THE AMERICAN CONSTITUTION AND THE SPANISH CONSTITUTIONS OF 1812 AND 1978

Changes and structures explained through the uncertainty avoidance dimension and other cultural dimensions

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ABSTRACT

This paper analyses the American Constitution of 1787 and the Spanish Constitutions of 1812 and 1978. The objective is to analyse their structures and the changes they have undergone throughout history, to find differences that can be explained by the different cultural values that these two groups normally display. As will be seen, the cultural dimension of uncertainty avoidance, amongst others, is the one that has a greater presence in this study. The conclusions drawn from this study show that cultural groups change throughout history, but the cultural roots that they inherit seem to be present through the times.

RESUMEN

Este artículo analiza la Constitución americana de 1787 y las Constituciones españolas de 1812 y 1978. El objetivo es analizar sus estructuras y los cambios que han sufrido a lo largo de la historia, para encontrar diferencias que puedan explicarse por los diferentes valores culturales que estos dos grupos muestran normalmente. Como veremos, la dimensión cultural de evitación de la incertidumbre, entre otras, es la que tiene una mayor presencia aquí. Las conclusiones extraídas muestran que los grupos culturales cambian con los años, pero las raíces culturales que se van heredando parecen permanecer a lo largo del tiempo.

1. Introduction

1.1 Culture and the study of cultural traits in the constitutions

The eighteenth century was the cradle of the great revolutions of the Modern Age, and it was also the historical framework that witnessed the birth of texts as crucial as The Virginia Declaration of Rights in 1776 –key to the Independence of the United States– the Declaration of the Rights of Man and of the Citizen in 1789 –as a constitutive text of the French Revolution– or the Declaration of the Rights of Woman and of the Female Citizen in 1791 –based on the 1789 Declaration but focused on women's rights. All these texts were preceded by the British Magna Carta in 1689 and, in turn, were the basis on which The United Nations Universal Declaration of Human Rights was adopted in 1948.

This paper does not intend to analyse the historic value of these early texts, as this would be part of a historical, political, or sociological study. The value of these documents for this study is that they inspired the first Constitutions, such as the American one in 1787, and a few years later, the first Spanish one in 1812. These nations gave legal form to their aspirations and their cultural identities through them. In fact, it could be argued that cultural traits are one of the pillars on which these Constitutions were based, since these texts were created or modified to defend and preserve, among other things, cultural identities. Thus, it could also be said that cultural traits are part of the fundamental rights of each nation since they shape its identity, its past and its future. This study focuses on how the cultural traits of these two nations shaped their Constitutions, and also how they were reflected in these texts.

Countless studies analyse the political, social, historical or cultural aspects of the Spanish and American Constitutions. It is worth mentioning those studies dedicated to the so-called cultural rights, which refer to the right to have an education, the right to artistic creation, to participate in cultural life, etc. (Harvey, 1995), and which should not be confused with the cultural traits of each group.

Among the studies that analyse cultural aspects, it is worth mentioning those devoted to the family (Martínez López-Muñiz, 2000) or to the equality of citizens before economic, social, and cultural rights (Pérez Luño, 2007). In the case of the American Constitution, there are some examples of studies that connect it with the cultural dimension of individualism, since this is a cultural trait of which this cultural group is the highest representative (Hamden-Turner and Trompenaars, 1998, 2000; Hofstede, 1980, 1991; Hofstede et al., 2010). Thus, for example, the eminent individualist character of the United States is attributed to the historical conditions of its creation and its subsequent historical evolution (Arieli, 2013; Potter, 2019). Also, individualism in relation to family, sense of community or religion has also been analysed (Davenport and Lloyd, 2017; Lawler and Reinsch, 2019). In the case of the Spanish Constitutions, no studies on individualism have been found, since this is not a prominent cultural trait in this group. On the contrary, the Spanish cultural group is halfway between individualism and collectivism (Hamden-Turner and Trompenaars, 1998, 2000; Hofstede, 1980, 1991; Hofstede et al., 2010), being referred to as a tribal cultural group by Leaptrot (1996). The author of this study prefers the term tribal-collectivist since the word tribal raises suspicions in some readers.

