

Human Rights and *The Right to be Loved*

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In *The Right to Be Loved*, Matthew Liao provides a nuanced account of some of the most significant rights of children and parents. To do so, he develops a broader theory of rights. Although this theory of rights has several interesting features, there is reason to worry about its viability. In what follows, I use Liao's discussion of the rights of children and parents to highlight worries about his broader theory of rights.

Liao's main argument attempts to establish that children have the right to be loved. The argument involves three main steps. First, he argues that a sufficient condition for being a rightholder is having the genetic (or, more generally, physical) basis for moral agency. Human embryos have the genetic basis for moral agency, and human beings continue to have this genetic basis throughout their lives whether or not they ever actually develop moral agency. So, all human beings meet a sufficient condition for being a rightholder. Second, Liao argues that human beings have rights to what he calls the fundamental conditions for pursuing a good life. Third, he argues that being loved is a fundamental condition for children to pursue a good life. So, children have the right to be loved. I take Liao to have made a strong case for the third step of this argument. But I will raise worries about the first two steps.

Next, I examine an argument about parental rights. Liao considers whether we ought to require parents to be licensed in order to protect children from potentially abusive or neglectful parents, just as we require drivers to be licensed in order to protect people from potentially dangerous drivers. He gives the following argument against this view: "biological parenting is a fundamental (human) right, and fundamental rights should not be licensed; therefore, biological parenting should not be licensed." (154). Here again I am going to focus on the view of rights informing this argument. I will argue that, as it stands, Liao's argument account of human rights does not adequately support the claim that biological parenting is a human right.

1. Rightholding and Rights

In the first step of his argument, Liao defends the claim that all human beings are rightholders via the claim that a sufficient condition for being a rightholder is having the genetic basis for moral agency. Liao defends this latter claim by arguing that this account of rightholding coheres better than rival accounts with the special moral status involved in rightholding. We have more reason to save a being with welfare than an inanimate

object because the former has a greater moral status. Liao claims that rightholders have a further ‘special kind of moral status’ (17) that explains why their interests give us more reason for action than the comparable interests of non-rightholders. As Liao puts it:

[C]onfronted with a choice between saving a turtle’s limb or saving the limb of a normal functioning adult human being, and assuming that the loss of a limb to either is equally devastating, it seems that one should save the human being’s limb. A way to explain this intuition is to appeal to something like the status of a rightholder and to say that entities who are rightholders have greater moral status than entities that are not rightholders. (16-17)

This strikes me as a somewhat peculiar way of thinking about what it is to be a rightholder, as it does not seem very clearly connected with having rights. Perhaps as a matter of fact all entities that have rights give us weightier reasons for action than entities that do not have rights. Or, to tie the thought more closely to the idea of a right, perhaps all entities that have rights have rights to preferential treatment relative to entities that do not have rights. But it is far from clear that this idea should be built into the idea of being a rightholder.

One might instead approach the significance of being a rightholder from a different direction by asking what function rights serve and then asking what kinds of entities can have rights given that function. Liao’s choice not to pursue this strategy generates an incongruity between his account of what kinds of beings can be rightholders and his account of what kinds of rights rightholders have. An examination of his account of human rights will make the incongruity evident.

Liao argues that human beings have human rights to what he calls the fundamental conditions for pursuing a good life (39). Setting aside for now what these consist in, he argues for the connection as follows:

In my view, these fundamental conditions for pursuing a good life ground human rights because having these conditions is of fundamental importance to human beings, and because rights can offer powerful protection to those who possess them. The former is true because if anything is of fundamental importance to human beings, then pursuing a characteristically good human life is; pursuing a good life is the first and foremost aim of most human beings. (45)

