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Autonomy, Harm and Development

An Inquiry into the Influence of Philosophical Concepts in Youth Care

Nienke van Liempd, 3690989

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Supervisor: Dr. M.A. van den Hoven

Second examiner: Dr. L.L.E. Bolt

Table of contents

Preface	3
Abstract	4
Chapter 1: Introduction	5
1.1. Case Introduction	5
1.2. Introduction of Dutch law	8
Chapter 2: Joel Feinberg's soft paternalism	11
2.1. Soft Paternalism	11
2.2. Autonomy	13
2.3. Voluntariness	15
Chapter 3: Soft paternalism in practice	23
3.1. The Soft Paternalist Approach to Tom's Case	23
3.2. The Soft Paternalist Approach to Yunus's Case	25
Chapter 4: Richard Rorty, Ironism and Liberalism	28
4.1. Ironism and Self-Creation	28
4.2. Liberalism and Solidarity	30
Chapter 5: Ironism and Liberalism in Practice	33
Chapter 6: Conclusion	38
Literature	40

Preface

This thesis is the final product of the master programme Applied Ethics at Utrecht University.

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Abstract

Children can suffer developmental delay, or permanent damage, in their development towards an autonomous person but it is difficult for philosophical theory to explain how. The question I will focus on is how a child can be harmed and what this harm consists of. The general difficulty with philosophical theory about autonomy and harm is that it focusses on fully developed autonomous persons, not on not yet fully developed children. Using two exemplary cases, I will show that this can make it difficult to determine if a child is harmed and on what basis intervention is allowed to protect children from harm. This thesis will inquire into the possibilities of philosophical theory to respond to this question raised by the cases. I will analyse Joel Feinberg's notion of soft paternalism and Richard Rorty's work on ironism and liberalism to show that even though these theories do not answer all questions, they are able to guide me in providing possible answers.

Chapter 1: Introduction

Children can suffer developmental delay, or permanent damage in their development to become autonomous persons¹. In some cases it is clear that someone is to blame for the harm caused to a child and that the child should be protected against the source of harm. In other cases it is clear that no one is to blame for the harm caused to a child, because no one could have predicted the outcome of a situation and intervention was impossible. The cases I will focus on are those in which it is not clear if there is harm caused to a child. There are cases in which it is not clear if the development of the child towards an autonomous person has been delayed or harmed and if the child should be protected and if so, against what. Yet, at the same time these cases discuss situations where children are considered to be at high risk, and it is debated whether the government should intervene. The research question of this thesis is: how can philosophical reflection upon the concepts of ‘harm’, ‘autonomy’ and ‘development’ be of use in providing answers to questions raised in the daily practice of youth care? The general difficulty with philosophical theory about autonomy and harm is that it focusses on fully developed autonomous persons, instead of developing children.

What does developing towards an autonomous person mean? What is harm in respect to this development? What are the ways in which this development can be delayed or permanently harmed? Since the cases are situated in the Netherlands, how should the Dutch government justify protecting children against these harms? I will be using Joel Feinberg’s notion of soft paternalism and Richard Rorty’s work on ironism and liberalism in answering these questions. In order to get a better understanding on how these theories apply to practice, I will be using exemplary cases. My aim is not to give a definitive answer to my questions, but to roughly map out the possible answers Feinberg and Rorty could give to my questions.

1.1. Case Introduction

I will be using two cases. The first case is about Tom, who was only given raw food by his mother, since he was six years old. This means no meat, no dairy, no cooked vegetables or potatoes, no pasta or rice, just fruit, uncooked vegetables, nuts and seeds. His mother was convinced that this was a much healthier diet, for one because this excluded the hormones and antibiotics added to meat and dairy. The hormones are added to the food of cows to make

¹ This implies that my definition of a person is partly based on autonomy.

them produce more milk. In the meat industry growth hormones are added to the food to make the animal grow faster. All animals are given antibiotics, because the risk of a disease spreading throughout the cattle can be devastating for the farmer. Also, the blackened edges on baked food, can cause cancer. Not eating baked food would reduce the risk of getting cancer².

Rian Teeuw, paediatrician at the Academic Medical Center (AMC) in Amsterdam, specialised in child abuse, examined Tom and concluded that he was undernourished. His diet did not include enough proteins, calcium and fats essential for the development of his body and brain. If his diet would not change, he would remain 12 to 15 centimetres shorter than his peers. She compared his development to the development of a child in Africa. Tom's mother claimed that Tom is as tall as he is supposed to be, but that his peers are abnormally tall, because of the hormones they take in with the meat and dairy in their diets³.

Initially, the Dutch government was involved with Tom's case because his mother homeschooled him, without having the right qualifications. She kept him from going to school because Tom was bullied for his raw diet. Also, the school canteen did not provide food that fit Tom's diet. Youth care wanted Tom to go back to school, so he could get a diploma. If he refused, he would be placed in foster care. In 2008 a documentary about Tom and his mother was released called *Rauw* (followed by *Rauwer* in 2012), depicting their raw diet lifestyle. This caused the media to spike, especially after Tom and his mother appeared on *De Wereld Draait Door*, a popular Dutch television programme. It was not so much the fact that Tom was homeschooled which outraged a lot of people, but rather that he was on a raw diet. By the end of 2012 a procedure was started to put Tom in foster care. However, youth care and Tom's mother came to an agreement that Tom would again attend school and would be allowed to stay with his mother. At this time Tom was already fifteen years old. Youth care did not intervene with Tom's diet.

Several questions arise in this case. Is Tom's mother justified in giving Tom only raw food? Is the Dutch society justified in being outraged about Tom's diet? Should youth care have intervened with Tom's diet, based on the findings of a paediatrician that he was undernourished? Does it matter that Tom's mother only wanted the best for him by keeping

² Documentary *Rauw*, directed by Anneloek Sollart, 2008.

³ "Jeugdzorg haalt kind weg bij 'Rauw-moeder',"

http://www.joop.nl/leven/detail/artikel/17706_jeugdzorg_haalt_kind_weg_bij_rauw_moeder/ (consulted on 5-06-2014).

him home and putting him on a raw diet? Was youth care justified in not intervening with Tom's diet? I will try to answer these questions later. Let us first look at the second case.

This case is about Yunus. He was born in a Muslim family, but was put in foster care when he was nearly a year old. He was brought to the hospital with several broken bones, which the doctors believed to be the result of child abuse. More research would be needed to make this claim conclusive. Yunus was to be put in foster care as soon as possible. He was placed under the care of a Dutch lesbian couple in 2004 and was joined by his two older brothers in 2006. His mother agreed to him being placed in the foster family at first, even though she was troubled by the idea of her son being raised by a lesbian couple. In 2007 there proved to be no conclusive evidence that Yunus's injuries were the result of abuse. Juvenile court ruled that it should be investigated whether it is in the interest of Yunus to go back to his birth parents, or that it is in his interest to stay with his foster family. At first his birth parents did not want to comply to this investigation, but in 2010 they did and in 2012 the court concluded that Yunus's parents were not fit to fulfil their duties as parents. Yunus could stay with his foster parents.⁴

When Yunus was nine years old, his mother changed her mind and did not want her Muslim son to grow up with a non-Muslim lesbian couple. The case caused a spike in the media, because the Turkish government intervened with this case. The Turkish government claimed that Yunus should not become estranged from his culture. His foster family does not have the same culture as his birth parents, his foster parents are a lesbian couple, and homosexuality goes against the norms and values of Islamic culture. A diplomatic row between the Dutch and Turkish government followed, with the Turkish government questioning the way Turkish children are treated in Dutch Youth Care. In a press conference the Turkish prime minister Erdoğan expressed the idea of Turkey and the Netherlands working together on the placement of Turkish children in Dutch youth care. Dutch prime minister Rutte disagreed, saying that youth care in the Netherlands is the responsibility of the Dutch government and of no one else.⁵

⁴ "Waarom Yunus bij zijn pleegmoeders blijft,"

<http://www.volkskrant.nl/vk/nl/2686/Binnenland/article/detail/3421492/2013/04/06/Waarom-Yunus-bij-zijn-pleegmoeders-blijft.dhtml>, (consulted on 5-06-2014).

⁵ "Rutte en Erdogan twisten over Yunus: 'dit in de toekomst voorkomen',"

<http://www.nrc.nl/nieuws/2013/03/21/rutte-en-erdogan-twisten-over-yunus/> (consulted on 03-06-2014).

