

Intergenerational Justice Review

Foundation for the Rights of Future Generations



**Issue Topic: Children's and Young
People's Rights – with a Focus on
the Right to Vote**

Table of Contents

Issue topic: Children's and Young People's Rights – with a Focus on the Right to Vote		Announcements and Interna	
Editorial	127	What Would Happen if Citizens Under 18 Years Old Had the Legal Right to Vote? The German U18 Project Experience	152
What Does it Mean to Have a Right? <i>by Prof. Dr. Dieter Birnbacher</i>	128	The 20th Anniversary of the Convention on the Rights of the Child	153
Should Democracy Grow up? Children and Voting Rights <i>by Prof. Dr. Steven Lecce</i>	133	Voting Rights and Age Restrictions - The Position of the Foundation for the Rights of Future Generations	154
Improving Public Policy for Children: A Vote for Each Child <i>by Prof. Dr. Robert H. Pantell and Prof. Dr. Maureen T. Shannon</i>	139	Motion for a resolution presented to the Council of Europe's Parliamentary Assembly: Expansion of Democracy by Lowering the Voting Age to 16	155
On Behalf of Children? The Plural Voting System in Belgium – from 1893 to 1919 <i>by Prof. Dr. Laurent de Briey, Aurélie Héraud and Elise Ottaviani</i>	144	Barring Adults from Voting – Disenfranchisement of Felons and Mentally Disabled People Around the World	156
Book Reviews		Call for Papers: Intergenerational Justice and the Scourge of War	158
Priscilla Alderson (2008): Young Children's Rights. Exploring Beliefs, Principles and Practice.	145	Possibilities and Limits of Party Cooperation in Democracies	159
David Archard / Colin M. Macleod (eds.) (2002): The Moral and Political Status of Children.	149	Ways Towards a Legal Implementation of Intergenerational Justice	159
		New Editorial Staff	159
		Imprint	159
		Become a supporter of FRFG!	160

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The rights of children and young people present an interesting ethical and legal case. Given the existence of universal human rights, why formulate extra rights for a special group? Are children and young people not human beings? What are the main differences between the Universal Declaration of Human Rights (adopted in 1948) and the Convention on the Rights of the Child (adopted in 1989)? Is there a need to adapt human rights in order to make them age-dependent, thus moving away from the idea of 'one right for all'? In order to understand the complexity surrounding the issue of children's and young people's rights, two arguments are key:

First, there is an alleged conflict between the rights of parents and those of the child. For thousands of years, children were regarded as the property of their parents. In Roman law, the father even had the right to abandon newborn children. In the Old Testament, children are mentioned in the same breath as slaves – both were at the complete disposal of the head of the family. Thomas Hobbes writes on children that parents may “alienate them... pawn them for hostages, kill them for rebellion, or sacrifice them for peace”.¹ Although this view has been weakened in the Western world in recent centuries, the idea of children as the subject of rights does not have many friends among authoritarian parents. Second, and more important nowadays, there is a potential conflict between children's rights and the protection of children. This can be exemplified by the 'right to work'. While no one questions the necessity of adults to work in order to make a living, a child's right to work needs to strike a balance between exercising personal freedoms and protecting them from work which restricts their opportunities to play and go to school. For adults, employment is highly valued because of its financial and identity granting dimensions. If children are (or feel) obliged to help their own poverty-stricken families, or simply just want to imitate the behaviour of their parents, they could have a subjective interest in gaining employment at a very young age (like 6 or 7). But this could conflict with the 'best interests of the child' - i.e. their objective need to be educated.

The right to vote is not mentioned in the Convention on the Rights of the Child at all. Article 12, however, states: “States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.” The struggle for a compromise resounds in this formulation.

There are 2.2 billion youngsters under 18 years of age living worldwide. But voting rights are only granted to a very small minority of them, namely from 16 years on if they live in Austria, Brazil, Cuba, Indonesia or Nicaragua. Children and adolescents are thus excluded from key political decision-making processes which have an impact on their lives. Without access to these processes which are integral to the exercise of democratic rights, children are comparatively invisible as citizens or subjects. 'Young people own the future' is a prominent saying. But they are already here, now.

