

The Irrelevant V-Chip: An Alternate Theory of TV and Violence

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I. INTRODUCTION

The Telecommunications Act of 1996,¹ signed by President Clinton on February 8, 1996, contains a two-prong attack on TV violence. The first prong is a technological one, requiring that a "V-chip"² (V for violence) be installed on all new TV sets greater than 13". When TV programs are rating-encoded, parents will be able to decide whether to activate the V-chip on their home sets and block whatever rated programs they choose.³ The second prong is a

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¹ Pub. L. No. 104-104, 110 Stat. 56 (1996).

² "[A] feature designed to enable viewers to block display of all programs with a common rating" *Id.* § 551(c).

³ The full text of the relevant sections of the Act reads:

SEC. 551. PARENTAL CHOICE IN TELEVISION PROGRAMMING.

(b) Establishment of Television Rating Code

(1) Amendment - Section 303 (47 U.S.C. 303) is amended by adding at the end the following:

(w) [The F.C.C. shall] Prescribe -

(1) on the basis of recommendations from an advisory committee established by the Commission in accordance with section 551(b)(2) of the Telecommunications Act of 1996, guidelines and recommended procedures for the identification and rating of video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children, provided that nothing in this paragraph shall be construed to authorize any rating of video programming on the basis of its political or religious content; and

(2) with respect to any video programming that has been rated, and in consultation with the television industry, rules requiring distributors of such video programming to transmit such rating to permit parents to block the display of video programming that they have determined is inappropriate for their children.

substantive one, providing that, if “distributors of video programming” do not establish a voluntary rating system for “sexual, violent, or other indecent material” within one year, the government will do it for them.⁴

(2) Advisory committee requirements. In establishing an advisory committee for purposes of the amendment made by paragraph (1) of this subsection, the Commission shall -

(A) ensure that such committee is composed of parents, television broadcasters, television programming producers, cable operators, appropriate public interest groups, and other interested individuals from the private sector and is fairly balanced in terms of political affiliation, the points of view represented, and the functions to be performed by the committee;

(B) provide to the committee such staff and resources as may be necessary to permit it to perform its functions efficiently and promptly; and

(C) require the committee to submit a final report of its recommendations within one year after the date of the appointment of the initial members.

(c) Requirement for Manufacture of Televisions that Block Programs. Section 303 (47 U.S.C. 303), as amended by subsection (a), is further amended by adding at the end the following:

(x) Require, in the case of an apparatus designed to receive television signals that are shipped in interstate commerce or manufactured in the United States and that have a picture screen 13 inches or greater in size (measured diagonally), that such apparatus be equipped with a feature designed to enable viewers to block display of all programs with a common rating, except as otherwise permitted by regulations pursuant to section 330(c)(4).

[section (d) omitted]

(e) Applicability and Effective Dates

(1) Applicability of rating provision. The amendment made by subsection (b) of this section shall take effect 1 year after the date of enactment of this Act, but only if the Commission determines, in consultation with appropriate public interest groups and interested individuals from the private sector, that distributors of video programming have not, by such date -

(A) established voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children, and such rules are acceptable to the Commission; and (B) agreed voluntarily to broadcast signals that contain ratings of such programming.

(2) Effective date of manufacturing provision. In prescribing regulations to implement the amendment made by subsection (c), the Federal Communications Commission shall, after consultation with the television manufacturing industry, specify the effective date for the applicability of the requirement to the apparatus covered by such amendment, which date shall be not less than two years after the date of enactment of this Act.

⁴ This Article deals only with violent programming, leaving “sexual . . . or other indecent material” for another day. *Id.* at (e)(1)(A). What the author thinks of censoring media sex can be gleaned from Peter Johnson, *Pornography Drives Technology: Why Not to Censor the Internet*, 49 FED. COMM. L.J. 217 (1996).

The “distributors of video programming” fell quickly into line. At a White House meeting on February 29, 1996, network and cable executives promised a rating system by year’s end.⁵ By year’s end, they delivered.⁶

The content of the proposed rating system, and the controversy it has spawned, is not at issue in this Article. What is at issue is that the President, Congress, and now the TV industry have endorsed the “violence hypothesis,” *i.e.*, that viewing violent television programming causes violent or aggressive behavior, usually by children.⁷ This hypothesis has been in the air almost as long as TV has been on the air, since at least 1954.⁸ Of late, proponents and opponents have become so polarized that not even the data are safe:

⁵ Alison Mitchell, *TV Executives Promise Clinton a Violence Ratings System by '97*, N.Y. TIMES, Mar. 1, 1996, at A1.

⁶ Lawrie Mifflin, *TV Industry Leaders Unveil Technique of Rating Shows*, N.Y. TIMES, Dec. 20, 1996, at A18. The TV rating systems contains the following categories:

TV-Y Appropriate for all children.

TV-Y7 Directed to children 7 and above. May include mild physical or comedic violence or may frighten children under age 7.

TV-G Suitable for all ages. Contains little or no violence, no strong language, and little or no sexual dialogue or situations.

TV-PG Parental Guidance Suggested. May contain infrequent coarse language, limited violence and some suggestive sexual dialogue and situations.

TV-14 Parents Strongly Cautioned. May contain sophisticated themes, sexual content, strong language and more intense violence.

TV-M Mature Audiences Only. May contain mature themes, profane language, graphic violence and explicit sexual content.

Jim Cooper, *Is Everybody Happy?* CABLEVISION, Jan. 27, 1997, at 30.

⁷ Thomas G. Krattenmaker & L. A. Powe, Jr., *Televised Violence: First Amendment Principles and Social Science Theory*, 64 VA. L. REV. 1123 (1978).

⁸ *Juvenile Delinquency (Television Programs): Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary*, 83d., 2d Sess. Cong. (1954); *Juvenile Delinquency (Television Programs): Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary*, 84th Cong. (1955).

Each side uses the same study⁹ to reach an opposite conclusion.¹⁰ Now, however, the proponents have won Congress' and the country's hearts if not quite their minds. Although Congress, in the Telecommunications Act, was unwilling to adopt the violence hypothesis in so many words, it still managed hedgingly to "find" that

*[s]tudies have shown that children exposed to violent video programming at a young age have a higher tendency for violent and aggressive behavior later in life than children not so exposed, and that children exposed to violent video programming are prone to assume that acts of violence are acceptable behavior.*¹¹

On its own, Congress less boldly found only that children watch a lot of TV, that TV contains a lot of violence, and that there is a compelling government interest in empowering parents to limit same.¹²

The problem with the sweeping endorsement of the violence hypothesis is that it is just that—a hypothesis. Despite what Congress finds about what studies have shown, there is great disagreement not only about what the studies show, but even about how many studies

⁹ See, e.g., Lynette K. Friedrich & Aletha H. Stein, *Aggressive and Prosocial Television Programs and the Natural Behavior of Preschool Children*, 38 MONOGRAPHS SOC'Y FOR RES. CHILD DEV. (Whole No. 151) (1973).

¹⁰ See, e.g., John P. Murray, *The Impact of Televised Violence*, 22 HOFSTRA L. REV. 809, 815 (1994) (citing Friedrich & Stein, *supra* note 9, as demonstrating that "children who were judged to be initially somewhat aggressive became significantly more so, as a result of viewing the 'Batman' and 'Superman' cartoons"). *Contra*, Jonathan L. Freedman, *Viewing Television Violence Does Not Make People More Aggressive*, 22 HOFSTRA L. REV. 833, 845 (1994) (citing Friedrich & Stein, *supra* note 9, as showing "no difference between the kids who had watched 'Batman' and those who had watched 'Mister Rogers'"). Significantly, the Murray reading of the Friedrich & Stein data made it into the Surgeon General's Report by the Scientific Advisory Committee on Television and Social Behavior, TELEVISION AND GROWING UP: THE IMPACT OF TELEVISED VIOLENCE (1972) and the National Institute of Mental Health's TELEVISION AND BEHAVIOR: TEN YEARS OF SCIENTIFIC PROGRESS AND IMPLICATIONS FOR THE EIGHTIES, (David Pearl, et al., eds., 1982), while the contrary reading is absent. Both the Surgeon General's report and the NIMH study were then used by Congress as evidence supporting the violence hypothesis. See *infra* note 80 and accompanying text.

¹¹ § 551(a)(4) (emphasis added).

¹² § 551(3,5,8).

there are.¹³ What is needed to break the logjam is a *tertium quid*, a third way of looking at television and violence that, without doing violence to the data, explains the discrepancies in interpreting it. This Article offers that third view.

