






Active Audiences in the Regulation of the Audiovisual Media. Consumer versus Citizen in Spain and Mexico

Las audiencias activas en la regulación de los medios: La dialéctica consumidor-ciudadano en España y México

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ABSTRACT

Media audience has been conceived, traditionally, as a group of citizens or consumers. In the Media environment, citizens exercise their communication rights and participate in the public sphere; consumers, on the other hand, consume audiovisual products in a specific market. In the citizen perspective, audiovisual communication serves the public interest and democratic values; in the consumer one, it serves private and individual interests. This paper studies the main academic positions referred to the dichotomy citizen – consumer, attending particularly to the investigations of Peter Dahlgren on relations between Media and Democracy; of Richard Collins, on Audiovisual Policy; and of Sonia Livingstone on public sphere, audience participation and Media governance. After this theoretical approach, the paper analyzes the presence of these conceptions of the audience in the audiovisual legal systems of two countries: Spain and Mexico. These two countries are modifying their legal framework. As a conclusion, it appears that the different conceptions of the audience –as consumers or as citizens– are in a close relationship with the different ways of Media control and accountability.

RESUMEN

Dos han sido los prismas bajo los que se ha concebido tradicionalmente a la audiencia: como ciudadanos, que ante los mensajes de los medios ejercen sus derechos comunicativos y participan en la construcción de una opinión pública libre; o como consumidores o usuarios, que actúan dentro de un mercado de productos audiovisuales. Mientras que la primera perspectiva atiende a la comunicación audiovisual valorando su interés público y su influencia en la construcción de un espacio público de debate y discusión, la segunda atiende a la dimensión más privada e individual de la comunicación audiovisual. En el presente trabajo se abordan las principales posiciones doctrinales sobre dicha dicotomía consumidor-ciudadano, analizando para ello la obra de los autores que más atención han dedicado a estas cuestiones en el ámbito europeo, y en especial los trabajos de Peter Dahlgren sobre las relaciones entre medios y democracia, los de Richard Collins sobre política audiovisual, y los vinculados a Sonia Livingstone sobre esfera pública, participación de las audiencias y gobernanza de los medios. Realizada esta aproximación teórica, se analiza la presencia de dichas concepciones de la audiencia en dos ordenamientos jurídicos audiovisuales que están experimentando modificaciones sustanciales: el español y el mexicano. Como conclusión, se constata que las distintas concepciones de la audiencia están en profunda relación con la forma de concebir el control de los medios y la rendición de cuentas de sus operadores frente al público.

KEYWORDS | PALABRAS CLAVE

Audience, citizen, consumer, accountability, participation, broadcasting, democracy, regulation.
Audiencia, ciudadano, consumidor, control, participación, radiotelevisión, democracia, regulación.

1. Introduction

The terms chosen to designate those who are in front of a television reveal not only a theoretical choice, but also a certain commitment to a socio-political perspective (Perez-Tornero, 2005: 251) which has an impact on the regulation and control of the media (Lunt & Livingstone, 2012: 7). Two of the most widespread concepts of the viewer—in constant dialectical tension—are «consumer» and «citizen». These concepts, referring to the users of the media, have jumped in Europe from the field of academic reflection and communication theory into actual policies and appear jointly for the first time in British audiovisual legislation. The Communications Act of 2003 states that the purpose of the activity of the regulator Ofcom is to serve both the interests of citizens, who are defined as «all members of the public in the United Kingdom» (Section 3.14), and the interests of consumers (Section 3.5).

This article addresses the nature and the scope of the concepts of «citizen» and «consumer» as well as the enduring discussions around them, using as a basis the work of the authors who have devoted more attention to these issues within Europe, particularly Peter Dahlgren's work on the relationship between media and democracy (1995; 2002; 2009; 2010; 2011), Richard Collins on audiovisual policy (2007; 2012) and Sonia Livingstone on the public sphere, audience participation, and media governance (Couldry, Livingstone & Markham, 2006; Lunt & Livingstone, 2012). After completing this theoretical approach, we examine how these concepts are present in the audiovisual policies in Spain and Mexico, two countries with different traditions that are facing profound reforms in their audiovisual legislation.