One thing should be noted. Even if the Dutch government would agree with the Turkish government that Turkish children in foster care should be placed in a Turkish family, or at least a Muslim family, there is a practical problem. There is a shortage of foster families in the Netherlands, and only a small part of these families are Muslim families. There just are not enough Muslim foster families to take care of the Muslim children in need of foster care.⁶

There are a lot of questions that can be raised in regard to this case. Is Yunus harmed in not growing up in a Muslim family? Can his birth mother, after being declared unfit for parenting, make any demands about the upbringing of her son? Is the Dutch government justified in claiming that they alone are to decide what is best for Yunus? Is the Turkish government justified in saying that they should intervene in the way Turkish children are treated in Dutch youth care?

1.2. Introduction of Dutch Law

In order to answer these questions, I will first look at Dutch law. It can help us to gain insight on what considerations and principles governmental interventions in families is based and what justificatory reasons follow from the regulations. The first difficulty with this law that needs to be mentioned is that it claims to benefit the interests of the child, but that it is not entirely clear what this means. Also this law will not answer questions about the conduct of Tom's mother or the reaction of the Dutch society on her behaviour. Neither will it answer Yunus's culture-related questions. Are parents free to raise their child as they see fit, or are there boundaries? Despite these doubts, this law will serve as a basis of theoretical background when we come to the part of applying the two theories I will set out later to these cases. It sets the framework in which I will work. In Article 2.3 of the Jeugdwet youth care should promote the following⁷:

⁶ "Te weinig islamitische pleegouders," <http://nos.nl/artikel/483127-te-weinig-islamitische-pleegouders.html>, (consulted on 5-06-2014).

⁷ Jeugdwet, Artikel 2.3.1.: Indien naar het oordeel van het college een jeugdige of een ouder jeugdhulp nodig heeft in verband met opgroei- en opvoedingsproblemen, psychische problemen en stoornissen en voor zover de eigen mogelijkheden en het probleemoplossend vermogen ontoereikend zijn, treft het college ten behoeve van de jeugdige die zijn woonplaats heeft binnen zijn gemeente, voorzieningen op het gebied van jeugdhulp en waarborgt het college een deskundige toeleiding naar, advisering over, bepaling van en het inzetten van de aangewezen voorziening, waardoor de jeugdige in staat wordt gesteld:

- a. gezond en veilig op te groeien;
- b. te groeien naar zelfstandigheid, en
- c. voldoende zelfredzaam te zijn en maatschappelijk te participeren, rekening houdend met zijn leeftijd en ontwikkelingsniveau.

1. A child should be able to grow up healthy and in a safe environment.
2. A child should be able to grow up to be independent.
3. A child should be able to be self-reliant enough to participate in society, dependant on its age and level of development.

The first point applies to both cases. The question can be raised whether Tom's diet enables him to grow up in a safe environment, whether his diet is delaying his physical development and whether this can be seen as a type of physical abuse. We could also ask whether Yunus would grow up in a safe environment if he were to stay with his foster parents or if he needs to be transferred to a Muslim foster family. I do not think the second point is relevant in these cases, since there is no direct indication of limited development of independence, but the third point may be. Tom's diet resulted in him being bullied at school, which made his mother decide to turn to homeschooling. Is his diet delaying or damaging the development of Tom's self-reliance to participate in society the way his peers do? Does Yunus's non-religious upbringing have a negative influence on the development of his self-reliance, which is not the case if he were to grow up in a Muslim family? The answers to these questions lead to another question: on what grounds can the Dutch government justifiably intervene?

For me, the context of Dutch Law helps to extrapolate three relevant concepts: 'harm', 'autonomy' and 'development'. Harm should be prevented and autonomy, the development towards an autonomous person, should be promoted. When does harm occur? In what ways can a child be harmed in its development towards an autonomous person, especially if we have the two cases in mind? And if a child is harmed, what is the least harmful way to protect the child? Is Tom harmed by his diet and by not going to school? Is Yunus harmed by growing up with a Dutch lesbian couple and not in a Muslim family? I think that these cases illustrate how difficult answering these questions is.

In order to find an answer to these questions, I will look at philosophical theories. Philosophical reflection can be of help because it systematically analyses the use of concepts and the relation between them, within a certain framework. This may not lead to conclusive answers, but it can map out different ways to approach problems in the daily practice of youth care. I hope to show that philosophical theory does is not unrelated or indifferent to daily practice, but that philosophical theory can be in line with intuitions and laws. I also hope to

show that philosophical reflection can give useful insights into problems arising in daily practice of youth care.

I will draw on Joel Feinberg and Richard Rorty. Feinberg is well-known for his work on interests, autonomy, harm and paternalism. Even though his focus is on political philosophy, it could be interesting to see how Feinberg's use of the concepts of autonomy and harm hold up when confronted with children and how his paternalist view reflects on justifying government interference with cases in which children are harmed. Rorty's focus is also more on political philosophy. His ideas on the development of persons in a liberal society could be useful. He has clear ideas on self-creation and is clear about what the conditions are for a society to be liberal. He does not say anything about the role of the government when it comes to protecting children from harm in specific cases, when the liberal society is established. Both philosophers are named in discussions on philosophy of education. Doret de Ruyter, whose research is aimed at educational philosophy, named both Feinberg and Rorty in a lecture on foster care, which lead me to draw on these philosophers.

I will not offer an argument for one approach or the other. This thesis is more a philosophical search for different ways to answer the questions that arise within the two cases we discussed. What are the answers that Feinberg can give and what are the answers Rorty can give to these questions? Before getting into these answers, I will describe Feinberg's theory. After that I will apply his theory to the cases and compare the answers Feinberg gives to the answers Rorty gives.

Chapter 2: Joel Feinberg's Soft Paternalism

Joel Feinberg (1926-2004) was a legal and political philosopher known for his work on paternalism. The paternalist holds that the state can interfere with an individual, against their will if necessary. This is based on the motivation that the person will be better off with this interference. Feinberg opposes legal paternalism, or hard paternalism, and introduces soft paternalism. Voluntariness is the basis for soft paternalism. I will describe Feinberg's notion of soft paternalism, how soft paternalism relates to autonomy and how voluntariness serves as the basis for soft paternalism.

2.1. Soft Paternalism

The term 'paternalism' has a negative connotation. Being 'paternalistic' is often used as an accusation. The term suggests that a state stands to its citizens as a parent stands to his children. This is not how we generally interpret the relation of the state to its autonomous, free citizens. The negative connotation attached to paternalism is problematic, Feinberg explains, because there are situations in which someone can be rightfully accused of being paternalistic without this being problematic. Feinberg proposes that some useful distinctions should be made in order to show when legal paternalism is not problematic and can even be beneficial.⁸

Feinberg's soft paternalism is explained in *Harm to Self*, the third volume of a four-volume work called *The Moral Limits of the Criminal Law*. His aim is not to answer questions about youth care, but about how a state can condemn conduct as criminal, without infringing on the autonomy of its citizens. This explains why the definition of legal paternalism and soft paternalism is outlined in terms of criminal prohibition, and not in terms of youth care. Feinberg defines legal paternalism as follows: "It is always a good and relevant (although not necessarily decisive) reason on support of a criminal prohibition that it will prevent harm (physical, psychological or economic) to the actor himself"⁹ He continues to make a distinction between (1) presumptively blameable paternalism and (2) presumptively non-blameable paternalism. Presumptively blameable paternalism is treating adults as if they were children, by making them act in certain ways (whether for their own good, or for the good of

⁸ Joel Feinberg, *Harm to Self*, Oxford: Oxford University Press, 1986, pp. 4-5.

⁹ Ibid, pp. 4.

others). Presumptively non-blameable paternalism is defending those who cannot sufficiently defend themselves from external dangers.¹⁰ This vulnerable class of people includes, among other things, the mentally disabled, the physically handicapped, the poor, but may also include the children in the cases.

