The legislator’s dilemma

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By DEEPANSHU MOHAN,  Dec 16, 2018

“Legislators make the citizens good by inculcating habits in them”, Aristotle wrote in the Ethics. Adam Smith, in Theory of Moral Sentiments, laid emphasis on the need for the state to guide its citizens to pursue their natural instincts (‘truck, barter and exchange’) while inhibiting their ‘dark sides of selfishness’ and greed through better laws.

Confucius, taking a contrarian position to both, Aristotle and Smith, argued for alternative methods in enabling a culture of civic virtue amongst citizens, as he said, “Guide them with government orders, regulate them with penalties, and the people will seek to evade the law and be without shame. Guide them with virtue, regulate them with ritual and they will have a sense of shame and become upright”.

From the times of Confucius, Aristotle to Thomas Aquinas, Jacques Rousseau, and Edmund Burke, most political philosophers have recognized the cultivation of civic virtue, as one of the most essential objectives and foundations of effective governance. In 21st century however, the Confucius method of ‘virtue’ regulated by ‘rituals’ appears quaint and quite pernicious, as an answer to one of the most puzzling questions in political philosophy and policymaking even today: How to encourage citizens to cultivate (and practice) a more liberal civic culture at a minimal social cost?

By a liberal civic culture, one can refer to a culture characterised by extensive reliance on market-oriented systems to allocate mist economic goods and services; formalise equality of political rights; rule of law; public tolerance (to cite a few).

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To the libertarians, Friedrich Hayek’s suggestion on adopting the market as a foundation to social system in addressing all matters of social policy make most sense. Hayek celebrated markets as, “A social system which does not depend for its functioning on... all (wo)men becoming better than they now are, but which makes use of (wo)men in all their given variety and complexity, sometimes good and sometimes bad”.
In the United States and most of Western Europe, the adoption of a market-oriented approach (compatible with Hayek’s ideas) has helped them in designing incentives and penalties that tend to predominantly influence citizens’ behavior and their conduct.

Nevertheless, there are certain moral dilemmas in most social systems, where incentives-solely designed out of market systems—cannot resolve social issues that shape (or affect) social cohesion in more communitarian (community-based social structures), thereby, leading to a deeper conflict of engagement between citizens’ social preferences and the desirable goals of the Legislator. Michael Sandel, in What Money Can’t Buy: The Moral Limits of Markets, makes a compelling distinction between the commercial and the sacred domains of social practices, citing a range of goods and services, such as: the adoption of children, surrogacy, sexuality, drugs, voting rights, organ transplantation (to cite a few), which must not be trivialized by the decisions of the market alone.

As a result, the legislator, in a democratic framework of governance, constantly remains in a state of dilemma to design laws with other policy tools that mustn’t make incentives (or constraints) to crowd out social behavior and conduct amongst citizens, across groups imposing high social costs over time.

If incentives sometimes crowd out ethical reasoning, the desire to help others, and other intrinsic motivations (to vote, maintain public hygiene etc.), this may seem just a short step away from Karl Marx’s broadside condemnation of capitalist culture as one promoting “universal venality”. In such a scenario, it becomes critical to closely understand, analyze the role of (pre-existing) incentives across social groups in shaping social preferences of groups from both, an individual and collective level.

To so, cross-cultural social experiments, conducted by social psychologists and behavioral economists (say, Aaron Henry, Samuel Bowles and his joint work with Ugo Pagano and Massimo D’Antoni) can help us understand the role of incentives in different socio-cultural arrangements.

Success stories of policy mechanism design via trials conducted as part of social experiments, such as in Public Goods Game (Falkinger et al. 2000), Trust Game (Sandra et al. 2009) etc. have already yielded positive results on identifying factors influencing social preferences across different cultural groups. The use of trials as a technique also help in pilot testing new policies (within controlled social groups) before rolling these out at a large scale level.

Further, it is pertinent to acknowledge how such findings, drawn from behavioral experiments in cross-cultural settings, offer indicative (if not conclusive) policy evidence allowing the legislator in getting the required information, needed to promote social cooperation, fraternity and voluntary participation (say, in exercising voting rights).

Besides this, quite often aspiring liberal states neither have the information nor the coercive capacity to eliminate opportunism and malfeasance. But, they can and do
protect citizens from worst-case outcomes (personal injury, natural calamities, loss of property etc.) by being aware of high-risk and low-risk scenarios, drawn from results from such studies. The result, what Norbert Elias defines, is a “civilizing process” based on the fact that “the (explicit) threat which one person represents for another subject is subject to stricter control”, which is accomplished either through improved legal systems of enforcement and/or with greater occupational mobility allowed to people to exit or be prepared for a situation before the worse-case outcome arrives (say, get insurance or social protection against a natural calamity or unemployment).

The puzzle of cultivating vibrant civic cultures in market-based societies may be resolved by paying closer attention to geographic and occupational mobility of people (across social groups); studying the rule of law and its effect on social behavior of citizens, along with an understanding of other aspects of (aspiring) liberal societies that protect social order with limited paternalistic (in form of legal/ military) control.

Cross-Cultural behavioral experiments and studies can, at the same time, help a great deal in acting as an informative feedback loop on analyzing the role of incentives and constraints in either, crowding in or crowding out, social preferences amongst citizens (i.e. key to the constitution of a vibrant civic culture). Likewise, a deeper understanding of the synergistic relationship between drivers of incentive-compatible public policies remain key to addressing the legislator’s dilemma in enabling a liberal civic behavior with limited social opportunity costs.