

The Supply Side of Love

LEIF WENAR

King's College London

Three virtues of Matthew Liao's fine book, *The Right to be Loved*, will strike its readers. The first is the fearlessness with which it advances a thesis that many will initially regard as preposterous. The second is its rigor as a piece of extended argumentation. The third is the good sense of the practical conclusions that emerge by its end. Readers who are struck by the first may, as they read, become impressed by the second, and, by the end, find themselves remarking with satisfaction on the third. This is an intellectually courageous book, with a practical importance that derives from the value and vulnerability of children themselves.

Here I'll make one point focused the verb phrase in the title, 'to be loved,' and two points about the noun, 'the right.' The points about rights derive from the technical analytical literature on that concept, while the initial point about love is more generally about justification. These points either reinforce the approach that Liao has taken in the book, or request that he expand further on the arguments that he has presented.

I. The Supply Side of Love

Liao argues convincingly that children have interests in being loved in the ways that he specifies. The empirical studies that he cites on children needing love are compelling, and they flesh out what is likely a firm if inchoate conviction that most people have.

However, in order to establish that members of some group have a right, it is not sufficient to show that the members of that group have an interest—even a strong interest. That's only one-third of the argument required: what Beitz calls the 'demand' side of the argument. In order to establish the existence of a right, there must also be a second proof, on what Beitz calls the 'supply' side. There must also be a proof that it's appropriate to ascribe to the members of some other group a duty to provide what the members of the first group have an interest in receiving.¹

In Liao's case, this means that there must be a proof not only that children have an interest in being loved, but that it's appropriate to ascribe to someone a duty to love them. And this proof about the duty has to be a separate proof. To show the existence of a right, it's never enough merely to prove the existence of an interest in the putative right-holder, or to emphasize how strong that interest is. To complete the proof of the

¹ Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press), pp. 59–72.

existence of a right, one must show that it is reasonable to impose a duty on someone else to satisfy that interest.

There are many strong interests that do not ground rights, because the correlative duty would be unreasonably costly or inappropriate or even impossible to ascribe. For example, it seems plausible that some terminally ill people have strong interests in being provided extremely expensive end-of-life care. Or again, it seems plausible that nearly all people have very strong interests in being esteemed by others. These interests do not generate rights, because it would be too costly to provide these terminally ill people with all the medical care they have strong interests in receiving, and because it would be inappropriate to ascribe a duty to esteem each person regardless of whether they are worthy of that esteem.

Thus there can be strong interests without corresponding rights, because the argument can't be made on the supply side for ascribing the corresponding duty. So, what independent argument does Liao give for the appropriateness of imposing a duty to love children?

Liao argues forcefully and in my view effectively that it is *possible* for there to be a duty to love children. He also shows how this possible duty to love might generate differential responsibilities—for example, that biological parents might have the responsibility to cultivate various emotional capacities with respect to their children, while employers might have the responsibility to support more flexible workplace policies that make it easier for parents to spend time with their children. Liao's argument that it is possible for there to be a general duty to love children, and his explanation of how this duty might be dischargeable by different kinds of agents, are notable achievements in themselves.

However, to establish the right, we need arguments beyond those that show that a duty to love children is possible. We need arguments that this duty is actual – that it would be reasonable to ascribe such a duty. It needs to be shown that what is required of parents and others to fulfil a purported duty toward children is appropriate, and not overly burdensome, given their own legitimate interests and priorities. It has to be shown that it is morally acceptable to require the potential duty-bearers to supply the thing that will meet the demand of the potential right-holders.

And the burden on Liao to supply such a proof is significant, since the duty that he wants to ascribe in fact appears rather burdensome. Liao is explicit that his purported duty to love children requires more than what common sense morality requires, and it seems that it may require a great deal more. He says, for example, that the purported duty-bearers may be required to sacrifice whatever is surplus to the fundamental conditions they themselves need for pursuing their own basic activities.² That sounds quite burdensome indeed.

Now Liao doesn't give a full account of what such sacrifice will require of parents and others, and in order to judge the plausibility of the right-ascription it would be useful to know more specifics about what sacrifices Liao thinks are morally required. Just from what Liao has said, it seems that we can say this. Call 'child care' whatever child-directed activities one could perform in one's various roles that would provide more basic goods and opportunities to children. And call a 'free moment' whatever time is left over after we have secured our own basic health and liberties, and discharged our other duties. Then it looks like Liao's right to be loved will require all of us to do child care in every free moment.

