamining the legal challenge to the license of WLBT-TV, describing how dominant discourses of consumerism interacted with broadcast regulation and displaced issues of race.⁴

Situating legal struggle in this way reveals the problematic consequences of translating marginalized or minority concerns into the terms of the dominant liberal legal establishment.

Further, it cautions students of law and regulation "not to assume the coherence and consistency of legal discourse but to search out the resonances of the social, economic, and political struggles that reside behind the smooth surface of legal reasoning and judicial utterance" (Hum. 1985, p. 16).

THE CHALLENGE TO WLBT

It is widely acknowledged that the WLBT-TV challenge (1964-1969) was a defining moment for the broadcast reform movement of the sixties and seventies (see discussions of Krasnow, Longley and Terry, 1982; Rowland, 1982; Haight and Weinstein, 1981; Cole and Oettinger, 1978). In the early seventies, citizen and advocacy groups employed the "WLBT model"-filing petitions to deny license renewals-in fights to change local broadcast practices. Because the extended conflict over the WLBT license established strategic and legal precedents pertaining to broadcast reform, scholars have frequently described the WLBT case and its importance.⁵ Left largely unexamined has been the relationship of specific social and cultural forces-such as the disparate discourses of consumerism-to the operations of broadcast regulation. At the center of this legal and cultural contest was the concept of the consumer, consumer rights, and several related questions: Who were the consumers of television, and of this particular broadcast outlet? What rights, if any, did these consumers have? From 1964 to 1969, in the midst of a decade that saw the rise of Ralph Nader, these questions and others were argued in various forums including the Federal Commu-

nications Commission (FCC) and the District of Columbia Federal Court of Appeals.⁶

In April of 1964, a coalition of reformers including Aaron Henry, the Reverend R.L.T. Smith, and the New York-based United Church of Christ (UCC) filed a petition to deny the license renewal of WLBT television in Jackson, Mississippi. These petitioners, in a cooperative effort with other local citizens, began in 1963 to gather evidence systematically demonstrating that the station was not meeting local public interest standards. Specifically, their formal petition alleged: (a) a failure to serve the local black population; (b) programming that discriminated against blacks; (c) unfairness in the presentation of issues, especially about race relations; (d) failure to provide the community with adequate religious and other public affairs programming; and (e) an excessive amount of airtime devoted to commercial announcements (Parker, 1972, p. 2).⁷

A lengthy legal battle ensued. Acting on the 1964 petition, the FCC asked the station for programming improvement yet granted a short-term one year license renewal and dismissed the petitioners as lacking formal "standing" before the administrative body (38 FCC 1143). The petitioners appealed this ruling, resulting in the 1966 District of Columbia Court of Appeals decision which will be discussed below (359 F.2d 994). The 1966 judgment remanded consideration of the case to the FCC, which held formal hearings regarding the original complaints and again renewed the station's license (14 FCC 2d 431). Another appeal to the courts was made. In 1969 the petitioners claimed victory as the same D.C. Court of Appeals chastised commis-

sion hostility toward the public intervenors and revoked the station's license (425 F.2d 543).

Out of this complex legal history, the present focus is on the early years of this struggle, and, in particular, on the legal notion of standing (*locus standi*) which was crucial to the seminal 1966 Court of Appeals decision. Briefly put, the 1966 court ruling gave local citizens (audience members) "standing"—entitlement to intervene (or the right of direct representation) in administrative agency (FCC) proceedings. Although "standing" is a legal concept most often debated on the formal grounds of process and precedents, by employing a social historical perspective we can see how such formal concepts operate in, and are situated at, specific historical conjunctures.

Since the 1966 Court of Appeals decision granted legal standing to broadcast consumers, and the 1969 opinion revoked WLBT's license, textbook treatments of this case history often implicitly promote the notion of continuing progress in broadcast regulation and suggest the progressive movement in this instance was largely the result of individual agents and successful legal strategy. Rather than attributing a legal decision to judicial idiosyncrasy or inherently superior arguments and formal technique, the task here is to ask how popular and legal discourses concerning race and consumerism converged and shaped social and legal consciousness in a particular instance.

"Don't Buy Segregation"

In 1962, even as President Kennedy was announcing what he called the consumer's "bill of rights,"

including a "consumer's right to be heard," African Americans in Mississippi were testing their voices and power as consumers in a state notorious for racial violence and oppression. In the small delta community of Clarksdale, activists engaged in a persistent boycott of merchants with a history of racial discrimination. The grassroots effort, led by local resident and state NAACP president Aaron Henry, was maintained for several months and had a significant economic impact on downtown businesses (Salter, 1987, pp. 29-36).

In the winter of 1962, Jackson became the site of a massive grassroots effort aimed at pressuring stores and services dependent upon black patronage. The Jackson Nonviolent Movement lasted more than six months and had initial leadership from the North Jackson Youth Council of the NAACP, a group of young students advised by Tougaloo College professor John Salter. The movement received additional guidance and support from other prominent black Missisippians, including Aaron Henry, Rev. R.L.T. Smith, Rev. G.R. Haughton, and NAACP field secretary Medgar Evers.