It is correct that youth participation must be understood in broader terms than just voting. It is participation in civil society which can take several forms, for instance youth parliaments, youth entitlements to speak or submit requests to political bodies or parliaments in all matters affecting young people. Nevertheless, in this issue of *Intergenerational Justice Review*, we focus on the voting rights of children and adolescents because they are the most important step for increasing youth influence in politics and to make children's interests more visible. There are three possibilities: engagement for young people, engagement with young people and also participation from young people. I believe that the last option should be given more importance in general. The first article of IGJR 4/2009 deals with the nature of rights in general. Dieter Birnbacher (University of Düsseldorf, Germany) offers an introduction into the language of rights and the role rights play in ethics and law. His contribution explores whether the concept of rights can be replaced without loss by the concept of obligations, that is whether rights should be seen as social constructs derived from obligations.

The following article by Steven Lecce (University of Manitoba, Canada) addresses the question of whether or not children's continued electoral exclusion is morally defensible. According to Lecce there is a fundamental tension between the egalitarian presuppositions of democracy and our refusal to grant voting rights to children and young people.

The third peer-reviewed article by Robert H. Pantell (University of California, San Francisco, USA) and Maureen T. Shannon, University of Hawai'i at Mānoa, USA) explores current thinking about enfranchisement of children, from the fields of ethics, law and social welfare. It proposes a proxy voting right for parents.

This issue also contains a lot of interesting background readings including a historical overview of examples of plural voting systems, a summary of the Convention of the Rights of the Child as well as an outline of voting age and voting restrictions for felons in prison and mentally disabled people in more than a dozen countries. Moreover, this issue features book reviews of Priscilla Alderson's *Young Children's Rights. Exploring Beliefs, Principles and Practice* and the anthology *The Moral and Political Status of Children*, edited by David Archard and Colin M. Macleod.

I hope you will enjoy reading our current issue.

Joerg Chet Tremmel
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Notes:

1. Hobbes, Thomas (1994): *The Elements of Law, Natural and Politic*, edited with an introduction by J.C.A. Gaskin. Oxford: Oxford University Press (first published in 1650), 23.8

What Does it Mean to Have a Right?

by Prof. Dr. Dieter Birnbacher

Abstract: This contribution offers an introduction into the language of rights and the role rights play in ethics and law, with special reference to the rights of children. It emerges that there are a number of very different functions characteristic of 'rights talk', both in ethics and law, and that many of them offer opportunities for strengthening appeals to moral and legal principles while others involve pitfalls that should be avoided. In conclusion, two of the theoretical questions raised by rights are addressed: whether the concept of rights can be replaced without loss by the concept of obligation, and whether rights should be seen as social constructs derived from obligations, or whether it is more plausible to reverse the order of priority.

The language of rights – a powerful ethical and political device

The language of rights is a particularly forceful device in moral and political debate. No other term is better suited to express strong moral emotions and political convictions. 'Rights talk' always carries a considerable emphasis, and this seems due to the fact that the language of rights from its very nature focuses on the perspective of those who have something to gain from a given moral or legal relationship. Though it is widely agreed that rights, at least in their primary sense, are correlated with duties or obligations, and that to ascribe a right to someone implies ascribing a corresponding duty or obligation to someone else, the language of rights brings the recipient of these obligations sharply in view and remains silent on those who are expected to accept these obligations and to act in accordance with them. This focus explains, at least in part, the greater power of the language of rights over the moral emotions. In general, it will be much easier to bring people to fight for the rights of A than for the fulfillment of their or others' duties towards A.

The focus on the perspective of the right-holder is only one aspect of the central function of the language of rights (which is particularly relevant in the context of chil-

dren's rights), its advocacy function. Whoever claims that a person A has (or should have) a certain right makes himself an advocate of A. He takes the side of A and makes it clear that he is prepared to defend A's right against anyone who fails to respect it, either in practice, by not observing it, or in theory, by calling into question A's legitimate possession of the right. In many cases, the advocacy function goes further and includes, beyond appealing to relevant persons expected to fulfill A's right, an appeal to a wider community. In these cases, the advocacy is not only directed to those identified individuals immediately concerned with A, but at an unidentified, anonymous and indefinite totality such as the community of politicians, society, or even, as in the case of human rights, mankind.