Finally, the author's research has not found any other studies in which other cultural dimensions are related to the Constitutions analysed here, hence the importance of the contribution of this study.

1. 2. The birth of the so-called cultural dimensions

This study has compared the Constitution of the United States with the Spanish Constitutions of 1812 and 1978, to see if we could identify in their structures and the changes they have undergone, differences attributable to the different cultural features that these two cultures normally display. The cultural dimensions that have been found here are the dimension of identity, commonly known as individualism-collectivism (Hofstede, 1980, 1991; Hofstede et al., 2010), the power distance dimension (Hofstede, 1980, 1991; Hofstede et al., 2010), the diffuse versus specific dimension (Hamden-Turner and Trompenaars, 1998, 2000), and the uncertainty avoidance dimension (Hofstede, 1980, 1991; Hofstede et al., 2010). An important aspect of this study is the fact that it is analysing texts that were created when the concept of cultural dimension had not been born yet. For instance, in the case of the American Constitution and the Spanish Constitution of 1812, we are going to ascribe some characteristics to them and relate them to cultural dimensions that had not been taxonomically defined yet in the eighteenth and nineteenth centuries. Obviously, this does not mean that at that time there were no cultural differences between these two peoples, but rather the opposite since the current cultural globalization had not begun yet and the populations did not share customs and values as easily as they do nowadays. As a result, the differences were even more marked. Moreover, the fact that these cultures had not been the subject of quantitative analysis, as they were in the twentieth century, does not mean that they did not already possess the characteristic cultural traits that they exhibit nowadays. For example, no one can think that the United States was a collectivist culture in the eighteenth century, and, for some reason, it became the greatest representative of individualism later. The same can be applied to the rest of the cultural dimensions since they are normally linked

to one another. For example, in tribal-collectivist societies such as Spain, it is common to find also a medium-high power distance rate. Similarly, in individualist societies, it is common for the power distance index to be lower since the independence demanded by the individual does not fit with power hierarchies (Hofstede et al., 2010).

During the aforementioned centuries, anthropology had a predominantly ethnographic character, and it focused its efforts on describing different peoples and cultures, and not so much on trying to establish universals of cultural values. In other words, it was an *emic* treatment of culture (Goodenough, 1970; Harris, 1968; Pike, 1954), which described the customs, intentions, and motivations of the groups studied. On the contrary, there was no *etic* analysis of these cultural aspects and processes, in other words, no attempt was made to find objective and universal explanations that described certain cultural aspects and that could be applied to other groups in which the same cultural aspect appeared, even if it was in the opposite way. Actually, the concept of cultural dimension was first coined by Kluckhohn and Strodtbeck (1961, p. 10) as -a limited number of common human problems for which all peoples must at all times find some solution-. Each cultural group approaches these problems differently thus shaping their cultural identity. Kluckhohn and Strodtbeck described the six key dimensions that every individual of any culture must face in their relationship with nature and with the rest of human beings. These dimensions are the type of relationship that human beings establish with nature; the relationship of human beings with the rest of the individuals; the motivations of individuals to act; the assessment of human nature; the relationship of human beings with time; and the relationship of human beings with space. Later, during the seventies and eighties of the twentieth century, the paradigm of cultural dimensions was further developed with the contributions of Hall (1959), Hofstede, and Hampden-Turner and Trompenaars, among others. The last three authors are the ones chosen here to try to explain the differences found in the Constitutions analysed.

2. Hypothesis and methodology

This study was conducted from October to December 2021. It has a qualitative character, and not a quantitative one since it consists of a description and explanation of the differences found in the structures of the texts and the modifications they have undergone. These differences cannot be expressed with figures from which we can calculate percentages. These differences will be explained by the different cultural traits that these cultural groups have. Thus, the analysis followed a deductive method since the first step was to read the constitutional texts, in order to have a first general image of their structures. While reading them, a list of the main features was elaborated for each of the texts. The aim was to clearly visualise these features and try to connect them later with the cultural traits typical of each group. Then, a second reading of the Constitutions was carried out, and other lists of characteristics were drawn up again for each one. These two sets of lists were then compared, to verify that the differences found in the two readings were the same and that nothing relevant had been omitted. This method is called intracoder reliability, and it is used in studies where there is only one researcher, to double-check results, and to give consistency to the study (Frisby, 2017; Lamprianou, 2020; Van den Hoonaard, 2008).