Planning for the boycott campaign began in the fall of 1962, and included a study of job and consumer conditions in Jackson. Organizer John Salter had been impressed by recent direct action campaigns outside of the state and was eager to mobilize the local Black community (Salter, 1987, pp. 39, 51-52). On November 30, 1962, the official bulletin of the North Jackson Youth Council (NAACP), the *North Jackson Action*, declared "The boycott is now official . . . picket lines and mass meetings are definitely set." The front page

highlighted "a brief statement of grievances" discussing the problem of employment discrimination, and continued:

Negro consumers are forced to use separate restrooms, separate drinking fountains, and very frequently are forced to use separate seating facilities in the stores. Often, they are forced to stand. Negro customers are the last to be waited on. In any dispute between a clerk and a customer, the customer is always wrong -- if he or she is a Negro. Many of the white businessmen are members and supporters of the viciously anti-Negro White Citizens Council-- whose national headquarters is in Jackson . . . Brutality, levied against Negro people, has frequently occurred in the stores of white businessmen (North Jackson Youth Council, Papers of John R. Salter, Jr., Box 1, Folder 15).

Attempting to draw further attention to these practices downtown, picketing demonstrations joined the selective buying effort in December, just in time to affect the holiday shopping season. The Youth Council organized a systematic phone calling campaign and pamphlet distribution strategies to inform the black community of its actions and goals. Salter (1987, p. 101) recalls that almost 60,000 leaflets were distributed in the first six months of the campaign, and that "boycott workers had spoken at length in almost every Negro church in Jackson--and most of these churches had been visited many times." Since police harassed or arrested those engaged in the distribution of boycott information, student workers used unusual, sometime secretive techniques, carrying materials in paper bags, umbrellas, and under their coats, moving quickly through different parts of Jackson (Salter, 1987, p. 71).

These extraordinary communications efforts were necessary because the mainstream print and electronic media of Jackson provided visually no opportunities for black voices to be heard or pro-movement arguments to be made. Two newspapers dominated the daily print media, namely, the *Clarion-Ledger* and the *Jackson Daily News*, and were both owned by the powerful Hederman family, which had a significant investment in downtown business as well as the segregationist status quo. Front page editorials and columns in these papers frequently leveled withering attacks on the federal government and civil rights activities. In response to the boycott, the papers offered loud condemnations of it, and ran ads urging readers to shop downtown.

The Hederman family also controlled a substantial portion of the broadcast market, owning WJTV one of two network-affiliated television stations in Jackson. WJTV's programming practices, while not the focus of history textbooks, were quite similar to those at WLBT. In fact, the petitioners of WLBT originally challenged both stations' licenses, articulating several identical complaints, including racial discrimination. In the case of WJTV, a few signs of programming adaptability helped shift the focus of legal efforts to the more recalcitrant WLBT.

WLBT's connection to the white business establishment and most powerful state politicians was quite dear. Fred Beard, the station's general manager, was a prominent member of the anti-integration White Citizen's Council, as were many downtown businessmen and prominent Mississippi lawmakers (McMillen,

1971). In fact, on at least one occasion, Beard was vigorously applauded by Citizen's Council members when he announced the station's active censorship of pro-integration programming. WLBT also had a "Freedom Bookstore" on its premises, filled with Citizen's Council and white supremacist literature. Economically, the station had a close relationship with Citizen's Council businessmen and downtown stores in terms of long-term advertising accounts. In short, the station had very powerful economic and political allies, and only the marshalling of considerable political and legal resources would bring about a change in its racist practices.

It was the station's allies that were under direct attack during the Jackson movement. In order to counter perceptions that it was without concrete goals, the movement issued a concise list of demands in January of 1963:

(1) Hiring of personnel on the basis of personal merit without regard to race, color or creed; and promotion of such personnel on the basis of both merit and seniority without regard to race, color or creed; (2) an end to segregated drinking fountains, an end to segregated restrooms, and an end to segregated seating; (3) service to all consumers on a first come, first served basis; (4) use of courtesy titles—such as "Miss," "Mrs.," and "Mr."—with regard to all people (Papers of John R. Salter, Jr., Box I, Folder 14).

As Liz Cohen (1992, p. 9) has observed, the Jackson movement, while acknowledging the need for equality in the sphere of production (hiring and promotion) focused on the problems of local black consumption. In her broader analysis of civil rights

activism, Cohen identifies the existence of a postwar politics of consumption "oriented around black's rights as consumers, not just producers" (p. 8). She argues that "although access to jobs remained on the agenda of civil rights activists in the early 1960s, they now saw consumption and production rights as ...intertwined" (p. 8).

