Really equal rights? Some philosophical comments on ‘Why children shouldn’t have equal rights’ by Laura M. Purdy

TOM D. CAMPBELL
Law School, The Australian National University, Canberra, Australia

Purdy’s essay is strong on what she rightly calls common sense but weak on evidence and analysis. For the evidence as to what we can expect from different modes of child rearing we are referred to her book, *In their best interest? The case against equal rights for children*, on which I am not in a position to comment. It is therefore on the analysis in her essay that I dwell here.

Purdy’s thesis is that children should not have equal rights because there are morally relevant differences between children and adults.¹ The first problem I have with this contention is that it is in general not made clear what age of children she is referring. If we may distinguish, somewhat arbitrarily, between babies (0–1), infants (2–5), children *stricto sensu* (5–12), adolescents (13–16) and youths (17–21), then it is clear that the differences between these categories of ‘child’ are highly relevant to the question as to whether or not they should have the same rights as adults.²

Much of the discussion in Purdy’s essay relates to adolescents and youths and is effectively about the proper age of majority for various purposes, such as getting married or driving a car.³ Such arguments are not affected by points about young children. Moreover, general speculation about ‘children’s nature’⁴ is unhelpful without age specification. While the examples concentrate on juveniles⁵ and they are presumably what the central issues are about, the essay is replete with crude statements about ‘most children’,⁶ and strays into examples relating to early educational experience of children *stricto sensu*.⁷ It is clear that at least some of her opponents are, however, concerned with juveniles rather than children as such.⁸

² For such a scheme see Tom Campbell (1992) *The rights of the minor: As person, as child, as juvenile, as future adult*, in P. Alston et al. (eds.), *Children, rights and the law*, Clarendon Press, p. 1.
⁴ Purdy, op. cit., note 1, p. 1.
⁵ Ibid., p. 235.
⁶ Ibid., p. 227.
⁷ Ibid., p. 232.
⁸ Ibid., p. 226.
Another significant analytical defect is that it is not clear whether Purdy is hostile to rights in general and in favour of paternalism in general, and is keen to keep whatever barriers to these social evils can be maintained, or whether her position on children's rights is independent of such presuppositions. It sometimes appears that her view is that rights for adults are bad enough without extending them to children. Liberty is a bad thing, so don't let us extend it unless we have to.\(^9\)

A further, related, difficulty is that Purdy does not consider whether there can be paternalistic rights. She simply assumes that all rights are option rights, so that the right-holder always has a choice whether or not to exercise her rights, such as the right to schooling. It is therefore taken that if a child's freedom is restricted that this is a violation of her rights. This may be no more than a supposition taken over from children's liberationists, but it is one which can be countered to good effect in this context, if only to assert that children have different but equally important rights. Purdy would do well to read Neil MacCormick on children's rights\(^10\) and consider a theory in which rights are not analytically tied to choice. Children then can, for instance, be said to have the same rights but without the power of election. This could be considered equality of a sort since it gives equal weight to the interests of children and adults.

There is no real attempt in Purdy's essay to distinguish between the same rights and equal rights. If people have different interests this is a non-discriminatory ground for giving them different rights. On this basis we could develop an interesting counter-liberationist theme about equal but different rights. Her point is, of course, that liberationists go for the same rights, but there is no need to hand them the rhetorical advantage of allowing them to claim that they alone stand for equal rights.

It is also not clear if the arguments relate to equal rights in all respects, or only to equal basic rights.\(^11\) The latter is more plausible, particularly as they are the rights that are claimed as universal. Yet, if we are talking only about civil rights and only about youths then Purdy seems to be prepared to accept liberationism.\(^12\)

Maybe it is that rights which apply to all adults should apply to all children. It would be helpful to have these rights identified more precisely and to develop a distinction between basic and non-basic rights.

A major problem with Purdy's position is that, as she acknowledges, the morally relevant differences which apply to most children do not apply to all children or only to children.

\(^9\) Ibid., p. 229.
\(^12\) Ibid., p. 240.