The *tertium quid* is the following hypothesis: (1) violence is antisocial behavior; (2) television-watching is antisocial behavior; (3) therefore, the more a child watches television, to the exclusion of other, more socializing activities, the more likely it is that the child will grow up antisocial and, perhaps, violent, *regardless of the content of what he watches*. In other words, there is something in the nature of TV-watching, rather than in the content of TV programs, that is more likely to cause antisocial behavior, including violence, than the content itself. Excessive, solitary TV-watching robs a child of socializing activities, such as sports and games, even computer games,¹⁴ that would accustom her to dealing regularly and nonviolently with other people.¹⁵

This thesis explains, without reaching the content of TV programs, several findings that have puzzled researchers. Among them are, first, the failure of the data to connect more than a few individual acts

¹³ See, e.g., David Barry, *Screen Violence: It's Killing Us*, HARVARD MAGAZINE, Nov.-Dec. 1993, at 40. (That violent TV causes violent conduct is "the consensus in more than one thousand studies done over a thirty year period."). *Contra*, Edward Donnerstein, *Mass Media Violence: Thoughts on the Debate*, 22 HOFSTRA L. REV. 827, 828 ("There are not three thousand studies on television violence. There are perhaps three thousand studies on television. But there probably are approximately two hundred or two hundred fifty studies related to violence in the media.") (Barry cites Donnerstein as authority for "more than one thousand studies." Donnerstein demurs.); Jonathan L. Freedman, *Viewing Television Violence Does Not Make People More Aggressive*, 22 HOFSTRA L. REV. 833, 837 ("[T]he research . . . is such a muddle that . . . no one who sat down and carefully read the research could possibly believe that it supported the casual effect of television violence on aggression.").

¹⁴ See Carlin Meyer, *Reclaiming Sex from the Pornographers*, 83 GEORGETOWN L.J. 1969, 2000, n. 168 (1995) ("I call [cyberplay] a social activity because several expert psychologists have argued persuasively that computers, unlike television, are highly interactive media, thus fostering rather than inhibiting social skills.").

¹⁵ There are, of course, other kinds of antisocial behavior than violence, including shyness, sullenness, solitude and bad table manners. Whether excess TV-watching causes any of these is beyond the scope of this paper.

of violence to specific violent TV programs;¹⁶ second, the findings of several studies that, as TV becomes more pervasive in a community or a country, so does violence;¹⁷ and third, why children are as likely to come to blows over the remote while watching "Gumby" as while watching "Mighty Morphin Power Rangers."

This thesis is not novel. As discussed in Part II of this Article, the effect of art upon the individual and society has interested philosophers for centuries. To Plato, the representations of drama have a direct and immediate effect on people's behavior. To Aristotle, the effect of art has more to do with its structure than its content. To our contemporary Marshall McLuhan, both the content and the structure of particular works of art pale before the impact of the medium itself.

With apologies to Plato, the *tertium quid* hypothesis follows Aristotle and McLuhan and posits a connection between TV and violence that has nothing to do with content. In doing so, it erects a constitutional barrier for the V-chip. The Supreme Court, in reviewing restrictions on the content of speech, requires the government to demonstrate that content regulation will, in fact, do something to alleviate the problem Congress has found.¹⁸ This "causal nexus" is required both under the strict scrutiny applied to most speech regulation¹⁹ and under the more relaxed scrutiny currently applied to broadcast regulation.²⁰ Accepting this hypothesis

¹⁶ Among the few such instances are a girl being raped with a soda bottle after her attackers saw a similar incident in "Born Innocent" on TV. *Oliva v. N.B.C.*, 74 Cal. App. 3d 383 (1977) (finding that plaintiff had a right to present a jury with evidence implicating the network in the assault).

¹⁷ See, e.g., *THE IMPACT OF TELEVISION: A NATURAL EXPERIMENT INVOLVING THREE TOWNS* (Tannis MacBeth Williams ed., 1986); Brandon S. Centrewall, *Study of Homicide Rates in the U.S., Canada, and South Africa Following the Introduction of Television*, JAMA (1992).

¹⁸ *F.C.C. v. League of Women Voters of California*, 468 U.S. 364, 391 (1984). See also *Edenfield v. Fane*, 113 S. Ct. 1792, 1798-99 (1993); *Turner Broadcasting Sys., Inc. v. F.C.C.*, 512 U.S. ___, 114 S. Ct. 2445, 2470 (1994).

¹⁹ *Sable Communications of Cal. v. F.C.C.*, 492 U.S. 115, 126 (1989) ("The Government may . . . regulate the content of constitutionally protected speech in order to promote a compelling interest if it chooses the least restrictive means . . .").

²⁰ *Red Lion Broadcasting Co., Inc. v. F.C.C.*, 395 U.S. 367 (1969); *League of Women Voters*, 468 U.S. 364, 380, 395 (1984) (restriction on broadcast speech must be "narrowly tailored" to a "substantial" state interest and use the least restrictive means "readily available"). Many have questioned this continuing lowered scrutiny for broadcast-speech

would break the causal link between content and conduct and render government control of violent program content unconstitutional.

A corresponding danger of accepting this hypothesis, however, is that it invites an unappetizing corollary, *i.e.*, that restricting the amount, rather than the content, of TV that children may watch may indeed serve a substantial government interest and be constitutional. If so, it would at least point Congress toward the real culprit. Though there is no broad national consensus on the impact of TV violence on children, there is certainly a consensus that too much TV is bad for them.²¹ By trying to limit children's TV watching in general, Congress would perform a service that many parents would applaud.

Such a remedy, however, is both drastic and unlikely. It is also superfluous. If the hypothesis is correct, it is the antisocial quality of TV-watching that is at fault. The growth of interactive TV, like the growth of interactive computers for children, may do much to socialize TV-watching, changing children from mere consumers into active participants. Similarly, programs that engage children in dialogue, singalongs, counting games, etc. border on interactivity. "Barney," "Mr. Rogers' Neighborhood," and "Sesame Street" are examples.

Defining children's programming to require such interactivity would put teeth into Congress's inchoate Children's Television Act,²² which, despite a recently adopted rule that requires broadcasters to provide three hours of "specifically designed" educational programming for children each week,²³ does not define "educational" in any meaningful way.²⁴ Broadcasters generally have finessed the

regulations. *See, e.g., Turner*, 114 S. Ct. at 2457 ("Although courts and commentators have criticized the scarcity rationale since its inception, we have declined to question its continuing validity as support for our broadcast jurisprudence.").

²¹ Just as, long before the 1964 Surgeon General's Report, there was folklore that "smoking will stunt your growth." The folklore proved broadly correct, simply misstating the exact effect. It is the same with TV. The folklore that "TV is bad for you" is broadly correct, simply misstating the exact cause.

²² 47 U.S.C. § 303(a) (1990).

²³ Report and Order: Policies and Rules Concerning Children's Television Programming, 11 F.C.C.R. 10660 (Aug. 8, 1996).

²⁴ Newton N. Minow & Craig L. LaMay, *ABANDONED IN THE WASTELAND: CHILDREN, TELEVISION, AND THE FIRST AMENDMENT*, 21 (1995).

Act by airing reruns of "The Jetsons" and "Leave it to Beaver,"²⁵ and seem poised for even more imaginative recycling.²⁶ Demanding interactivity, rather than allowing more of the same, would make TV-watching as social and engaging as tag or baseball, and the problem of TV-induced violence would disappear.

II. ART AND PHILOSOPHY

A. *Plato* (c. 428-348 B.C.)

Wherever one goes in philosophy, one always meets Plato coming back, so why not meet him setting out? In *Republic*, Plato nailed down the two planks of the violence hypothesis. First, children can't tell fiction from reality. ("A good painter, by exhibiting at a distance his picture of a carpenter, would deceive children and foolish men, and make them believe it to be a real carpenter.")²⁷ Second, children's reaction to fictional violence is to imitate it. ("For if, dear Adeimantus, our young men should seriously incline to listen to such tales and not laugh at them as unworthy utterances, still less likely would any man be to think such conduct unworthy of himself")²⁸ Scenes of sex, such as Zeus so excited by the sight of Hera that "he wants to lie with her there on the ground,"²⁹ and violence, like "the trailings of Hector's body round the grave of Patroclus and

²⁵ *Id.* at 22.

²⁶ When broadcasters, in February 1997, "began presenting their fall 1997 children's program schedules to advertisers . . . no new art form was on view. . . .