While articulating "civil rights problems" during the selective buying campaign, Jackson movement leaders such as Rev. R.L.T. Smith put the "denial of human dignity" at the top of their public complaints, and called for local recognition of "freedom and human dignity" at mass meetings held in Jackson churches (Papers of Rev. R.L.T. Smith, Box 3, Folder 28). Clearly, this call was associated with the concrete experiences of African Americans shopping in downtown Jackson, denied access to bathrooms and water fountains, and often ignored by white employees. In the months after the movement disbanded, the petitioners challenging WLBT echoed this theme, complaining that the station undermined black dignity by failing, for example, to use courtesy titles in addressing black personalities and events.

The Jackson movement's concerns and demands were quite different from those articulated by John Kennedy just months earlier on behalf of what he called the "American consumer." The president identified four primary consumer concerns and corresponding rights: (1) the "right to safety" which dealt with protection from hazardous goods; (2) the "right to be informed," which was concerned with protection against fraudulent, deceitful, or grossly mis-

leading information in media such as broadcast advertising; (3) "the right to choose," concerned with "access to a variety of products and services at competitive prices"; and (4) "the right to be heard," an assurance "that consumer interests will receive full and sympathetic consideration in the formulation of government policy, and fair and expeditious treatment in its administrative tribunals" (such as the FTC and FCC) (Lampman, J 988, p. 22).

Such pronouncements could be understood as both expansive and restrictive. While the president's speech provided a symbolic alliance with "the American consumer," and symbolically expanded "consumer rights," it also set implicit limitations on the government's interests in these matters. As one of his key speech writers has put it, Kennedy's announcement of these "rights" served to "define and limit the field of consumer protection and to identify legitimate policy choices vis-a-vis consumer markets" (Lampman, 1988, p. 31). Aside from a cautious and vague endorsement of consumer representation, the executive statement established as paramount safer goods and "improving the level of consumer satisfaction from a given level of expenditure" (Lampman, 1988, p. 29).

Focusing on consumer satisfaction derived from favorable economic exchange, Kennedy implicitly defined the "American consumer" as individualized and autonomous, enjoying free access to the marketplace independent of the social divisions and constraints experienced everyday by thousands of Jackson shoppers. Missing was the movement's recognition of a basic need to affirm

the human dignity and worth of consumers. The Jackson movement had issued its own version of a bill of rights for consumers, arguing that an entire class of citizens had been abused within, and often excluded from, the free marketplace. At the same time, in Washington, political discourse symbolically erased social differences in consumer experiences and worked to reestablish the vision of a fundamentally fair marketplace that balanced the interests of individual consumers and producers.

Certainly these segregated consumers had been influenced by the popular consumerist discourse of the period, as is evident both in the Jackson movement's newsletters and more widely throughout the South (Cohen, 1992). However, the meanings of consumerism were appropriated differently and specifically in response to crises such as those experienced in Jackson. It is clear that the direct action campaign undertaken in Mississippi's capital contained a considerable current of dissatisfaction with the federal government, law, and formal announcements from Washington. Local direct action represented impatience with legal and bureaucratic efforts. As Silver (1963, p. 342) and others have noted, many activists in the state were "unimpressed with legalism and and constitutionalism," favoring the use of grassroots campaigns aimed at problems needing immediate remedy.

In this environment the license of WLBT-TV was challenged. The station never faced a direct action campaign, although African Americans had long complained about its programming. Rather, the battle over WLBT would be waged primarily in

the realm of the legal and bureaucratic, with all of its attendant dangers. Because local black Mississippians lacked the enormous economic and legal resources necessary for a protracted licensing battle and administrative challenge, the task fell largely to media activists and attorneys associated with the United Church of Christ (UCC).

Shifting Standards of Standing

Before the challenge from the UCC and its co-petitioners, both the FCC and federal courts handling broadcasting concerns had granted "standing to intervene" only to legislators and those parties "operating in the public interest," demonstrating sufficient economic injury or electrical interference. Those parties successfully claiming economic injury and electrical interference were invariably commercial and industrial entities. Although the courts insisted that standing was considered in the light of larger public rather than private interest concerns, members of the listening and viewing audience, "the public," were not formally and directly recognized or represented, but only indirectly considered through the various arguments of industry and government. As one legal analyst summarized, "the courts had apparently given at least tacit approval to the [Federal Communication] Commission's standing construction, for in no instance had standing to contest a licensing order been upheld on any other ground" ("Recent developments," 1967, p. 520). That is, until 1966, with the release of the WLBT-TV decision.

With WLBT, the courts' position on standing shifted. Dissatisfied with the aforementioned precedents, the

Court of Appeals established that the listening public was now to be considered as potentially "aggrieved" by renewal of broadcast station licenses, and as a potential "party in interest" empowered to challenge license grants and renewals. In granting standing to the appellants, Warren Burger wrote for Circuit Judges McGowan and Tamm:

Since the concept of standing is a practical and functional one designed to insure that only those with a genuine and legitimate interest can participate in a proceeding, we can see no reason to exclude those with such an obvious and acute concern as the listening audience. This much seems essential to insure that the holders of broadcasting licenses be responsive to the needs of the audience, without which the broadcaster could not exist (59 F.2d 1002).