2. Spectators, audience, and the public: in search of an audiovisual citizenship

The notion that citizenship is linked to the audiovisual field comes directly from Habermas's theory of the public sphere as the ideal space in which the exchange of information on issues of common interest takes place and allows for, when operating properly, the free formation of public opinion. Therefore, the existence of a true public sphere requires the coincidence in both space and time, of people talking with people; hence, the relevance of the media as mediators of social interactions in a mass society (Habermas, 1991). This citizen assembly informs and is informed, discusses and deliberates on issues that are of general interest, particularly of political interest. A condition for the public sphere is not only the existence of a com-

mon space, but also, as a central requirement, the existence of rational discussion, critical speech, and active reasoning by the public (Dahlgren, 1995: 9). Public and citizenship become, in this context, concepts which are linked within the field of public spheres to the extent that citizens are able to share issues of common interest in a mediated «public connection» (Couldry, Livingstone & Markham, 2006: 34-35). Therefore, a public sphere exists when the audience no longer behaves simply as a mere addition of individual receivers, but as co-producers of dialogue and political action (Dahlgren, 1995: 122).

The problem with the theorizations on deliberative democracy and the participation and engagement of publics, is its confrontation with the indifference and apathy of citizens—which is linked in part to structural factors (Dahlgren, 2009: 6). If dialogue is a constitutive element of the notion of publics as «morally and functionally vital for democracy» (Dahlgren, 2002), in order for individuals to become citizens within the scope of the public sphere, and by extension, collectively create a democratic culture that works, there has to be a series of structural prerequisites that Dahlgren groups under the term of «civic culture» (2002; 2009; 2011). These structural prerequisites include democratic skills which can be acquired through education and converted into participatory habits inherent for democracy.

Young people have a special facility for interaction within the Internet (Jenkins & al., 2009; Rheingold, 2008), but the possibilities offered by it for a participatory democracy reach the whole of society. Indeed, the Internet allows for the dynamics of cooperation and social interaction, «smart mobs», in Rheingold's expression (2004), capable of overthrowing unjust governments and building democratic power, though we cannot forget that these smart-mobs technologies can also entail new threats to freedom, quality of life, and human dignity. In this context in which the progressive «audienciation» (Orozco, 2002) of the Internet can lead to the emergence of a mirage of participation when there is only amplified consumption (Orozco, Navarro, Garcia-Matilla, 2012), an education specific for the development of democratic participatory skills is revealed as a crucial issue of our time.

Insofar that the objective of media education is not to guarantee professional efficiency based on the development of certain skills but to enhance «personal excellence» through the development of personal autonomy and the social and cultural commitment of citizens (Ferrés & Piscitelli, 2012), the need for a participatory edu-communication (Rheingold & Weeks,

2012) that serves the dual role of citizens as consumers and producers of contents (prosumers) within the mediated public sphere, connects with the classical theory of the civic virtues. In this sense, the idea of «achieved citizenship» is currently expressed as a mode of social agency (Dahlgren, 2009: 57-79). Citizens are active only if there is a favorable cultural environment beyond the institutions that define democracy, and if these structures and processes are populated by real people with democratic inclinations (Dahlgren, 2009: 104).

Notions of citizenship and public are particularly present in discourses about public media, which find their legitimation in the service of the public interest – a concept that has received surprisingly scarce attention (Lunt & Livingstone, 2010: 36; Feintuck & Varney, 2006: 75). The concept of «public value» as a public media management principle, in particular, is present in the British regulation of the BBC, and assumes the necessary collaboration of both providers and users and their participation in the processes of democratic control of the media (Collins, 2007: 24).

3. The citizen-consumer dialectic

For Dahlgren (1995:148; 2010: 26-29), the concepts of consumer and citizen are incompatible, while for Collins (2012) and Lunt and Livingstone (2012), they can coexist together to the extent that it is possible to achieve a balance between economic regulation, consumer protection, and the promotion of citizens' interests. In fact, these last two dimensions appear united in the concept of «citizen-consumer» as adopted by Tony Blair's New Labour Party in the United Kingdom. The terminology integrates values such as transparency, citizen consultation, accountability, empowerment of individuals, and freedom of choice (Lunt & Livingstone, 2012: 43). This conciliation is consistent with neo-liberal positions which are promoting a new concept of participation, more associated with the capabilities of individual subjects who are responsible in a given market, than with their condition as members of the citizenry in a political community (Ong, 2006; Shah & al., 2012).

