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DOI

[10.1515/gj-2018-0051](https://doi.org/10.1515/gj-2018-0051)

Publication date

2019

Document Version

Final published version

Published in

Global Jurist

[Link to publication](#)

Citation for published version (APA):

Fabbri, M. (2019). Shaping Tastes and Values Through the Law: Law and Economics Meets Cultural Economics. *Global Jurist*, 19(3), [20180051]. <https://doi.org/10.1515/gj-2018-0051>

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Shaping Tastes and Values Through the Law: Law and Economics Meets Cultural Economics

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Abstract:

This article elaborates on the point made by Guido Calabresi in his recent book “The Future of Law and Economics: Essays in Reform and Recollection”, where he holds that Law and Economics should inform law-makers and policy-makers regarding what tastes and values are more desirable than others. Calabresi invites economists to depart from the approach traditionally embraced in economic analysis holding that “De gustibus non est disputandum”. He proposes instead to dialogue with law-makers in order to openly engage in the promotion of welfare-enhancing tastes and values. My main argument is that recent empirical findings in Economics support Calabresi’s invitation to normatively engage in shaping cultural traits – at least for a specific set of tastes and values.

Keywords: policy-making, legal analysis, Guido Calabresi, beliefs formation

DOI: 10.1515/gj-2018-0051

1 Introduction

This article elaborates on the point made by Guido Calabresi in his recent book “The Future of Law and Economics: Essays in Reform and Recollection”, where he holds that Law and Economics should inform law-makers and policy-makers regarding “what tastes and values¹ are more desirable than others” (Calabresi 2016, 73). Calabresi invites economists to depart from the approach traditionally embraced in economic analysis holding that “De gustibus non est disputandum”. He proposes instead to dialogue with law-makers in order to openly engage in the promotion of welfare-enhancing tastes and values. Calabresi’s approach on how to deal with tastes and values in economic analysis of law – as developed in chapters 7 and 8 of the book – challenges the methodological status quo. Similarly, this fascinating perspective opens new and potentially fruitful avenues of research for future generation of scholars.

In this article, I propose a theoretical framework for systematically including the discussion of tastes and values in the economic analysis of the law. I argue that Cultural Economics offers a welfaristic argument for including the promotion of welfare-enhancing tastes and values as one of the elements that the Law and Economics analyst needs to consider.² My main argument is that recent empirical findings in Economics support Calabresi’s invitation to normatively engage in shaping cultural traits – at least for a specific set of tastes and values. In the next section, I will start my exposition by reviewing recent empirical findings in the field of Cultural Economics, a branch of Economics that uses state-of-the-art empirical techniques to investigate the relationship between people’s tastes, values, and economic outcomes. A growing body of literature demonstrates two important results. First, it is possible to identify a set of tastes and values which are key determinants of a society’s economic performance. Second, the design of legal institutions³ has direct consequences – which can be predicted and empirically estimated – for the formation and persistence of these economically-relevant tastes and values. I hold that, taking as a starting point the fact that cultural traits have an impact on economic outcomes, the effects of a hypothetical legal change on tastes and values can be treated as an (expected) cost or benefit in a welfare analytical framework, or used it as a “tie-breaker” in case of mixed evidence and uncertain evaluations.⁴ On this basis, and assuming that in the upcoming years the discipline will develop a systematic exploration of which tastes and values matter for economic choices, the Law and Economics analyst can engage in normative arguments regarding which values and tastes should be promoted by the lawmaking process. Another way to state the concept is that the analyst will be able to inform policy and law-makers regarding how to design reforms and institutions that *ceteris paribus* promote welfare-enhancing cultural traits.⁵ Indeed, the field of Law and Economics is particularly suited to produce sophisticated analysis of a society’s institutional setting and to generate systematic and testable predictions regarding the effects of changes in legal institutions.

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The paper proceeds as follows. The next section reviews some empirical contributions in Cultural Economics relevant for the discussion. In Section 3, I elaborate on Calabresi's claim to develop my main argument, holding that the Law and Economics scholars should include the promotion of welfare-enhancing tastes and values in the evaluation of alternative legal institutions. Section 4 discusses the inclusion of tastes and values-shaping within the cost-benefit analysis of land tenure reforms in developing countries as an example of possible applications of this argument. Section 5 concludes.