In granting standing to representatives of the "listening audience," the court recognized it had broken away from previous, more restricted notions of standing, admitting that "up to this time, the courts have granted standing to intervene only to those alleging electrical interference ... or alleging some economic injury" (359 F.2d 1000). However, now the court had decided to expand notions of public interest beyond those represented in the restricted categories of the past. Claiming a new flexibility and ability to adapt based on experience, the court continued: "... What the Commission apparently fails to see in the present case is that the courts have resolved questions of standing as they arose and have at no time manifested an intent to make economic interest and electrical interference the exclusive grounds for standing" (359 F.2d 1000-1001).

Such remarks implied the Court of Appeals was attempting to distance itself from the FCC. Passages such as the one above suggest that the commission had a certain inflexibility which the court was now rebuking and positioning as detrimental to the public interest.

This rebuke seems to have little justification in terms of legal coherency. Indeed, in terms of coherency, the commission's, not the court's, decision would seem to be much stronger. The former's determination was based on well-established and often cited precedents such as *FCC v. Sanders Brothers Radio Station* (1940), *Scripps-Howard Radio, Inc. v. FCC* (1942), and *NBC v. FCC* (1942). It is also worth repeating that the court had given at least its tacit approval to these prior commission constructions of standing.

However, in this case, the court took great pains to foreground the flexibility and dynamism of standing. Standing was defined as a "practical and functional concept." After tracing a case history of standing law, the court remarked, "This history indicates that neither administrative nor judicial concepts of standing have been static" (359 F.2d 1000).

In addressing the FCC argument that the commission itself could fairly represent the listening audience and thus eliminate the need for further formal public representation, the court again implied that the commission had been unjustifiably rigid in contrast to the judicial body's reasonable, flexible, commonsensical disposition. In a passage which damages claims to formalistic justification by constitutionality, process, or precedents, Burger wrote that "experience" linked to an implied "common

sense” had guided the decision-making:

The theory that the Commission can always effectively represent the listener interests in a renewal proceeding without the aid and participation of legitimate listener representatives fulfilling the role of private attorneys general is one of those assumptions we collectively try to work with so long as they are reasonably adequate. When it becomes clear, as it does now, that it is no longer a valid assumption which stands up under the realities of actual experience, neither we nor the Commission can continue to rely on it. The gradual expansion and evolution of concepts of standing in administrative law attests that experience rather than logic or fixed rules has been accepted as the guide (359 F.2d 1003--1004).

This paragraph asserts rather baldly that the court's standing decisions had been based on considerations outside those of constitutionality, process, and precedents. It explicitly privileged "experience" over formalistic legal "logic" or "fixed rules." The grounds for standing had uneasily shifted, with little legal rationale available outside of "it seems to be the best decision in this instance, given the experience of past years." Elaborating on this rationale, Keller (1967, p. 135) wrote that the court recognized that previously narrow constructions of standing "had not achieved the desired result," ostensibly of serving the "public interest," and therefore was advocating a new standing construction. Even traditional legal analysts noted the court's lack of formal justification in this shift, stating in one instance that the decision underscored the "burdensome and artificial construction of standing requirements" ("Notes," p. 384).

The Court of Appeals' writing re-

garding standing and WLBT highlighted a problem that is central to the critical legal studies critique of traditional legal practice, namely, the fundamental indeterminacy of law.⁸ In this case, the court explicitly disposed of the idea that standing had a natural, inherent, or self-evident meaning. Rather, its meaning had been, and continues to be, a site of social and legal struggle, dynamic through time and place. In this history, the court made the point of discarding the arguments regarding constitutionality, process, and precedents advanced by the FCC, subordinating such claims to consideration of "nonlegal" variables, such as industrial and "consumer" conditions. Clearly, social factors surrounding the case were important to the judicial decision.

Further, the court statements to the FCC regarding the strengths of the minority complaint suggest that the judges pondered the merits of the legal challenge when formal guidelines dictated that standing was to be determined a priori (359 F.2d 1006--1009). The court's concluding remarks underscored its concern as it surveyed the station's history and stated "a pious hope on the Commission's part for better things from WLBT is not a substitute for evidence and findings" (359 F.2d 1008). Critics noticed this formal transgression, questioning the appropriateness of court remarks suggesting how the FCC should have ruled in its initial statement regarding WLBT license renewal (38 FCC 1143 [1965]). The *Michigan Law Review* (1967, p. 524), for example, remarked that the propriety of the court's approach was questionable" since policy determina-

tions are clearly within the exclusive scope of the Commission's expertise."