Although the term «consumer» is present in the Telecommunications Act 1984, it is enshrined as a guiding principle of British audiovisual policy since the

Peacock Report (1986) which introduced the notion of «consumer sovereignty» in the audiovisual field. The term was conceptualized by Potter (1988) as an active user who is able to achieve the accountability of institutions in an efficient market (Collins, 2012: 221), and is in contrast to the previous doctrine based on the idea of viewers and listeners as vulnerable citizens in need of protection, and consequently, less active in demanding accountability. It is precisely on this issue of accountability where the main differences between the concepts of consumer and citizen have been developed in the United Kingdom in recent decades.

Collins and Sujon (2007: 33-52) discuss the evolution of the concept of accountability in the United

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Kingdom using for their purposes the classic distinction of Hirschman (1970) of the three ways through which stakeholders hold institutions accountable: «exit», «loyalty» and «voice». These three pathways act in different ways according to the type of media, their ownership, and the obligations of public service imposed and lead to three different media governance systems. Thus, for audiovisual company service providers who are subject to licence, such as the operators of cable and satellite, accountability is accomplished by leaving (exit): the user acts on his disagreement by terminating the service.

A second group includes private channels for whom «stakeholders», in this case viewers, can choose between approving the programming and staying as loyal viewers (loyalty), or leaving (exit). And, with public channels from which citizens cannot «exit» (that is, the system continues to operate regardless whether users remain or leave), viewers can demand accountability by making their voice heard (voice) either directly or indirectly.

This approach adopts a view of users of the media which is closer to the concept of consumer than to citizen, although the authors warn that, despite the rivalry between the two concepts, there is no incompatibility

between the values systems that they represent. In general terms, it can be said that consumers make broadcasters accountable through their ability to disconnect (exit), while citizens make their voice heard on issues that affect them (voice). The distinction between the concepts of the «audiovisual consumer» and «audiovisual citizen», Collins concludes, is located fundamentally in the mechanisms of accountability: when we speak of the audiovisual citizen, the mechanisms of control (participation bodies, procedures for

For example, the first paragraph of the Preamble to the ERTV maintains that radio and television broadcasting are an «essential vehicle for information and political participation of citizens, for the formation of public opinion, and for cooperation with the education system (...).» While the Preamble for the LTP begins with a similar statement: «The goals of such public broadcasting service must be, above all, to satisfy the interest of the citizens and to contribute to the pluralism of information, the free public opinion-forming and the dissemination of the culture».

With the idea of promoting citizen participation in the contents and programming of the public broadcasting service, ERTV foresaw the creation of advisory councils for RNE, RCE and TVE, with a plural composition of social agents, and functions of information and consultation. Each advisory council had to be convened at least every six months.

During the mid-1990s, Spain incorporated into its legal system the Television without Frontiers Directive

through Law 25/1994, of 12 July. This transposition was the first step in a process that would gradually turn the vision of radio and television into a more economic and commercial perspective. It is not surprising that these perspectives in European legislation led to a commercialization of the Spanish audiovisual sector, inasmuch as that the European Union has fundamentally served for the harmonization of markets and the free movement of goods, people, and services between member countries (Crusafón, 1998: 83). The Preamble of Law 15/1994 still remains in its commitment to the narrative of rights and citizen discourse, and refrains from characterizing television as a business, or an industry. However, Article 1, upon describing the purpose of the Act, shows evidence that its center of gravity has already shifted toward a more commercialized conception of broadcasting.

Around the turn of the this century, the broadcasting sector underwent profound changes in Spain, marked by the emergence of commercial platforms of satellite TV, pay-per-view TV, and the arrival of digital terrestrial television and Internet television. The legislature, reacting to technological advances, pat-

The advance and consolidation of the concept of consumer and user coincides with a more precise identification of mechanisms by which consumers can make their voices heard, participating in the audiovisual field and demanding, as citizens, proper accountability. The evolution of the Spanish regulation is typically neo-liberal, abandoning the interventionist and collective discourse while stressing the leading role and responsibility of the individual viewer.

complaints, etc.) reside outside the citizen himself, while in the case of the «audiovisual consumer», the control resides within. (Collins 2012: 40). It should be emphasized that consumers' mechanisms of accountability are merely individual (exit), while the citizens' mechanisms have a collective dimension, linked to public debate (voice). In any case, accountability and audience participation are two sides of the same coin: user participation is an obligatory element of media accountability systems (Baldi & Hasebrink, 2007).

