

## NEW ON PATERNALISM

PAUL CALCOTT

*Victoria University of Wellington*

---

### 1. INTRODUCTION

Individuals often seem to misjudge their own interests. One reason is inadequate information. Other reasons are failures of reasoning and volition. These reasons have all been construed as paternalist motives for the state to intervene. But in a recent article in this journal, New (1999), criticizes earlier accounts of paternalism. He argues that imperfect information constitutes a standard form of market failure, and consequently policies that respond to it do not require a paternalist motivation. The purpose of this note is to evaluate New's claim.

New identifies four failures of reasoning, which provide paternalist rationales for intervention. They are all reasons why individuals' decisions may not accord with their own welfare. They are (i) technical inability to complete necessary mental tasks, (ii) weakness of will, (iii) allowing emotions to distort decisions and (iv) lack of experience which may mean that the implications of options are not fully appreciated.

Imperfect information can also lead individuals to make decisions which are not in their own interests, and can also be appealed to in rationales for intervention. But New explicitly denies that such a rationale would be paternalist. This conclusion is contrasted with previous authors such as Feinberg (1986), Kleinig (1983) and Archard (1993) who list ignorance among the conditions that might justify paternalist intervention. New argues that as ignorance is a failure of information, it does not provide a paternalist motive.<sup>1</sup>

<sup>1</sup> Although New states (fn 3) that his argument deals with hard rather than soft paternalism, he has subsequently clarified his position that lack of information does not provide a soft paternalist rationale either. It is this second position, which was not emphasized in the paper, which is in direct contradiction to previous authors.

New suggests two reasons to adopt his conception of paternalism. The first reason is that it corresponds to the distinction between market and individual failure. The second reason is the benign nature of policy responses to imperfect information. In the following sections, these reasons will be evaluated. I will conclude that neither rationale is convincing.

## 2. THE FIRST ARGUMENT – MARKET AND INDIVIDUAL FAILURE

New appeals to the concept of market failure in motivating his account of paternalism. Failures of markets, or of institutions more generally, are contrasted with failures of individuals to make decisions that advance their own welfare. His position is that imperfect information is a standard form of market failure, which provides a well understood rationale for intervention (in terms of efficiency). In contrast, limitations of reasoning ability are classified as failures of individuals rather than failures of markets.

Imperfect information sometimes does lead to market failure and consequently to nonpaternalistic interventions. One example would be a law making insurance compulsory, which was designed to counteract adverse selection. In justifying this law, it would not be necessary to overrule individual citizens' views on what would be in their own interests. However, an accusation of paternalism would be more plausible in other cases. For example, a regulation might restrict the use of homeopathic medicines. Regulators attribute ignorance to those who wish to use a particular service, and impose their own views about which choices will be beneficial.

There does not seem to be a clear consensus among economists that imperfect information cannot provide a paternalist motive for intervention. For example, Acocella (1999, p. 118) suggests that paternalism can be justified by imperfections of either information or rationality. Even Gravelle and Rees, who New cites for a standard textbook treatment, do not unambiguously follow the convention suggested by New. They imply (1992, p. 616) that false beliefs about the probabilities of various possible events (which presumably may be due to imperfect information) can provide a rationale for paternalism.

The distinction between 'deficiencies of exchange' and 'deficiencies of reasoning' does seem to reflect a widespread convention of economic models. An individual's information is a property of a particular equilibrium, but her reasoning ability is not. Information is commonly modelled as being endogenous. Cognitive limitations and emotional reactions are rarely acknowledged. However this says more about the current state of economic theory than it does about the sources of different types of decision failures. It was not so long ago that

information was modelled as exogenous. Perhaps cognitive limitations will be increasingly endogenized in the future. In the real world, they are certainly affected by what happens in the economy. An academic education might increase cognitive skills, military training and the 'school of hard knocks' might enhance volitional discipline, and counselling might equip people better to deal with emotional pressures. And education and training are conventionally viewed as endogenous economic decisions.

The distinction between market and individual failure is based on the source of the problem. But reasoning failures and imperfect information are primarily different types of problem rather than problems attributable to sources in different locations. Inadequate information can be a result of the individual's choices and cognitive and volitional failures can result from institutional failings. An individual may rationally or irrationally choose not to seek further information before making a decision. In contexts in which it is important to determine who bears the primary responsibility for ignorance – such as in determining the appropriate scope of the *caveat emptor* rule – it must be decided which types of information the individual has a responsibility to collect.