In fact, some very old shows have been trotted out to meet the Federal mandate—a sign of either cynicism or economic desperation." Proposed shows that would fulfill the educational commitment include "Bobby's World," a cartoon about a 4-year-old boy that has been around for seven years." Lawrie Mifflin, *To Fulfill a Children's Educational TV Quota, Everything Old Becomes New Again*, N.Y. TIMES, Feb. 10, 1997, at D8. "The Adventures of Captain Planet" is also scheduled for recycling, as are NBC's eight-year-old sitcom "Saved by the Bell" and seven-year-old "N.B.A. Inside Stuff," produced by the National Basketball Association's entertainment division. "I've never understood where the educational value is on that one," Jon Mandel, a senior vice president of Grey Advertising, said. "But I'm not an educational consultant, nor am I a child." *Id.*

²⁷ PLATO, *REPUBLIC*, 598c (Book X) (Paul Shorey trans., Harvard U. Press 1963).

²⁸ *Id.* at 388d (Book III).

²⁹ *Id.* at 390c (Book III).

the slaughter of the living captives upon his pyre,"³⁰ are particularly "dangerous to temperance and self-control."³¹ Therefore, given children's propensity for imitation, stories should teach, not violence, but virtue:

Hera's fetherings by her son and the hurling out of heaven of Hephaestus by his father when he was trying to save his mother from a beating, and the battles of the gods in Homer's verse are things that we must not admit into our city either wrought in allegory or without allegory. For the young are not able to distinguish what is and what is not allegory, but whatever opinions are taken into the mind at that age are wont to prove indelible and unalterable. For which reason, maybe, we should do our utmost that the first stories that they hear should be so composed as to bring the fairest lessons of virtue to their ears."³²

Since a child's mind is easily molded and "takes the impression that one wishes to stamp upon it,"³³ the proper solution is to institute "a censorship over our storymakers, and what they do well we must pass and what not, reject."³⁴ It turns out that the story-makers on *Republic's* "accepted list"³⁵ do nothing well but "hymns to the gods and praises of good men."³⁶ All others are banished, dramatic poets in particular. Dramatists are imitators of reality whose works are three removes from truth,³⁷ they produce phantoms and not realities;³⁸ they weave a spell³⁹ with witchcraft and jugglery;⁴⁰ "in regard to the emotions of sex and anger, [they] water and foster these feelings when what we ought to do is to dry them up";⁴¹ they are not trained educators to be entrusted with telling children the truth.⁴²

³⁰ *Id.* at 391c (Book III).

³¹ *Id.* at 390b (Book III).

³² *Id.* at 378d-e (Book III).

³³ *Id.* at 377b (Book III).

³⁴ *Id.* at 377c (Book III).

³⁵ *Id.*

³⁶ *Id.* at 607 (Book X).

³⁷ *Id.* at 597e (Book X).

³⁸ *Id.* at 599 (Book X).

³⁹ *Id.* at 601b (Book X).

⁴⁰ *Id.* at 602d (Book X).

⁴¹ *Id.* at 606d (Book X).

⁴² *Id.* at 600b (Book X).

If a man, then, it seems, who was capable by his cunning of assuming every kind of shape and imitating all things should arrive in our city, bringing with himself the poems which he wished to exhibit, we should fall down and worship him as a holy and wondrous and delightful creature, but should say to him that there is no man of that kind among us in our city, nor is it lawful for such a man to arise among us, and we should send him away to another city, after pouring myrrh down over his head and crowning him with fillets of wool, but we ourselves, for our souls' good, should continue to employ the more austere and less delightful poet and tale-teller, who would imitate the diction of the good man and would tell his tale in the patterns which we prescribed"⁴³

Exit Jim Henson; enter Jesse Helms.

Plato's analysis of art takes three logical steps. First is his premise that poetry is speech (*logos*), with the corollary that the artist is a speaker, who, as such, must speak either truth or falsehood ("tales are true or false").⁴⁴ Second is his assertion that people—children in particular—perceive art as if it were direct experience, irrespective of context. Third is his conclusion that the effect of art is to inspire, by appealing to the emotions, a mindless imitation of the portrayed experience that bypasses the orderly, rational process of proper education. The two conclusions flow naturally from the first premise, namely that poetry is speech. It is the same thinking that informs the violence hypothesis.

Since the Supreme Court has held that what television transmits is "speech,"⁴⁵ it is important to distinguish Plato's *logos* from First Amendment "speech." Plato's *logos* is a fairly narrow rhetorical term, as in the "speech" component of a play (apart from its plot, characters, spectacle, etc.). To the Plato of *Republic*, the only thing that mattered about poetry was *logos*—rhetoric—the extent to which the mere words of a story inclined toward virtue or vice. Thus, that Homer spoke of Achilles trailing Hector's body behind his chariot and of his burning live foes on Patroclus' pyre was enough for Plato to

⁴³ *Id.* at 398 (Book III).

⁴⁴ *Id.* at 377 (Book III).

⁴⁵ *See, e.g.*, *Turner Broadcasting Sys., Inc. v. FCC*, 114 S. Ct. 2445, 2456 (1994) ("Cable programmers and cable operators engage in and transmit speech, and they are entitled to the protection of the speech and press provisions of the First Amendment.").

find Homer praising such conduct and recommending it to children. Context was of no importance, neither the context of Achilles' conduct within the larger *Iliad*, nor, significantly, the context in which listeners heard the story. Whether read in a book, or recited for an audience, or (presumably) dramatized for television, the *Iliad* is intolerable rhetoric.

Toward the end of his indictment of poetry, Plato relents slightly.

[W]e would allow (poetry's) advocates who are not poets⁴⁶ but lovers of poetry to plead her cause in prose without meter,⁴⁷ and show that she is not only delightful but beneficial to orderly government and all the life of man. And we shall listen benevolently, for it will be clear gain for us if it can be shown that she bestows not only pleasure but benefit.⁴⁸

B. Aristotle (384-322 B.C.)

Aristotle, in the *Poetics*, demolished Plato's premise and, hence, his conclusions. First, to Aristotle, the essence of art is not speech, but structure, with the poet not a "teller," but a "maker," of tales.⁴⁹ Second, people experience art at a remove, enjoying in imitation something they would abhor first hand.⁵⁰ Third, the effect of drama is vicarious, summoning up such emotions as pity and fear, but also giving such feelings release in a healthy catharsis.⁵¹ As Plato's conclusions about the effect of art flow from his premise that art is speech, so Aristotle's flow from his premise that art is structure.

At the outset, Aristotle dismisses Plato's fears for children's virtue by looking, not at an ideal city, but at the world. From childhood, people have an instinct for imitation. They like imitating and hearing stories and seeing pictures of things that would be frightful if they saw them in life, "obscene beasts, for instance, and corpses."⁵² Significantly, not only do they enjoy representations of things they recognize

⁴⁶ This is because poets can make things seem true that are actually false.

⁴⁷ This is because poetry with meter appeals to the emotions.

⁴⁸ PLATO, *supra* note 27, at 607d (Book X).

⁴⁹ ARISTOTLE, *POETICS*, ix, 9 (W. Hamilton Fyfe, trans., Harvard Univ. Press 1960).

⁵⁰ *Id.* at iv, 4.

⁵¹ *Id.* at vi, 2.

⁵² *Id.* at iv, 4.

from life, but of things they have never seen. In that case, the pleasure comes not from the accuracy of the imitation but from the technique, *i.e.*, the structure.⁵³ Thus (*pace* abstract impressionism), a random scribble of beautiful colors is not as pleasing as a structured outline in black and white.⁵⁴

It follows that the soul of a story is not its message, as Plato has it, but its structure, *i.e.*, its plot.⁵⁵ Tragedy, for instance, is a representation of an action *by means of* speech (here, Aristotle uses Plato's word *logos*),⁵⁶ just as a portrait is a representation by means of paint. The pleasure it gives comes, not from the characters or the speech, but from its magnitude and its ordered arrangement of parts.⁵⁷ In tragedy, what satisfies the feelings are such recurrent plot elements as reversal, discovery, and calamity.⁵⁸

Tragic calamity, when it happens on stage, does not arouse the same feelings such calamity arouses in life. Because it is structure, not speech, tragedy happens at a remove. The emotions it arouses are, on the one hand, fear, as such a calamity might arouse in life, but on the other hand pity, the objectification of the artistic subject that distances the spectator and allows her to feel another's pain while sitting painlessly in a theater seat or, by extension, painlessly at home watching TV. This subjective-fear-objective-pity reaction is the famous Aristotelian "healthy catharsis" of the emotions⁵⁹ that is often seen as the central point of the *Poetics*.

But it would be a mistake to think that, to Aristotle, catharsis was the point of tragedy, for that would lump him with Plato as a moralist. To Aristotle, unlike to Plato, art was neither therapeutic nor moral. People don't go to *Oedipus Rex* to have their fear and pity purged. Nor do they leave having learned that if they kill their fathers and sleep with their mothers they'll go blind.⁶⁰ Art produces its own

⁵³ *Id.* at iv, 6.

⁵⁴ *Id.* at vi, 21.