² S. Mathew Liao, *The Right to be Loved [RTBL]* (Oxford: Oxford University Press, 2015), pp. 145–49.

It may be that this is not correct—that Liao is not imagining a duty to love children that is as burdensome as this. If so, then clarification on the issue of demandingness would be helpful. In any case, my main request is for more argument on the supply side. However demanding is the duty that Liao wants to ascribe, more needs to be said to show that it would be reasonable to ascribe to parents and others this duty to satisfy children's interests in being loved.

And, let me say again, that this argument about the supply side can't simply go back and emphasize the strength of the interests on the demand side. There are very many strong interests in the world, there is an enormous amount of unmet need. What needs to be shown is not only that the interests in receiving are strong, but that it's reasonable to require the giving.

To take an analogy from university life: if you're an academic who wants a grant, it's never enough to show that you've got a fantastic project—even a project that will produce much-needed results. To get the grant, you're also going to have to cost the whole thing out.

II. Enforcing the Right

It's ungenerous to ask for more from Liao, since he's already given us so much in this book. But I hope that he will take this as a compliment—he's made a much stronger case for the right to be loved than I think most people would have thought possible. Having seen how far and how well we've traveled across the complete proof for the existence of a right to be loved, we are now very interested to see how Liao will help us to cover the last miles.

Let me move now to a further request, which comes from the conceptual analysis of rights. The demand and supply sides are in fact only two-thirds of a complete proof that a right should be ascribed. There is an extra element needed as well, before we can conclude that some right actually exists.

The 'third third' is a proof about enforcement. It has to be shown that it would be appropriate to require the performance of the duty that would correspond to the right. Without this enforcement element, one has only proved something less than a right—something called a 'directed duty,' which means that one person owes something to another.

Let me explain with a quick example. Say Jerry and George are friends, and they're joking around in front of George's partner. In a teasing way, Jerry actually reveals something private and embarrassing about George that George really did not want his partner to know. Now when this happens, Jerry owes it to George to try to make up for his gaffe. Jerry should try to minimize the damage by trying to smooth things over with George's partner, by taking George out for a beer, and so on. Jerry owes it to his friend to try to make up for his careless damage to his friend's relationship.

But that's just a directed duty—Jerry has a duty to George to try to make up for the error. We wouldn't say that George has a right against Jerry that Jerry try to make up for his blunder. And the reason that we see a directed duty without a right here is that we think that enforcement of Jerry's duty would be inappropriate. Beyond some mild social pressure on Jerry, there's no sanction in this intimate context of friendship that it seems fitting to impose. Without more serious enforcement being apt, all we have here is a directed duty, not a right.

To take this back to the right to be loved, the 'third third' of the proof that children have a right to be loved is that it's appropriate to enforce a duty to love children. And

again it would be useful to hear more about this from Liao, especially when it comes to the duty of parents. The parent-child context, like the context of friendship, is often one of intimacy. It is often thought that serious coercive enforcement—certainly by the law and even through serious social pressure—is inappropriate except in the most egregious cases of parental abuse and neglect of their children.

So if parents have a duty to love children, we would expect that some kind of enforcement of the duty will be appropriate. In fact, given the strength of children's interests in being loved, which Liao emphasizes, we might even expect that the enforcement mechanisms for non-compliance would be relatively robust. Indeed, Liao asserts that the right to be loved is a human right. If this is correct, we might expect that at least some enforcement of the right would be the responsibility of the state—since human rights are commonly conceived as imposing duties on the state (perhaps along with others) to protect individual interests.

There's not much about enforcement in the book, but this is a topic about which I expect Liao actually has a good deal to say. So let me put in a request to hear more from Liao about the enforcement of the child's purported human right to be loved by the parents. Certainly a child has rights against parental abuse and neglect—but how much, and what kind, of enforcement of the child's right to be loved does Liao envision?

III. Unplanned Agreement on Rights

Let me finish not with a request for more, but with an enthusiastic review of where Liao and I are already in accord. In our separate discussions of rights, Liao and I have in an entirely unplanned way ended up converging on how arguments about rights should proceed. Sometimes theorists doubt that 'the truth is out there' on issues such as the conceptual analysis of rights—yet the kind of spontaneous convergence that has occurred between Liao and me gives confidence that it is.

Liao's book does not go deeply into the technical conceptual analysis of rights (for which I expect many readers will be grateful). So to set up this point, let me very briefly cover the state of the debate between the two main analyses of what rights are.