2 Tastes, values, and economic performance

The challenges posed by isolating cultural effects in a rigorous empirical setting marginalized the study of how values and beliefs are formed and evolved for several years. In fact, as reminded by Calabresi, for a long time mainstream Economics preferred to assume that tastes and values are just given and stable overtime (Calabresi 2016, chap. 7). However, in recent years, larger data availability and advances in empirical methodologies induced several scholars to start investigating the relationship between culture and economic choices more systematically. Cultural Economics is a relatively young—but rapidly growing—branch of Economics. Nonetheless, scholars have already offered several important contributions. It lies outside the scope of the present article to provide a thorough review of this literature, for which the interested reader can refer to Alesina and Giuliano (2015) and Fernández (2011). In what follows, I will list some contributions reporting empirical findings that, in my view, support the claim advanced by Guido Calabresi that the analyst should choose which tastes and values to promote. The first set of contributions reviewed shows that tastes and values are important determinants of economic outcomes. The second set of studies listed below demonstrates that it is possible to identify the univariate causal effects of institutions on cultural variables relevant for economic decisions.

2.1 Culture matters

In Economics, there is abundant evidence that tastes and values are determinants of important economic outcomes such as the growth rate of states or the wealth of nations. A classical study of Putnam (1993) on the differences in economic development between North and South Italian regions shows that cultural traits composing social capital (social interaction, cooperation, interpersonal trust, and participation), that were developed centuries before the country's unification through the establishment of free city-states, explain the North-South divide. The results found empirical support by subsequent studies of Guiso, Sapienza, and Zingales (2016). One of the most important cultural traits for explaining economic outcomes identified in the literature is interpersonal trust. Studies found that trust affects economic development (Knack and Keefer 1997), individual economic performance (Butler, Giuliano, and Guiso 2016), innovation (Fukuyama 1995), firm productivity (Bloom, Sadun, and Reenen 2012) financial development, participation in the stock market, and trade (see Guiso, Sapienza, and Zingales 2008, 2009).

The degree of cooperativeness, sometimes labelled “generalized morality”, is another important determinant of economic development, as argued by Tabellini (2010). The author shows that much of the regional differences in economic development across Europe can be explained by looking at how much individuals consider respecting other human beings as a fundamental value, give importance to obedience to authority, and feel to have control over their life and the possibility to self-determine their success. Other cultural traits that has been proved to influence economic success are thriftiness, work attitudes (Doepke and Zilibotti 2008), and the perception of poverty as determined by lack of sufficient effort or by bad luck (Alesina, Glaeser, and Glaeser 2004).

2.2 Formal institutions affect tastes and values

The previous subsection shows that tastes and values determine economic outcomes. One important question is whether these tastes and values could be shaped by legal interventions and by the design of formal institutions. Empirical research again provides an affirmative answer to this question. To isolate the univariate causal effect of institutions on tastes and values, scholars have to identify an institutional shock exogenous to cultural evolution and then verify how the institutional change affected people's tastes and values. Two approaches are possible: the natural experiment one and the laboratory experiment one.⁶ The natural experiment approach makes use of observational data to identify the effects of different types of institutional shocks on culture. For instance, Botticini and Eckstein (2007) show that throughout history the types of political institutions governing the states where the Jewish communities settled had major consequences for the adoption of Judaism religious

norms, which in turn shaped the Jewish economy and demographic history. Gruber and Hungerman (2008) study a change in state regulations that increases the opportunity cost of religious participation by allowing retail shops to be open on Sunday. The authors find that allowing shops to be open on Sunday consistently reduce participation in religious activities and increase drinking behavior among individuals affected by the law. Finally, Becker et al. (2016) study the collapse of the Habsburg Empire and the modifications of states borders to show the long-lasting effects of state institutions on levels of trust and corruption of the bureaucracy. This line of research identifies a clear causal link between the institutional setting and the tastes and values of the population experiencing these institutions.