⁵⁵ *Id.* at vi, 12.

⁵⁶ *Id.* at v, 2.

⁵⁷ *Id.* at vii, 8.

⁵⁸ *Id.* at xi, 10.

⁵⁹ *Id.* at v, 3.

⁶⁰ If any ancient Greek researchers found any causal nexus between attendance at *Oedipus Rex* and a decline in parricide and incest, such studies are lost to history.

pleasure, which is distinct from any pleasure found in real life.⁶¹ Nor is art true or false. “That is not true,” is a charge that art defends by shrugging, “Maybe it should be.”⁶² Whether it is true-to-life is similarly irrelevant. “What is convincing though impossible should always be preferred to what is possible and unconvincing.”⁶³ The standard of what is correct in art has nothing to do with the standard of what is correct in life.⁶⁴

The burden of the *Poetics* is that art is content-neutral. Art neither recommends nor discourages any action in the real world. Its effect is to arouse and purge various emotions, making the artistic experience healthy and self-contained. Furthermore, it arouses these emotions not by what it says but by what it does: not through speech but through structure. It makes no difference what tragedy one is watching; what matters is that one is watching tragedy.

C. *Marshall McLuhan* (1911-1980)

Marshall McLuhan takes Aristotle the final step—and connects classical literary criticism to contemporary media and the *tertium quid* hypothesis—by pointing out that it makes no difference what TV show one is watching; what matters is that one is watching TV.

McLuhan argues that the content (or “message”) of any medium or technology is the change that it introduces into human affairs. The content, for instance, of the railway or the airplane is not the freight or passengers they carry but the new cities, the new kinds of work and leisure, the social hubs and spokes, the redefinition of time and space they create.⁶⁵ The medium, famously, is the message. Thinking, therefore, of television in terms of traditional “content,” *i.e.*, programming, is “the numb stance of a technological idiot.”⁶⁶

⁶¹ *Id.* at xxiii, 2.

⁶² *Id.* at xxv, 11.

⁶³ *Id.* at xxiv, 19.

⁶⁴ *Id.* at xxv, 4.

⁶⁵ MARSHALL MCLUHAN, *UNDERSTANDING MEDIA: THE EXTENSIONS OF MAN* 8 (McGraw-Hill, 1965) (1964).

⁶⁶ *Id.* at 18.

Since program content does not matter, TV's effects, according to McLuhan, are rooted in the nature of the TV image. Unlike print, film, and radio, which have high information content and supply a complete image ("hot" media), the TV image is low-definition and diffuse. It is broken up and pixelated like a mosaic, offering the viewer far fewer dots per second than film.⁶⁷ It is "cool" and participatory, requiring the viewer to supply the missing dots, as if unconsciously reassembling a pointillist painting.⁶⁸ It is two- rather than three-dimensional, lacking depth and demanding close-ups. A TV show projected on a movie screen is overwhelming and claustrophobic, huge faces in constant close-up. "The close-up that in the movie is used for shock is, on TV, quite a casual thing. And whereas a glossy photo the size of a TV screen would show a dozen faces in adequate detail, a dozen faces on the TV screen are only a blur."⁶⁹ With film, the viewer is a bystander in the interplay of projector and screen. With TV, the viewer is a participant. The image is projected on him. He is the screen.⁷⁰

For lack of observing so central an aspect of the TV image, the critics of program "contents" have talked nonsense about "TV violence." . . . Once these censors become aware that in all cases "the medium is the message" or the basic source of effects, they would turn to suppression of media as such, instead of seeking "content" control. Their current assumption that content or programming is the factor that influences outlook and action is derived from the book medium, with its sharp cleavage between form and content.⁷¹

McLuhan criticizes one of the early studies of TV and violence⁷² by pointing out that its methodology was "literary." That is, it measured such things as viewing time, program preferences, vocabulary counts, and other indicia having nothing to do with the

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 317.

⁷⁰ *Id.* at 313.

⁷¹ *Id.* at 314.

⁷² WILBUR SCHRAMM ET AL., TELEVISION IN THE LIVES OF OUR CHILDREN (1961).

peculiar nature of TV.⁷³ “Program and content analysis offer no clues to the “magic of media.”⁷⁴ TV is less a purveyor of programs than an extension of society’s nervous system, which explains why people keep radios and TVs on even when nobody is listening or watching.⁷⁵ The violence study, therefore, had nothing of value to report. The same methodology, gauging the impact of printing in the 16th century, would have myopically tabulated people’s book choices while missing the entire Renaissance of individualism and nationalism that print was spawning.⁷⁶ What people were reading didn’t matter; what mattered was that they were reading.

Since what matters today is that people are watching TV, McLuhan attempts a medium-specific, content-free analysis of the TV child. What she takes from TV is a thirst for involvement in depth that makes traditional cultural goals seem unreal, irrelevant, and anemic. TV’s mosaic image supplies an all-inclusive *nowness*⁷⁷ in young lives that has nothing to do with programming and would be the same if the programs consisted entirely of high culture.⁷⁸

It is, of course, our job not only to understand this change but to exploit it for its pedagogical richness. The TV child expects involvement and doesn’t want a specialist job in the future. He does want a role and a deep commitment to his society The TV child cannot see ahead because he wants involvement, and he cannot accept a fragmentary and merely visualized goal or destiny in learning or in life.⁷⁹

McLuhan thus foresaw a generation of TV children who would grow up impatient with the step-by-step processes of normal maturing and who would instead demand instant participation in the world and society, the same participation that they get from television. McLuhan saw these children through rosy 1960’s glasses, predicting that TV children would demand involvement in the world, that the world

⁷³ MCLUHAN, *supra* note 65, at 19.

⁷⁴ *Id.* at 20.

⁷⁵ *Id.* at 68.

⁷⁶ *Id.* at 19.

⁷⁷ *Id.* at 335.

⁷⁸ *Id.*

⁷⁹ *Id.*

would yield, and that the world would improve. What he saw, in fact, was the first generation of TV children: students rising from their TV sets and demanding an instant end to the Vietnam war, instant participation in university decisions, an instant end to racism, sexism and other social injustices.

Had he instead donned 1990's jaundiced spectacles, he might have seen the dark side of TV's effects: a generation of children mesmerized by the tube to the exclusion of other, socializing play; children with 11-hour-a-day⁸⁰ TV habits that leave little time for cards, jumprope, hide-and-seek, and other social contact; a TV-induced expectation of nowness that leads unsocialized children, when their desires are not gratified, to lash out violently.

What McLuhan did foresee was that print-bound legislators would try to mitigate TV's effects by censoring TV content.⁸¹ He considered such solutions doomed to failure. Any solution to the "TV violence problem" must either restrict the hours that children watch television or take the nature of TV-watching into account. McLuhan suggests a response to TV that involves a corresponding depth or structural approach to the existing literary and visual world, *i.e.*, some kind of synthesis of old and new technology.⁸² The best way to combat TV-induced violence would be to combine the participatory qualities of solitary TV watching with the participatory qualities of socialized play.

III. THE RESEARCH

Researchers, when they have found a connection between TV and violence, have plumped for a Platonic, rather than an Aristotelian or McLuhanesque explanation. There are three basic categories of research: committee reports, laboratory research, and field studies.

⁸⁰ Telecommunications Act of 1996 § 551(a)(3).

⁸¹ See *supra* note 71 and accompanying text.

⁸² MCLUHAN, *supra* note 65, at 71.

A. *Committee Reports*

These are the sorts of studies cited by Congress in its Committee Reports on the Telecommunications Act.⁸³ These studies, however, do not represent original research, but rather compilations of existing research. For example, the National Institute of Mental Health 1982 report⁸⁴ merely solicited position papers and commissioned one review of existing literature.⁸⁵ Similarly, Congressional hearings tend to focus, not on original research, but on witnesses who will confirm the committee's predisposition.⁸⁶ Therefore, committee reports should be set aside, in favor of looking at the original research.⁸⁷

⁸³ See, e.g., H.R. REP. No. 204, 104th Cong., 1st Sess. 224 (Dissenting views) (1995). The Report cites the Surgeon General's Report (1972), the National Institute of Mental Health Report (1982), the Carnegie Council on Adolescent Development (1992), the American Medical Association (1976, 1982, 1993), and the Centers for Disease Control (1993).

⁸⁴ See *id.*

⁸⁵ Freedman, *supra* note 10, at 836.

⁸⁶ See, e.g., *V-Chip Gets Prominence in Senate Hearing on Televised Violence*, COMMUNICATIONS DAILY, July 13, 1995 ("Nearly all witnesses at hearing favored V-chip proposal, as broadcast and cable executives weren't invited to testify.").