Legal paternalism can be translated into laws. Feinberg makes four distinctions in types of paternalistic laws. The first is the distinction between coercive law that *requires* certain conduct and restrictive law that *forbids* certain conduct. The law that requires you to wear a seatbelt while driving a car is a coercive law that requires something from you. The law that forbids you to use heroine is a restrictive law. The second distinction is between *mixed* and *unmixed* paternalistic laws. An unmixed paternalistic law has no other objective but to protect persons from harm (either self-inflicted or inflicted by others), while a mixed paternalistic law also has other objectives (preventing others from being harmed, protecting the general public). The third distinction is between laws that *prevent* people from harming themselves (“harm-preventing paternalism”) and laws that *promote* conduct that benefits people (“benefit-promoting paternalism”). The fourth and final distinction is between laws that apply to *single-party* cases (for example cases of self-mutilation) and *two-party* cases (for example cases of euthanasia).¹¹

Whereas the hard paternalist permits restricting the conduct of a person whenever it benefits this person’s (or someone else’s) good, the soft paternalist sets conditions that need to be met before permitting state interference; “Soft paternalism holds that the state has the right to prevent self-regarding harmful conduct (so far it *looks* “paternalistic”) *when and only when* that conduct is substantially non-voluntary, or when temporary intervention is necessary to establish whether it is voluntary or not.”¹² So interference is justified only when the act is not voluntary, or when it cannot be determined whether the act is voluntary or not. If a mentally stable person who does not find his voluntariness reduced by any kind of factor like drugs or coercion wants to inflict pain on himself, then the soft paternalist should allow for this. In a two-case scenario, where A asks B to whip him and both parties meet the voluntariness requirements, the soft paternalist is not allowed to intervene. The legal paternalist would not allow for A to be whipped by B, because he needs to protect his citizens from any type of harm.

¹⁰ Ibid, pp. 5.

¹¹ Ibid, pp. 8-9.

¹² Ibid, pp. 12.

Even though we now have a general understanding of what soft paternalism is, it is still impossible to apply this principle to our example cases. There are still too many concepts unexplained, which is why I will now set out how Feinberg uses autonomy and voluntariness.

2.2. Autonomy

Feinberg points out that the concept ‘autonomy’ is generally used messily used. There are different conceptions of autonomy, but usually authors do not distinguish between these or specify which conception they use. This leads to misunderstandings which Feinberg prevents by distinguishing between four conceptions of autonomy.

The first conception is autonomy as the *capacity* to govern oneself. This is the ability to make rational (life) choices. Autonomy as a capacity is a matter of degree, not an all-or-nothing state of being. But those on the very end of the autonomy scale are not necessarily more competent than those who are five steps behind them on that scale. Feinberg follows Daniel Wikler in saying that some people have developed their ability to make rational choices further than others, but when you are above a certain threshold, everyone is equally competent. This reflects in legal systems. It is not the case that I am legally allowed to make more decisions or other types of decisions because I have almost finished my Masters in Philosophy, while a plumber who never finished college and has been working for several years can make less decisions. Even though I may be more intelligent (which still remains to be proven), we are equally competent. Those below the threshold are all equally incompetent, even though their capacities may vary greatly.¹³

The second conception is autonomy as a *condition*. Sometimes a person has the right and the capacity to govern himself, but may not be able to do so. When he is unwillingly enslaved, he has no way to ‘exercise’ his autonomy. Luck plays a part in this, according to Feinberg. Sometimes external factors, beyond your control, rob you from the conditions ideal for exercising your autonomy, leaving you restricted or deprived from it. But, under normal circumstances, there are still different ways in which you can exercise your autonomy.¹⁴

The third conception is autonomy as an *ideal*. This ideal consists of well-chosen character traits that make the ideal autonomous person, if they are combined in a specific way. But as

¹³ Ibid, pp. 28-30.

¹⁴ Ibid, pp. 31-32.

Feinberg points out, even a very refined conception of autonomy will be only partially ideal, because it does not have a moral component. The ideal autonomous person is not necessarily the ideal moral person. Also, in being an autonomous person, you are not alone. You encounter numerous other autonomous persons, with whom you need to live together in a society. You cannot make an autonomous choice, without taking this external world into account.¹⁵

The final conception is autonomy as *right*. This is a lawful conception of autonomy, which is not just applicable to persons, but also to regions or nation-states. Great Britain is a sovereign state, its power is whole and undivided, in contrast to Scotland, a state that is autonomous under the reign of Great Britain. Scotland's autonomy is partial (it does not have the right to decide on everything itself) and limited (there are restrictions to the right to decide things for itself). Feinberg fails to mention that Great Britain is part of the European Union and that in some way the autonomy of Great Britain depends on or is restricted by the EU, but I think this fact does not influence his parallel. Feinberg makes the parallel to persons, even though he admits that it is slightly forced. Infants do not have the right to autonomy yet; they do not have capacities that grant them this right. Children may have a 'partial right to autonomy' in varying degrees, depending on their age and capacities. Their rights are partly derived from their parents. Within the sovereign boundaries their parents have set, children can exercise autonomy.¹⁶

Autonomy as a right is difficult to understand. A child has a partial right to autonomy, because its parents have autonomy. How this right is conveyed and to what extent, is not clearly explained by Feinberg. Another difficulty is that not all children are allowed the same amount of freedom and are set the same boundaries. Some children can be allowed to exercise more autonomy than others, depending on their parents.

Something to take note of is that the exemplary cases are about children, who are still developing into autonomous persons. Even though they are developing the capacity for autonomy, the children in the cases have not yet reached the threshold of being autonomous hence are not competent enough to make a choice in their difficult situations. However, this does not mean that their opinions and wishes should be ignored. The 'Internationaal Verdrag Inzake de Rechten van het Kind,' Article 12, participation and right to be heard (participatie

¹⁵ Ibid, pp. 44-47.

¹⁶ Ibid, pp. 47-51.

en hoorrecht), states the following: “A child has the right to give his or her opinion about all cases concerning the child. The government ensures that the child can express its opinion and that this opinion is heard. This also applies to judicial and administrative procedures”.¹⁷ So who else is involved in making decisions about the children in the cases? What are the roles of the birth parents, foster parents, youth care employees and the government? Who should protect children in the development to autonomous persons?

I will leave these questions for now and turn to the notion of voluntariness. How is voluntariness connected to autonomy and what are the implications for the cases?

2.3. Voluntariness

As mentioned above for soft paternalism voluntariness is an important concept. When an act is voluntarily, the soft paternalist is not allowed to intervene, even when the person performing the act may risk harming himself, or others (who are also voluntarily committing to this act). Feinberg shows that soft paternalism is reasonable in protecting people from harming themselves (and others who are voluntary), even though this may infringe on their right to autonomy. He argues for making useful distinctions.

The first is the distinction between an act that harms, or likely will harm, the person himself and an act that harms, or likely will harm, others. Committing suicide is an example of a harm that a person can inflict on himself (even though those who are left behind can be said to be harmed, this distinction is about the immediate harm of an act to the persons involved). Asking someone else to kill you is an example of an act that harms someone else. An example of this is euthanasia.¹⁸ Both acts can be committed with the consent of all parties involved.¹⁹ This is relevant, because if both parties voluntarily consent to the act, the soft paternalist is not allowed to intervene.

The second distinction is between *direct risk and certain harm* and *the risk of harm*. If the risk of an act is direct and harm is certain, harm is the desired end of the act. The harm is desired. When I take a hammer and deliberately smash it on my thumb, the harm I inflict on my thumb

¹⁷ Internationaal Verdrag inzake de Rechten van het Kind, Artikel 12, Participatie en hoorrecht: Het kind heeft recht om zijn of haar mening te geven over alle zaken die het kind aangaan. De overheid zorgt ervoor dat het kind die mening kan uiten en dat er naar hem of haar wordt geluisterd. Dit geldt ook voor gerechtelijke en bestuurlijke procedures.

¹⁸ Only if in the case of suicide and euthanasia death is seen as harm, which may not always be the case.

¹⁹ Ibid, pp. 99-101.

is direct and deliberate. The risk of harm applies to acts that do not have harm as an end, but are likely to involve risk of harm. I am aware that I am very clumsy with a hammer (or any other type of tool for that matter). When I decide to build my own table, I take the risk of harming myself with the hammer. However, the end of my act is not to harm myself, but to build the table. I have to take a 'calculated risk'.²⁰

The third distinction is the one between *reasonable* and *unreasonable* risks. Most acts involve some kind of risk. Whenever I go out to get some groceries, I run the risk of getting run over by a car when I cross the street. This is a small risk, which is reasonable to take. An unreasonable risk would be stepping in a car to get my groceries. I have no drivers licence and I am not just likely to harm myself, but anyone between me and the grocery store. The soft paternalist does not just want to prevent me from performing this act based on the harm that it will cause me or others, but also because this act is 'unreasonable to the point of suggesting impaired rationality'.²¹ Feinberg proposes five considerations to determine if the act is rationally acceptable (given that you have time to deliberate in the first place): (1) the degree of probability that the act will result in harm to oneself, (2) the seriousness of the harm being risked, (3) the degree of probability that the act will result in the risked harm, (4) the importance or value of reaching the goal set out by the act and (5) the necessity of the risk (i.e. is there no alternative course of act which does not involve taking this risk, or taking a smaller risk?).²² Since I do have time to deliberate on how best to go to the grocery store, using this list I should reasonably conclude that the least risky way to get my groceries, is to go by foot.

