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The Logic of Comparison

Similarities and differences

The development of the comparative method is largely attributed to John Stuart Mill ([1882] 1973, Book 3: 388–406) who outlined the method of agreement, based on a comparison of different instances in which a phenomenon occurs. This method is to be distinguished from but is also complementary to the method of differences, e.g. the comparison of instances in which a phenomenon occurs with precisely similar instances, except the one sought-after, in which it does not occur, as well as the more complex method of concomitant variations. The latter goes beyond the observation of measuring either the presence or absence of operative variables by observing variations of the operative variables and correlating these to each other.¹ Although originally designed for the natural sciences, the outline of these methods is widely regarded as the rationale for the comparative method in social sciences (Kleinsteuber 2004: 65; Lijphart 1971: 688). The basic requirements for every comparison are, accordingly, degrees of similarities and differences. Both have to be taken into account. In the following I will briefly turn to some similarities and differences in legal traditions, politics and policies.

Both mass media and legal systems respond to developing social strains and conflicts in setting standards and norms, although the media is much more flexible in this regard (Alexander 1981: 21). A key distinction lies in legal histories between common law countries including, among others, the UK and US, and civil or code law countries that include Germany and France. Common law originated from England and was distributed throughout the British Empire. It forms the basis of
the legal systems for almost a third of the world’s population. On the other hand, German legal science became highly influential in the civil law world. Traditionally, in a historical sense, in the common law countries, ‘predictability and stability were provided by legal rules developed in cases and by the doctrine of *stare decisis*, while flexibility and growth were furnished by the rules of equity and the techniques for limiting and distinguishing precedent’ (Gledon et al. 2008: 149, italics in original). On the other hand, in the civil law tradition, ‘predictability and stability were assured by the “written law” of the codes, while flexibility and growth were permitted, internally, by general clauses tempering rigid rules, and externally by interpretation, made more supple by the absence of a formal rule of *stare decisis*’ (Gledon et al. 2008: 149, italics in original). The German civil codes of 1896 were highly technical, precise and featured a complicated structure. The system was designed and further developed so that, in theory, it could address ‘any given problem falling within its scope’ (Gledon et al. 2008: 41). This is in contrast to common law, as applied in the UK, which primarily deals with facts and concrete situations but exhibits a relative disdain for systematization and generalization. Instead, the UK approach relies on ‘a gradual, pragmatic development of practice’ (Prosser 2005: 94). The distinctive feature of the Romano-Germanic civil law tradition partially explains the prominent role of the Federal Constitutional Court and its legislative continuity in media and communications jurisdiction.

In the post-war period, the UK and Germany broadly share similar social and cultural values. Likewise, both countries underwent comparable societal transitions in the 1960s. What Hoggart and Morgan (1982: 64) label ‘the erosion of cohesion and unity’ found its equivalent in the German *68er Bewegung*, with both movements having clear implications for the media. Some democratic processes are fairly similar and also politically there are parallels. With one exception (1945–51) one-party Conservative administrations stayed in power in Britain from 1940 to 1964. On the other hand, the German Christian Democrats remained in office from 1949 to 1969, albeit with changing coalition partners. Conservative parties in both countries perceived public broadcasting as biased towards the left. Since the late 1970s in the UK and early 1980s in Germany, the Tories and Christian Democrats celebrated their second heyday before New Labour in 1997 in the UK, and the Social Democrats in 1998 in Germany, returned to office. In Germany, the SPD/Green Party coalition government lost the general election, held on 27 September 2009, and a CDU/CSU/FDP coalition government gained power. Likewise, in the UK, New Labour lost the general election held on 6 May 2010 and the