

JUSTIFYING MORAL JUSTIFICATIONS: WHO SHOULD BE THE JUDGE?

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The project undertaken by de Ruyter and Spiecker is to define and to justify a criterion for the imposition of pedagogical help. In other words, they seek to specify the conditions under which it is morally justified to override the right of parents to raise their children without interference. It seems clear from what de Ruyter and Spiecker report of their context that the development of a more precise criterion for intervention is an important and timely undertaking. Although I believe that their criterion definition requires some further elaboration, I have no quarrel with the general direction de Ruyter and Spiecker have taken in making it “semi-strict.” My reservations concern not so much the content of the proposed criterion as the method of its justification. Accordingly, in my response, I will suggest two directions for further development of the definition, but focus the majority of my remarks on the issue of *how* the criterion should be justified, and *to whom*.

DEFINITION OF THE CRITERION

De Ruyter and Spiecker set forth six conditions that they believe any appropriate criterion for intervention should observe. The second condition has two parts. It states that the criterion should be defined in terms of (a) “harm to the child” and (b) “parental conduct.” The rationale for this condition is that intervention in a family is not justified unless the child is being harmed and the harm can be attributed to the parents. To meet this condition, then, a proposed criterion must not only operationalize the vague notion of “harm to the child,” it must also specify “a minimum standard of pedagogical skills the parents must meet.” Does the criterion definition proposed by de Ruyter and Spiecker meet this condition?

Concerning the first part: De Ruyter and Spiecker identify “harm to the child” with whatever is against the child’s interests, and then argue that it is in the child’s interests to become a person. A person is defined as “a human being who is able to act adequately.” In order to be adequate, human action has to be “at least minimally rational, minimally moral and minimally authentic.” Essentially, then, de Ruyter and Spiecker operationalize the notion of “harm to the child” on the basis of their particular understanding of the minimal developmental achievements required to become a person. The associated moral claim seems to be that children have a right to the care and education that will enable them to develop whatever capabilities are the minimum required for personhood.

As suggested above, I have no quarrel with this basic approach. At the same time, I think that de Ruyter and Spiecker need to say more in defense of their particular conception of personhood and adequate human action, and their apparent assumption that rationality, morality, and authenticity encompass all of the child’s valid and educationally-related interests. What about the creative or spiritual or aesthetic dimensions of being human? Are these less in the interests of the child? My suggestion here is that, if de Ruyter and Spiecker wish to develop a criterion that is not too tradition-bound, they would be well-advised to support their conception of adequate human action with reference to a comprehensive review of the empirical research on the cognitive, emotional, and social dimensions of human development.¹

Concerning the second part of the condition: de Ruyter and Spiecker propose that the attainment of minimal rationality, morality, and authenticity be taken as a “minimal educational standard.” The education provided by parents is inadequate, and intervention is justified, whenever the child’s right to minimal development is “violated.” The difficulty I see with this standard for parental conduct is that it offers no guidelines whereby a judge could determine whether or not a child’s lack of development is properly attributed to the educational care, or lack of it, provided by the parents. Perhaps specific guidelines are too much to expect of a legal criterion definition. However, if the criterion contains or makes reference to no guidelines whatsoever, then there seems to be a real risk that different judges will reach different conclusions in similar cases, depending upon their understanding of the relations between education and development. My suggestion here is that, in order to address their own concerns about vagueness, de Ruyter and Spiecker should attempt to provide at least some indication of the minimum parents should be expected to do, and be expected *not* to do, in providing for the development of their children.

JUSTIFICATION OF THE CRITERION

In their justification of their proposed criterion, de Ruyter and Spiecker focus exclusively on the question of whether, and, if so, on what grounds, the “right of the child per definition overrides the right of the parent.” I am puzzled as to why they would focus on this question, because on de Ruyter’s and Spiecker’s own account, this is the one question more than any other on which consensus already exists. What distinguishes the criterion proposed by de Ruyter and Spiecker is not that it justifies intervention in terms of the interests or rights of the child, but how those interests are described. To my mind, what requires justification in the proposed criterion is precisely what makes it different from other existing and proposed definitions.