The fourth and final distinction is between *voluntary* and *non-voluntary* assumptions of risk. Here Feinberg wants to point out that voluntariness is not an all or nothing concept, but a matter of degree. Some choices are more voluntary than others. No choice can be perfectly voluntary. Most choices are not made with complete and perfect knowledge of all the risks involved, are made in a state of complete mental calmness, without being distracted, without unbalancing emotions, misunderstandings, clouded judgement or other factors that may impair the perfect voluntary choice.²³ In my previous example I came to the conclusion that I should walk to the grocery store, because driving would be unreasonably dangerous. The reason for going to the grocery store in the first place, is that I have an insuppressible urge for

²⁰ Ibid, pp. 101.

²¹ Ibid, pp. 103.

²² Ibid, pp. 102.

²³ Ibid, pp. 104.

chocolate. What I do not know, since I locked myself in my room and have been working on my thesis all morning, is that a dangerous maniac escaped from a mental institution nearby, and that he has been spotted near my grocery store. My choice to go to the grocery store is still voluntary, but it is not perfectly voluntary, since I was not able to control my chocolate craving. The escapee is an non-voluntary risk involved, of which I am ignorant. My act is thus reasonable (from my point of view), but not voluntary enough, which allows the soft paternalist to prevent me from going to the grocery store.

At this point it is useful to make the distinction between *unreasonable* and *irrational* acts. For example, my boyfriend were to call me just before I were to leave the house to get my chocolate. He tells me about the maniac escapee and promises me he will pick up some chocolate on his way home from another grocery store. The reasonable choice would be to stay home and wait for my boyfriend to return. If I, with this knowledge, still decide to take the risk and go out, I am making an unreasonable choice. I am still in control of my decisions, I am capable of making the reasonable decision, I just don't. However, if my chocolate craving takes over and forces me to go to the grocery store, I am making an irrational choice. My chocolate craving invoked a 'temporary insanity', robbing me of the ability to make any considerations at all. Any choice made from (temporarily) incompetence stemming from (severe) cognitive impairment will be rendered irrational.²⁴

I may take a risk that is perfectly reasonable to me, but may seem unreasonable to someone else. So how does the soft paternalist go about judging voluntariness in these types of situations? Unlike hard paternalism, soft paternalism is not just concerned with preventing people from being harmed, but with protecting people from harm or risk they have not voluntarily chosen to suffer. Feinberg drafted three rules of thumb to deal with variable standards of voluntariness, which are all based on common sense²⁵:

1. *The more risky the conduct the greater the degree of voluntariness required if the conduct is to be permitted.* My chocolate craving may be a sufficient reason for someone to stop me from going to the grocery store. The degree of my voluntariness may be sufficiently reduced by my chocolate craving, not to meet the requirement of going to the grocery store and running significant risk of harm.

²⁴ Ibid, pp. 106-108.

²⁵ Ibid, pp. 118-124.

2. *The more irrevocable the risked harm, the greater the degree of voluntariness required if it is to be permitted.* Irrevocable harm, such as permanent paralysis or death, cannot be undone. Other things being equal, common sense dictates that these risks should be handled with a great care. If the escaped maniac is not as dangerous as he was made out to be and the worst he will do is call me names, I do not run the risk of irrevocable harm. On the other hand if the maniac is a convicted rapist and murderer, looking for a victim after being institutionalised for ten years, I obviously run a greater risk of being irrevocably harmed. My degree of voluntariness probably needs to be higher than it is, or the soft paternalist can legitimately stop me from leaving the house.
3. *In still other ways the standard of voluntariness must be tailored to various special circumstances.* Since voluntariness is applied in different branches of law, it should be tailored to meet the ends of those branches. Voluntariness may have a slightly different interpretation when it comes to setting up a will, compared to a request for euthanasia.

With these rules in hand I can now make presumptions about the voluntariness of other people's acts. This means that '[w]e may be obligated to intervene [...] when the act in question is of a type rarely chosen voluntary, and relatively often chosen non-voluntary.'²⁶ Thus, when I decide to stay home after all and wait for my chocolate to arrive, but see my neighbour go out, I have the obligation to warn her about the dangerous maniac. It is reasonable to presume that no woman willingly goes out with a raping, murdering maniac wandering about. But my neighbour might actually be a police woman who was called in to join the search for this maniac. This would make her going out a voluntary act. As long as I do not have this information, I owe it to her to tell her about the maniac.

One class of voluntary acts, are acts for which you have given your *consent*. I will focus on two-party cases of consent, leaving the single-party cases be, since they are of no use to my exemplary cases. When A asks B to harm or endanger A in any kind of way, A takes the responsibility of B's act, because A consented to B committing this act. A has given B authorisation for the act.²⁷ There are different types of consent, but not all of them are flawless. The first type is *active consent*. This is a vocal or written consent to an act. Whenever the consent is made voluntary, and the act consented to is not against the law, the

²⁶ Ibid, pp. 124.

²⁷ Ibid, pp. 176-177.

soft paternalist has to refrain from acting. Even if the act infringes on the autonomy of one of the parties.²⁸ Even though it may sometimes be difficult to determine if the consent is in fact voluntary (enough), this is the least problematic type of consent. Let's quickly go through more problematic types of consent:

- *Consent as inferred psychological state.* I will clarify this with an example. Say A and B like to discuss the newest episode of *Game of Thrones* over lunch the day after it has aired. Since B had to work late last night, he did not have a chance to watch the newest episode yet. However, A is not aware of this and can therefore logically infer that B wants to discuss the episode as usual. If A were to discuss the episode without B's active consent, he might reveal an important detail, making him responsible for ruining B's experience of watching the episode himself.²⁹ Inferring a psychological state is not sufficient consent.
- *Dispositional consent* is also inferred by A about B, but only because B is indisposed to give his consent. If B is unconscious, comatose, asleep or in some other state in which he cannot give his active consent, the same problem arises as in the previous type of consent. Even though A may have knowledge of B's general desires, there may be reasons, which A is unaware of, for B not to consent to A's act. Despite this, A cannot be blamed for acting the way he did, since there was no way to get B's consent.³⁰
- *Prior consent* is best understood with the example of a 'living will'. When A is forty years old he draws up a will, stating that in the event that he will ever get Alzheimer's after the age of seventy, he wants to be euthanized. However, his future self may not agree with his forty-year-old self. Still, if his present self is making the decision voluntary, his will is to be carried out in the future.³¹
- *Subsequent consent* is consent given for an act after it happened, even if there was active non-consent in the first place. This is a problematic type of consent, because both instances of consent can have been voluntary, leaving the question open which of the two instances to pursue.³²
- *Tacit consent* is the idea that someone can consent to an act, giving active consent. This needs an example to be clearly distinguishable from the other types of consent.

²⁸ Ibid, pp. 172-176.

²⁹ Ibid, pp. 181.

³⁰ Ibid, pp. 181.

³¹ Ibid, pp. 181.

³² Ibid, pp. 182-183.

During a meeting the chairman announces that the next meeting will take place next week, same time, same place. “Does anyone object?” he asks. If no one answers it is reasonable to assume everyone consented to the time and place of the next meeting.³³

- *Hypothetical rational consent.* “This is the notion that we can ascribe to a person as his actual consent what a hypothetical, perfectly rational person *would* consent to in his circumstances.”³⁴ But behind this type of consent lies the idea that only perfectly rational consent is voluntary, even though we have already affirmed that this does not need to be the case.

All these types of consent are flawed one way or the other. Active consent is the best candidate validating acts and thus refraining the soft paternalist from justifying interference. There are, however, also problems with active consent.

