

Is There a Right to Parent?¹

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Abstract

This paper examines Harry Brighouse’s and Adam Swift’s attempt to justify the family by appeal to the interests of both children and parents. According to their dual-interest account, adults’ interest in parenting plays a role in explaining why less than optimal parents can exercise legitimate authority over children. I analyze this claim and raise doubts about the existence of any fundamental right, which is non-derivative from children’s own interests, to parent understood as a right to control the child.

Keywords: parents, children, right to parent

One of the main questions to which *Family Values* offers an answer is how to justify the family given what its authors—self-identified liberal Harry Brighouse and Adam Swift—call “the liberal challenge”. By “the family”, Brighouse and Swift mean a childrearing arrangement whereby a small number of particular adults stand in fiduciary, and authoritative, relationships with particular children, but which is not *exclusively* justified by reference to the child’s interest. This is an anomaly for liberals, who believe that all authoritative relationships between individuals with full moral status ought to be justified by appeal to the interest of the party over whom authority is being exercised. As self-identified liberals, Brighouse and Swift take this challenge seriously.

The family is definitely not like this. Consider: First, there exist—or we can imagine—ways to rear children alternative to the family. Brighouse and Swift list some of them:

“[s]tate-regulated quasi-orphanages, in which children are raised by trained and specialised employees; [a]rrangements, such as those associated with Kibbutzim, in which child raising is shared between “parents” and designated child-raising specialists’ and [c]ommunes

¹ For comments I am grateful to Andrew Williams and to participants to an open session on academia.edu and in particular to John Baker, Sally Haslanger, R J Leland, Michele Loi and Erik Magnusson.

in which a large group of adults collectively and jointly raises a group of children, with no adult thinking of herself as having any special responsibility for any particular child, and no child thinking of herself as the responsibility of any particular adult” (Brighouse and Swift 2014:70-71).

It may be that good families serve children’s interests better than any of the above alternatives – as Brighouse and Swift go on to argue. They draw on empirical literature to explain why children fare best when raised by loving and sufficiently competent adults, which are referred to as ‘adequate parents’. But, as far as I see, this is not in itself enough justification for a child-centred account of the family, that is a defense of the family by exclusive appeal to children’s interests. We do not know how many adequate parents there are around, and have no reason to think that we can identify them (especially without serious violations of personal autonomy and intimacy). It may well be that childrearing arrangements other than the family would, on average, serve children’s interests optimally, even if the best imaginable way to bring up children is to give them adequate parents.² But if there aren’t enough such parents, and if we cannot help enough people to become adequate parents, rearing children in the family may unjustifiably expose too many children to serious risks. The well-run orphanage, Kibbutz, or communal childrearing may be the best feasible arrangements as far as the children’s interests are concerned. If good versions of these arrangements—but not of the good family—are feasible on a sufficiently widespread scale, the family is to be rejected on child-centred grounds.

There is a second reason why the institution of the family as is cannot be justified on child-centred grounds. If the family was merely meant to protect children’s interests we ought to give priority of access to parenting to people who would make best parents and who are willing to take over this role. This is clearly not the case, even allowing for the possibility that we cannot—usually—tell in advance who would make the best parent. But some cases are clear-cut: when a new child is born to parents who already have numerous children, and who we have reason to think are particularly bad at parenting, liberal states nevertheless grant custody to biological parents. At the same time people who are likely to make wonderful parents and who

2 Veronique Munoz-Darde argued that the existence of the family is especially objectionable if we ought to give priority to the worst off: “whether or not a great many individuals are better off because of the existence of the family is irrelevant in settling whether the family would be one of the institutions of a just society. What matters is whether the existence of the family ensures that the least advantaged members of society are better off than they would be with its abolition”. Her own answer to this question seems to be negative (Munoz-Darde 1998-9: 42).

are more than willing to raise children remain childless due to inability to procreate and the difficulties of adoption. More generally, custody rights follow biological connections, absent special circumstances.