Here we get two glosses on the relevance of pursuing a good human life: it is of ‘fundamental importance’ and it is ‘the first and foremost aim of most human beings’. It is unclear whether Liao intends these as normative or descriptive claims. Perhaps these claims are about what ought to be of fundamental importance to human beings or what ought to be their foremost aim. Or perhaps they are about what human beings as a matter of fact regard as important or aim at. The restriction of the claim to ‘most human beings’ may lend some support to the descriptive interpretation. But this interpretation makes it unclear why all human beings have rights to the fundamental conditions for living a good life given that some of them may not regard living such a life as important. Consider the committed utilitarian who would gladly forgo a good life if that meant that many others were able to live such a life instead. Since living a good human life is not her foremost aim, why should we take her to have rights protecting the fundamental conditions on living such a life just because most of those in her species have this aim?

Perhaps it might be suggested that cases like the committed utilitarian will be too few to make a difference to what rights practices our institutions ought to adopt. But there is another much larger class of human beings who do not seem to aim at living a good life or regard doing so as important. Recall that on Liao's view any being with the genetic basis for moral agency is a rightholder. If so, human beings have the status of rightholders as early as the embryo stage. But although embryos, fetuses and infants have the genetic basis for moral agency, they either lack consciousness altogether or lack the cognitive or conceptual sophistication to aim at a good life or regard living such a life as important. So, why should a descriptive fact about what most adult human beings aim at justify rights for beings who do not share those aims?

Suppose instead we interpret Liao as making normative claims about what ought to be important to human beings or what ought to be their foremost aim. On this interpretation, of course Liao owes us some defense of these claims. But even if these claims could be defended, this would not address the problem for the rights of very young human beings just described. Given that infants lack the sophistication to aim at living a good life, it is difficult to see how the imperative to aim at such a life or to regard it as important could apply to them. And why should claims about what adult human beings who have the relevant sophistication ought to aim at justify rights for beings who are not subject to that imperative?

But perhaps Liao is instead making a claim about what is important from some impersonal point of view. Though the talk of aims is hard to square with this interpretation, the puzzle about the very young disappears when we are considering the impersonal point of view. So, perhaps this is the way Liao ought to go.

But the impersonal interpretation makes evident the incongruity between Liao's account of rightholding and his account of the rights we have, a problem that was already lurking in the previous interpretations. One might reasonably wonder what having the genetic basis for moral agency has to do with living a good life, as beings without this attribute, like turtles, can also live good lives. When we read Liao as discussing the good life as important to or aimed at by human beings, there is at least some very minimal connection with agency in the offing. Even here it is difficult to see how the genetic basis for moral agency will fit into the picture, and this is what sets up the worries about the very young I have just described. But at least agency might in some way be connected with the significance of living a good life.

When we transition to the impersonal interpretation, however, there is no obvious connection with agency at all. If rights function to protect the fundamental conditions for living a good life because living such a life is what matters most from the impersonal point of view, why not think that all beings who can live good lives are rightholders? In other words, given Liao's view of what rights we have, a more natural account of rightholding might focus on the genetic basis for living a good life instead of focusing on the genetic basis for moral agency. As it stands, the restriction of rights to those who have the genetic basis for moral agency seems troublingly unmotivated in much the same way as the kind of unabashedly speciesist position Liao is trying to avoid.

It might be worth exploring whether any being that has the genetic basis for moral agency also has the genetic basis for living a good life. If so, this view of rightholding would support all the claims that Liao is interested in defending with respect to children. It would, however, also support attributing rights to non-human animals, an issue about which Liao tries to remain uncommitted. And the rights that the view would attribute to

non-human animals would be quite extensive. So, this view would open up a whole new set of issues to be addressed.

Alternatively, perhaps one might begin with an account of rightholding in terms of the genetic basis for moral agency and then combine that with an account of human rights as focused on the fundamental conditions for developing moral agency. I suspect Liao could adjust many of his arguments for the claim that being loved is a fundamental condition for children to be able to pursue a good life to instead defend the claim that being loved is a fundamental condition for children to be able to develop moral agency. So, here again, I suspect he could get much of what he wants. Unfortunately, though, Liao is committed to the claim that a concern with moral agency does not fully explain the human rights we have and offers an extended argument against this view. So, Liao could not take up this view without losing some of the claims he is trying to defend.