Sometimes an actor gets forced into committing an act or making a choice he would not otherwise have made. These acts or choices are generally judged as involuntary because they are coerced. Coercion will render acts involuntary, but different types of coercion, will lead to different conclusions. I will distinguish several types of coercion. Feinberg does point out that these types are not always clearly distinguishable in difficult cases, but he believed that it is at least a useful distinction for a lot of cases.³⁵

The first is *compulsion proper*. This is when an external force (either a force of nature, or a person or something else) makes your body move, without your consent. Your body is being moved for you. The wind blowing you over in a storm is an example of compulsion proper. Also when someone more powerful than you is forcing your car keys out of your hand, you are subject to compulsion proper.³⁶

The second type is *compulsive pressure*. In these cases the person is subjected to compulsive pressure, making any alternative act more difficult. You managed to get home, but the storm is still raging. Your shutters are under pressure, leaving you with the choice to lean against them to keep them shut, or take a bath risking your shutters to be forced open. You do have

³³ Ibid, pp. 183.

³⁴ Ibid, pp. 184.

³⁵ Ibid, pp. 194.

³⁶ Ibid, pp. 190.

the choice to take a bath, but since you are not willing to risk your shutters to be blown open, you are forced to lean against them, until the storm passes.³⁷

The third type is *coercion proper*. While compulsion is limiting your choices by rendering alternatives more difficult, coercion renders the alternatives less appealing by increasing its cost. The alternative is still there, but choosing this alternative has been rendered unreasonable. An example of this is a threat. When threatened to choose between letting your spouse die or giving the threatener ten thousand euros, there are two alternatives. Even though neither of them is appealing, one of them is more so than the other.³⁸

The fourth type is *coercive pressure*. Coercion is a matter of degree. Some coercive offers are more pressing than others. Coercive pressure is the amount of pressure on the person who is coerced.

Coercion is not the only factor that can reduce voluntariness of active consent, deficient belief or mistaken information are other factors. There are different ways in which deficient belief or mistaken information can influence voluntariness. The first is a misunderstanding over what is being agreed to. Sometimes the parties involved have a different interpretation of the agreement, leaving no one to blame for the honest mistake. The second is ignorance or mistaken belief about background facts. The third is mistaken expectation of future occurrences. No one will ever be able to tell what will happen in the future, but some cases are more likely than others. The fourth is limits to the assumption of risk. In making a risk analysis of a choice, sometimes you are not aware of all the possibilities, or take some possibilities to be so unlikely, that you do not take them into account. Whenever you invite your neighbour over for dinner, you are aware of the risk that there is a chance a conversation will occur about the terrible guitar music your spouse makes. You do not take it as a risk that your neighbour is a secret agent who will plant cameras in your house to follow your every move, because you are a suspect in a drug investigation. The fifth is fraud, the false pretence and the false promise. Where misunderstandings occur by accident, fraud is the deliberate deceit of another party. Feinberg continues to distinguish more types of deficient belief, but those are not relevant to our example cases.³⁹

³⁷ Ibid, pp. 190-191.

³⁸ Ibid, pp. 191-192.

³⁹ Ibid, pp. 269-315.

What is relevant to the cases is reduction of the voluntariness of active consent due to incapacity. The cases are at their core about children: not fully developed autonomous persons. Children are thus not fully capable of voluntarily giving active consent. Feinberg illustrates this with an example. A salesman can approach a very rich three-year-old with the choice of buying a house with a piece of property. The three-year-old will understand words as ‘money’ and ‘house’, but he is not even close to understanding what effect the exchange of these goods has. The ten-year-old will have a better conception of what is going on, but he will still not be able to distinguish for example a good deal, from a terrible one. Even the fifteen-year-old is not yet developed enough to understand how this decision will for example influence his future, rendering the choice not voluntary enough.⁴⁰ Therefore, children should not be asked to make these types of choices.

Parents or guardians make decisions about the lives of their children. Children are not capable of picking their own elementary school yet, so someone else needs to make that decision. In making a decision that will influence the future of a child’s life, Feinberg suggests that the best choice is the one that leaves as many life options open as possible. This way, when the child further develops into an adult, he is able to choose for himself what he wants to do and who he wants to be. Sending your child to elementary school will open up the possibility of a further education in the future and the possibility to a job and a comfortable life (as far as finances go to get you a comfortable life).⁴¹

The idea of trying to make the least limiting life decisions for a child does sound very appealing, but this will prove to be very difficult in the cases where there is a lot of pressure to make a decision. This is something we will get to in the case discussion.

⁴⁰ Ibid, pp. 325.

⁴¹ Ibid, pp. 325-327.

Chapter 3: Soft Paternalism in Practice

The next step is applying Feinberg's soft paternalism to the example cases. I will first discuss the case of Tom, using it to figure out if and how soft paternalism can justify government interference based on harm. Next, I will discuss the Yunus case.

3.1. The Soft Paternalist Approach to Tom's Case

As already mentioned the difficulty with voluntary acts, which is the basis for soft paternalism, is that Tom is not yet old enough and not yet autonomous enough to make a fully voluntary decision or give any type of consent about life changing decisions. Not going to school and his raw diet cannot be said to be fully his choice (yet). What would the Dutch government be allowed to do, through youth care, if it would take the soft paternalist approach?

If Tom were an adult, the soft paternalist would have to make an evaluation of Tom's degree of voluntariness against the risks he is running by not going to school and sticking to a raw diet. Furthermore the soft paternalist also has to consider whether the amount of voluntariness is sufficient for the risk Tom is taking. This does call for a risk assessment, which is rather difficult. The influence the raw diet has on his body needs to be taken into consideration. Even though a paediatrician concluded that Tom is undernourished, his energy levels are comparable to those of his peers. In his daily life he is not experiencing any physical disadvantages due to his diet. However, the raw diet did lead to him being bullied at school and is the reason he is now being homeschooled by his mother. His mother does not have a degree for homeschooling, which would leave Tom without a diploma. This could lead to difficulties when applying for higher education or trying to get a job on his level of schooling. If the degree of voluntariness of Tom's choice would not be sufficient enough to weigh the risks he is taking, the soft paternalist would have the obligation to intervene with Tom's choice. However, Tom is not yet an adult and his degree of voluntariness is not sufficient to make a fully voluntary decision in this situation. A risk assessment does not justify a course of action in this case.

Note here that Tom's consent to his raw diet can be mistaken for *subsequent consent*. Even though he was only given raw food since he was six years old, at the age of thirteen he firmly stated that he wants to stick to this diet. Even if it had been the case that he had trouble with it at first, he now seems to consent to this diet. But here again we run into the problem that this

consent is not to be considered as actual consent, because his stage of development. If Tom were twenty years old when he started his raw diet even though he did not quite agree with it and at twenty-five came to the conclusion that this is the best diet for him after all, then maybe this consent could be said to be subsequent consent.

Coercion can be a justifiable reason for the soft paternalist to intervene. Is Tom coerced by his mother? His mother is in charge of what he eats and she decided that he was going to be homeschooled. Is she using *coercion proper* to force Tom do what she wants him to do? This does not seem to be the case, because Tom expressed he is fine with his diet. It is important to ask ourselves if by doing this, Tom's mother is any different from other mothers. Every child comes to a point at which his mother says something like: "You will eat your broccoli, or you will not get dessert!" The child probably considers one of the options as an impossible alternative; not getting dessert.⁴² But this is not exactly the case with Tom. He does not feel forced to eat raw food as the child in the example feels forced to eat his broccoli. Tom does not sneak out of the house to eat steak and fries at his friend's house. Maybe Tom is subject to *compulsive pressure*. His loyalty to his mother and the fact that he has been eating raw from a young age may make the alternative, namely taking up a regular diet and going back to school, more difficult. Even if this is the case, it is very difficult to prove, leaving the soft paternalist with yet another dead end.

The last and I believe most viable approach the soft paternalist can take is to find out which course of action leaves Tom with the most life options. The soft paternalist wants to guarantee Tom's right to an open future. Is a raw diet limiting his future life options? I do not think that just eating raw food can be said to be limiting. Tom will not be as tall as his peers, but being 12 to 15 centimetres shorter than average will not necessarily limit future life options. I was not able to find a study that conclusively proves that a raw diet will lead to a premature death, or have any other physical consequences later in life. Supporters of the raw diet claim that a raw diet prevents premature death, though this is not proven either. However, the unqualified homeschooling will limit Tom's life options. In the Netherlands the *Leerplichtwet* dictates that children should attend school from the age of five until the age of 16. Without a *havo*, *vwo* or *mbo 2* diploma, they should be educated until they are 18 years old. This law was implemented to ensure the future possibilities of children. It is possible to get exemption from

⁴² Even if this would be a case of *coercion proper*, it is still questionable if this is a problematic case. It probably is not.

this law.⁴³ Instead of taking the final exams in school, Tom could apply for state exams, allowing him to still get a high school diploma. The apply Tom's mother made to get this exemption was rejected in the court, as was the appeal she made later on.