Now, the family defended against the liberal challenge in *Family Values* is different, perhaps very different, from the current legal institution of the family. Brighthouse and Swift argue for more limited parental rights than what existing states recognize. Nevertheless, they do want to reject, rather than bite the bullet of, the ‘best available parent’ possibility. In their own words: “Would there be anything wrong with a system that distributed children to adults in the way that maximized the realization of children’s interests, even if it left out some adults who would be willing, and adequately good, parents?” (Brighthouse and Swift 2014: 86). They think there would be. Not because children lack full moral status, which would make it unproblematic to allow parents’ own interest in authoritative relationships with children to determine what is a legitimate way of bringing them up.³ Instead, they defend a dual-interest theory of what makes the family legitimate. The reason why—according to Brighthouse and Swift—it is all right to settle for childrearing arrangements that are sub-optimal for children is the way in which childrearing makes a unique and crucial contribution to a fully flourishing life.

In their elaborate account of the value of parenting, Brighthouse and Swift argue that adults have a fundamental moral right to be parents. The reason, in a nutshell, is that intimate and authoritative relationships with children are uniquely valuable for most adults; such a relationship is not “just another intimate relationship, valuable to both sides but substitutable for the adult by an additional relationship with a consenting adult” (Brighthouse and Swift 2014: 88). Rather, they have a different moral quality, make a different kind of contribution to the flourishing of adults, and so are not interchangeable with other relationships. Because childrearing makes a substantial and unique contribution to adults’ flourishing, adults are said to have an interest-based right to pursue such relationships. The unique value of parenting, according to Brighthouse and Swift, resides in the combination of four features which characterize parent-child relationships.

First, relationships between parents and children are structurally unequal, given children’s unavoidable, involuntary and asymmetrical dependency on the adults. By contrast, dependency in relationships between adults is less encompassing, often voluntary and more reciprocal. Second, parents are in charge of their children’s well-being and development to an extent to which people are not responsible for other individuals, with whom they stand in different types of relationships. To discharge this responsibility

3 “Children are individuals distinct from their parents, individuals whose interests it is the state’s job to protect and promote” (Brighthouse and Swift 2014: 5).

parents need recourse to coercion and manipulation. Third, parents unavoidably shape their children's minds—that is, their beliefs and interests. Finally, children are capable of loving their parents in a spontaneous, unconditional and non-reflective way that is not to be encountered in other kinds of loving. The first three features of the parent-child relationships generate the distinctive moral burdens of parenthood: responsibility for the well-being and development of individuals who are dependent on you and who cannot exit the relationship with you at will. According to Brighouse and Swift, it is valuable to meet this challenge, as part of a process of self-knowledge and personal development that most people find uniquely fulfilling.

The last feature of the parent-child relationship, that of spontaneous and unconditional love, points to the specific value of loving, and being loved by, children and to the source of hedonic value afforded by parenthood. It is thanks to these features that parenting is essential to the flourishing of (most) adults.

This account of parenting allows Brighouse and Swift to reject the 'best available parent' possibility, because adults' fundamental interest in parenting limits children's entitlement to being raised by the best parent who is willing to take over this role:

"Within certain limits, adults' interests in being a parent can trump children's interests in having the best possible parents. No child has a right to be parented by the adult(s) who would do it best, nor do children as a whole have a right to the way of matching up children and parents that would be best for children overall. Both scenarios could leave perfectly competent parents missing out on the goods of parenting" (Brighouse and Swift 2014: 95).

If Brighouse's and Swift's defense of a dual-interest account succeeds, then adults have a right to parent that is *sui generis*—i.e. fundamental, grounded in their own interests—rather than derivative from children's own rights to protection and care. This would not change the fact that a right to parent is an anomaly by liberal lights: liberals acknowledge no other entitlement to exercise power over another individual legitimised in part by reference to an interest—no matter how important—of the one exercising power.