The WBLT case does not stand alone in regard to this type of formal transgression. In analysis of constitutional standing, for example, critics have argued that standing has become "a surrogate for decisions on merits" and that the law of standing "is little more than a set of disjointed rules dealing with dealing with a common subject" (Tushnett, 1977, p. 663). In this surrogacy, standing law denies its social construction and social specificity, cloaking itself in an a priori rationale claiming a clean separation from consideration of contemporary social conditions.

The WLBT decision threatens to strip this cloak from standing law, exposing the social and cultural forces at work in such decision-making. A more than cursory examination of the precedent-setting 1966 Court of Appeals decision supports the contention that standing law is fundamentally indeterminate as are the meanings of specific legal terms such as "the public interest." Further, it reveals a moment in which formalistic justification for legal standing and specific case merits were conflated in an environment of considerable social struggle.

Transforming Viewers

To better understand the 1966 Court decision regarding standing, it is necessary to look more closely at how this judicial body defined various social groups and consider how these definitions related to a specific social milieu. This is not to suggest that legal texts or definitions simply reflect the social realm, but that such discourses emerge in an interactive and creative way, working on social

conditions even as such conditions shape them.

By 1960 broadcasting was increasingly defined as a consumer concern. Quiz show scandals and FCC commissioner misconduct had brought television into disrepute, and these exploitations of a relatively young and promising medium were widely publicized in the popular press, arousing public dissatisfaction (Boddy, 1990). At the same time, prominent political leaders such as Kennedy campaigned to align themselves with government protection or the consumer (Pertschuk, 1982). As Pertschuk (1982, p. 17) has noted, Kennedy's "consumer" campaign speech was greeted enthusiastically, and "opinion polls showed broad, though not necessarily deep, public endorsement of ... consumer protection initiatives."

In 1962, the president established a Consumer Advisory Council which had liaisons with various federal administrative agencies, including the FCC. And in 1964, as Lyndon Johnson established the President's Committee on Consumer Interests, his special assistant for consumer affairs, Esther Peterson, continued the communication between the executive branch and the FCC. During these years, the White House occasionally asked the commission for an account of activities it had undertaken in the interest of the American consumer. Thus, FCC actions such as their work on the "All Channel Receiver Bill" were called to the attention of the White House as "efforts to help the consumer" (Papers of E. William Henry, Box 76, "Assistant for Consumer Affairs" and "White House Correspondence").!~

In the popular press, a January,

1960, cover article titled "Where, may we ask, was the FCC?" in *Consumer Reports*, blasted the commission for inactivity and "passing the buck" especially in regard to "false and irritating" advertising. The article warned that by flooding air channels with poor programming and ads, broadcasting companies could "decimate the consumer use-value of all receiving sets" (p. 9). Calling for the "implementation of the consumer position in Government," the article nominated television as the nation's dominant consumer concern, stating "the consumer investment in and the consumer interest in television and radio dwarf that of any other segment" (pp. 11, 9).

Faced with public anxiety over advertising and claims that ads were increasingly false and pervasive, the FCC, under the leadership of Newton Minow (1961-63) and William Henry (1963-66), launched campaigns against overcommercialization in broadcasting (Baughman, 1985, pp. 117-152). Congressional members, acting as defenders of the broadcast industry, were persistent in curtailing these administrative agency efforts. However, powerful FCC commissioners believed that the public shared their displeasure with the number of commercials aired and the "ever increasing interruption of programs" (Baughman, 1985, p. 123).

William Henry, FCC chair during the early years of the WLBT challenge, encouraged the commission's broadcast bureau to "closely check individual renewal applications for the number of commercial messages pledged on the license form versus those actually aired" (Baughman, 1985, p. 134). In mid-1964, the

broadcast bureau, again with Henry's support, unsuccessfully attempted to take punitive action against specific stations located in Louisiana, Mississippi, and Arkansas accused of broadcasting too many commercials (Baughman, 1985, p. 135).

With this as a historical backdrop, the legal texts of the WLBT struggle are better understood. For example, it comes as no surprise that the United Church of Christ legal team, counseled by former FCC staff member Ann Aldrich, included a complaint of overcommercialization in the WLBT petition to deny licensing. Such a complaint, seemingly trivial in comparison to charges of racist programming, resonated with public and FCC concerns. Even after the 1966 court decision ignored the overcommercialization charge, the UCC petitioned the FCC to revisit its complaint regarding too many ads (5 FCC2d 37).

Beyond the contention that advertisements were too frequent and interruptive, anxieties regarding false or misleading ads were closely linked to notions of consumerism and economic protection. Applied to broadcasting, the logic of consumerism again focused on expenditure and the viewer's return from financial investment. Consumer protection was not so much protection from frustration or annoyance or more threatening systemic injustices as from uninformed, irrational, or unwise investment-in other words, protection from "not getting one's money's worth." This concern was evident, for example, in the 1960 *Consumer Reports* article, as it foregrounded public spending on television and radio purchases and spoke of "consumer use-value." This economic

logic was also clear in the arguments employed by the UCC legal team in the WLBT case, and was adopted by the court in its 1966 opinion. The contention of the petitioners was that the public, through ownership of sets and their appurtenances, had a large economic stake in broadcasting, had not received a fair return for its investment, and therefore deserved legal standing as an economically aggrieved party (Parker, 1982).