The laboratory experiment approach adopts two alternative strategies to isolate the effects of institutions on culture. A set of studies uses laboratory games to compare the behavior of comparable subjects who live in different institutional settings. In a classical study conducted in fifteen small-scale societies, Henrich et al. (2001) show that participants to laboratory experiments display levels of pro-sociality that strongly correlate with the degree of market integration characterizing the society they live in. Gneezy, Leibbrandt, and List (2016) compare two neighboring populations of fishermen in Brazil to study how the organizational features of the work environment affects social preferences. The first population engages in lake-fishing for which one-person boats are used, while the second population engages in sea-fishing activities that involve groups of fishermen operating in larger boats requiring multi-person cooperation to be operated. The authors perform laboratory games among the two populations and show that the sea-fishermen operating in larger work-communities display higher level of interpersonal trust and cooperation compared to lake-fishermen. In a field study in Burundi, Voors et al. (2012) show that the exposure to violence during the civil war determines sizeable changes in social, risk, and time preferences of the community members affected by the conflict. These findings show that even a temporary shock, by altering individual behavior, can have long-term consequences by altering savings and investments decisions.

A second strategy used by experimenters consists in observing how participants react to exogenous manipulations of the institutions characterizing the laboratory games. For instance, Dal Bó, Foster, and Putterman (2010) show that the effect of a policy on the level of cooperation is greater when it is chosen democratically by the subjects than when it is exogenously imposed. This finding suggests that democratic institutions can affect behavior directly and not only through the choice of institutions selected as a results of the democratic process. Similarly, Sutter, Haigner, and Kocher (2010) find that participation rights enhance group cooperation. In sum, also this second set of studies confirms as well that the design of formal institutions has an impact on the formation and persistence of people's tastes and values.

3 Toward a systematic assessment of the effects of legal interventions on culture

In the previous section I reported examples of empirical findings showing that culture matters for determining the wealth of nations and that culture is shaped by the design of formal institutions. Given these premises, I argue that an analysis evaluating the desirability of a legal intervention should account for the effects that the proposed changes of existing institutions will have on tastes and values. The set of tastes and values that the analyst must consider includes those that scientific research proved to be key determinants of economic outcomes.

Let me develop this idea by using an example. For instance, we have seen above that studies identified generalized morality and interpersonal trust as important factors for economic growth. Imagine that an analyst who is evaluating the effects of a recently-implemented reform estimates, as a short-term consequence of the intervention, an increase of investments. At the same time, assume that the analyst finds evidence that the reform caused a decrease in generalized morality and interpersonal trust. In a standard cost-benefit analysis conducted within the Welfare Economics framework, the desirability of the reform would be evaluated by performing a static comparison between the benefits associated with the increase in productivity and investments against any material cost caused by the reform. Conversely, the decay in generalized morality and interpersonal trust – even assuming that these elements would be investigated and registered by the analyst – would not be included in the evaluation.

My argument is that the standard cost-benefit evaluation of this hypothetical reform considered in the example would be incomplete. According to my argument, the analyst should account also for the (estimated future) losses connected to a decrease in generalized morality and interpersonal trust deriving from the implementation of the reform. Notice that the inclusion in the cost-benefit evaluation of the changes on cultural traits caused by the reform is not motivated on moral or ethical grounds, and that the analyst is not asked to base his evaluation on a set of value judgements regarding the desirability of certain tastes and values. Indeed, the inclusion of tastes and values in the analysis is based on a welfaristic argument: the level of generalized

morality and trust affects future creation of wealth in a predictable (and possibly measurable) way. The empirical evidence showing that culture matters for economic outcomes and that the design of formal institutions shapes people values and beliefs provides the basis to support this claim. In practice, the law-making process should integrate findings of Cultural Economics to systematically include two elements currently left out by the analysis. First, the analysts should include predictions regarding the effects of a legal intervention on the set of tastes and values identified as determinants of economic growth. Second, the ex-post evaluation of the performance of a legal intervention should contain an empirical assessment of its effects on these welfare-enhancing cultural traits.

An obvious problem with this procedure would be the estimation of costs and benefits associated with a change in cultural traits. Indeed, while some “direct” effects of an institutional reform are easier to predict, observe, and quantify, isolating the causal effects of a cultural change on the economy might be challenging for several reasons: these effects tend to manifest only in the long-run and their empirical identification is challenging. Admittedly, at the present moment we do not have reliable empirical estimations of, say, the monetary equivalent of a one standard-deviation change in a society’s level of trust. For these reasons, even assuming everybody agrees that an increase in the level of pro-social behavior will be beneficial for a society’s economy in the long-run, one can still argue that the analyst should not consider the changes of cultural traits because of the connected practical difficulties.