4. Spain: more nominal than real participatory rights

How are both concepts of consumer and citizen reflected in the audiovisual policies developed in Spain in recent years? Two stages can be distinguished. The first large regulatory stage was set into Law 4/1980, on 10 January, «Spanish Radio and Television Statute» (ERTV), and Law 10/1988, of 3 May, of «Private Television» (LTP). From the first paragraphs in their preambles, their vision of broadcasting as a form of communication substantially linked with the construction of an active and participatory citizenship is clearly stated.

ched up the audiovisual legal framework, by means of a dispersed, prolix, and occasionally chaotic, set of rules. (García-Castillejo, 2012: 81-82).

Also at the dawn of this century, public broadcasters –both state and regional– reached a point of collapse. After years of drifting towards dubiously fair competition with private operators, they were met with a huge economic deficit, a very limited audience, negligible credibility, and virtually no identity (Azurmendi, 2007: 269). Thus, the debate on the reform of state public television was opened, a debate that ended with the approval of Law 17/2006, of 5 June, of the Corporación Radio Televisión Española (LCRTVE).

A pioneering document for the reforms needed in the Spanish audiovisual sector was the «Report on the Reform of the Public Media», prepared by the so-called «Committee of Wise Men», and published in February, 2005. The entire report is a determined advocacy of public radio and television service conceived as an instrument of democratic participation, and a guarantee of communication rights. In several passages, the report explicitly contrasts the concept of the citizen with the mercantilist conception of radio and television. For example, the preamble solemnly declares that the reform project is oriented to ensure the provision of «public service, (as) a communicative function, addressed to citizens and not to mere consumers of certain products, and whose benefit is social and not just commercial or economic» (p.10).

Turning to the text of Law 17/2006, the terminology used continues in the semantic fields of the cited report, linked to citizenship, pluralism, audience participation, and the rights of viewers. Nevertheless, the Act does not incorporate all the recommendations made by the «Committee of Wise Men» (Bustamante, 2013). Taking into account that the Act regulates public television, and aims to correct the commercial excesses committed in the past, the chosen perspective is natural. However, more than six years after its entry into force, the mechanisms for social participation and control foreseen in the Act are still unapproved.

A large proportion of the advisory councils have been suppressed (Fuente-Cobo, 2013: 72); the right to access has become a purely token reality (Bustamante, 2010); the designation of the governing bodies of public television has been modified, reverting back to the hands of the Government. Ultimately, it can be stated that the drift of the Spanish public broadcasting service brings us back to stages prior to the approval of Law 17/2006 (Bustamante, 2013: 299).

Regarding private television, Law 17/2010, of 31

March, General de la Comunicación Audiovisual (LGCA), derogated a set of laws –up to twelve– applicable to private television, and established a new regulatory landscape. The first lines of its Preamble leave no doubt as to the inspiration and the discourse that underlies its articles. They are dominated by purely commercial concepts: industry, sector, economy, supply, demand, commerce, business, development, etc. Its economistic tone is diametrically opposite to Law 17/2006, which constitutes a curious dichotomy between the two rules both approved under the governments of President Rodríguez Zapatero (Zallo, 2010: 17).

Despite this mercantilist and «consumerist» perspective, LGCA carefully regulates the rights of the public, included in the first part of the Act (Articles 4 to 9). Regarding public participation, Article 9 recognizes the right of the public to request the adjustment of audiovisual content to the law, exercising their «right to participation in the control of audiovisual content». Another mention of citizen participation appears in Article 22.1º LGCA, which defines radio and television communication services as «services of general interest, since these services are connected with fundamental rights, and constitute a vehicle of their participation in political and social life».