But how could one go about rejecting this account of a *sui generis* right to parent? It does not look very promising to question the importance that raising children has for most of us. The evidence is very strong: most people want children, go ahead having them often in spite of serious adversity and in spite of the inevitable difficulties of the job, and many people agonize

for long periods of time over not being able to become parents. Nor does it help to note that not all people believe that parenting makes such a great contribution to their flourishing. As Brighthouse and Swift themselves note, it is possible that the flourishing of some, but not of all, people depends on being able to parent well (Brighthouse and Swift 2014: xx). Some people may be unable to parent well (even with help) and therefore parenting will not contribute to their flourishing. Other people's lives may be so rich in alternative venues to flourishing, some of which incompatible with childrearing, that they will flourish best without rearing children. But neither of these facts mean that rearing children is not essential to the flourishing of those of us who can parent well and whose flourishing is not incompatible with parenting.

More promising, one may believe that we do not have a right to pursue fully flourishing lives—but merely to pursue sufficiently flourishing lives. This is a plausible thought, in a world of competing claims over limited resources. On this view, would-be adequate and willing parents who miss the opportunity to rear children do not suffer from a rights violation provided they have other, adequate, opportunities to flourish. An interesting way of answering this challenge would be to argue that, for people who can be adequate parents and who wish to parent, the failure to rear children somehow blocks other avenues to flourishing. For instance, as in some fairy tales, grief of being childless may cast a thick shadow over every other joy, or take away the drive to engage in other projects, or otherwise undermine the ability to pursue other worthwhile goods. But this is not what Family Values argues. Another way to try to rebut this challenge would be to note that raising children is not merely a permissible—and very valuable—activity, but a morally mandatory one in the sense that each generation has a duty to bring up a minimum number of children to ensure the care of those individuals in need of assistance and the continuation of some sort or political society.⁴ In this case, parenting would be a very peculiar activity that not only makes an essential contribution to full flourishing, but also enables individuals to flourish by doing what was their duty to do in the first place. Perhaps there is a fundamental right to aim at full flourishing, if thereby you also do your bit to discharge a collective duty. (Suppose, by analogy, that there was a duty to defend your country against unjust attack and that fighting wars was essential to most people's full flourishing. Would that be a reason to allow all would-be adequate soldiers to participate in self-defence, should they find themselves under unjust attack?)

I do not know if the last argumentative strategy could succeed, but note that in an overly populated world like ours it is very likely that the number

4 I defend this view in Gheaus (2015). For other arguments why there may be a (individual) duty to have children see Smilansky (1995).

of children that we (collectively) have a duty to rear might well be much smaller than the number of would-be adequate parents. If it were not possible for all would-be adequate parents to parent-as-dutiful-behavior, there cannot be a right to parent partly justified as dutiful behavior.

Above I have outlined what are, in my experience⁵, the most usual types of criticism leveled at Brighouse and Swift's defense of a right to parent. I do not aim to draw a conclusion yet: on the one hand, in their favor speaks a very powerful widespread intuition that we have a right to rear children if we would parent them adequately. On the other hand, and against their view is the very plausible liberal belief that if you are denied a chance to parent either because alternative childrearing arrangements, or other would-be parents, would serve children's interests even better, you do not suffer from the violation of a fundamental right.⁶ In the remainder of the paper I explore an intuitive way to adjudicate between these two contradictory beliefs, and in conclusion I suggest a way of reforming childrearing in line with the liberal stance, while also vindicating the intuition that adults have a right to involvement in childrearing (a right which nevertheless falls short of a right to parent).

Much of the argumentative power of Brighouse and Swift's defense of a dual-interest account of legitimate childrearing comes from their appeal to the unique value of parenting. In turn, this value derives from the unique combination of features displayed by parenting. Since their conclusion—that there is a right to parent—coincides with an already widespread belief, it is tempting to think that a right to parent can really be justified by appeal to the combination of the four unique features of the parent-child relationship. And, since there is nothing quite like parenting in the world—that is, no other relationship that displays all of the features identified by Brighouse and Swift—this connection (between the four features and the right to parent) is difficult to test. But what if other social relationships also displayed the combination of these four features? Would we respond with the same intuition that one's interest in such a relationship can partly justify one's authority over another?