My reply to this objection is twofold. First, while it is true that an empirical quantification of the effects of culture is challenging, we should also consider that Cultural Economics is a recently developed field of study and that, in a relatively short-time period, it already produced notable results. Considering the interest raised by the discipline’s findings, we should expect this body of evidence – and so, the availability of precise empirical estimations – to increase in the near future. This increase will be likely magnified by the latest development in technology and empirical research methods, such as the analysis of Big Data or the use of artificial intelligence, which will make possible exploring research avenues so far precluded.

Second, even considering our current state of knowledge, including the welfare effects of cultural changes in the analysis that compares two alternative institutional settings could result informative in cases where the standard cost-benefit evaluation reports mixed results. For example, in a recent paper, Fabbri and Faure (2018) evaluate the performance of an incentive mechanism that combines stochastic rewards for abidance by a legal norm with random monitoring to determine sanctions for non-compliant agents. The authors organized a field experiment on a bus transportation system where passengers’ purchasing of a valid ticket to use the service is enforced by a system of random monitoring and sanctions. The treatment consisted in complementing this punishment-based system with a reward mechanism for compliance. Specifically, on a sample of the buses circulating in a municipality, the purchase of a valid bus ticket was linked to the participation into a lottery awarding a monetary prize. The authors show that the introduction of the lottery determines a causal increase in profits from ticket sales that is slightly larger than the costs for organizing the lottery and paying prizes out. Under the assumption that the bus company’s objective is to maximize profits, in a standard cost-benefit analysis that considers only the direct and readily-measurable effects of the intervention, the policy suggestion would be to implement the incentive system. Notice that this result holds net of possible short-term crowding-out effects, which are already taken into account by the randomized evaluation. On the other hand, an analysis that includes also the welfare effects of tastes and values would be more cautious on the assessment of the policy. For instance, recent evidence shows that individuals who are affected the most by crowding out of internal motivation caused by offering monetary rewards for law abidance are those characterized by high education levels (Fabbri and Wilks 2016). Since highly educated agents are overrepresented in the education sector and other public roles responsible for shaping a society’s civic norms, it is reasonable to assume that the incentive scheme will have detrimental consequences for the intergenerational transmission of values of voluntary norms abidance that go beyond the short term crowding-out effects. For this reason, considering the positive but modest increase in profits estimated when only direct crowding-out effects are accounted for, the analyst willing to additionally include the long-term consequences of the policy on cultural values transmitted to future generations might revert the assessment and evaluate the incentive scheme as non-desirable.

4 An example: The cultural effects of land rights formalization programs in developing countries

The systematic inclusion of analysis concerning how institutional changes affect welfare-enhancing cultural traits should be implemented whenever the alternative institutional settings under evaluations are sufficiently dissimilar from each other. One example of such an institutional change concerns the debate regarding reforms of land tenure rights in developing countries. In contrast to Western societies, which mostly adopted formal sys-

tems of property rights registration, in the majority of the developing world access to land is regulated by an informal system of customary rights. For instance, restricting the focus only to the African continent, customary informal rights are used in over 90 % of rural areas. Customary rights are a complex multifaceted institution that is characterized by important differences across cultures and societies (Delville 2000). Nonetheless, some common key characteristics that distinguish customary systems from systems of formal private property can be isolated. First, customary systems are inherently informal. Access to land is regulated by religious and local norms, and administered by customary local authorities by following a set of procedures based on local customs, family ties, and past use rights. Second, the possibility to use parcels of land does not confer rights comparable to ownership. Land users usually receive some rights connected to the performance of some pre-defined activities. However, these rights tend to be limited in time and eventually subject to revocation in cases where the right-holder unilaterally modifies the original use made of the land parcel. Moreover, in most customary systems, land cannot be owned by individuals, hence some actions like selling or using plots of land as collateral are precluded to community members.