Perhaps the most interesting chapter of the LGCA, in which the dialectic of rights and participation of the audience takes a more prominent role, is its Section V, dedicated to the creation of the «National Council for Audiovisual Media» (CEMA). In particular, Article 45 LGCA entrusts to CEMA the mission of ensuring respect for the rights of the public, among which are participation, transparency, pluralism, and the fulfillment of the mission of public service. Also at the service of citizen participation, Article 51 LGCA of the Law envisaged the creation of an advisory committee of the CEMA as an organ for audience participation and for advising the Audiovisual Committee. Thus, we can say that the LGCA opened the door to a more participative and active audience in the field of television.

However, the LGCA has been modified several times since coming into force. The most important of these reforms has been implemented by Law 3/2013, of 4 June, setting up the «Spanish Commission for the Markets and Competition» (CNMC), repealing all of Section V of the LGCA dedicated to CEMA. Based on arguments of budgetary austerity, the Government has promoted the LGCA modification by assigning CEMA's functions to a new macro-regulator, the CNMC.

This legal reform further tilts the balance even more towards the mercantilist conception of the

audiovisual sector and of the audience, as the name of the new Commission itself obviously proves (Linde & al., 2013:246). Article 1.2° of Ley 3/2013 designates the CNMC as intended to «ensure, preserve, and promote the functioning, transparency and the existence of effective competition in all markets and sectors, for the benefit of the consumers and users». All references to the participation of the audience disappear from the Law, with the exception of Article 30, which provides that in the development of some rules, the CNMC will give audience to those interested, and will promote citizen participation. What is not clear is how it will provide for such participation, especially when the Advisory Committee foreseen in the LGCA –the main body of citizen participation in the audiovisual environment– disappears in the new regulation, a movement which has been interpreted as clearly contractive (Fuente-Cobo, 2013).

Perhaps the only positive point of this reform is to be found in Article 37 of the Ley 3/2013, under the title «Publicity of Proceedings». This article requires the publication of CNMC's «provisions, resolutions, agreements, and reports that are handed down in the application of laws, once having notified interested parties». So far, the opacity with which the Administration has handled its own records has been entirely unacceptable. Publishing these records is an inalienable premise for the citizenry to know that the law is applied, and therefore, can participate in content control.

Considering the above, two observations can be made. Firstly, regarding the underlying discourses in the Laws, as television and radio sector expands allowing more and more operators, the vision of broadcasting as an economic sector gathers strength. At the same time, references to its importance to the robustness of democracy, to pluralism, and to citizen participation in public debate, are progressively reduced. Paradoxically, the advance and consolidation of the concept of consumer and user coincides with a more precise identification of mechanisms by which consumers can make their voices heard (voice) participating in the audiovisual field and demanding, as citizens, proper accountability. The evolution of the Spanish regulation is typically neo-liberal, abandoning the interventionist and collective discourse while stressing the leading role and responsibility of the individual viewer (Ong, 2007:4; Zallo, 2010).

The predominant concept in the new regulatory scenario, described in both Law 17/2006 and the LGCA, is closer to the consumer-citizen than to the passive spectator, valid in previous stages characteri-

zed by grandiloquent declarations of intentions without the correlative real forms of participation.

Once again Harvey (2005: 70) is correct in his diagnosis of the neoliberal state. In Spain, participatory mechanisms envisaged in both laws are backsliding or, quite simply, have not yet been effectively implemented. At the present time, the only way open for citizen participation is the complaint system, scarcely known about and poorly organized and resourced.

5. Mexico: between the rights of audiences and «realpolitik»

Mexico currently addresses one of the most far-reaching reforms in recent decades in the field of telecommunications, with global effects on communication rights. The project of reform, which resulted in the Pact for Mexico signed in 2012 by the country's three major political parties and the Federal Government, affects several articles of the Mexican Constitution, and is structured around six central points.

Among the six points that articulate this legal reform, the first stands out. Its objective is strengthening fundamental rights to freedom of expression, access to information, as well as certain rights of the telecommunication and broadcasting service users. It is noteworthy that this is the first time that the principle of general interest in the definition of telecommunications as a public service is incorporated into the Mexican legal system. This in turn, in a provision adding a new paragraph to Article 6 of the Constitution, gives the State the duty to ensure the principles of quality, plurality, universal coverage, networking, convergence, free access and continuity.