Consider the following imaginary situation, meant to show how intuitively extraordinary parents' rights are over their children (at least in the absence of certain empirical assumptions that do not figure amongst the reasons that Brighouse and Swift provide in their case for the right to parent). Imagine that, as a result of a natural cataclysm, a group of adult refugees reaches your country. They have nowhere else to go. You live under a just and benevolent

5 From numerous conferences and referee reports to work in which I describe (and endorse) their account.

6 For a convincing elaboration of this, see Vallentyne (2003).

government that automatically grants the refugees the right to stay and settle down in the country and, in due course, to become citizens. As it happens, the refugees come from a very remote culture, described by anthropologists as ‘primitive’.⁷ They speak a language that nobody has heard of before and nobody understands, and they do not seem able to pronounce simple words in your own language. They cannot read or write, and have never been in contact with any technologically advanced civilization. They do not understand how any of the machines work, and understand complicated social rules even less. They appear scared of traffic and large crowds. Their bodies are beautiful, fragile, relatively small, and unusually agile. They quickly acquire a wonderful reputation for being uncomplicated, trusty, direct, curious, affectionate and playful.⁸ For good reason, the belief spreads that having one of these refugees around can bring into your life a kind of joy and fun that nothing else could, and hence that an intimate relationship with one of them would be a special blessing. Moreover, these people are in much need of patient introduction into your own ways of living; somebody has to take over the job of socializing them. And you are right to think that engaging in such an extraordinary task would make a significant and unique contribution to your own personal development.

Now imagine that, after a few visits to the camp where the refugees get emergency lodging, you become particularly attached to one of them and from all you can tell the affection is reciprocal. Your new friend responds to you with spontaneous trust, joy, and unconditional attachment. You would like to spend as much time as possible with this person. Would it be a legitimate policy to allow you to lodge your new friend in your home and take upon yourself the entire responsibility, and with it the power, to ensure that her life goes well and that she acquires adequate knowledge of your society’s language, moral sensitivity and expectations, laws and customs such that she can, eventually, become an autonomous citizen? Moreover, would it be legitimate for you to have the authority to decide with whom she is allowed to spend time, and under what circumstances—i.e. to have the power to exclude others from having a relationship with her? Would it be permissible if the state gave you a right, against all others, that they do not undermine your relationship with this person?⁹

7 Perhaps these anthropologists are objectionably condescending; I apologize on their behalf.

8 So they are, indeed, very close to how 17th and 18th century Europeans imagined native inhabitants of America: they are a reincarnation of the *bon sauvage*.

9 This is a feature of the right to parent as defended by Brighouse and Swift: “those people given the job of parenting a particular child will have a right to parent that child in the weak sense that others will be under a duty not to undermine the relationship” (Brighouse and Swift 2014: 87).

If you had the right to do these things, your relationship with the refugee would acquire the same combination of features that characterize relationships between parents and children, and which are said to generate a powerful interest in parenting and hence the right to parent. The relationship would be asymmetrical, and very difficult to exit for the refugee; it would involve significant moral responsibility on your part, given the power you would have to protect and shape the person in your care; and it would make possible a kind of spontaneous, unconditional and unreflective love that is not usually possible between adults. If people have a right to enjoy relationships that display the above combination of features, then you should be allowed to take control of the refugee's life in the way in which parents control their children's lives.