Within the advocacy function typical of 'rights talk' a division can be made between the kind of norms or principles to which the ascription of rights appeal. One use is to appeal to the norms and principles that are part of a system of moral or legal norms widely recognized in a moral or legal community. This use might be termed the *enforcing* use. Rights held by A are appealed to in order to enforce obligations on the part of B whenever this seems required by hesitation or failure on the part B to act in accordance with these rights. The invocation of rights in this sense is of the nature of a reminder. It is understood that B recognizes A's right and has no reason to question the legitimacy of these rights or of the claims based on it. The main purpose of the reminder is to draw B's attention to implications these rights have for his own dealings with A. B, for example, has subscribed to the right to free speech all the time, but under certain circumstances B must be reminded of the fact that this right applies even to the expression of opinions that he thinks morally or politically disastrous. In these cases, the advocacy inherent in the language of rights is based on a shared normative system the vitality of which depends on a continuous process of mutual monitoring. Viewed from the angle of society at large, it functions as device of normative self-control

and self-correction to which various social institutions contribute: politicians and other opinion leaders, the courts, the media and the general public.

A second function of the language of rights is the appeal to rights that are not, or not yet, part of the respective normative system but are postulated as necessary or desirable additions by moral or political reformers. This is the *manifesto* use of the language of rights or, as it may be termed, its *revisionary* use. In this use, rights are postulated in the knowledge that they are not as a matter of fact recognized, or only in special cases or by very few communities, with the hope that they will come to be recognized more widely at some future point of time. This use is perhaps even more typical of 'rights talk' than the first one because it brings out its characteristic surplus normativity. Appealing to rights does not only signify that they should be observed where observance is in some way deficient, but that they should be recognized in the first place. Rights, in this use, typically have a distinctly utopian flavor. They call for changes in the system of morality and/or law that are hoped for but not necessarily expected to come about. The reference to rights is counterfactual rather than of the nature of a mere reminder. This is evident in fields such as international law where the institutions necessary to enforce the rights formally asserted by international declarations are notoriously non-existent. An extreme example is the universal right to periodic holidays with pay declared in art. 24 of the UN Declaration of Human Rights. The revisionary function is a frequent characteristic especially of the proclamation of

Modesty forbids what the law does not.

/ Lucius Annaeus Seneca /

moral rights: Moral rights are postulated with an intention to transform them into legal rights by changing the legal system accordingly and by providing the institutions necessary for their enforcement. Ethics precedes politics. John Stuart Mill's defense, as philosopher and moralist, of the

moral right of women to political participation preceded his (unsuccessful) attempt to bring about a vote for women's suffrage as a Member of Parliament.

Rights - some distinctions

To a semantic purist, the fact that the language of rights takes over important rhetorical functions must seem a mixed blessing. He will approach 'rights' with a double suspicion. First, like other rhetorically colored concepts in morality and politics like 'freedom' or 'human dignity', the concepts of rights is liable to inflation, thereby blurring its contours and weakening its normative force. Second, its very popularity as a rhetorical device tends to make people less inclined to take account of the semantic differences that exist between the various uses of this concept in theory and practice.

I will refrain, in the following, to practice semantic purism and to present the myriad of distinctions and classifications that have been proposed concerning rights in philosophy and political science. A minimum of distinctions, however, is necessary to make transparent, in the words of Joel Feinberg's title, "the nature and value of rights" (Feinberg 1980, 143 ff.) and to clarify what it is that is postulated in so many moralities, constitutions, declarations and manifestos. One first distinction is that between the standard *relational* use of the term 'right' where rights refer to a relation between a right-holder A and a B who is correspondingly obligated by this right, and the *non-relational* use in which to have a right just means that one is permitted to do something. In many contexts we can phrase the statement that A is morally or legally *permitted* to act in the way he does by saying that A has a right to act in this way.

To have a right, in this non-standard sense, means that A is under no obligation to act otherwise than he in fact does. Thus, in saying that in any free society everyone has the right to act as he wishes as far as this in accordance with existing law one expresses the thought that everyone is permitted to do what he does provided this is not prohibited by an existing law. There is, in this use, no question of a special relation, constituted by a right, in which the individual stands to other persons or to society at large. Whether A has the right or not need not depend on any interpersonal relations between A and others. That A is permitted to do something might be seen to follow from the rela-

tion of A to him- or herself or to God. If, according to traditional Christian thinking, nobody has a right to suicide, this means no more than that suicide is illegitimate, quite independently from the relations in which the individual stands to others and independently from whether the verdict is justified by any obligations he may have to others.