Some aspects such as the different changes that each Constitution has undergone could not be extracted from mere reading and they are the result of separate research, supported by different academic articles. In these cases, an attempt has also been made to find an explanation based on the different cultural dimensions.

As for the choice of the Spanish texts, they were particularly chosen because they are the first and the last of all the Constitutions that have existed in this country. In addition, in the case of the Constitution of 1812, it was the closest in time to the United States one, so if there had been substantial differences with the 1978 Constitution, it would have been an aspect to analyse. However, as will be seen, apart from the differences in content –because of historical reasons– the two Spanish Constitutions are very similar in their structure. In this regard, aspects such as the abolition of slavery or at what age certain groups were allowed to vote have not been analysed. The reason is that, on the one hand, some of these issues are not present in the first Constitutions, and on the other hand, this would have required an analysis of a rather historical nature, which provided data on the social, political and historical background. However, this study wants to focus only on cultural dimensions and their reflection in the texts.

Finally, the hypothesis raised by this study is that the differences that these two cultural groups possess will be reflected in their Constitutions since the culture of a people is reflected in their participants' language and in the way they express themselves.

3. Results and discussion

These are the differences found in the Constitutions analysed:
1. Number of Constitutions in both countries.
2. The modifications that the Constitutions have undergone.
3. Length of the texts.
4. Organization of the contents of the texts.

The first difference that emerges in this study is the fact that we are analysing a single American Constitution but two Spanish Constitutions. Thus, the American Constitution was born in 1787 and since then it has been

modified according to the needs created by social and political circumstances. These changes have been made through Amendments and have continued down to the present times –the last one in 1992. On the contrary, the first Spanish Constitution was drafted in 1812 and the last one in 1978 –both of them analysed here. However, between the first and the last one, six other Constitutions were approved in Spain, specifically in 1834, 1837, 1845, 1869, 1876 and 1931. It could be argued that as changes arose in the country's political system, the existing Constitutions were discarded, and others were created later. Thus, Spain has had new texts on the occasion, for example, of the establishment of a republican system, such as the one of 1931, or the end of a dictatorship, such as the one of 1978. This fact could be explained by the cultural dimension of power distance (Hofstede, 1980, 1991; Hofstede et al., 2010). This dimension refers to how power is distributed in a cultural group and to what extent the participants of that culture accept that power is distributed equitably or not. In a society with a medium-high power distance index, such as the Spanish one, with 57 points on Hofstede's scale, hierarchies are very present in the structures of companies, in political parties and in organizations in general. However, this does not mean that people who have no power agree with that inequality in the distribution of power. In fact, one of the characteristic features of this type of societies is that when people perceive that something is not working, the best thing they can do is to change those who hold power, as well as the structures created by them, and to replace them with other people and other structures (Hofstede, 1980, 1991; Hofstede et al., 2010). In this case, the Constitutions in force were abrogated, and then others were approved later. As Pérez Royo (1987) points out, in Spain the Constitutions are not changed, but new ones are created. Perhaps, the reason why such an important number of Constitutions have been created and repealed in this country is due to the attributes that the cultural dimension of power distance brings to this cultural group.