Since Tom is not yet 16 years old and he did not get exempted, he should by law be in school. Not going to school and not getting adequate education sufficiently reduces the chances of Tom getting a recognized diploma could which will harm Tom's future life options. The Dutch society is based on a school system with diplomas that are required in order to gain access to higher education and eventually a job at his level. In depriving Tom from this diploma, Tom is unnecessarily limited in his future life options. So, according to the soft paternalist, Tom does not necessarily need to change his diet, but he needs to go back to school.

This leads me to conclude that even though Tom is not yet fully autonomous and cannot yet make a voluntary decision, there is a way for youth care to intervene, based on a soft paternalist approach. It justifies the decision that Tom has to go back to school. However, it does not justify changing Tom's diet. If he is bullied because of his diet, maybe the school can choose to work with its students to create a more accepting environment, or Tom can choose to change his diet himself. It does seem that the right to an open future is the only way in which the soft paternalist can intervene in cases concerning children. In Tom's case it is still relatively easy to see how Tom's life options are limited, but we shall see in the next case, that it is not always clear which option is the least limiting.

3.2. The Soft Paternalist Approach to Yunus's Case

In the case of Yunus, considerable physical harm was already done to him, which lead to him being placed in foster care. Nine years later, youth care is left with these two alternatives: either Yunus stays with his foster parents whom he has lived with almost his entire life and he will grow up without the culture of his birth parents, or he is transferred to a Muslim family and he will grow up with the culture, norms and values of his birth parents. Which option will best allow Yunus to grow into an autonomous adult? Which option will limit his life options the least?

⁴³ "Leerplicht en kwalificatieplicht," <http://www.rijksoverheid.nl/onderwerpen/leerplicht/leerplicht-en-kwalificatieplicht> (consulted on 24-06-2014).

A difference between this case and the case of Tom, is that Tom expressed in the media that he has no objections against his raw diet. He allowed a director to make two documentaries about the lifestyle he and his mother keep. Yunus did not get or take the opportunity to speak up in the media about what he thought was best for him. I do not know if Yunus wanted to stay with his foster parents, or if he wanted to be transferred. The question should be raised to what extent Yunus's opinion matters to decide the case. His opinion will probably not be decisive. His opinion is less than adequately voluntarily and could be shaped by the loyalty he might have towards his birth or his foster parents. But I think his opinion should be taken into account.

It is important to recognize the setting in which the case is taking place, in order to fully comprehend the difficulty. The Netherlands is a liberal democracy, with freedom of religion as one of its central values. The religion you adhere to should not be limiting your life options. If this case were set in Iran, religion would play a major factor in deciding the case. Homosexuality is not permitted in Islamic cultures and growing up in a non-Islamic family, with homosexual parents would definitely be limiting your life options. Since this is not the case in the Netherlands the soft paternalist is left undecided about what the best alternative for Yunus is.

It can be said that it is better for Yunus's development to stay with his foster family, rather than being moved around. For him his foster family provided a safe home and asking him to adjust to a new family could be harmful, even though it would allow him to grow up within the culture, norms and values of his birth parents. But I am not sure if the switch would be limiting Yunus's life options in any way. And there is no way of telling which of the options would put more strain on Yunus. Which leads to the conclusion that the soft paternalist approach cannot give a decisive conclusion as to what the best option is in this case. The incompetence of children to make voluntary decisions makes it extremely difficult for a soft paternalist approach to intervene when it is not clear which life option is the least limiting.

Soft paternalism is not equipped to handle these types of cases, even though I believe it is a viable approach in cases concerning adults. What could provide an answer to Yunus's case, is a theory of development of autonomy. How does a child grow up to be an autonomous person? What are the implications of that for this case? Rorty notions of ironism and self-creation can be of help here.

Chapter 4: Richard Rorty, Ironism and Liberalism

Richard Rorty (1931-2007) was a pragmatist philosopher, known for his works *Philosophy and the Mirror of Nature* and *Contingency, Irony and Solidarity*. A pragmatist holds that a hypothesis can only be proven by testing it in the physical world; to see what its practical consequences are. Rorty's ironism combined with a liberal approach is completely different from Feinberg's soft paternalism. Where Feinberg uses voluntariness as a basis for his theory, Rorty makes a distinction between the private sphere, which is most suitable for his ironism with self-creation as its basis, and the public sphere, which is most suitable for his liberalism with solidarity as its basis. I will first explain what these terms entail, before applying them to our example cases.

4.1. Ironism and Self-Creation

Central in Rorty's theory of self-creation are vocabularies. A vocabulary is the set of words we use. It is arbitrarily formed, partly inherited from your parents, shaped by your culture and relies on you as its user for its creation. A vocabulary is not just used to have conversations, but is also used to express beliefs, desires, doubts, thoughts and hopes. It is more than a set of words. A vocabulary sets a frame of mind, within which a person sees the world in a particular way.⁴⁴ Whenever you have a thought about something, you have this thought in your own vocabulary. You are not able to think with words, or express a belief with words you are not familiar with.

Rorty calls a vocabulary *final* when its user cannot give a noncircular argument in defence of doubt cast on the use of his vocabulary. Rorty is not clear about what he means by doubt, but it will suffice to say that you can reach a point at which you are argumentatively stuck within your vocabulary. The words and the meaning attached to these words cannot give an argument against the doubts raised against the use of these words, without relying on the meaning you attach to them. This is when you hit the limits of your vocabulary and for Rorty this is when your vocabulary becomes a final vocabulary. Rorty does not see the inability to defend yourself against doubt as a problem, an ironist can cope with this.

⁴⁴ Caitlin McCollister, "Richard Rorty's Ironic Liberalism, The Charge of Relativism, and the Priority of Pragmatism," from <http://www.sewanee.edu/philosophy/Capstone/2006/McCollister.pdf> (consulted on 28-05-2014), pp. 12.

Someone is called an ironist, when they handle their vocabulary in a specific way. These are the three conditions Rorty gives:

“(1) She has radical and continuing doubts about the final vocabulary she currently uses, because she has been impressed by people or books she has encountered; (2) she realises that argument phrases in her present vocabulary can neither underwrite nor dissolve this doubts; (3) insofar as she philosophizes about her situation, she does not think that her vocabulary is closer to reality than others, that it is in touch with a power not herself. Ironists who are inclined to philosophize see the choice between vocabularies as made neither within a neutral and universal metavocabulary nor by an attempt to fight one’s way past appearances to the real, but simple by playing the new off against the old.”⁴⁵

Not only should the ironist continuously doubt her own final vocabulary, there is *no definitive* vocabulary you are striving toward. There is no metavocabulary, which can erase doubts about your own vocabulary, because there are no universal standards to which you can measure a definitive vocabulary. This is a metaphysical ideal that you need to let go of. The search for a definitive vocabulary is not a search for the ‘right’ vocabulary either, since there is no way of knowing what the right vocabulary is. I can set criteria for a final vocabulary, but I set these criteria in my own vocabulary, not yours. The criteria are defined by my vocabulary, and thus cannot be applicable to your vocabulary. Universal standards for vocabularies are unattainable. A final vocabulary thus is not a definitive vocabulary. A definitive vocabulary is an unattainable metaphysical ideal. A vocabulary is only final in the sense that “if doubt is cast on the worth of these words, their user has no noncircular argumentative recourse.”⁴⁶ Not all human beings will reach a final vocabulary. Nor is this necessary, according to Rorty.

Self-creation is only possible with a final vocabulary. Rorty defines self-creation as recreating your self by recreating your vocabulary. By reflecting upon your past vocabulary, inquiring upon your present vocabulary and comparing it to other vocabularies, through reading books for example, you can create the best self you are capable of being at that specific moment. It is not necessary to reach a final and best version self through recreation. Just as your vocabulary can only be judged with criteria from within your vocabulary, you can only be judged by your own criteria. In reflecting on your inherited vocabulary and redescribing it on

⁴⁵ Richard Rorty, *Contingency, Irony and Solidarity*, Cambridge University Press: Cambridge, 1989, pp. 73.