According to several scholars, these characteristics of customary rights systems do not offer sufficient property rights protection to land users. As a consequence, agricultural investments and productivity remain low where customary rights are in place (De Soto 2003). Following this logic, in the last decades the policy response of international organizations and Western governments to improve productivity and stimulate economic growth in developing countries has been to implement land tenure reforms that aim at formalizing and securing land users' rights. According to this wisdom, secure land rights will stimulate agricultural investments and foster economic development. Somehow in contrast with these predictions, the available evidence regarding the impact of land tenure reforms on welfare in developing countries is mixed (for a review of the literature, see Deininger and Feder 2009). Part of the uncertainty comes from the empirical challenges to estimate the reform effects. The first problem is related to the difficulty to find a reliable identification strategy to isolate the effects of a reform from other confounding factors (Besley and Ghatak 2010). This empirical complication has been partly addressed by recent studies that make use of large scale randomized control-trial approaches to isolate the effects of land tenure reforms on economic outcomes (see for instance Ali, Deininger and Goldstein 2014; Goldstein et al. 2016). These studies found a significant, albeit modest, impact of formalizing land rights on long-term investments in the few years following the interventions.

However, while these results seem to confirm the positive impact of land titling on investments in the short-run, a thorough evaluation of the impact of land tenure reforms faces also a second problem. Cost-benefit analysis needs to account also for the long-run effects of the reforms, which might be different to the short-run ones. The estimation of long-run effects in a randomized control-trial setting is complicated by possible events arising after randomization has taken place that would challenge the randomized control-trial design – think about migrations, natural disasters, or wars. Therefore, producing a comprehensive estimation of the effects of land tenure reforms – i. e. an estimation that takes into account also long-run consequences – is a challenging task, even in the ideal cases where a reform was implemented as randomized control-trial. These empirical shortcomings in estimating the costs and benefits of the interventions increase the uncertainty regarding the normative assessment of the desirability of the interventions.

Because of the problems to find a reliable identification strategy and to measure long term effects of land tenure reforms, I argue that assessing the cultural impact produced by land rights formalization programs can be an important complement to the short-run estimation of the interventions effects. As showed by the contributions reviewed in Section 2, changes in cultural traits as a consequence of an institutional shock tend to persist in the long-run. Given the long-run persistence of culture, as long as the analyst can predict the impact of the cultural traits object of the analysis on economic outcomes, she can derive a proxy for the long term economic effects of a land tenure reform by observing the short-term changes in values and beliefs following its implementation.

In order to formulate predictions regarding the impact of cultural traits on economic outcomes, the analyst can follow two approaches. First, she can make use of the available empirical evidence. For instance, Di Tella, Galiani and Schargrotsky (2007) study how the allocation of formal land titles to peri-urban Argentinian squatters affects individuals' culture. The authors show that squatters who are randomly selected to formally become land owners self-report a higher support for a market economy compared to non-selected individuals who did receive the land title. In a follow-up study, Galiani and Schargrotsky (2010) show that this increase in pro-market beliefs translates in higher investments in education for the offspring of parents who received land titles. In our example, considering we do have reliable estimations of the returns to investments in education (see for instance Psacharopoulos and Patrinos 2004), the analyst can include this information into the (long-term) benefits of implementing the reform.

As a second possibility, in case the reform under evaluation has already been implemented, the analyst can perform a direct estimation of the changes in values and beliefs that the intervention generated, attempting then to quantify these effects by translating them in a monetary (or utils) equivalent. For instance, Fabbri (2018)

performed lab-in-the-field experiments to evaluate the effects on cooperation levels and interpersonal trust of a land tenure reform in West-Africa. The author takes advantage of the large scale randomized control-trial implementation of the reform that involved hundreds of villages to achieve identification. Results show that, six-eight years after the intervention had taken place, the reform produced a 30 %–40 % increase in cooperation and trust levels for villagers who experience the land rights formalization.⁷ Again, the analyst can translate the increase in cooperation and trust levels in monetary terms, and then include these measurements in the calculation of the benefits associated with the reform implementation.