This brings us to the question of *how* a criterion of just intervention should itself be justified: On what grounds are moral justifications properly vindicated, and to whom? Answers to this question will reflect basic assumptions about the nature of the moral domain. For example, if morality is understood to be a matter of social contract, then it would make sense to justify a moral criterion by arguing that all those who would be affected by the proposed definition have explicitly or implicitly consented to it. Alternatively, if morality is understood to be a matter of what any adequately informed rational person would assent to, then it would make sense to attempt justification through arguments that the proposed criterion could not consistently be denied by any rational agent. Or, if morality is understood in terms of what provides for the greatest happiness of the greatest number of people, then it would make sense to justify a moral criterion on the basis of some utilitarian calculation. De Ruyter and Spiecker do not account for their choice of the justification procedures of John Rawls and R. M. Hare. The first point, then, is that I would find it helpful in assessing their overall position if de Ruyter and Spiecker located themselves more clearly in a particular tradition of moral justification.

My own view of justification, moral and otherwise, is that it is either directly or indirectly related to the intentions of some particular context. On this view, the criterion proposed de Ruyter and Spiecker would properly be justified with reference to their purposes in defining it (assuming the purposes themselves are unproblematic). What are these purposes, and what are their implications for justification?

De Ruyter’s and Spiecker’s primary purpose, if I am correct, is to protect the interests of both children and parents by helping judges determine when the imposition of help is justified. The ideal criterion should therefore be specific enough to inform decisions in the complex contexts of actual practice, without being so detailed as to preclude the exercise of judgment. This suggests that the proposed criterion should be justified through the process of asking judges, jurists, and special pedagogues whether or not the criterion would have been helpful in the toughest cases they have encountered. This suggestion is consistent with de Ruyter’s and Spiecker’s own condition that the criterion be developed by pedagogical experts.

De Ruyter's and Spiecker's other primary purpose, if again I am correct, is to define a criterion that is in reflective equilibrium with widely shared — that is, not too-tradition bound — considered moral intuitions. I take this to be the case first, because a search for reflective equilibrium underlies Rawls's procedure of the original position,² and second, because de Ruyter and Spiecker themselves defend their conclusions with reference to moral intuitions that they seem to assume will be shared by their audience. For example, in describing their conditions for any criterion of intervention, they seem to presuppose agreement on the moral intuitions that parents have rights of autonomy in raising their children, and that children have a right to the kind of care that would promote their development, at least to minimal standards. Similarly, in explaining the need for a more precise criterion for intervention, de Ruyter and Spiecker seem to take agreement for granted on the principle of distributive justice: that similar cases should be treated similarly in the law.

I would support the basic strategy of seeking reflective equilibrium with shared intuitions. What is not clear to me is *whose* moral intuitions de Ruyter and Spiecker believe should be consulted in the definition and justification of the criterion. To whom are the arguments of de Ruyter and Spiecker primarily addressed? Once again, the answer to the question of "To whom should a moral criterion be justified?" will vary according to moral point of view. However, perhaps the least that could be expected in the justification of a moral criterion is that those most directly affected would be consulted. This suggests that de Ruyter and Spiecker need some method of checking their own understanding of human rights and interests with the actual moral intuitions of Dutch parents and children.

To conclude: in my view of the proper justification of a moral justification, thought experiments such as those drawn from Rawls and Hare are useful, but are no substitute for dialogue among those affected by the issue at hand. Moreover, such dialogue must be situated within the conditions and intentions of contexts of actual practice. I think that the work summarized here by de Ruyter and Spiecker does much to move forward the dialogue required to define and justify a new criterion for the imposition of help. I would like to thank them for this opportunity to join in the conversation, and look forward to hearing their response.

¹ For example, Alison Clarke-Stewart, Marion Perlmutter, and Susan Friedman, *Lifelong Human Development* (New York: John Wiley & Sons, 1988).

² John Rawls, *A Theory of Justice* (Cambridge, Massachusetts: Belknap Press, 1977), 48-53.