By contrast, American culture has a medium-low power distance index, with 40 points on Hofstede's scale (Hofstede, 1980, 1991; Hofstede et al., 2010). This means that hierarchies and inequalities are even less accepted in this society and any manifestation of inequality of power is widely criticised. Besides, when there is a dissonance or a failure in the system, it is preferred to analyse the system and processes related to it, and if faults are found, instead of completely discarding the whole structure, they make any required changes so that performance and results improve. This trait can also be related to Hamden-Turner and Trompenaars' (1998, 2000) description of the diffuse versus specific dimension of the American culture. According to them, this culture is specific. In specific cultures, a lot of attention is paid to processes, looking for any aspect that can be improved or replaced to get an optimal result, but without changing the rest of the process. Applying this concept to the present study, we could say that, in the case of the American culture, amendments have been added to adapt the system to the social and political situation of the moment, without repealing the entire text, whereas in the Spanish case, when there have been changes of power, the existing Constitution has been dismissed and another one has been created later.

The second difference found in this study is the fact that the American Constitution has been modified up to twenty-seven times, the last one in 1992, while the Spanish constitution of 1812 was not modified at all and the 1978 one has only been modified twice, in 1992 and in 2011, and only mandated by the European Union (Álvarez Rodríguez, 2020; García Gestoso, 2012; Pérez Royo, 1987). In fact, the current Spanish Constitution has some articles that require important changes, such as those that refer to the Crown, and more specifically to the succession to the throne, as nowadays men are before women in the line of succession. Although the offspring of the current King of Spain are two daughters, these articles should be modified for the sake of coherence, in a society that continually promulgates values of gender equality. The cultural feature identified in this study that could explain the fact of the almost absence of modifications in the Spanish Constitutions is the cultural dimension of uncertainty avoidance (Hofstede, 1980, 1991; Hofstede et al., 2010). In this case, the Spanish cultural group has a high index in this dimension, with 86 points on Hofstede's scale, whereas the American group has 46 points on this scale. This cultural dimension describes the degree of acceptance that individuals have regarding the uncertainties and changes that arise throughout their lives and that the future hides. In a group with a high level of uncertainty avoidance such as the Spanish, individuals are generally more reluctant to changes and uncertainties, and they try to avoid them through the creation of procedures and regulations that limit and delimit them. Conversely, in a society with a medium-low uncertainty avoidance index, such as the American, people become less stressed by changes and accept them as challenges that test individual and group capabilities, and ultimately improve the entire system. In this case, Spanish society does not want to open a debate in Congress, to change these articles, and it could be explained by the uncertainty that would generate to open a process of changes in which other fronts and controversies would surely be opened, such as the permanence of the Monarchy, or the territorial framework of Spain (Martín, 2017). In addition, politicians at the top of the power hierarchy, regardless of their political colour, seem to disdain society's will for change, putting their political image and their permanence in power before social needs. This is also a descriptive feature of societies with a medium-high index of power distance, such as the Spanish group. That is, in these societies, it is more common for decisions to be made by those at the top of the hierarchical pyramid, without consulting those with less power (Hofstede, 1980, 1991; Hofstede et al., 2010). In this case, there is a kind of tacit agreement among those at the top of the political hierarchy not to deal with issues that could escalate into other conflicts and that could have a

political cost (Díaz Revorio, 2004; Martin, 2017). Therefore, it could be argued that it is not a question of political colour, but a cultural issue, since no matter which party is in power, none of them wants to open Pandora's box of changes. Some allege that this immobility could be explained by the fact that the 1978 Constitution was created after a dictatorship, and it is therefore considered a kind of sacred totem that protects the nation from fratricidal wars (Álvarez Rodríguez, 2020; García Gestoso, 2012; Martín, 20217; Pérez Royo, 1987). However, the truth is that the other Spanish Constitutions were created in different social and historical contexts, and they were not modified either. The reason is that this cultural trait, like so many others, was already present to some degree two centuries ago, so, the core of the matter has a cultural nature, bearing in mind that we also must consider historical, political and social aspects.

It should be noted that, obviously, new legislation that allows social, legal, or cultural advances is created, and this makes Spain a progressive and modern country. In other words, societies change throughout history, and for example, the fact that the American society was born and grew up under the cultural trait of individualism and today remains so does not imply that it has not changed in two centuries and a half. Nowadays, it is a different society from that of 1787, when its first Constitution was approved, although it still has the cultural feature of individualism in its cultural heritage.