Yet, I contend that a policy allowing you to take control of the refugee's life would be obviously unjust to the refugee, your powerful interest to pursue intimacy with her notwithstanding, unless—for whatever reason—this kind of policy would best promote the interests of the refugees. The reason that would make it unjust is not its paternalism towards the refugees. Indeed, the refugees in this example need paternalistic treatment if they are to survive at all in their new environment and if they are to become autonomous individuals with a chance to lead their own life in your society. The reason that would make it unjust for you to take control of her life is that, if it were possible to promote her current well-being and future autonomy in a different way—for instance by letting her reside in the refugee center, or by letting her move in with someone equally willing and better prepared to serve her interests—it would be unfair towards her to ask her to move in with you. This is a first, liberal response to the imaginary case.

A different, related intuitive response is that, if it were possible to promote the refugee's current well-being and future autonomy without locking her into any particular relationship, then giving you—or another private individual—authority over her would be wrong because it would make her subject to (perhaps benevolent) domination. This is a republican response. You may think that, since you have such a powerful interest in sustaining the relationship with the refugee, you are entitled to the necessary means for protecting the relationship—including the right to prevent others from forming and sustaining a close relationship with her. But a parental-like power to exclude other individuals in this way comes at too high a moral cost to the refugee, especially if is not necessary for optimal protection of her own interests. The fact that you have relational interests at stake here does not seem to make any difference.

Since the well-being and development into autonomous individuals of the refugees is a matter of public responsibility, social arrangements should

be sought that can best ensure meeting this responsibility. 'Best' may be interpreted as either 'well-being maximization' or 'ensuring a certain level of well-being in a non-dominating manner'. Possibly, concern for the refugee's well-being and respect for their moral status will indicate that they ought to live together with many other people: some fellow refugees and some of your co-citizens whose main occupation will be to provide welfare and integration to the refugees. Or, perhaps, it would be best for them to live in the home of private individuals—call them 'hosts'—but have access to a broad range of intimate and caring relationships with many of your (socially and emotionally competent) co-citizens, without needing their host's approval. In any case, it seems that it is exclusively the refugee's interests that determine the ideal way of socializing them: The host's own interest in pursuing a relationship with one of the refugees (even if this relationship was highly, and uniquely, valuable to the host) does not seem to do any work in settling the matter.

This story is obviously meant to provide a close analogy to the situation of parents and children. The two cases share the features which, according to Brighouse and Swift, generate parental rights. If your intuition is that these features cannot justify parental-like authority over the refugees, then probably they are also unable to generate a right to parent as defended in *Family Values*.

The same hypothetical case triggers a second intuitive reaction—at least, on my side. The fact that your interest in having an intimate and authoritative relationship with the refugee is irrelevant to your having rights over her. This does not mean that you do not have a right to pursue a long-lasting, intimate relationship with the refugee. Your interest in this unique relationship is, I assume, powerful enough to generate a right to pursue it. You may spend some time with her every day and provide constant company and guidance to her. You may decide to become one of the people whose main occupation is to work in the refugee home part-time or full-time until she is sufficiently autonomous to take charge of her own life and leave the refugee home. While the state would be wrong to allow would-be competent hosts to assume parental-like authority over one of the refugees, it would also be wrong to set up an institution of socializing refugees that denies citizens a chance to develop close and benefiting relationships with the refugees. If the citizens really have a powerful interest in entering and sustaining close relationships with the refugees, then it would be arbitrary to exclude some from having access to such relationships—assuming the relationships do not set back the refugee's interests—in order to benefit others. Note that the pursuit of an intimate caring relationship with a person does not require a right to exclude other individuals from pursuing such relationships with her—it

requires only that nobody else have a right to arbitrarily interrupt your relationship with this person. (This is of course consistent with the possibility that the *highest* possible degree of intimacy, as well as the most secure kind of intimacy, requires the exclusion of intimacy with others.)