In personam vs. in rem rights

In its standard use, to have a right means to stand in a certain normative relation to others, namely that of having a legitimate claim against them. If A is declared to have a right against B, A is thereby ascribed a legitimate expectation that B, by acting or forbearing to act in appropriate ways, respects that right, and a corresponding obligation on the part of B to do what B owes to A as his or her due. This kind of right can be of one of two natures (or both).

If A has a legitimate claim against one or more concrete persons, one can speak of an *in personam* right. If the claim is against an indefinite totality of persons such as society or humanity at large, one can speak of an *in rem* right. The paradigm example of an *in personam* right is the right involved in the institution of promises. It is an essential part of promising that the promisor confers a right on the promisee to expect and to demand the fulfillment of the promise. The promise establishes a moral relation between the partners that is highly personalized and highly asymmetric, by defining one of the partners as the right-holding and the other as the right-fulfilling party. Another typical case of an *in personam* right is the right of the child to be cared for by its parents. Here again, the distribution of rights and obligations is highly asymmetric, but differently from the promise case the right is not established by a free agreement but by a 'natural' relation. A further difference is that in the case of the child the right-holder is also the beneficiary of the right, whereas in the case of a promise the beneficiary can be a third party. If B has promised A to do something for A's child, A's child is the beneficiary of the promise but not necessarily the holder of the right involved in the promise. An example of an *in rem* right is the right to work. It is clear society at large is the addressee of this right, but it is far from clear how fulfillment of this right is to be secured and who is concretely obligated by it. As such, it is an abstract right without concrete addressee. It appeals to society as a whole to

accept certain obligations and to think about devising, constructing and entertaining institutions suited to meet them. Most rights postulated in the manifesto sense, including the rights of future generations, have to be classified as *in rem* rights in this sense. The same applies to the rights stated in the UN Convention on the Rights of the Child.

It is no accident that *in rem* rights are mostly *moral* rights. They are typically postulated with the purpose to establish legal rights where they do not yet exist and to establish the institutions necessary for their being respected within a society's given framework. This sheds light on important characteristics by which legal rights differ from moral rights. Establishing legal rights is a move in a language game that is essentially *pragmatic*. As a pragmatic device, legal rights are judged primarily by their instrumentality, i. e. by the extent to which they serve the ends they are designed for. One of these ends is the safeguarding of moral rights. Moreover, legal rights are *relative*, both in factual and in normative respects. Not only is it possible that a person can have a certain legal right in one legal community and none in a neighboring one, it is also the case that these rights often make no stronger claim than that to be valid in a certain society and within a certain period of time. Not only can the institutions capable of enforcing legal rights be created and abolished at will, but even the legal rights themselves are subject to change. Against this, the claim to validity that goes with moral rights is universal. If A has a moral right, A has this right no matter whether this right is in fact recognized or respected. A can possess this right even if it is not respected by the majority of existing societies. While a statement that A has a *legal* right is descriptive and particular, a statement that A has a *moral* right is normative and universal. As a move in the moral language game, the ascription of a moral right shares the claim to universal validity built into the very language of morality, however illusory (or hypocritical) this claim may seem on the background of historical and cultural relativity. The other side of the coin is that moral rights are largely ineffectual as long as they are not transformed into legal rights and made part of a system of law that sanctions violations. As a rule, a promisee is well advised to safeguard the moral rights accruing to him from a promise by the legal rights going with a legal contract. Though morality by itself is not without its own sanctions,

these are in general too weak to provide the trust required for cooperation.

In some legal systems, legal protection of interests is graded by distinguishing between *objective* and *subjective* rights. Rights are objective if the legal system imposes legal duties on citizens to respect certain limits in their dealings with one another and with third parties. Rights are subjective if the legal system makes provisions for opportunities of the right-holders to have their rights protected by legal action, either by laying complaint against violations in person or by advocates. In many countries, minors have subjective rights, whilst animals have only objective rights. Both have rights that are protected by law. But only children are capable of being vicariously represented by trustees who secure their rights on their behalf.

Liberties, claim-rights and powers

Another distinction between rights that dominates the theory of rights is that by their respective *content*. The favoured approach is to classify the content of moral or legal rights by the kind of goods that the exercise of the right is intended to safeguard. In the case of *liberties*, this is primarily freedom and privacy, in the case of *claim-rights* it is primarily integrity and opportunities, in the case of *powers* it is the interest in autonomously structuring one's social relations by establishing contracts and other agreements with others.