⁸⁷ Congressional findings have a similarly second-hand pedigree. It is most likely from secondary sources that Congress made its findings in Section 551 of the new Telecommunications Act:

(a) FINDINGS. The Congress makes the following findings:

(1) Television influences children's perception of the values and behavior that are common and acceptable in society.

(2) Television station operators, cable television system operators, and video programmers should follow practices in connection with video programming that take into consideration that television broadcast and cable programming has established a uniquely pervasive presence in the lives of American children.

(3) The average American child is exposed to 25 hours of television each week and some children are exposed to as much as 11 hours of television a day.

(4) Studies have shown that children exposed to violent video programming at a young age have a higher tendency for violent and aggressive behavior later in life than children not so exposed, and that children exposed to violent video programming are prone to assume that acts of violence are acceptable behavior.

B. *Laboratory Research*

Laboratory studies follow a pattern. Typically, children are put in small rooms, where some are shown a violent TV show and some a nonviolent one. Researchers then measure the level of aggression in the two groups. The measuring takes various forms: asking children whether they want to pop a balloon;⁸⁸ giving them Bobo dolls to knock over⁸⁹ or other toys to fight with⁹⁰ (Bobo dolls bounce back up when hit: What self-respecting child would *not* knock one over?); letting them hit a live person in a clown suit;⁹¹ giving electric shocks to a live, pretended victim via a "Buss aggression

(5) Children in the United States are, on average, exposed to an estimated 8,000 murders and 100,000 acts of violence on television by the time the child completes elementary school.

(6) Studies indicate that children are affected by the pervasiveness and casual treatment of sexual material on television, eroding the ability of parents to develop responsible attitudes and behavior in their children.

(7) Parents express grave concern over violent and sexual video programming and strongly support technology that would give them greater control to block video programming in the home that they consider harmful to their children.

(8) There is a compelling governmental interest in empowering parents to limit the negative influences of video programming that is harmful to children.

(9) Providing parents with timely information about the nature of upcoming video programming and with the technological tools that allow them easily to block violent, sexual, or other programming that they believe harmful to their children is a nonintrusive and narrowly tailored means of achieving that compelling governmental interest.

Telecommunications Act of 1996 § 551(a).

⁸⁸ Paul Mussen & Eldred Rutherford, *Effects of Aggressive Cartoons on Children's Aggressive Play*, 62 J. ABNORMAL & SOC. PSYCHOL. 461-4 (Mar. 1961).

⁸⁹ See, e.g., Albert Bandura et al., *Imitation of Film Mediated Aggressive Models*, 66 J. ABNORMAL & SOC. PSYCHOL. 3-11 (Jan. 1963); Albert Bandura et al., *Transmission of Aggression through Imitation of Aggressive Models*, 63 J. ABNORMAL & SOC. PSYCHOL. 575-82 (Nov. 1961).

⁹⁰ ROBERT M. LIEBERT ET AL., *THE EARLY WINDOW, EFFECTS OF TELEVISION ON CHILDREN AND YOUTH*, 78 (1973).

⁹¹ See Bandura, et al., *Transmission*, *supra* note 89.

machine”;⁹² or simply measuring changed levels of verbal aggression.⁹³ Typically, children recently exposed to violent television exhibit more violent behavior.

Another sort of laboratory study, which is a hybrid with the field studies discussed below, takes actual subjects in the field and restricts their TV diet. One such study⁹⁴ fed one group of teenage boys a diet of “Bonanza,” “I Spy,” and “The Rifleman,” and a peer group “Andy Williams,” “Gomer Pyle,” and “Petticoat Junction.” The results proved equivocal except for one unexpected act of aggression: The boys on the nonviolent diet rebelled, threatening the researchers with violence if their bland fare continued. Relenting, the researchers recategorized “Batman” as nonviolent and showed it to the rebels. A few hours of shoot-'em-ups calmed them down, and the experiment ground inconclusively on.

The foregoing study was designed to test the “catharsis theory,” derived from Aristotle.⁹⁵ If tragedy’s “healthy catharsis” of pity and fear extends to other artistic structures, the theory goes, then watching or reading about violence might satisfy children’s taste for it, reducing their violent propensities.⁹⁶ Exposure to mild erotica, for instance, has been found to soothe men’s general, everyday annoyance levels.⁹⁷ However, neither the botched “Batman” study nor others by the same authors⁹⁸ have solved the conundrum of the catharsis theory. That is because it requires proving a negative, *i.e.*, that children who watch violent TV do *not* turn as violent as they otherwise might.

Laboratory violence studies suffer from two common faults that nullify them. First, the researchers condone the violent conduct they

⁹² Robert J. Liebert & Robert A. Baron, *Short Term Effects of Televised Aggression on Children's Aggressive Behavior*, in 2 NAT'L INST. OF MENTAL HEALTH, U.S. DEP'T OF HEW, TELEVISION AND SOCIAL BEHAVIOR 181, 185 (1972).

⁹³ HANS J. EYSENK & DAVID NIAS, SEX, VIOLENCE, AND THE MEDIA, 154 (1978).

⁹⁴ SEYMOUR FESHBACH & ROBERT SINGER, TELEVISION AND AGGRESSION (1971), reported in MATTHEW L. SPITZER, SEVEN DIRTY WORDS AND SIX OTHER STORIES, 105-6 (1986).

⁹⁵ *Supra* note 59.

⁹⁶ SPITZER, *supra* note 94, at 96.

⁹⁷ John Ramirez, et al., *Effects of Erotica on Retaliatory Behavior as a Function of Level of Prior Provocation*, 43 J. PERSONALITY & SOC. PSYCH. 399 (1980).

⁹⁸ See SPITZER, *supra* note 94, at 96 n.9.

are studying. They encourage, or at least allow, children to hit the Bobo or the clown, to “shock” the pretended victim or steal each other’s toys. But the kind of violence that people want to prevent by censoring violent TV is not approved violence, but unapproved, antisocial violence—“the purposeful, illegal infliction of pain for personal gain or gratification that is intended to harm the victim and is accomplished in spite of societal sanctions against it.”⁹⁹ None of the laboratory research studied such violence, that is, violence that breaks the laboratory’s (*i.e.*, society’s) rules. Nobody has suggested that the goal of censoring TV is to wipe out all aggression, including “good” aggression like football, self-defense, wood-chopping, or quarry-blasting. The goal is to isolate and excise “bad,” antisocial aggression. Otherwise we would be in danger of becoming the race of “chestless men” that Nietzsche feared arising at the end of history.¹⁰⁰ Until laboratory experiments learn to measure only “bad” aggression, they are slender reeds on which to rest social policy.

The second flaw in laboratory research is that, if the violence hypothesis is correct and children are affected by TV violence from an early age, then the very children being studied are already saturated with TV violence from previous exposure. Therefore, researchers examining these children are only measuring the effects of one more instance of TV violence piled on ten thousand others. As one critic puts it,

[I]n the experimental situation we have children of six or eight or ten years of age, all or most of whom have watched television for years[,] been exposed to a great many scenes of violence . . . [and], according to the causal theory, been greatly affected by this exposure.

. . . [W]hy in the world would one more exposure have any effect? . . . [T]here is no possible reason why one more violent television show is going to have a noticeable effect on aggression when kids have watched thousands of them before. Life does not work that way¹⁰¹

⁹⁹ Krattenmaker & Powe, *supra* note 7.

¹⁰⁰ FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* 300 (1992).

¹⁰¹ Freedman, *supra* note 10, at 840.

Since, therefore, the violence hypothesis holds that watching thousands of violent acts over a long childhood is the cause of aggression, it is necessary to turn to long-term field studies for any proper results.

C. *Field Studies*

Field studies are of three types. First are studies that subject children in the field to a controlled, laboratory-style situation, like the controlled "Batman" experiment noted above,¹⁰² and a similar study that, over four weeks, showed children either violent programs ("Batman" and "Superman" cartoons) or pro-social programs ("Mister Rogers' Neighborhood").¹⁰³ Second are studies that, over a longer time, measure children's reaction to television in an uncontrolled environment (in the wild, as it were).¹⁰⁴ Third are studies that measure the level of violence in societies before and after the introduction of TV.¹⁰⁵ Of the three types, only the third seems to confirm the violence hypothesis. As I shall show, however, these last studies equally and alternatively confirm the *tertium quid* content-neutral hypothesis, with significant implications for policy-makers.

The Friedrich & Stein study showed violent cartoons to some children and prosocial programs to others over four weeks. The results depend on whom one believes. To John Murray,¹⁰⁶ "[t]he overall results indicated that children who were judged to be initially somewhat aggressive became significantly more so Moreover, the children who had viewed the prosocial diet . . . were less aggressive, more cooperative and more willing to share with other children."