⁴⁶ Ibid.

your own terms, you are exercising your autonomy. The only criterion that you can use to evaluate your final vocabulary, is autonomy, but only by yourself. By measuring your present vocabulary to your past vocabulary and assessing if your vocabulary has become truly yours, you can declare yourself a more autonomous person than you used to be. This does not lead me to conclude that people without a final vocabulary are not autonomous at all, but that those people with a final vocabulary who reflect on it do become more autonomous. They are actively exercising their autonomy. Rorty seems to use a graduate notion of autonomy.

A constantly adapting and changing self, becoming more autonomous (or less autonomous, depending on how you evaluate your changes), but never reaching a definitive version of yourself. But this is not a problem for Rorty. The idea of a final and best self is another metaphysical ideal, which is unattainable according to Rorty. All you can do is recreate yourself by recreating your own vocabulary. We simply have to accept that there is no such thing as the final version of the self, but that we are constantly changing. In accepting this change, we are able to accept the self we are. Contingency should not be feared or loathed, contingency should be embraced, since it gives us the opportunity to change. Note that it is not possible to let go of your former vocabulary and implement a completely new vocabulary. All you can do is recreate and redescribe the vocabulary you already have, changing it bit by bit.

Do take note of the fact that Rorty's theory of self-creation is not to be misunderstood with a narrative theory of the self. It is not in the stories we tell about ourselves to others, or in the stories we tell ourselves, that we (re-)create our selves. It is not the historical events that shape us and reflecting upon events from the past in this way will not help us find our selves, if we want to follow Rorty's line of argument. Our recreation lies in the reflection of our use of words.

4.2. Liberalism and Solidarity

In explaining his utopian view of a liberal society Rorty rejects the idea of foundations for assertions. There is not one foundation on which all vocabularies are grounded, or which makes all vocabularies 'good'. This may lead people to believe that Rorty sets no boundaries to what vocabularies are permissible and which are not. McCollister shows that this does not

necessarily lead to a severe problem. It is possible that vocabularies are formed that support slavery or genocide.⁴⁷ Rorty acknowledges that it is possible for such vocabularies to be formed, but that this is highly unlikely. Also, he points out that these ideas are just as likely to take ground in a society based on universal foundations. In our vocabularies we use terms like ‘inherently wrong’ to communicate that we think slavery is wrong, we did not discover a fact in the world that we believe slavery to be inherently wrong. This belief sprouts from a series of contingent events, which lead to the rejection of slavery. Practices that we do now approve of, may in the future very well be rejected and vice versa.

Rorty does want to point out that the ironist approach is more applicable to the private sphere and that his liberalism is better applicable to the public sphere. This distinction is something we need to keep in mind when discussing the cases, later on. In the ideal liberal society social organisation should be focussed on giving every citizen the chance to recreate himself to the best of his abilities. This is in line with the ironist ideal of self-creation. However, the continuous doubt that comes with this ironist ideal is slightly problematic for a community as a whole. Communities tie together because of certain characteristics they share (being Dutch, being female, or studying a specific topic for example). As good ironists, the members of the community should continuously doubt these characteristics, doubting the community, leaving them with an unstable community. Ironism is thus not the best option for shaping the public sphere of a community. Also, unlike the metaphysician the ironist is not looking for one universal theory that could tie a community together. It is impossible to make a universally applicable ironist theory, since there is no vocabulary in which this theory can be expressed. A universal theory would imply a universal vocabulary, which does not exist according to the ironist. A public sphere guided by liberalism is not held together by a shared doubt or shared universal notions such as human rights or the nature of rationality, but by solidarity.

Rorty uses a very narrow definition of solidarity. His definition relies on our shared susceptibility to pain.⁴⁸ Not just any pain, but one specific to human beings: humiliation. Our wish to avoid humiliation and our ability to recognize other people’s wish to avoid humiliation, is what ties people in a community together. Solidarity is recognizing other beings ability to feel pain, therefore recognize them as morally relevant and not subjecting them to humiliation.

⁴⁷ McCollistar, pp. 17.

⁴⁸ Rorty, pp. 92.

The interest people have in their own well-being, their own desire for self-creation is the basis for a liberal community, since people need a community in order to be able to recreate themselves to the best of their abilities. There need to be services like a police force, a grocery store, houses, people who you can relate to in order for you to be able to recreate yourself. “For this reason, concern for the private and the public goods can co-occur in the same person (and in the same community) without necessitating a reference to some transcendent truth that serves a common denominator.”⁴⁹

⁴⁹ McCollistar, pp. 19-20.

Chapter 5: Ironism and Liberalism in Practice

I will start again by looking at the case of Tom, to see if Rorty's theory will lead to the same conclusion as Feinberg's theory and how Rorty's theory would come to that conclusion. There are, however, some difficulties. I have not been able to find any literature about the development of children from Rorty's point of view. He does not give a clear overview of when vocabularies are starting to take shape, when it can be expected that a person reaches his final vocabulary, though he does say that it is possible that this never happens, or if reflecting on a vocabulary and shaping a vocabulary can take place at the same time. Because these questions are relevant for the cases, I will try to interpret Rorty as best as possible and try to stipulate answers to the questions raised by my example cases.

Children go through the development of language in the early stages of their lives. In learning new words and how to use them, young children can be said to reflect on the use of their vocabularies. Whenever they pick up a new word, they go through a process of figuring out what this word means and how to use it in context. Later in life most people develop a kind of 'feeling' for language, enabling them to correct themselves when they make a language error. Sometimes you hear yourself say something and you can hear that you are saying making a mistake. In correcting yourself you are showing a type of reflection. However this is not the type Rorty is talking about. What Rorty means by reflection is a reflective attitude on the way you use words in general, which is only possible with a final vocabulary. What meaning you attach to words, how you use them in context and how this use is influenced by your mind-set. It is the reflection on the mind-set that is developed with the development of a vocabulary that Rorty is referring to. In practice it turns out that different people use words in different ways, because they attach other meanings to these words and shape their minds in different ways. Why do I adhere to the meaning I gave to this word, and not to another? How does my use of this word reflect my mind-set?

I will try to clarify this with an example. I am a person with a final vocabulary and my vocabulary rich in words that describe emotions and a lot of words I use have an emotional charge. I was raised to be very attentive to people's emotions, which had a great influence on my mind-set. My boyfriend does not have a lot of emotionally charged words in his vocabulary. He sees himself as a rational being without a need for emotional connotations attached to words. This sometimes leads to misunderstandings. We were watching a television programme about children with Down Syndrome. At some point my boyfriend commented:

“They are so retarded.” I was kind of shocked. In my vocabulary the word retarded is a word with a strong negative connotation, which is only used to hurt someone’s feelings. But in his vocabulary the word ‘retarded’ is just stating a fact about someone being (permanently) delayed in his development, without any negative connotation whatsoever. In this moment I reflected on my use of words and my mindset that comes with it. I decided that I could change the way I use the word ‘retarded’ but also the way I react on it when other people use it. I believe this to be a (simple) example of recreating yourself in the way Rorty explains it. In assigning a new meaning and use to a word, I made the word mine, and herein lays the exercise of my autonomy. For the cases I believe it is safe to say that the children have not (yet) reached the level at which they are able to reflect on their vocabularies and exercise their autonomy in this way. They have no final vocabulary. They are still in the process of developing a vocabulary and will maybe never reach a final vocabulary, as I discussed already.

The important question that has to be asked is if you can be harmed in the development of your final vocabulary and thus if you can be harmed in the creation of yourself and the ability to consciously exercise and expand your autonomy. What need to be clarified is what development is. On the one hand there is the development of a vocabulary and on the other hand there is the development of the self, based on a final vocabulary. The development of a vocabulary is like collecting building blocks. The blocks are arbitrarily shaped and what types rocks you find is also subject to coincidence. The development of a vocabulary can be permanently damaged, but this only happens in rare cases. In 1970 Genie was found in a basement. At the time she was 13 years old and had been locked in a basement from the age of 20 months old. She had not been thought any kind of language and was never spoken too with more than a few words. When she was saved she did not have the ability to speak. At the age of 14 she began to learn language, but never acquired the ability to speak more than words without a clear syntax.⁵⁰ Genie was not able to attain any building blocks for her vocabulary in the first thirteen years of her life, which left her unable to learn a language. It is possible to be harmed in the development of your vocabulary, but this is not the case in our example cases.