A right can be classified as a *liberty* if it means that A is free to act as he wishes without the interference of others. In particular, a liberty can be positive (right to free speech) or negative (right not to serve in the army). In each case the corresponding duty is negative, that of non-interference. If A has a liberty, B has an obligation not to interfere in A's exercise of the liberty, whether this consists in an activity or a forbearance. An example for a liberty in the context of children's rights is art.13, 1 of the UN Convention on the Rights of the Child, which assures the child freedom of expression.

With *claim-rights* the differences between the positive and the negative versions are more pronounced. To have a *positive* claim-right means to be entitled to being provided with some good (such as, for example, the means of subsistence, health care or work opportunities) by certain identified persons or by society at large. In this sense, a small child has a claim-right to be cared for by its

parents or, alternatively, by a guardian, and to receive the health care and education necessary for its development into an autonomous person. To have a *negative* claim-right means not to be exposed to certain violations of one's integrity and corresponding risks, for example by physical violence or psychological torture. The corresponding duties on the part of others are partly negative and partly positive. Others are not only required not to infringe on or to endanger the integrity of the right-holder, but also to actively provide the means necessary for achieving the good safeguarded by the right. These are usually taken to include whatever may be necessary to provide for the personal safety of the right-holder. In the case of children and other particularly vulnerable groups, rights are mostly of the nature of negative and positive claim-rights. This must not blind us, however, to the fact that the members of vulner-

At his best, man is the noblest of all animals; separated from law and justice he is the worst.
/ Aristotle /

able groups also enjoy liberties. Some of these may even conflict with the fulfillment of rights, such as in cases in which children refuse a medical treatment which they have a right to receive. A typical example of a claim-right in this sense is the provision of the UN Convention on the Rights of the Child that the system of adoption shall ensure that the best interests of the child shall be the paramount consideration (art. 21).

A right can be classified as a *power* if it confers on an individual the opportunity to change the moral or legal relations in which he stands to others. In modern societies, this kind of right has become more and more important with the growing liberty of the individual to establish, within certain limits, his roles and relations by his own will. The individual has successively become free to control the moral and legal obligations incumbent on him by making autonomous choices how far to bind himself by contracts, promises and personal bonds.

It goes without saying that distinguishing these kinds of rights does not mean to ignore their interrelations, both logical and factual. Powers are logically dependent on liberties. Liberties are factually dependent on claim-rights, at least if they are not meant as formal guarantees but as entitlements that the individual has a realistic chance to exercise

in practice. The distinction according to content is also relevant for the question of who qualifies as holder of the respective right. Since each kind of right is concerned with a certain kind of good, there are logical limits to the range of subjects that qualify as right-holders. A right, whether moral or legal, can only be ascribed to beings to which the corresponding good can be ascribed. As a consequence, the range of rights that can be ascribed to animals is narrower than that for children, which is again narrower than that for adults. Animals do not qualify as candidates for the ascription of liberties, or only to the extent that they are capable of intentional action. They do not qualify as candidates for powers. They do qualify, however, as holders of positive and negative claim-rights to the extent that their good depends, among others, on how they are treated by humans. Infants do not ordinarily qualify as candidates for civil rights such as the right to vote (except vicariously). But they obviously qualify for claim-rights such as the right to physical and mental integrity and to being provided with the means necessary for their development to maturity. There is, then, no once-for-all answer to the question of who qualifies as a bearer of rights. It depends on the kind of right in question. In general, the range of beings to which claim-rights can be ascribed is wider than that to which liberties and powers can be ascribed. And it follows that there is no reason to uphold the time-honored doctrine of the reciprocity of rights and duties according to which rights can only be held by beings that are capable of having duties. This doctrine is a non-starter because it overlooks the central function of the ascription of rights, its advocacy function. A being such as a sentient animal, an infant or a demented adult is no less qualified as right-holder by not being able to put forward its rights or even to know about them. On the contrary, because of their dependency on others these beings are particularly in need of having their rights respected.

Another relevant observation is that the legal system is considerably more generous in ascribing rights than the moral code. As an essentially pragmatic device it is much more free to ascribe rights to non-personal entities that would not qualify as holders of moral rights, such as trusts and heritages or (concerning the right to inherit) the *nasciturus*, the child yet to be born.