This argument provided the awkward equation through which the court defined local African-American concerns as synonymous with the those of the American consumer. The judges gave considerable discussion to the specific history and practices of WLBT early in the opinion, focusing hard on the allegations of racial discrimination. However, as the court articulated its position regarding the issue of standing, considerations of this history dropped out of its writing in deference to formal constraints dictating standing be considered only in relation to specific persons, firms, or corporations, rather than social classes or groups.

Such constraints were, and continue to be, the product of American legal liberalism—a philosophical framework that reproduces the artificial dichotomization of the individual and society and inconsistently privileges individual liberty over social responsibility. Working and writing within this tradition, the court was formally mandated to address specific economic grievances—individual material losses—rather than systemic discrimination. This was, and is, the purview of administrative jurisprudence.

Thus the court drew parallels between the consumers of margarine.

coal, electricity, and broadcasting, arguing that consumers of these and other commodities had certain economic claims, and in some cases had been granted temporary standing before administrative agencies such as the Federal Trade Commission. Contending that television "consumers" and consumers of margarine needed similar administrative protections, the court's opinion reflected a temporary and artificial, yet formally demanded, separation of social justice from individual consumer concerns.

The court's defense of individualized television consumers was summed up with a quotation from Edmond Cahn: "Some consumers need bread; others need Shakespeare; others need their rightful place in the national society—what they all need is processors of law who will consider the people's needs more significant than administrative convenience" (359 F.2d 1005). Employing such liberal proclamations, the court transposed middle-class assumptions onto other groups, in this case, predominantly working and underclass African Americans in the nation's poorest state. Discussing which parties should be officially recognized rather than deemed legally invisible, the court effectively subordinated concrete cultural concerns regarding popular representation to the economic logic of consumer protection.

The argument that viewers should be principally defined as consumers owning television sets, thus holding an economic stake in local broadcasting, had little resonance with many poor African Americans, even if accepted at face value. Such consumer protections assumed the citizen was economically independent, when this

was hardly the case for many black Mississippians. Truly independent consumer choices were a luxury afforded relatively few African Americans in the state. Further, although television purchases escalated nationwide in the sixties, census data reveal that "nonwhite" households in Mississippi lagged well behind other populations in the acquisition of this technology, at least in the late fifties. Considerably less than half, approximately 40 percent of "nonwhite" households in Mississippi had televisions as the decade began, compared to television's presence in 66 percent of "all occupied households in the state." In impoverished rural areas, even a smaller percentage of nonwhite households had a set at home (U.S. Department of Commerce, 1963).

Thus, the court's discussion of standing via consumerism, while resonating with federal legislation prohibiting public discrimination against customers, effectively ignored important social differences and histories in a construction of the homogenized, individualized television viewer-consumer. Anxiety regarding the state's address of racial conflict was displaced by "consumer" and "public interest" concerns, and in a larger sense, by the formal demands of legal liberalism, with its dichotomization of public and private, as well as individual and social, interests.

This symbolic displacement, however temporary, allowed the state, represented by the Court of Appeals, to address a race-based threat to social and economic stability, via an official legal discourse, without directly appearing to offer such an address. As Vincent Mosco (1989, p. 118) points out in a discussion of

government, hegemony, and federal broadcast policy, the state is responsible for controlling antagonisms before they become systemic conflicts. One of the means noted as working toward this end is identification of social agents not as members of antagonistic classes [or races]-but as individual legal subjects. In complementary fashion, "the state presents itself as the agent for solving the problems of individual juridical citizens..." (Mosco, 1989, p. 119). In Washington, the Kennedy administration threw support behind endeavors aimed at the furtherance of individual voting and consumer rights rather than rallies and large-scale public protests. As historian David Chalmers (1991, pp. 23, 40) has noted, the national government was not willing to directly challenge the Southern status quo much beyond the issue of voting rights, and as "the civil rights strategy of the early sixties increasingly became one of forcing the issue in the streets, ... the administration treated it as a problem of conflict containment." Members of the Jackson movement frequently complained about the lack of federal support for their highly visible direct action campaign. In this case, the court's choice to deal with the petitioners as representative of consumers worked to atomize or isolate the complainants as individual consumers of the television programming. The court's employment of the Cahn quotation foregrounded this atomization quite clearly, with the message that "some consumers need this, others that." The court's alternative, guarded against by the rules and procedures of legal liberalism, was more menacing-to recognize that the petitioners represented the

concerns of a race or an aggregate threat.