Perhaps the analogy carries over, again, to the case of childrearing. Parental authority—as we have it and as it seems¹⁰ to be defended in *Family Values*—comprises a right to exclude others from having close relationships with one’s child for reasons other than the protection of the child’s interest. And, as we have seen, a right to parent is justified by Brighouse and Swift by reference to the unique value of relationships of *intimacy and authority* with children. Yet, it seems to me, intimacy, more than authority, contributes to the value of the adult-child relationship. This is so especially once we acknowledge that being in a sustained intimate relationship with a child involves considerable responsibility on the part of an adult even if that adult does not play a full parental role. Indeed, the justification of a right to parent starts from the observation that for “most people, intimate relationships with others are essential for their lives to have meaning” (Brighouse and Swift 2014: 87). and progresses by noting the unique value of parent-child intimacy. Similarly, it is appeal to intimacy with a child that most plausibly explains the common intuition that people ought to be free to parent and the possibility that some people’s flourishing could be irremediably undermined if they had no children in their lives. But the most problematic element of the parental right, in a liberal perspective, is the authoritative, not the intimate, side of the relationship. If it is possible to disentangle intimacy and authority in childrearing—both analytically and practically—the intuitive support for a right to rear children might be salvaged without need of taking exception from liberal beliefs.

Therefore, I suggest that Brighouse and Swift’s case for a fundamental right to parent is only partially successful: it fails to show that appeal to adults’ interests does any work in establishing a right to control the child. But it can show how adults’ interest in relationships with children grounds an associative right: adults whose company would not be detrimental to children’s interests have a right to seek and maintain close and caring relationships with children. Yet the claim to a right to control a child’s life must be grounded exclusively in the child’s interest, in which case there is

10 “Seems” because Brighouse and Swift defend a child-centred view with respect the content of parental rights. Yet, they also say that the right to parent involves that others are “under a duty not to undermine the relationship” (Brighouse and Swift 2014: 87). But my making close friends with my neighbor’s child can—if the neighbor has no power to interrupt the relationship—undermine the child’s relationship with her parent.

no *sui generis* right to parent.¹¹

It is possible that more people will want to reject the pertinence of the analogy between welcoming refugees and engaging in childrearing, than to refute the conclusions I draw about the just treatment of the refugees. To do this, they would likely point to some empirical features that set apart parenting from my imagined example. Unless they are adopted, children are never complete *strangers* to their parents or at least to their gestational mother, in whose body they come into existence and develop for a while. Many believe that parents are inevitably more *attached* to their own offspring than they can ever be to other children (although there is a debate on whether the explanation is to be found in the fact of gestation or in genetic relatedness; if such special attachment exists, I think that it springs from gestation¹²). This alleged fact contributes to the belief that, in general, (biological) parents make the best parents for particular children. So, perhaps, you are inclined to think that, should babies come into the world unrelated to any particular individuals—should they, for instance, be brought by storks—we ought indeed to set up childrearing practices that serve their interests as well as possible, including the possibility of allowing the best available parents to rear them. But, in fact, babies come into the world from the bodies of other people and so you may also think that this fact settles the question of what childrearing practices serve best the children's interests (the family) and who are the best parents (procreators). (For instance, you may be convinced by evolutionary biology.)

Therefore, the beliefs that the family is legitimate and that procreators have a (non-fundamental) right to rear their own children—that is, support for the *status quo*—can be compatible with a child-centred account of who has the right to assume authority over children. The compatibility depends on the above-mentioned beliefs that procreators are, on average, able to love their children best and that a child is best off in the custody of the person most able to love her.¹³ If childrearing within the family really is in the vast majority of children's best interest, and if the beliefs concerning procreation and love are true, then it may be fine to settle for minor reforms of the family. But, *contra* Brighouse and Swift's account, this would be based entirely on the child's interest.

11 That is, as far as Brighouse and Swift's argument goes. For a different defense of a right to parent as part of a dual interest account of just child-rearing see Clayton (2006).

12 I discuss this in Gheaus (2012) where I analyze, more generally, the normative import of gestation for a right to rear a particular child.

13 For more on this, see Munoz-Darde (1998-9: 45-46). For a child-centred account that is compatible with the *status quo* of raising children in the family, and perhaps with the raising of children in their biological family (as a default) see Archard (2003).

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