

Consumer Law and Paternalism

Presentation by Kate Tokeley of Victoria University of Wellington, New Zealand for the Australasian Roundtable, Melbourne University, 2012.



















Should the law intervene to
protect consumers from
themselves?

Defining Legal Paternalism

- **Hard paternalism (shoves)** — bans, cooling-off periods and statutory consumer guarantees.
- **Soft paternalism (nudges)** — opt-out schemes, tax incentives, banning advertising
- **Non-paternalistic consumer laws** - prohibiting misleading information, credit disclosure requirements
- **Importance of assessing the goal of the intervention**

Academic Theories on Paternalism

1. Traditional Paternalism
2. Anti-paternalism
3. Libertarian Paternalism
4. Asymmetric Paternalism

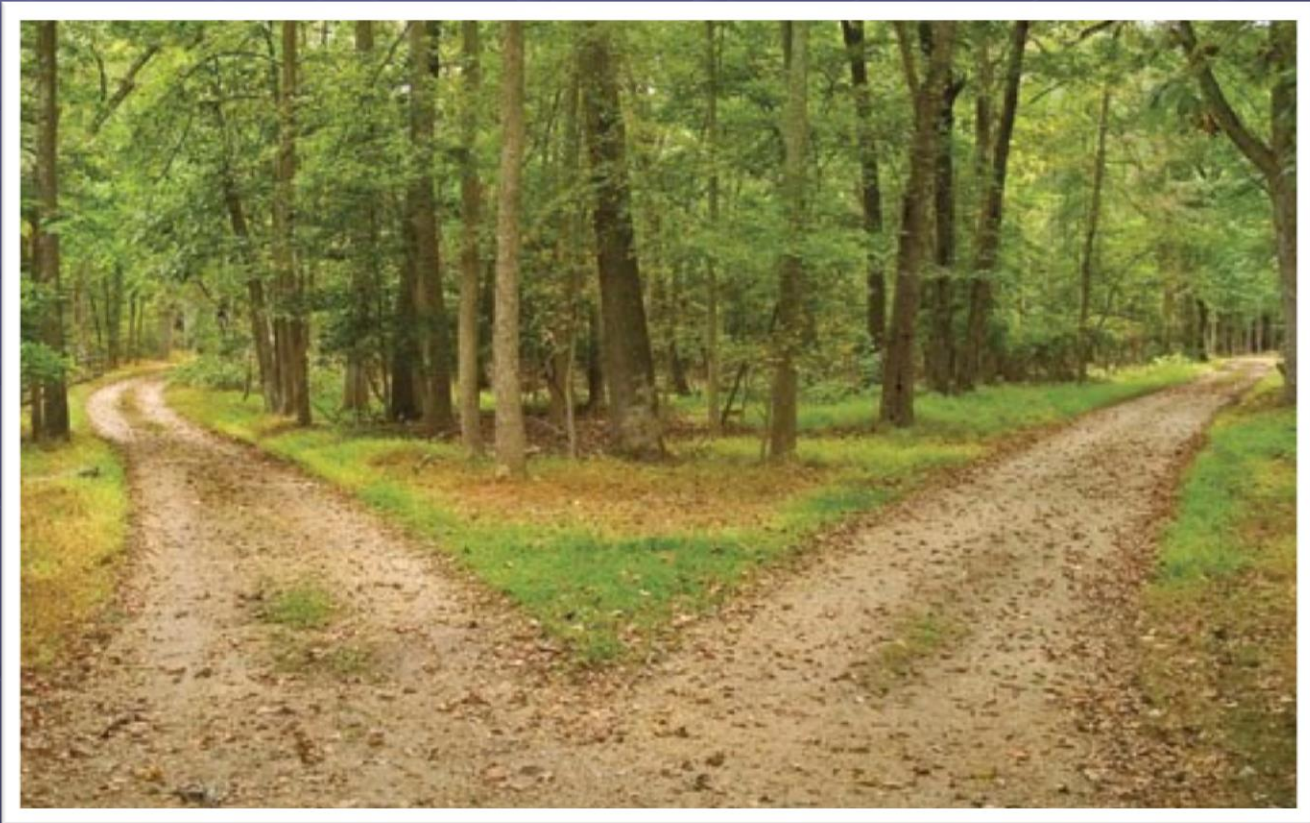
Consumers act in ways that appear irrational.

So What?

2 Objections to legal paternalism

- **Freedom** of choice best chance of achieving consumer welfare
- **Freedom** has intrinsic value

Do the existing theories on paternalism help policy-makers decide which way to go?



A Multi-factorial Approach to legitimacy

- the **magnitude** of potential consumer harm;
- the **probability** of consumer harm;
- the **irreversibility** of potential consumer harm;
- the degree to which **addiction** is affecting consumer choice;
- the degree to which consumers **want to be protected**;
- the degree to which consumers are dealing with **complex large quantities of information** they are unable to process in a reasonable time-frame;
- the degree to which the problem is affecting **children, young adults** or other potentially disadvantaged groups;
- the degree to which there are additional, **non-paternalistic reasons** for enacting the law (i.e the behaviour is hurting other people);
- the probability that non-legal responses, such as **education or support programmes**, will fail to provide solutions to the problem within an acceptable time-frame.

Two Stage Process

- First – ask if it is legitimate to restrict consumer freedom (multi-factorial approach)
- Second - ask if the proposed intervention is likely to be effective and whether it might have negative unintended consequences.