It seems reasonable to conclude that responsibility for imperfect information can sometimes be attributed to internal factors, and that cognitive and volitional failures can sometimes be attributed to external factors. Consequently, using the distinction between individual and market failure to differentiate paternalism from non-paternalism does not support either of the two claims at issue. It does not imply that imperfect information is irrelevant to paternalism, and it does not imply that cognitive and volitional failures are only relevant to paternalism.

### 3. THE SECOND ARGUMENT – THE FORM OF INTERVENTION

New provides a second reason to associate paternalism with cognitive or volitional failures but not with imperfect information. He suggests that the state can respond to information shortages without overriding the choices of individual citizens. Paternalists must be willing to impose their own judgements, even on those who would dispute these judgements. But no such imposition is made when the state merely provides information, or when citizens acknowledge their own relative lack of information.

New illustrates this point with an example. An intending swimmer is prevented from entering the sea, because (it is reasonable to suppose) this person does not realize that the tides are dangerous. It will normally be possible to inform such a person about the danger. New's interpretation is that if the person still wishes to swim after receiving this

information, then any further restraint could only be motivated by paternalism (fn 4).

Governments sometimes do respond to citizens' ignorance by providing information. This is a largely noncoercive form of intervention and consequently may be particularly easy to justify. I do not wish to dispute the benign character of information provision.<sup>2</sup> However, this form of intervention may also be used in response to cognitive and volitional failures. Consequently, this approach would imply that some policy responses to these failures are not paternalist.

Consider individuals who have insufficient experience to appreciate the consequences of their actions. For example, cyclists may not realize the risks involved in riding without a helmet. Recall that lack of experience is one of New's four varieties of cognitive and volitional failures. In response, a campaign could be undertaken to encourage cyclists to wear helmets, by providing *information* on the experience of previous accident victims or of the assessments of experts. The solution to a perceived cognitive problem could be communication.

New also argues that technical inability to process information can be a barrier to competent decisions, and so can provide a rationale for paternalism. But again, the provision of information may be sufficient to compensate. For example, a layperson cannot be expected to digest the evidence on the alleged carcinogenic properties of overhead electric cables, but will usually have no difficulty in understanding information that, say, most studies have concluded that the danger is negligible. Similarly, motorists may be subject to cognitive limitations to the effect that they misjudge the speed at which a certain corner can be taken safely. The state could respond by providing a sign that warns of a 'Deceptive Bend'.

Not only may information be provided in response to cognitive failures, but more intrusive interventions may also be used in response to imperfect information. Indeed, government agents sometimes do not have access to any superior information to provide. This does not necessarily preclude intervention. A regulation may impose a duty on some market participants to provide information to others. For example, banks may be required to provide certain types of information in contracts for lending money. Similar regulations could also be motivated by cognitive failures. Consumers may find it difficult to understand the provisions in contracts even when they are explicitly stated, if technical or legalistic language is used. In response, the state may require that these contracts be phrased in plain language. Such a regulation would

<sup>2</sup> As New implies however, information campaigns will not always be beneficial. They will typically be funded by tax revenue, and their benefits may not justify their costs. Furthermore, information can be provided in a manipulative manner.

not appear to be more paternalist than those mandating information disclosure.

It appears that failures of cognition and volition can motivate interventions that are as weak as those designed to correct imperfect information. In addition, some interventions that are justified in terms of imperfect information, are more intrusive. For example, certain activities and products may be banned in the interest of safety. Although New does not address such interventions, they are discussed by Kelman (1981). For example, he argues that some food additives should be regulated. It may be more efficient for regulators to make decisions directly than to expend resources on information campaigns which are unlikely to reach all consumers.

Such regulation is a more invasive form of intervention than providing information as it prevents consumers from making their own choices. However, Kelman denies that this form of intervention is paternalist. Whether or not Kelman's assessment is compelling it does not provide support for New's thesis. Kelman does not suggest that interventions motivated by poor consumer information are easier to justify than, or of a different character to, those motivated by cognitive and volitional failures. Indeed, he argues that cognitive limitations also provide a reason to introduce this form of regulation.