The third difference to highlight concerns the length of the texts. The American Constitution has 7,591 words, distributed in seven articles, some of them divided into sections, and then twenty-seven amendments, also divided into sections. In the case of the Spanish Constitutions, the 1812 one has ten titles, with 384 articles and 17,548 words. The 1978 one has 17,376 words, with ten titles and 169 articles. As we can see, the two Spanish Constitutions are much more extensive than the American one. This fact could be explained again by the above-mentioned dimension of uncertainty avoidance (Hofstede, 1980, 1991; Hofstede et al., 2010). As we can see, the Spanish texts are much more descriptive and thorough, trying to deal with as many issues as possible and to leave all the relevant points defined and limited to the extent possible. This does not mean that the participants of the American culture are not concerned about the issues dealt with in the Spanish Constitutions, but it is not crucial that all of them are expressed and captured in the Constitution because they can be developed in other types of legal texts later. Cultures with a high level of uncertainty avoidance usually display a greater number of specific laws and regulations. For instance, this can be clearly seen in the presentations that companies make of themselves on web pages (Faisal et al., 2017; Pacheco Baldó, 2020). In the case of Spanish companies, we will find in most cases, documents with the internal regulations and official laws that the company promises to comply with, while in American companies we will only find references to their privacy policy, which also reminds us of its individualist character since privacy and independence of the individual are crucial to them.

The fourth difference to be highlighted is the one that concerns the organization of the contents of the Constitutions. This is perhaps the most difficult difference to analyse since we must distinguish between the reflection of the cultural dimensions in the structure of the contents and the historical reasons that produced changes in the contents, something that we do not deal with in this study. In the first place, in the American Constitution, most of the articles deal with the functioning of the legislative or representative chambers, the election of their members, their duties, the procedures they can carry out, such as the impeachment, the power to pass laws and taxes, the election and powers of the President, the judiciary, the creation of States, etc. The main feature of this structure is that it does not follow an order, nor are the articles defined or titled. Thus, the first article deals with legislative powers, the Congress, taxes, etc., the second with the President, the third with the judiciary, the fourth with the States, the fifth with amendments, and the sixth and seventh with the validity and ratification of the Constitution. From there on, amendments are added as required by relevant social and legal circumstances. Besides, it is only with the amendments that we can find aspects that most directly affect the rights of citizens, such as the right to bear arms, other legal rights, or social modifications such as the abolition of slavery, the nationalization of citizens, the right to vote, etc. In fact, the first ten amendments were collectively referred to as the Bill of Rights in 1791.

On the contrary, in the Spanish Constitutions, a more detailed and concise order can be seen at first glance. Thus, in the one of 1812, the titles in which the Constitution is divided are well-defined and have a name. They follow this order: the first title deals with the delimitation and definition of the Spanish nation, the second with the Spanish territories –the peninsula and those overseas– and their religion and government, the third with the legislative chambers, the fourth with the King, the fifth with the Courts and the administration of justice, the sixth with the internal government of the provinces, the seventh with contributions and taxes, the eighth with military forces, the ninth with public education and the tenth with the observance of the Constitution and how to amend it. Each of these titles has several chapters, which in turn are divided into up to a total of 384 articles. In the case of the Spanish Constitution of 1978, we have again a structure with clear divisions and subdivisions, each one with its name, and according to the following order: the first title deals with fundamental rights and duties, the second with the Crown, the third with the Congress and Senate, the fourth with government and administration, the fifth with the relations of the government with the Congress and Senate, the sixth with the judiciary, the seventh with economy and taxes, the eighth with territorial organization, the ninth with the Constitutional Court and the tenth

with the procedure to reform of the Constitution. Again, some of these titles are divided into chapters and each of them into articles, up to a total of 169.