The proposed reform directly affects the close relationships that government and television corporations have, so far, maintained with obvious injury to the public. In 2000, the rise to power of a new party –the National Action Party– generated high expectations for change in the television universe, driven so far, in a tacit manner, by Grupo Televisa. Indeed, it was considered that the Ley Federal de Radio y Televisión (LFRT), existing since 1960, was obsolete and anachronistic.

In 2001 the Government Secretary inaugurated a roundtable for dialogue in relation to the review of the Media Law. Its purpose was apparently democratic, while intending to lay the groundwork for a balanced reform of radio and television that would involve all sectors of society (Esteinou & Alva, 2009: 12). However, in October 2002, the then President Fox announced a new regulation for the LFRT, which, in the opinion of academics and citizens, marginalized all

the citizens' proposals which they had worked on in the reform process started in 2000. Academic groups joined together to counter the presidential proposition and formulated the «Citizen Proposal for the Reform of LFRT», which was later accepted by the Senate and was legally presented in December 2002.

After a long public debate, in March 2003 a Report was finally approved regarding the draft decree of the LFRT reform initiative. It was clearly contrary to the citizen proposal in 2002, reinforcing the position of the government party, and subordinating the Mexican audiovisual system to the interests of private operators even more (Reyes Montes, 2007). The Report was so unpopular that it was given the name «Televisa Law». The LFRT reform was finally enacted by President Fox and published in April 2006, just a few months before the election campaign. There are several studies that analyze all those events and political confrontations, all of which could be summarized with the title of «Televisa Law and the Struggle for Power in Mexico» (Esteinou & Alva, 2009).

The telecommunications reform now being debated in Mexico contains enough elements to fuel optimism. However, this optimism should be moderated: the history of rights and liberties in Mexico reveals the complexity of the relationship between realpolitik and the rights of citizens. In this case, the political realism appears in reform when the user rights are ambiguously and paradoxically counterbalanced against the freedoms of economic agents. This dichotomy, between the freedoms of economic agents and the protection that the State grants the audiences does nothing but reaffirm the power of the media companies despite the proposed text that literally proclaims the following: «The Law shall establish the rights of the telecommunications users, the rights of the audience, as well as their protection mechanisms» (Fraction VI, Part B, Article 6 of the Constitution).

The reform process is still open, and it is too soon to predict how the inchoate reform will finally crystallize. It can privilege the audience and its rights, or the current status quo, by protecting business interests. In any case, the proposed constitutional formulation represents a landmark by recognizing that audiences need to be protected against the powerful influence of

media corporations. What is clear is that the path to the establishment of concrete channels for citizen participation, in the control and development of audiovisual content, still has a long way to go.

6. Conclusions

The creation of a public space for citizen participation is of common concern in Europe. The principal approaches focus on the tension between the concepts of audience as citizenship, or as a group of consumers. A key concept in audience participation, tightly linked to the consumer conception, is control and accountability. In the audiovisual field, participation may be exercised in three different ways: by disconnection (exit), through loyalty (loyalty), or by opi-

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nion (voice). The first method is characteristic of the individual consumer; the last, for its contribution to public debate, is characteristic of the citizen.

The Spanish model has advanced from a formal recognition of the democratic dimension of the media (ERTV and LTP) towards a more mercantilist conception of audiovisual communication (Ley 15/1994 and LGCA). Paradoxically, while the audiovisual discourse has been focused on the market and audience conceived as consumers under a markedly liberal view, some forms of citizen participation have been launched following both the «exit» and «voice» models. Indeed, the scenario described by Ley 17/2006 and LGCA would have allowed, if implemented and developed, the construction of a complex and complete system of accountability and social participation. Unfortunately, these options have been ignored or rendered inactive. The current scenario resembles more closely the ERTV and the LTP framework, characterized by nominal and empty recognition of citi-

zens' rights, rather than the active citizen-consumer envisioned in the most recent standards.

As for Mexico, which is in a very early stage of effective communicative rights development, one wonders if the current reform process will conclude with a true recognition of audience protection, or will restore the existing powers where operators and political power have prominence, leaving the audience at their mercy, once again.

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