CONCLUSION

In addressing the WLBT case, FCC Chairman E. William Henry declared in 1965 that the issue at hand was "not civil rights," but "the integrity of the public interest standard and the Commission's renewal process" (38 FCC 1153). This study directly challenges such a claim, arguing the WLBT case was very much about civil rights, as well as other social dynamics. The symbolic evacuation of racial struggle evident in Henry's quotation, if accepted uncritically, leads to a superficial understanding of an important moment in American law and history, and reinforces a dichotomy of legal reasoning and social change. To contend that notions such as the "public interest," or the formalistic legal/administrative process, are the central issues in such a case is to grant them an undeserved autonomy--one that denies their relationship to, and degree of dependence on, central social and political forces.

Situating the WLBT-TV fight within the 1960s civil rights movement reveals how this struggle echoes the strategies and ambiguous legacy of the movement as a whole.¹⁰ On the level of local and tactical politics, such challenges were part of campaigns that offered moments of empowerment and resistance for African Americans. Although it is difficult to gauge the empowerment experienced by black Mississippians in their moments of resistance and challenge to WLBT, the local implications of such activism should not be ignored or devalued. At the very least, the attacks on WLBT forced Jackson stations

to curb practices that were deeply painful to people of color, and initiated the process by which the station was awarded to a majority-black coalition in 1979.

On another level, in terms of industrial and regulatory structures or existing patterns of power, the station challenge and court decisions did little more than ratify the status quo by suggesting that the regulatory system was corrective--that it indeed worked. While the 1966 ruling regarding legal standing for WLBT viewers energized and facilitated the broadcast reform movement, by the late seventies further bureaucratic retrenchment effectively diminished the power of this legal precedent and ensuing activism even before Reagan administration deregulation. II

With the Reagan administration, an argument was reenergized that continues today, namely that address of legal questions such as standing or rights should be color-blind. This contention is prominent in contemporary debates revolving around problems as varied as voting rights and FCC licensing. Hopefully, the analysis offered here warns that to adopt a color-blind approach or address is to, among other things, abstract issues of race from history and reproduce the liberal myth of a fundamentally fair marketplace that magically balances disparate social interests. Critical observers of race relations and law convincingly demonstrate that the ahistorical standard of color-blindness fails to achieve the race neutrality it formally claims. As one African-American scholar puts it, to believe "that color-blind policies represent the only legitimate and effective means of ensuring a racially equitable society, one would have to

assume ... that such a racially equitable society already exists" (Crenshaw, 1988, p. 1344). In the formal claims of color-blindness and equal process, social and historical differences are dismissed. A quote from Patricia Williams (1991, p. 48) serves well in summarizing this point:

Law and legal writing aspire to formal- ized, color-blind, liberal ideals. Neutral- ity is the standard for assuring these ideals; yet the adherence to it is often determined by reference to an aesthetic of uniformity, in which difference is simply omitted. For example, when segregation was eradicated from the American lexicon, its omission led many to believe that racism therefore no longer existed. Race-neutrality in law has become the presumed antidote for race bias in real life.

Even as American law proclaims its lack of formal bias, we can see in specific instances, such as the WLBT case, that social concerns and pressures often force breaks in legal reasoning--disjunctures that are inadequately explained by law itself. In

the examination of these breaks or formal gaps, there should be a sensitivity to the struggle surrounding official and popular discourses, such as those of consumerism, and their intersection with law. In the sixties, consumerism was invoked both by civil rights activists and federal institutions in the context of establishing new law or policy. For those in the Jackson movement, consumer concerns called for the recognition of social differences and a response to the historic, long-term neglect of the free market. From Washington, the discourses of consumerism effaced social differences and tensions, reproducing the model of the individualized American consumer and the vision of an essentially fair, consumer-producer balanced society. In the rhetoric of the Court of Appeals and institutions of law, we see the uncomfortable mediation of these conflicting consumerisms, and an attempt to address racial tensions accompanied by a simultaneous displacement of these concerns.

NOTES

¹An earlier version of this paper was presented at the 1993 meeting of the Society for Cinema Studies. I gratefully acknowledge the consistent encouragement and insights of John Fiske and Lynn Spigel, and thank the anonymous reviewers for their valuable critiques.

²Among the early leadership of the Movement were John and Eldri Salter of Tougaloo College and Medgar Evers, field secretary of the Mississippi NAACP. The Salters began working with the North Jackson Youth Council of the NAACP shortly after their 1961 arrival in Jackson. This Council formed the early core of the Movement. John Salter recalls that a great majority of recruits to the Movement were high school students, and that they had "reached the point where they perceived the injustices very clearly, and they also saw the vision very clearly. They just didn't feel inhibited ...they were the backbone of the boycott and the backbone of the mass marches" (Oral History of John Salter, pp. 29-30). In 1963, after his appointment as chaplain at Tougaloo, the Reverend Ed King also played a key leadership role in Movement activities.