An explanation for these clear differences in the organization of the contents could again be provided by the cultural dimension of uncertainty avoidance. As we can see, the Spanish Constitutions are much more detailed and structured than the American one, and this is explained by the need to create frameworks, regulations and social structures that are clear and that reduce ambiguity. For cultures with a high index in this dimension, such as the Spanish one, these structures created by their members provide confidence in the actions of individuals, reducing the uncertainty caused by new situations (Li and Harrison, 2008). That is, the more defined the potential challenges of the future, the more secure individuals feel. Again, it does not mean that for the American culture legality and order do not matter, but people do not have the need for their Constitution to parcel out and define so exhaustively all the legal, political and social frameworks.

4. Conclusions

As for the initial hypothesis suggested, it has been possible to verify that the different cultural features of the American and Spanish groups are reflected in the Constitutions that these societies have created. The main differences have been found in the following aspects: the number of Constitutions in both countries, the modifications that have been made in the Constitutions, the length of the texts, and the structure of the texts. As for the fact of the disparate number of Constitutions created in each country, we have resorted to the dimension of power distance and also the specific versus diffuse dimension. Thus, throughout history, the Spanish cultural group, with a medium-high index of power distance (Hofstede, 1980, 1991; Hofstede et al., 2010) has preferred to depose the existing Constitution and create a new one later if needed, as a clear sign of the disagreement with the ruling hierarchy and with the structures created by them. On the contrary, the American cultural group, with a medium-low index in this dimension (Hofstede, 1980, 1991; Hofstede et al., 2010) and defined as culturally specific (Hamden-Turner and Trompenaars, 1998, 2000) has preferred to analyse the need for change according to the social and historical circumstances, and amendments have simply been added to the original text.

Regarding this last point, it has been argued that the fact that the American Constitution has got twenty-seven amendments, but the Spanish Constitution of 1812 was not modified, and the 1978 Constitution has only been modified twice in more than forty years only by mandate of the European Union (Álvarez Rodríguez, 2020; García Gestoso, 2012; Pérez Royo, 1987) could be explained by the differences in the dimensions of uncertainty avoidance and also of power distance. Thus, in the Spanish group, it is preferred not to engage in endless debates that would lead to uncertain places in the political arena. Since the politicians at the top of the hierarchy are the ones who must propose and execute such changes, no party risks losing their political weight even at the expense of leaving the country outdated in such obvious aspects as the succession to the throne (Martín, 2017). The result of this attitude is immobility, to a historical extent, one could say, since in Spain the Constitutions are not modified but only destroyed and then others are created (Pérez Royo, 1987).

As for the last two differences, regarding the length of the texts and the organization of their contents, again we have resorted to the dimension of uncertainty avoidance to explain the visible differences found. In both cases, this dimension has led the Spanish texts to detail and organise the contents in an exhaustive way, which reflects in a greater extension of the texts and a more orderly structure than in the case of the American Constitution.

The first conclusion that could be drawn from this study is that, obviously, cultural groups evolve and change over the centuries, however, the cultural dimensions that characterise them always seem to be present to a greater or lesser degree. They are a kind of cultural DNA since the customs, values, beliefs and other ideological artifacts adopted or created by a cultural group are transmitted from generation to generation. For cultural diffusion theories, this transmission of cultural traits or so-called *memes* –not to be mistaken for internet memes– is similar to gene transmission, as it is perpetuated across generations (Dawkins, 1976; Dawkins and Davis, 2017). However, it could also be argued that the elements that define and describe a cultural group are not only these cultural traits but also the historical context as well as social and political events that influence the group throughout history (Hofstede, 1980, 1991; Hofstede et al., 2010). None of these factors could be considered in isolation to justify the traits of a nation because the interaction of all of them shapes the cultural group. The second and most important conclusion of this study is that these cultural traits, memes, and historical backgrounds are reflected in the style of the communicative acts created and issued by the participants of these cultures (Scollon and Scollon, 2011), not only in the spoken discourse but in the written one, as in this case.

Finally, a future line of research that this study could open is the analysis of the discourse of these constitutional texts in search of politically correct discourse as far as genre is concerned, given the fact that they were written in different sociological moments when inclusive discourse was not a concern at all. The mere fact that these texts were mostly written by men –not by women– could have had an influence on the communicative style they display.

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