If Kelman is correct in his assessment that these examples do not involve paternalism, then it is because there is not enough genuine disagreement between the state and the regulated citizens. Disagreement is a core feature of paternalism. Paternalists are willing to impose their views even on those who disagree. Perhaps there are cases that are better described as 'impeded agreement' rather than 'disagreement', and consequently are not genuinely cases of paternalism.

Recall New's example of a lifeguard who observes someone about to enter the sea where there are dangerous tides. Assume that the intending swimmer would not wish to enter the water if it was dangerous. She would not so much be disagreeing with the lifeguard as unaware of the lifeguard's perspective. If the lifeguard does communicate information about the tides, then there will be perfect agreement. But communication may be impossible or, at least, too difficult. Perhaps the intending swimmer does not speak the same language as the lifeguard or is too far away to hear her. Because it is only barriers to communication that prevent agreement, it seems more natural to describe this case as 'impeded agreement' rather than disagreement.

Regulation of food additives may also involve 'impeded agreement' if consumers are uninformed. But this could also be the case if consumers have the relevant information, but are unable to interpret it. Perhaps the only reason that consumers do not accept the regulators' (expert) assessment of the evidence is that they do not know which assessment

the regulators have made. Consequently, if impeded agreement is a criterion for nonpaternalism then some policy responses to cognitive or volitional failures will meet this criterion. However, there is a second issue to consider. It has not been established whether imperfect information would ever provide a motivation for genuinely paternalist interventions. I will not make a judgement on this latter issue, but in the remainder of this section some relevant points will be noted.

Common sense suggests that disagreement can be due to ignorance. Feinberg provides one apparent example. It concerns a patient who disagrees with a doctor about the effects of a proposed treatment. The patient knows the doctor's assessment, so it is not a straightforward case of impeded agreement. But perhaps it is a more complicated case. Patients may be ignorant of their own level of ignorance or subject to even higher order forms of ignorance. Consequently, a higher order form of impeded agreement may be operating. It could be argued that without some form of impeded agreement there is little scope for rational agents to have differing beliefs about the effects of treatment. This view is reflected in conventional game theory where full rationality (under the Harsanyi doctrine) ensures that agents will never 'agree to disagree' (see Geanakoplos, 1992). According to this approach, genuine disagreement cannot be sustained by imperfect information alone.

This view could be used to support New's position that imperfect information cannot provide a paternalist motive for intervention. However it requires a very broad conception of impeded agreement that would cover cases in which agreement would be very difficult to reach. New's discussion of the example of the intending swimmer suggests that he would be unwilling to adopt such a broad conception. Recall that if the swimmer still intended to swim after learning the lifeguard's assessment of the risks, then New would describe any intervention as paternalist. If we accept that this intention could still be driven by ignorance, albeit of a fairly intractable variety, then we should accept that ignorance can provide a motivation for paternalist interventions.

#### 4. CONCLUSION

In this note, New's claim about the relevance of imperfect information to paternalism has been interpreted and evaluated. Two possible rationales have been identified for New's position. The first is based on the distinction between market failure and individual failure. It was concluded that this distinction supports neither the claim that imperfect information is not relevant for paternalism, nor the claim that reasoning and volitional failures relate exclusively to paternalism. The second rationale emphasizes the benign character of interventions that respond to imperfect information. This approach does not support the claim that

reasoning and volitional failures only pertain to paternalism. But it does suggest a possible argument for the view that imperfect information is not relevant to paternalism. However this argument would not be consistent with New's position.

#### REFERENCES

- Acocella, Nicola. 1998. *The Foundations of Economic Policy: Values and Techniques*. Cambridge University Press
- Archard, David. 1993. Self-justifying paternalism. *Journal of Value Inquiry*, 27:341–52
- Feinberg, Joel. 1986. *Harm to Self*. Oxford University Press
- Geanakoplos, John. 1992. Common knowledge. *Journal of Economic Perspectives*, 6:53–82
- Gravelle, Hugh and Ray Rees. 1992. *Microeconomics*, 2nd edn. Longman
- Kelman, Steven. 1981. Regulation and paternalism. *Public Policy*, 29:219–54
- Kleinig, John. 1983. *Paternalism*. Manchester University Press
- New, Bill. 1999. Paternalism and public policy. *Economics and Philosophy*, 15:63–83