To Jonathan Freedman,¹⁰⁷ however,

¹⁰² FESHBACH & SINGER, *supra* note 94.

¹⁰³ Friedrich & Stein, *supra* note 9.

¹⁰⁴ See, e.g., W. BELSON, TELEVISION VIOLENCE AND THE ADOLESCENT BOY (1978); TELEVISION AND THE AGGRESSIVE CHILD: A CROSS-NATIONAL COMPARISON (L. Rowell Huesmann & Leonard D. Eron eds. 1986).

¹⁰⁵ See, e.g., Williams, Centrewall, *supra* note 17.

¹⁰⁶ Murray, *supra* note 10, at 816.

¹⁰⁷ Freedman, *supra* note 10, at 850.

[This] is not an accurate description [E]ven combining physical and verbal aggression, there was no difference between the kids who had watched "Batman" and those who had watched "Mister Rogers" [except] a very weak interaction which showed that the low aggressive children became more aggressive after a neutral film than after a violent one, but that the high aggressive children became less less [sic] aggressive after a violent film than after a neutral one. My own reading of this study is that it should be considered evidence against the causal hypothesis, not in favor of it.

Despite the data's susceptibility to opposite readings, the Murray view has entered the official canon.¹⁰⁸ The 1982 NIMH report¹⁰⁹ lists the Friedrich & Stein study as showing the harmful effects of TV violence, as does a recent meta-study of the research.¹¹⁰ For purposes of the violence hypothesis, however, neither it nor the Feshbach & Singer study,¹¹¹ nor any other "controlled" field study yields unequivocal results that isolate TV content, as opposed to TV watching, as causing violence.

The second group of studies are those that observe children's natural TV watching at home. The Huesmann and Eron¹¹² study is one of the best and most famous, studying children's viewing habits and associated aggressive tendencies over three years in five different countries: the U.S., Finland, Poland, Australia and Israel. At the outset, the authors had great hopes for their study. Unfortunately, they had great preconceptions about it as well. They had concluded as early as 1975 "that the issue of whether media violence affects aggression had been solved,"¹¹³ and that all that was required was a sort of mopping-up operation to identify the exact mechanism by which the cause created the effect, something along the lines of smoking and cancer. "Just as not every person who smokes cigarettes gets lung cancer, not every child who watches violence behaves more

¹⁰⁸ *Id.* at 843.

¹⁰⁹ *Supra* note 10.

¹¹⁰ Wendy Wood, et al., *Effects of Media Violence on Viewers' Aggression in Unconstrained Social Interaction*, 109 *PSYCHOL. BULL.* 371-83 (1991).

¹¹¹ FESHBACH & SINGER, *supra* note 94.

¹¹² *Supra* note 104.

¹¹³ *Id.* at xi.

aggressively.”¹¹⁴ A more inflammatory statement of the study’s prejudices is hard to imagine.

Given the bias that informed the study’s conception, its conclusion bears careful reading:

More aggressive children watch more violence in the media in almost every country. Of that there can be no doubt. The common covariant of TV habits and aggression with social class, gender, age, IQ and cultural factors contributes to this relation but does not explain it. Although there is much less consistency across countries in the longitudinal data suggesting causal relations, substantial evidence was derived that supports a bidirectional learning model. The child learns aggressive scripts for behavior from observing media violence, and aggressive behavior on the part of the child produces environmental and cognitive reactions that make it more probable the child will watch more violence. Unpopularity and poor school achievement are two examples of such intervening variables. Other cognitive characteristics appear to increase the likelihood that the child will encode, retain, and later employ observed aggressive scripts. For example, identifying more with TV actors appears to have such an effect. Aggressive fantasies may increase the probability of aggressive scripts being retained because the fantasies serve as rehearsals of the scripts. Aggressive fantasies are more prevalent in children who behave more aggressively and watch more media violence.¹¹⁵

This conclusion is thoroughly hedged. Most notably, it admits that “longitudinal data suggesting causal relations” is inconsistent, leaving undecided the question of whether children’s viewing habits cause their aggression or vice-versa. Instead, cause and effect chase each other through a “bidirectional” labyrinth of “intervening variables” such as “unpopularity,” “poor school achievement,” “social class, gender, age, IQ,” and a propensity for “aggressive fantasies.” The last sentence of the paragraph simply restates the first in different words, with “TV causes violence” caught in its throat.

The reason for the hedging is that the data simply refuse to do what the sponsors hoped. Furthermore, the five national studies kept throwing off anomalies that defy explanation. For instance, in the U.S. study,

¹¹⁴ *Id.* at xii.

¹¹⁵ *Id.* at 256.

[T]he lower the parents' education and socioeconomic status, the more aggressive was the child, the more the child watched television and television violence, the more the child believed that violent shows "tell about life like it is," and the more the child identified with TV characters. . . . However . . . *the more highly educated and higher status parents watched slightly more TV violence than the more poorly educated parents.* . . . At the same time, higher achieving children and children of more educated parents themselves watch less violence and watch TV less regularly than other children.¹¹⁶

The reasons, say the authors, "cannot be tested with the current data, and there are probably alternative explanations."¹¹⁷

Other countries revealed other surprises. In Finland, the greatest indicator for aggression in boys, though not girls, seemed to be a combination of parental rejection and viewing TV violence. Low social class, on the other hand, seemed to make Finnish girls, but not Finnish boys, more aggressive.¹¹⁸ In Poland, though TV violence viewing "increased systematically during this period," overall child aggressiveness actually decreased in both boys and girls.¹¹⁹ In Australia, "parents' violent television viewing was related to later aggression, whereas children's violent television viewing was not."¹²⁰

The most startling results, even for the authors of the study, were in Israel. There, "a significant positive relation was found between television violence viewing and amount of aggressive behavior. In fact, the magnitude of the correlation was higher for Israeli city children than for children in any other country." What the authors found startling was "that such results should occur in a country in which only a few violent programs are broadcast late at night each week and in which the environment contains regular examples of real salient violence to which the child is exposed."¹²¹

¹¹⁶ *Id.* at 70-72.

¹¹⁷ *Id.* at 72.

¹¹⁸ *Id.* at 110.

¹¹⁹ *Id.* at 152-53.

¹²⁰ *Id.* at 189.

¹²¹ *Id.* at 234.

As Jonathan Freedman¹²² points out, the main lesson from the Huesmann and Eron study is that the authors had better take another look at their Israeli numbers.¹²³ Beyond that, despite the authors' strained efforts to make the link, it offers little support for the violence hypothesis.

Finally, two studies measure the violence levels in societies before and after the introduction of TV. In the first,¹²⁴ according to John P. Murray:

[Researchers] had the opportunity to evaluate the impact of televised violence on the behavior of children before and after the introduction of television in a Canadian community. They compared children living in the before/after television town with their peers in two other towns where television was well established. The three towns were called Notel (no television reception), Unitel (receiving only the government-owned commercial channel - CBC), and Multitel (receiving CBC and three American commercial networks - ABC, CBS and NBC). Children in all three towns were evaluated at Time 1, when Notel did not receive a television signal, and again at Time 2, after Notel had television for 2 years (it had received the government channel - CBC). Results indicated that there were no differences across the three towns at Time 1, but at Time 2 the children from the former Notel town were significantly more aggressive, both physically and verbally, than the children in the Unitel or Multitel towns. Moreover, only children in the Notel town manifested any significant increase in physical and verbal aggression from Time 1 to Time 2.¹²⁵

In a second study,¹²⁶ Dr. Brandon Centrewall examined the rise in homicide rates after the introduction of TV in the United States and Canada in 1945 and white South Africa in 1975. Controlling for factors such as firearms, drug abuse, alcohol, race, and urban population shifts, Centrewall found a remarkable similarity. In the U.S. and Canada, homicide rates increased at roughly the same rate as TV ownership, 100 percent from 1945 to 1970. In white South

¹²² Freedman, *supra* note 10, at 850.

¹²³ Professor Michael Botein, of New York Law School, echoes that the Israel results are "surprising, since there was only *one* TV channel in urban Israel at the time." (comment to the author).

¹²⁴ Williams, *supra* note 17.

¹²⁵ Murray, *supra* note 10, at 816-17.

¹²⁶ Centrewall, *supra* note 17.

Africa, the homicide rate had been declining in those years. However, with the introduction of TV, the murder rate among white South Africans shot up 130 percent by 1983. Controlling for many other factors, therefore, it seems likely that TV is substantially responsible for doubling the murder rate in three countries. Furthermore, the geometric progression of the number of murders over time, with few earlier and more later, seems to indicate that the people killing as adults are those who watched TV as children.