In any case, we need a clearer sense of what the relationship is between the criteria for being a rightholder and the basic rights of rightholders. Liao combines accounts of these two issues that do not straightforwardly support one another. More needs to be said to defend this package.

2. The Right to a Uterus

Before turning to Liao's discussion of the rights of parents, there is one final feature of his account of the rights of children that merits attention. As noted above, Liao maintains that human beings have rights to the fundamental conditions for pursuing a good life. And since being loved is a fundamental condition on children pursuing a good life, children have the right to be loved. But of course being loved is not the only fundamental condition on pursuing a good life. Among other things, children and adults need food, water and air in order to be able to pursue a good life (43).

Recall that on Liao's view human embryos are rightholders since they have the genetic basis for human agency. At that stage of development, rather than food, water and air, what human beings need is to be able to develop in a uterus. So, Liao's view seems to suggest that embryos have the right to a uterus.

Liao is aware that an account on which all human beings are rightholders raises important questions about abortion and embryonic stem cell research. But he suggests that such an account need not be incompatible with permissive views about these activities: "One can follow Judith Jarvis Thomson and hold the view that even if fetuses were rightholders, abortion would still be permissible" (15).

This suggestion, however, fails to appreciate an important difference between the kind of view of rights Thomson is discussing and the kind of view Liao ultimately advocates. Thomson explicitly rejects the claim that one has the right to what one needs to live, and this is crucial to her argument. The violinist has no right to your kidneys even though he needs them to survive.¹ So, the way in which Thomson reconciles attributing to a fetus the status of rightholder and the permissibility of abortion turns on a claim about what specific rights fetuses have. They do not have the right to the uteruses in which they are developing. For this reason, Liao's view does not leave room for using Thomson's strategy. Not only are embryos and fetuses rightholders on his view, they have rights to the fundamental conditions on pursuing a good life.

¹ Judith Jarvis Thomson, "A Defense of Abortion," *Philosophy & Public Affairs*, Vol. 1, No. 1, pp. 47-66, at p. 55.

There is another space in Liao's view in which the resources for defending the permissibility of abortion might be found. Liao suggests that rights can sometimes come into conflict (175, 199). When they do, there is an important question about how to resolve that conflict, a question that Liao does not attempt to answer. So, it may be that although embryos and fetuses have the right to a uterus, women have bodily rights that must be taken into account in determining whether abortion is permissible. Maybe. But given that being gestated is a condition on pursuing any kind of good life for embryos and that being required to gestate an embryo limits only some but not all of the ways of pursuing a good life, I think it would be surprising if the conflict between these rights so understood came out in favor of the permissibility of abortion. Consider, by way of comparison, involuntarily isolating people with contagious diseases or quarantining those who may have been exposed to such diseases. These are practices in which a very significant right, i.e. freedom of movement, is limited in order to protect the lives of other people. If important rights can be curtailed in this way, it is hard to see why this same pattern of reasoning would not push toward prohibiting abortion in many cases.

I do not raise this issue because I think that we ought to take the permissibility of abortion for granted, but only to suggest that Liao's view involves a significant commitment that he does not acknowledge. The argument that gets children the right to be loved gets embryos the right to a uterus. And if that is supposed to be consistent with a permissive view of abortion, more needs to be done to explain that.

3. Parental Rights

Turning now to Liao's discussion of parental rights, recall that Liao argues against licensing parents. The first premise of this argument is that "biological parenting is a fundamental (human) right" (154), or to be more precise: "we have fundamental (human) rights to the fundamental conditions for pursuing biological parenting" (155).