⁵⁰ Susan Curtis, Victoria Fromkin, Stephen Krashen, David Rigler and Marilyn Rigler, “The Linguistic Development of Genie,” from <http://www.neiu.edu/~circill/bofman/ling450/linguistic.pdf> (consulted on 25-06-2014).

Can a child be harmed in the development of its final vocabulary? Developing, redescribing and recreating yourself based on a final vocabulary is using the building blocks you have, moving them around, restructuring them, reshaping individual blocks, casting some out, getting some new ones, etc. For Rorty there is no definite product, no final building, you are developing towards, no best self you can be. The continuous recreation of the self is the best self you can be at that particular moment. Tomorrow, or in five hours, or even in a moment's time you can have recreated yourself into the next version of you. So how can you be harmed in this development? I suggest that the only way this is possible is if you are somehow obstructed in recreating yourself. Recreation is a mental process, as I understand Rorty, so in order for it to be harmed, I believe two things are possible. Either you are deprived of your mental capacities, maybe through a terrible accident leaving you in a coma. Or through extreme external (mental) pressure. Maybe through extensive torture you can be forced to stop recreating yourself, or if you suffered severe psychological trauma and somehow are not capable of reflective activity whatsoever. This is very speculative. Maybe there are less severe ways in which your ability to self-create can be impaired. Of course you can actively choose to not recreate yourself, or even never reach a final vocabulary at all, but Rorty does not see this as a problem. Your creation is up to you. This cannot be seen as harm.

So even if Tom and Yunus were developed enough to have a final vocabulary and be able to go through the process of self-creation, it is very difficult to see how they are harmed in their development, from an ironist point of view. If Tom wants to eat raw food, that is fine. If he needs to be homeschooled because of his diet, that is fine too. If Yunus stays with his foster parents, that is fine, as is him being transferred to another family. Their ability for self-creation is not harmed either way. This answer seems quite indifferent and unsatisfying, but Rorty has another trick up his sleeve: liberalism. Where ironism is mainly applicable to the private sphere, liberalism is better applicable to the public sphere. In the exemplary cases the Dutch government got involved in the private sphere, taking these private matters into the public sphere. After the media got hold of the cases, there is no denying that these cases became part of the public sphere. Maybe liberalism can justify the interference of the Dutch government.

The first thing to notice is Rorty would say that practices that are accepted by the larger public are arbitrarily formed. The fact that most people in the Netherlands are on a diet that includes meat, dairy and cooked vegetables should be no reason for them to reject other types of diets. A hundred years ago a vegetarian diet was considered just as strange as the raw diet is now.

Maybe in a hundred years eating raw food will be an accepted diet. These practices are all contingent and thus have no real importance for Rorty. Therefore, I do not think Rorty has a problem with Tom's diet. Note here that Rorty does not rely on solidarity to argue that Dutch society should be more accepting of non-mainstream practices. He would not argue that the general public should be more accepting or even protecting of minority groups, because solidarity is an important value in the liberal society. The general public should be more accepting of minority groups because they should recognize that mainstream practices only became mainstream through arbitrary historical events.

I do think that from a liberal point of view Rorty will have a problem with Tom not going to school, which would lead Rorty to the same conclusion as Feinberg. Within Rorty's theoretical framework children are not harmed quite as fast or quite as extensive as they are in Feinberg's. There is no best version of a person that can be damaged, only an impaired ability to recreate yourself. In an ideal liberal society everything would be ordered as to give each citizen the best chances to develop the ability to self-create. The Netherlands is not an ideal liberal society. The Netherlands is structured in a way that requires every citizen to go to school until they are 16 and get a recognized high school diploma in order to get a job at your level. Not having a diploma and not being able to get a job at your level does not directly impair the ability to self-create, but being in an environment that best suits your needs may improve your ability to self-create. So even though Tom is not directly harmed if he is homeschooled, it would be in his interest of developing the ability to self-create to go to a regular school. At least until he is 16 years old and get a high school diploma at his level. Even though Rorty does not give an explicit example of how a liberal society can or should intervene in the private sphere, I do think that based on Rorty's liberalism and his ironism, I can say that Rorty would agree that Tom should go to a regular school. Keep in mind that when Tom has developed a final vocabulary, he does not have the obligation to recreate himself. All the liberal society has to do is make it possible for Tom to develop the ability to self-create. It is up to him what he wants to do with this ability.

What would Rorty make of the Yunus case? Yunus is now living with his lesbian foster parents, which his birth mother claims is harmful for him, since he will not grow up to be a Muslim. A transfer to a Muslim family is what she believes is best for Yunus, in which she is supported by the Turkish government. Underneath this claim lies the idea that since Yunus was born in a Muslim family only way in which Yunus can develop to the best if his abilities is if he grows up in a Muslim family. Rorty would disagree with this. There is no ideal Yunus,

there is only Yunus as he recreates himself to be (if he reaches a final vocabulary). From that point of view there is no need for Yunus to be transferred to a Muslim foster family.

If he was originally placed in an Muslim family and his mother would have pleaded for him to be placed in a non-Muslim family, Rorty would conclude the same thing, that it is not necessary for Yunus to be transferred to another foster family. The status quo is the way it is and if Yunus is not mistreated in any way, there is no need to change the status quo. This may not seem a very satisfying answer. It hardly gives any clear criteria for judging what to do in a situation. But at least Rorty's liberalist approach is able to provide an alternative, where Feinberg's soft paternalism is not able to cope with the case.

Chapter 6: Conclusion

Daily life cases involving children lead to questions to which philosophical theories can possibly contribute. The cases of Tom and Yunus lead to questions regarding autonomy, harm and development, which needed to be reflected upon. The research question of this thesis was: how can philosophical reflection upon the concepts ‘harm’, ‘autonomy’ and ‘development’ be of use in mapping out answers to questions raised in the daily practice of youth care?

Questions raised by cases involving children are difficult for philosophical theories to answer.

My first chapter introduced the cases about Tom, who is on a raw food diet and is being homeschooled by his mother, and Yunus who’s development in a lesbian foster family was questioned. I reflected on the Dutch youth law, explaining what questions could be asked about these cases, and were asked in the media, based on this law. ‘Harm’, ‘autonomy’ and ‘development’ turned out to be central concepts in regard to these questions. Taking these concepts I looked at two philosophers, Joel Feinberg, with his soft paternalist approach, and Richard Rorty, with his notions of ironism and liberalism.

Key values in Feinberg’s soft paternalist approach are autonomy, voluntariness and the right to an open future. The difficulty with autonomy and voluntariness is that children are not yet fully autonomous and are not yet able to make fully voluntary decisions. This does not mean that their opinions should not be heard, but that their opinion should be weighed against this knowledge. Feinberg’s most useful concept was the right to an open future. This right could justify the Dutch government intervening with Tom’s home schooling and sending him to a regular school. It could not help me answer the question what alternative was better for Yunus, staying with his foster parents, or being transferred to a Muslim family.

Rorty’s liberalist approach was able to provide an answer. A liberal society should support its citizens in developing the ability to self-create and exercise their autonomy. Self-creation is based upon a final vocabulary, which Tom and Yunus do not yet have. Tom being homeschooled and not getting a diploma, does not directly damage his development of the ability to self-create, but going to school and getting diploma will benefit this process. For this reason I concluded that within Rorty’s theoretical framework Tom should go to school. For Yunus it can be said that a change of the status quo is probably an unnecessary change, which

does not contribute to his development. Yunus can stay with his foster parents, against the wishes of his birth parents.

How do these insights reflect on the Jeugdwet, that I started out with? The Jeugdwet is for a large part in line with both Feinberg and Rorty. Feinberg's soft paternalist approach is more demanding, claiming that children should not only grow up to be independent and self-reliant. Children should grow up to be autonomous persons, capable of making voluntary decisions. Within Rorty's framework the Jeugdwet is too extensive. Growing up to in a healthy and safe environment is probably beneficial for the development of the ability to self-creation, but it will not damage the development. Rorty would agree with the idea of children growing up to be independent and self-reliant, because that serves the liberal society as a whole, but it is not a direct factor in the development of the ability to self-creation. Since these abilities do not contribute to the development of a final vocabulary and the development of the ability to self-creation.

I hope to have shown that philosophical theory is not unrelated or indifferent to daily practice. Philosophical theory can be in line with intuitions and laws. Philosophical reflection can give useful insights into problems arising in daily practice of youth care.

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