³Kennedy's March 15, 1962 speech was titled "Special Message to the Congress on Protecting the Consumer Interest" ("Public papers," pp. 235-243). Creighton (1976) describes this public employment of concern for the consumer, noting that in political speeches consumers could be attractively framed as "individuals and households unsullied by governmental malfeasance" (p. 42). Pertschuk (1982) also provides insightful analysis of this period. A focus on the "consumer" was not only evident in political pronouncements, but in popular

press treatments of civil rights activism. For example, in NBC's three hour primetime special titled "The American Revolution of 1968," a "study of the American Negro's struggle for equality," host Frank Magee sought to "define this revolution" as having as an immediate goal "what might be called consumer rights as easily as civil rights...."

4This approach is informed by work in the critical legal studies (CLS) movement. For example, in an introduction to CLS, Kelman (1987) writes, "CLS theorists have devoted" great deal of their efforts to demonstrating that law and society are inseparable or interpenetrating and arguing that traditional pictures of that relationship between law and society that ignore that point almost invariably make law seem both more important than it is (in supposing that particular structures require particular rules) and less important than it is (in ignoring its basic constitutive nature)" (p. 7).

5As Haight and Weinstein (1981) have observed, the victory of local petitioners in the WLBT case "gave tremendous hope to prospective petitioners that further gains could be made by taking this 'legal route'" (p. 115). Such challenges were viewed as opening "doors for reforming the media through the administrative process" (Haight and Weinstein, p. 115; also see Branscomb and Savage, 1978). As scholars have subsequently noted, these hopes for long-term reform were poorly founded (Rowland, 1982; Haight and Weinstein, 1981). However, the WLBT case offered strategic legal "tools" for broadcast reform activities in the late sixties and early seventies. The writings of Rowland (1982) and Haight and Weinstein (1981) go beyond simple historical description to provide productive critical analyses of this period.

6The definition of television and radio as primarily commercial enterprises with attendant consumer concerns is evident throughout the history of American broadcasting and broadcast regulation. From their earliest years, radio and television were regulated as "interstate commerce" in accordance with the Constitution's interstate "commerce clause" of Article I, Section 8. Thus, congressional oversight of radio and television has long been justified by broadcasting's commercial "nature." Along these lines, it is interesting to note that important challenges to segregation came through the commercial sector, and found legal grounding in interstate commerce regulation (for example, the Interstate Commerce Commission's orders to abolish Jim Crow facilities and practices).

7Although the 1964 petition to deny the license of WLB "1"-TV followed local field work and studies conducted in 1963, 1963-64 was not the first period of local complaint against the station. African-American efforts to change local broadcast practices began earlier, prior to the intention and involvement of the UCC. Specifically, Medgar Evers and the NAACP filed complaints against the segregationist practices of the station in 1955 and 1957. In the latter year, WLBT's treatment of the Little Rock school crisis prompted Evers to request airtime. He was denied. The FCC showed no interest in intervention, though made aware of the situation by the NAACP. In 1957 the Commission granted WLBT a "license to cover construction permit," and in 1959 renewed the station's license without a hearing on local complaints (40 FCC 479).

8Streeter (1990) offers a description of the intellectual contributions made by the critical legal studies (CLS) movement as well as a discussion of applications to communications policy. It should be noted that within critical scholarship, the work of CLS students has been variously challenged and complimented by texts engaging the perspectives of African Americans. Legal analysts such as Patricia Williams (1991), Derrick Bell (1987, 1992), and Kimberlee Crenshaw (1988) show an appreciation for CLS interventions while maintaining important differences, and provide insights regarding the racial politics of law and its operations.

9President Kennedy mentioned the "All Channel Receiver Bill," then pending adoption by Congress, in his 1962 "Consumer Interest" address. In this speech the president also touched on other "consumer" concerns being addressed by the administration, including television programming. In part, Kennedy stated, "The Federal Communications Commission is actively reviewing the television network program selection process and encouraging the expanded development of educational television stations" ("Public papers." p. 27).

10 Thanks to an anonymous reviewer for suggesting I consider this parallel.

11 Rowland (1982) argues along these lines in regard to the broadcast reform efforts of the sixties and seventies, highlighting "The symbolic dimension of the process, the significance of broadcast reform as part of an overall political legitimization-of ratification of prior structural arrangements and power allocations..."(p. 3). Examples of bureaucratic retrenchment in regard to citizen standing are perhaps most obvious in the FCC's erection of a procedural labyrinth for citizen petitioners, beginning in 1972 (see "The Public and Broad-casting-A Procedure Manual," September 26, 1972, 37 FCC 2d 286). In its complex "Procedure Manual" for citizens' groups, the FCC made it clear that broadcast performance inquiries were to be initiated by private citizens, not the commission, and that the burden of proof rested on the shoulders of challenging parties (Rowland, 1982, p. 17).

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