The argument for this claim begins with the claim that we have human rights to the fundamental conditions on pursuing a good life. A good life "is one spent pursuing certain valuable, basic activities"(41). And basic activities are ones that are "important to human beings qua human beings' life as a whole" (41). Biological parenting purportedly qualifies as such an activity. And so we have human rights to the fundamental conditions for pursuing biological parenting.

But while biological parenting arguably has an impact on people's lives as a whole, it is not clear what it means for this activity to be important to people qua human being. Liao suggests professional philosophy as an example of an activity that has a significant impact on his life as a whole, but only qua individual, not qua human being. Now it certainly seems true that being a professional philosopher need not be important to everyone simply because they are members of the human species. Whether or not professional philosophy is a valuable activity for a person depends on his or her temperament, interests and skills. But it is unclear why one would think biological parenting has a different status. Not all human beings are interested in or fit to undertake biological parenting.

When Liao makes the case that biological parenting is a basic activity, he says very little that connects the importance of this activity with simply being a human being. Instead, he notes four features of biological parenting that he claims jointly contribute to biological parenting being a basic activity. First, biological parenting involves creating a new individual, and this is valuable "insofar as one is exercising one's agency and

autonomy and there is value in exercising one's agency and autonomy" (155). Here Liao suggests by way of analogy the value in creating a beautiful piece of artwork. Second, supposing the first part of Liao's argument works, the being one is creating is a rightholder. Third, the new individual would be created in part using one's own genetic material. Liao says that the value here is "akin to one's brain coming up with an interesting idea... there is value in such a biological process because such a biological process involves some core aspect of one's self" (156). Fourth, biological parenting involves seeing how this newly created individual grows and develops. And here Liao claims, "The value of shaping and nurturing the growth of this individual is akin to having the opportunity to see and shape the growth of one's idea" (157).

It is striking that, if we substitute developing an idea for creating art, three out of four of these elements are found in professional philosophy. One develops an idea out of oneself and watches it take shape and grow. It seems to me that there remain two potential differences between biological parenting and professional philosophy. In biological parenting, one creates a rightholder (as per the second item on the list above) and in professional philosophy, one receives some kind of remuneration that is extrinsic to the activity of philosophy itself. Let us consider each of these possible differences.

While creating a rightholder is certainly a unique feature of biological parenting, it is too unique to explain the difference between a basic and a non-basic activity. Nothing else is quite like biological parenting in this respect and so if this is what is making the difference, nothing but biological parenting will turn out to be a basic activity.

Consider next the presence of remuneration in professional philosophy. Perhaps the example is not meant to suggest that philosophy is not a basic activity. Indeed, one might think that philosophy is a way of coming to know about the world, oneself and others. And these are among Liao's examples of basic activities. So, perhaps it is important that the example is of professional philosophy rather than simply philosophy.

But one of the other examples Liao gives of a non-basic but important activity is devoting one's life to the betterment of others. And in his description of this activity, there is no suggestion that the work is paid. So, it doesn't seem as though he is drawing an important contrast between paid occupations and endeavors undertaken for their own sake. Thus, we are left with a puzzle about why biological parenting is a basic activity while engaging in professional philosophy and non-professional philanthropy are not.

Liao offers one further characterization of basic activities. He claims that "basic activities are ones that if a human life did not involve the pursuit of any of them, then that life could not be a good life. In other words, a human being can have a good life by pursuing just some, and not all, of the basic activities" (42). But this relationship between basic activities and living a good life is so weak as to provide very little guidance about how to sort activities. And without a clear distinction between basic and non-basic activities, it is difficult to see why biological parenting has a status that the other activities we have considered do not. And this makes it unclear why biological parenting should be immune to regulation.

Moreover, the loss of the distinction between basic and non-basic activities threatens to undermine Liao's theory of human rights more generally. Without some such distinction, it seems likely that the account will be committed to either too broad or too narrow a list of such rights. So, the impact of the problem with this distinction goes far beyond the issue of parental rights. Thus Liao's background theory of rights needs further development.