The first theory, the will theory, holds that a right gives the rightholder sovereignty over some domain, by empowering the rightholder to waive the duty of others. So, for example, the will theorist will understand a property right as giving an owner the power to waive the duty of non-owners not to enter the property. A promissory right gives a promisee the power to waive the duty of the promisor to do what she promised, and so on.

The second theory, the interest theory, sees rights quite differently. On the interest theory, rights by definition further the interests of those who hold them. So, for example, on this approach a property right protects the interests of the owner against intrusion by others, and a promissory right advances the promisee's interest in being able to form relations with potential promisors with respect to performance of the duty.

The debate between these two theories has dragged on for decades, and is widely seen as unsatisfactory because both sides seem stuck with serious counter-examples to their analyses.

For the will theory, a rightholder by definition needs to be able to exercise sovereignty over some domain. Yet then those beings who cannot exercise such powers—such as animals, comatose adults, and, most importantly here, children—cannot be rightholders. But common sense says they can be.

For the interest theory, it seems that there may be rights without interests—as anyone lamenting having placed a foolish order can tell you. The lamenter has a right that the company fulfil its side of the bargain, but complains that she regrets placing the order and has no need for the thing that’s on its way.³

Theorists of both camps have tried many maneuvers to try to avoid such counter-examples, but these maneuvers have typically seemed convincing only to those who have made them.⁴ There is a distinct sense that the technical debate over the nature of rights remains a stalemate, due mostly to the exhaustion of the two traditional antagonists.

Fortunately, there is now an improved analysis of rights within the technical literature that avoids all of the familiar counter-examples that have dogged the will theory and interest theory for decades. In fact, this third theory, called the kind-desire theory, appears to be subject to no counter-examples at all—it seems to give the correct analysis of all rights assertions.

By uncanny coincidence, this third theory is my own.⁵ And what’s extremely gratifying is that Liao has reconstructed from scratch one of the central moves that allows this analysis to escape the counter-examples of the earlier theories.

Liao wisely avoids the will theory of rights, which cannot make space for rights of children. And he chooses a justificatory strategy that goes a long way toward remedying the defects of the interest theory of rights. The key move that Liao makes is to take the interest theory away from what’s in the interests of *individuals*, and to transform it into a theory of what’s in the interests of members of *kinds*.

So now when we’re looking to see whether there is a right within some system of norms, we should look not to what’s in the interests of this or that individual, but instead to what is in the interest of members of a natural or a social kind—like the kinds that are children or promisees or journalists and so on.

Liao’s key move is to work with what’s in the interest of a child *qua* child, or of a promisee *qua* promisee. This move to kinds gets the analysis of rights out of all sorts of difficulties, for instance about individuals who accept promises while being mistaken about their own interests.

Liao arrives at this approach to rights from scratch. For example, his innovative use of the idea of ‘the genetic basis of moral agency’ shows him grounding his arguments for rights-ascriptions on this defining dimension of the kinds of beings that humans are. Liao even uses the ‘*qua*’ locution that’s characteristic to speaking about kinds, and that is central to the kind-desire theory of rights.

So, for example, in explaining the fundamental conditions for a good life, he says that ‘these are things that human beings need *qua* human beings... in order to pursue the basic activities.’⁶ This is precisely the right way to argue for the existence of a right, given the best analysis of what rights are.

³ There can also be strong interests without rights, for ‘supply-side’ reasons like those above. Thomson’s famous Henry Fonda example illustrates of this. “If I am sick unto death, and the only thing that will save my life is the touch of Henry Fonda’s cool hand on my fevered brow, then all the same, I have no right to be given the touch of Henry Fonda’s cool hand on my fevered brow.” J.J. Thomson, ‘In Defense of Abortion,’ *Philosophy and Public Affairs* vol. 1 no. 1. (1971): 47–66 at 55.

⁴ See L. Wenar, ‘The Analysis of Rights,’ in *The Legacy of H. L. A. Hart* ed. M. Kramer, C. Grant, B. Colburn, A. Hatzistavrou (Oxford, 2008): 251–73.

⁵ L. Wenar, ‘The Nature of Claim-Rights,’ *Ethics* vol. 123 no. 2 (2013): 202–29.

⁶ *RTBL*, p. 43.

I'm so very encouraged that Liao and I have, without trying, both arrived at this insight about how rights-ascriptions should be made, given what rights are. It seems that the truth is indeed out there and we have both seen it from our different perspectives. If Liao can convincingly elaborate his views more fully on the first two points above, then we will owe him a debt for having discovered that children do indeed have a right to be loved.