Both studies offer strong evidence for the violence hypothesis. The only trouble is that neither study controlled for program content. Nobody knows what those murderers were watching on TV or if they were watching TV at all.¹²⁷ Therefore, those who say that the two studies support the thesis that watching violent TV causes violence are making a leap that the evidence does not warrant. The only thing the evidence can be said to support even marginally is that TV, regardless of content, seems to increase societal violence—my *tertium quid* hypothesis. Constitutionally, given the availability of the *tertium quid* hypothesis, policy-makers are required to accept and implement it over a hypothesis that allows them to censor content.

IV. CONSTITUTIONALITY

The major constitutional selling point for the V-chip, for both President Clinton¹²⁸ and the congressional sponsors,¹²⁹ is that it involves not government censorship, but private choice. That is, the government will not censor or otherwise dictate the content of TV

¹²⁷ “[W]hen I hear about the latest psychopath who has shot his mother, machine-gunned his coworkers, raped his daughter, or slashed a prostitute[,] I notice that such men are more likely to have read the Bible than pornography” SUSIE BRIGHT, *The Prime of Miss Kitty MacKinnon*, in SUSIE BRIGHT’S *SEXWISE*, 123-24 (1995).

¹²⁸ “[The] V-chip . . . would allow parents to decide which—not only which channels their children could not watch, but within channels, to block certain programming. This is not censorship, this is parental responsibility.” President Bill Clinton, POTUS and VPOTUS Remarks at Family Values Conf., (July 10, 1995) in 1995 WL 405439, at *9.

¹²⁹ “The amendment that I am offering provides for choice chips in new television sets so that parents can decide what comes into their homes—not the Government; parents.” 141 CONG. REC. S8248, 104th Cong., 1st Sess. (daily ed. June 13, 1995) (remarks of Sen. Conrad).

shows but will merely require that they be rated for sexuality, violence, or indecency.¹³⁰ The rating will be done by the industry. Only if “distributors of video programming” fail to establish “voluntary rules” within a year,¹³¹ will a government “advisory committee”¹³² step in and do it. The industry is now field-testing its rating system. If it proves acceptable, government, at least in theory, will have had nothing to do with controlling the content of speech.

Similarly, at least in theory, the V-chip itself is content-neutral and non-normative. If activated, it would simply read the rating and block shows that are rated for violence.¹³³ Thus the decision of how to rate shows rests with the industry, and the decision whether or not to let the rated shows into the home rests with consumers, not the government.

The reason to pass the buck of responsibility from Congress to the industry to parents is to sidestep the First Amendment. Restrictions on speech violate the First Amendment only if they emanate from state action;¹³⁴ they receive “the most exacting scrutiny” only if they restrict the content (as opposed to the time, place and manner) of speech.¹³⁵ By having the industry place a descriptive label on television programs, and by having a disinterested computer chip read the label, both Congress and the President hope to claim, first, that government is not doing anything, and second, that the only people restricting the content of what children can watch are their parents.

There is no way, however, for the V-chip legislation to avoid being called state action. After all, *somebody* is labeling the content of television programs, *somebody* is installing a computer chip that will read the ratings, and *somebody* is telling the chip which programs to block. None of this would be happening had Congress not passed a law. As the Supreme Court recently ruled, in overturning a lower court decision that found no state action in legislation permitting cable

¹³⁰ Telecommunications Act of 1996 § 551(b)(1).

¹³¹ *Id.* at § 551(e)(1)(A).

¹³² *Id.*

¹³³ That is, shows rated TV-PG and above. *See supra*, note 6.

¹³⁴ *Boos v. Barry*, 485 U.S. 312, 321 (1988).

¹³⁵ *Turner Broadcasting Sys. v. FCC*, 512 U.S. ___, 114 S.Ct. 2445, 2459 (1994).

operators to ban indecent programming, "Although the court said that it found no 'state action,' it could not have meant that phrase literally, for, of course, petitioners attack (as 'abridging . . . speech') a congressional statute—which, by definition, is an Act of 'Congress.'" ¹³⁶

The constitutional question that next arises is whether state action requiring that programs be labeled is a content-based regulation. Of course it is. Congress may certainly require that the contents of products be disclosed, including package labels on food, drugs, alcohol and cigarettes.¹³⁷ However, such labels are not content-neutral. "Mandating speech that a speaker would not otherwise make necessarily alters the content of the speech."¹³⁸ A violent program with a label is different from a violent program without one, and both the Telecommunications Act and the industry TV rating system make it explicit that violent programming is one of their targets.¹³⁹ Labels above TV-G, therefore, are the equivalent of the government's saying "Viewing this program may be hazardous to children's health." A further constitutional danger is that, to escape the label and the stigma, programmers might bend over too far backwards, soft-pedaling their programming to slip below the TV-G line. The Supreme Court has consistently warned of the "chilling effect" such government disapproval can have on constitutionally-protected speech.¹⁴⁰

Therefore the question of whether violent TV programs really are a threat to children's health becomes the pivot on which the V-chip scheme's constitutionality turns. Once a regulation is found to involve state action restricting the content of speech, the government "must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and

¹³⁶ *Denver Area Educ. Telecommunications Consortium Inc. v. FCC*, 116 S. Ct. 2374, 2382 (1996).

¹³⁷ Sylvia E. White, *Labeling Violence: How Useful Are Labels and How Far Can We Go?* Paper Presented at International Conference on Violence in the Media, St. John's University, Oct. 3-4, 1994.

¹³⁸ *Riley v. National Fed'n for the Blind*, 487 U.S. 781, 795 (1988).

¹³⁹ See *supra*, notes 6 and 87.

¹⁴⁰ See, e.g., *Dennis v. United States*, 341 U.S. 494, 549 (1951) (Frankfurter, J., concurring) (stating that it is "self-delusion" to think that the government can stigmatize some speech without deterring legitimate speech from treading close to the stigmatized line).

material way.”¹⁴¹ In other words, state action must be narrowly tailored.

How narrowly tailored depends on the medium. The Supreme Court has consistently held that differences in the characteristics of media justify differences in First Amendment standards applied to them.¹⁴² If violent content-labeling were applied to a newspaper, for instance, it would clearly be unconstitutional.¹⁴³ If it were applied to a public speech that advocated violence, as Platonists accuse violent TV programming of doing, it would only be permissible if the speech was both intended to and likely to incite immediate violence.¹⁴⁴ Under both these standards, such a broad mandate to label TV content as the Telecommunications Act allows would be unconstitutional.

However, the Supreme Court has always given Congress a greater latitude to restrict broadcast TV than other speech, resting its decisions on the unique physical limitations of the broadcast medium, in particular the scarcity of frequencies.¹⁴⁵ For broadcast TV, any restriction must be narrowly tailored, not to a compelling, but only to a “substantial” government interest and use the least restrictive means readily available.¹⁴⁶ This standard has let the Supreme Court, for instance, uphold the “Fairness Doctrine,” requiring a right of reply to broadcast editorials, where such a requirement would not survive the strict scrutiny applied to newspaper editorials.¹⁴⁷

The question, therefore, is whether the government-mandated rating code can survive the limited scrutiny reserved for broadcast TV. One of the requirements of this standard is that Congress show a causal nexus between the harm it finds and the remedy it proposes. That is, “even if the hazards at which the restriction is aimed are sufficiently substantial, the restriction must be crafted with sufficient precision to remedy those dangers.”¹⁴⁸ Congress’ solution will not

¹⁴¹ *Turner Broadcasting*, 114 S. Ct. at 2470.

¹⁴² *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 367 (1969).

¹⁴³ *See Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974).

¹⁴⁴ *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

¹⁴⁵ *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 401 (1969).

¹⁴⁶ *See FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 395 (1984).

¹⁴⁷ Compare *Miami Herald*, *supra* note 143, with *Red Lion*, *supra* note 145.

¹⁴⁸ *FCC v. League of Women Voters*, 468 U.S. at 398-99.

stand unless it can show that its proposed remedy is more than speculative,¹⁴⁹ that it will do something to alleviate the harm,¹⁵⁰ and that in doing so it uses the "least restrictive means readily available,"¹⁵¹ and restricts only so much speech as is necessary.¹⁵²

It is here that the *tertium quid* hypothesis enters the equation. The data tracing a connection between TV and violent behavior, explained by Congress as emanating from the violent content of TV programs, is at least equally explainable by the *tertium quid* hypothesis as emanating from the nature of TV *watching* or the TV image itself. Therefore, Congress cannot prove that its proposed content-labeling scheme is anything more than speculative. It has a fifty percent chance of being right, the same odds as a coin toss. The "sacrifice of First Amendment protection for so speculative a gain is not warranted."¹⁵³

Cable TV, unlike broadcasting, is not subject to spectrum scarcity. Therefore, regulations affecting the content of cable programs must survive strict scrutiny, *i.e.*, be narrowly tailored to a compelling government interest and use the least restrictive means to reach the goal.¹⁵⁴ *A fortiori*, any regulation that fails the limited scrutiny of broadcast regulation would fail the strict scrutiny required of cable regulations.