5 Conclusion

In this article I elaborated on the claim made by Guido Calabresi, who holds that Law and Economic scholars should engage in tastes and values shaping. I argue that, for a set of tastes and values that the literature in cultural economics has identified as welfare-enhancing, this claim is supported by a welfaristic argument. I reviewed the empirical evidence from the field of Cultural Economics, a recent and fast-growing branch of Economics studying the relationship between institutions and culture. While findings in this literature are somehow still limited and non-systematic—for instance, the complexity of the channels through which culture affects economic choices and the multiple interactions with many other dimensions of human behaviour (social preferences, cognitive biases among others) are yet to be studied—nonetheless evidence show that certain tastes and values are key determinants of economic development.

I then summarized empirical studies demonstrating that the way in which formal institutions are designed shapes these cultural traits. Moving from these findings, I argue that the analyst who compares alternative legal rules should include in the cost-benefit evaluation also the estimation of the long-term effects on welfare-enhancing cultural traits associated to the choice of different institutional scenarios. In the article, I stress how the choice of specific tastes and values to be included in the analysis should not be based on the analyst's normative judgements or moral intuitions, but rather on the available empirical evidence that the cultural traits under consideration has been proved to be welfare-enhancing. In this sense, the promotion of tastes and values that I propose remains within a Welfare Economics framework.

Collecting a body of evidence regarding the effects of institutional reforms on culture is a challenging topic. Natural experiments are rare and difficult to find, laboratory experiments are subject to serious external validity concerns in this context, and large scale randomized control-trial are expensive. We do not have a developed theoretical framework and a set of systematic findings making possible to predict the cultural effects of institutional reforms. However, the increasing availability of data and advances in technologies and methods is quickly enhancing the possibilities of empirical research. Future research will hopefully make possible to systematically include, as Calabresi invites to do, the promotion of tastes and values in the economic analysis of the law.

Acknowledgements

I am grateful to the editor, Aleksandar Stojanović, and to four anonymous referees for valuable comments and suggestions. The usual disclaimer applies.

Notes

1 Throughout the paper, I use the terms “tastes and values” and “culture” or “cultural traits” interchangeably. The definition of culture as a phenomenon embodied in values and preferences is consistent with the view expressed for instance in Law and Economics by Kaplow and Shavell (2007) and in Economics by Akerlof and Kranton (2000). For an in-depth discussion that motivates the choice of using the terms “tastes and values” and “culture” as synonymous, see Alesina and Giuliano (2015).

2 On this point see also Cserne (2019), in this special issue.

3 For brevity, I will onward use the term “institutions” referring to formal institutions, such as law, policy interventions, and regulations.

4 On this point see also the argument proposed by Esposito (2019) in this special issue.

5 A possible objection against purposely influencing cultural values could be that it remains unclear which normative criterion policy-makers should use in deciding “what tastes and values are more desirable than others” (Calabresi 2016, p. 73). In this respect, the critique is similar to the ones advanced from different perspectives to the nudging approach (Alemanno and Spina 2014; Arad and Rubinstein 2018; Fabbri and Faure 2018; Sugden 2017; Sunstein 2018). While the issue deserves careful consideration, a thorough discussion of the argument lies out of the scope of this article. As it will be clarified in the following sections, the proposal advanced in this article implies an approach within the framework of welfare economics, thus considering as worth promoting those tastes and values that has been proved to be welfare-enhancing. More generally, the article could also be read as an invitation to include in the evaluation of policy proposals also

the impact that the policy will have on culture—remaining agnostic regarding which are the set of tastes and values that a society should promote.

6 Each approach has its own advantages and pitfalls, a discussion of which lies out the scope of this article. Broadly speaking, the natural experiment approach has the advantage to base the analysis on data generated as a consequence of real-world institutional changes. However, especially in cases in which the exogenous shock considered is a policy or political reform, this approach is subject to endogeneity concerns, since arguably the new institutions reflect tastes and values of the institutions builders. Laboratory experiments solve the identification problem by randomly allocating subjects to treatment and control groups, but they also cast doubts regarding the external validities of the results.

7 However, the author also shows that these results only hold for individuals living in the better market-integrated villages in the sample. Instead, for villagers living in societies characterized by comparatively low levels of market integration, the land tenure reform back-fired, actually worsening the levels of cooperation and interpersonal trust. These findings once more show how important is to proceed to a systematic ex-post evaluation of the cultural effects produced by an institutional shock.

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