V. A PROPOSED SOLUTION

As noted above¹⁵⁵ the *tertium quid* hypothesis potentially invites more, rather than less, government restriction of TV. If it is, in fact, true that too much TV-watching by children, to the exclusion of other socializing play, leads to a violent adult populace, it follows that the

¹⁴⁹ *Id.* at 399.

¹⁵⁰ *Id.* at 391.

¹⁵¹ *Id.* at 395.

¹⁵² *Id.*

¹⁵³ *Id.* at 397.

¹⁵⁴ *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989).

¹⁵⁵ *Supra* at Part II.C.

government has a compelling interest¹⁵⁶ in restricting not the content of TV, but the amount of TV that children may watch.¹⁵⁷ This invites the paradoxical conclusion from accepting the *tertium quid* hypothesis that merely restricting violent content is far less narrowly tailored than would be limiting the total amount of what children can watch.

Such a drastic solution is both unlikely and unwarranted, however. It is unlikely because it would be politically impossible and practically unworkable. Furthermore, Congress has always shied from imposing content restrictions on television. Even its enthusiasm for violence restrictions was late in coming and is even more tepid than its weak support of sexual restrictions.¹⁵⁸ For instance, both Senators Simon¹⁵⁹ and Dole,¹⁶⁰ who have made speeches against violent TV and movies, spoke against the Senate bill and voted against its V-chip provision. In the House, the V-chip provision was neither in the original bill¹⁶¹ nor in the manager's amendment¹⁶² brought to the House floor. It arrived at the last moment by a parliamentary subterfuge and passed narrowly.¹⁶³ Therefore, a Congress that would pass legislation restricting children's viewing hours is a fantasy.¹⁶⁴

¹⁵⁶ The Supreme Court has found a compelling state interest in helping parents to raise their children, *Ginsberg v. New York*, 390 U.S. 629, 639 (1968), and an independent state interest in the well-being of minors, *New York v. Ferber*, 458 U.S. 747, 756 (1982).

¹⁵⁷ Malcolm Gladwell, *Cheap Thrills: There's more to TV than V. There's also T.*, THE NEW YORKER, Jan. 20, 1997, at 7-8 (fearing that parents, lulled by the V-chip into ignoring *what* their children are watching, will also ignore *how much* their children are watching). In fact, Gladwell manages, in two pages, to deliver the essence of the current article.

¹⁵⁸ Section 16(a) of the Public Telecommunications Act of 1992, 47 U.S.C. §303 (1992), forbids indecent broadcasts from 6 a.m. to midnight. The restriction was upheld in *Action for Children's Television v. FCC*, 58 F.3d 654 (D.C. Cir. 1995), *cert. denied*, 116 S. Ct. 701 (1996).

¹⁵⁹ 141 CONG. REC. S8247 (daily ed. June 13, 1995) (statement of Sen. Simon).

¹⁶⁰ 141 CONG. REC. S8248 (daily ed. June 13, 1995) (statement of Sen. Dole).

¹⁶¹ 141 CONG. REC. H8426-44 (daily ed. Aug. 4, 1995).

¹⁶² 141 CONG. REC. H8444-51 (daily ed. Aug. 4, 1995).

¹⁶³ 141 CONG. REC. H8504 (daily ed. Aug. 4, 1995).

¹⁶⁴ The constituency for banning sex is different from the constituency for banning violence. Conservatives, the congressional majority, dislike sex but don't mind violence; liberals, the minority, dislike violence but don't mind sex. (One wonders, parenthetically, how conservatives got to be the majority, disliking sex as they do. Probably because liberals,

The *tertium quid* hypothesis does invite the following solution, however, that makes congressional restrictions unwarranted as well as unlikely. If the hypothesis is correct, then the problem with TV is not its violent content but its cool, absorbing, exclusive, antisocial nature.¹⁶⁵ Children engaged in too much TV become disengaged from society and unable to solve problems in an interpersonal way. A solution is to make TV-watching replicate some of the socializing qualities of human play by taking advantage of the peculiar nature of TV as a medium.

Interactive TV seemed a few years ago to be the most likely solution. It would have required children to engage the screen in a physically, rather than a psychically, active way by letting them control the outcome of TV stories with a remote control. Though not the same thing as playing with another child or other children, interactive TV would at least require a child to demand responses from the machine rather than being at its command. For this reason, the interactive play of a child with a computer is more socializing than his TV watching.¹⁶⁶ Congress should therefore encourage, in whatever way possible, the development of interactive TV. Requiring instead that the industry spend thousands of hours and dollars rating its TV shows for content is a step in the wrong direction. Unfortunately, experiments in interactive television, which were all the rage a few years ago, have slowly disappeared.¹⁶⁷

In the meantime, Congress should encourage shows that contain an interactive component or at least get children off the couch. Throughout the anti-violence literature, "Mr. Rogers' Neighborhood" and "Sesame Street" keep cropping up as good TV, as opposed to the

who do like sex, also like birth control and abortion. Also, probably because conservatives don't really dislike sex; they just dislike it when the wrong people do it. (Thanks to Prof. Michael Botein of New York Law School for the last insight.) Furthermore, there is no assurance that liberals beget liberals and conservatives beget conservatives. The reverse is more likely the case. (Final insight thanks to Jeffrey Cunard.))

¹⁶⁵ See MCLUHAN, *supra* notes 67-71.

¹⁶⁶ See Meyer, *supra* note 14.

¹⁶⁷ See, e.g., Denise Caruso, *The Puzzle of Making the Internet into a Competitive Broadcast Medium*, N.Y. TIMES, Feb. 10, 1997, at D5. *But see*, Zenith's Internet TV Plans, N.Y. TIMES, Jan. 9, 1997, at D4 ("Zenith said it planned to offer Internet television products with interactive capabilities based on software from Network Computer, Inc.").

violence of "Batman" and "Bonanza." It has been assumed that these shows are good because they show people cooperating rather than fighting. Looked at differently, however, "Mr. Rogers' Neighborhood," "Sesame Street," and even "Barney" have a content that is unrelated to the lack of violence in their scripts. That is, all three shows demand interaction. Mr. Rogers asks questions directly to the camera, inviting answers, even nodding and smiling as if in response to unseen viewers' replies. "Barney" contains singalongs. "Sesame Street" virtually requires that child viewers count along with the TV characters. In all three cases, the content is not the benign behavior that occurs on-screen but the interaction between the on-screen characters and the young minds onto whom (following McLuhan) they are being projected. According to the *tertium quid* hypothesis, this kind of interactivity breaks the mesmerizing quality of the TV image and brings TV-watching closer to socializing play.

There is already on the books the Children's Television Act,¹⁶⁸ which has recently been revised to require that broadcasters provide three hours per week of "educational and informational" programs for children. There is no definition of this programming, and, as noted above,¹⁶⁹ broadcasters do and will continue to circumvent it by recycling old fare. What Congress should do is to refine the Act further, defining "educational and informational" programs as specifically interactive. An experiment of this sort would be more narrowly tailored than a government rating system, would encourage experimentation in programming rather than chilling speech, and might actually do something to stop violence in a way the V-chip surely will not.¹⁷⁰

¹⁶⁸ See *supra* note 22.

¹⁶⁹ See *supra* note 25 and accompanying text.

¹⁷⁰ By the time Congress gets around to adopting this solution it may be moot. Interactive TV or Internet TV may then be a reality. Furthermore, High Definition Television (HDTV) may also be readily available, profoundly changing the nature of the TV image by filling in the scattered dots. McLuhan noted that stepping up the TV image to movie level would so change the medium that it would not be television any more. MCLUHAN, *supra* note 65, at 313.

VI. CONCLUSION

Though the violence hypothesis has won wide acceptance, the alternate hypothesis that excess TV-watching of any sort is at fault seems to account equally well for the connection between TV-watching and social violence. Unfortunately, if this *tertium quid* hypothesis is true, it carries the unappetizing baggage that might let Congress restrict, not the content, but the *amount* of television children may watch.

Neither restriction is necessary. The point of the *tertium quid* hypothesis is not that it is true, but that Congress is on shaky constitutional grounds legislating as if the violence hypothesis were true while an alternate hypothesis explains the same data. Given this philosophical stalemate, Congress' only recourse is to leave television alone and face up to the real sources of societal violence—poverty and ignorance—that the Constitution empowers it to do something about.