Another distinction that is of special importance for the relationship between parents

and children is that between *mandatory* and *discretionary* rights. Mandatory rights are rights that are conjoined with a duty to exercise the right. While liberties and powers are, in general, discretionary in the sense that the right-holder is free to exercise the right, some particular liberties and powers are mandatory in so far as they constrain their exercise. Thus, parents have the legal right to bring up their children and thereby the right to exercise their own personal preferences, for example (though with certain limitations) in point of religion, but this right is conjoined with a corresponding obligation. The right to vote, in some countries, goes together with an obligation to vote. Something similar holds for certain claim-rights. Thus, children have a legal claim-right to education in the sense that society has a duty to provide adequate educational opportunities. On the other hand, this right is mandatory by being conjoined with a duty. Children in general have no choice to go to school or not as soon as they have reached schooling age. Another type of right that is similar to a mandatory right in restricting the options open to the right-holder are *inalienable* rights. In this case, the right-holder is free to exercise the right he possesses, but he is not free to renounce the right or to exchange it for money or other goods, thereby permanently depriving himself of the opportunity of exercising the right. In this way, the right to freedom is customarily understood both in morality and in (constitutional) law. The right to freedom implies the right not to exercise this right in particular situations, but it does not imply a right to sell oneself into slavery.

The ethics and metaethics of rights

There are a number of controversial ethical and metaethical issues that regularly come up in discussions about rights and which can fruitfully be debated without going too deeply into substantive questions concerning concrete rights and their limits. One such issue is the status of rights in cases of conflict with other rights or duties.

It is generally agreed that rights are, as a rule, not absolute but have the status of *prima facie* rights, i. e. can and must be negotiated with other rights in cases in which conflicting rights cannot be respected at the same time. Thus, liberties are commonly held to be restricted by claim-rights and claim-rights by liberties, so that any one right is limited in its range by other items in the system of

rights, each in accordance with its respective normative weight. In German constitutional law it is agreed that even those basic rights that are granted without inherent limits do not hold absolutely but can in practice be limited if their exercise conflicts with other inherently unlimited basic rights. Only a so-called 'core content' of these rights is taken to partake of the non-negotiability that is characteristic of the right to human dignity (and its protection by the state) in the first article of the German constitution. The same holds for moral rights such as the right to physical integrity or the rights acquired by accepting a promise. For both rights, situations are easily thinkable in which they have to cede, on reflection, to the rights of others provided these carry more weight than the right sacrificed. It is a moot question, however, whether rights are negotiable not only against rights but also against duties without corresponding rights, i. e. to those duties traditionally termed 'imperfect duties'. Examples of 'imperfect' duties are the duty of generosity and the duty to come to the aid of the needy. Differently from 'perfect' duties that correspond to a right on the part of the recipient, imperfect duties leave the moral agent more choice in determining who is to receive the good the agent is morally bound to provide and in what exact way this is carried out. If I have contracted a debt it is usually clear who it is whom I owe the money and in what way and at what point of time I am expected to pay it back. The same holds for other perfect duties like fulfilling a promise or seeing to it that my child attends school. With 'imperfect duties' this is different. I have a choice about

the who, how and when of charitable giving, and I have more leeway to exercise my personal preferences. Charity is nothing I owe to its recipients. Is it legitimate to make an 'imperfect duty' take precedence over a 'perfect duty'? Is it morally unobjectionable to break a promise in cases in which this conflicts with coming to the aid of someone in need? This is answered in the negative by a great many philosophers, among them Kant and Schopenhauer, and there are many examples for which this answer seems adequate. Normally, it is no excuse for not paying back a debt that more good would be done by spending the money on a needy friend. For other cases, the doctrine of priority of rights over duties is clearly counterintui-

tive, for example if helping a friend in need is given priority over holding a promise on which nothing much depends. Rights are of varying normative weight, and at least those of relatively low priority may well be judged to be negotiable even with imperfect duties. Among the metaethical issues surrounding rights two stand out as being the subject of repeated and fundamental controversies. One is the issue whether the language of rights can be completely substituted by the language of duties. Some of the philosophical defenders of what has been called the *redundancy theory* of rights (such as Richard Brandt¹) have expressed doubts whether the particular psychological force of the language of rights can be reproduced by using only duty-talk. But they think that at least the semantic content of the language of rights is fully reproducible in the language of duties. Though this theory has found quite a number of adherents,² there are reasons to doubt whether it is adequate. For one, the correspondence with rights (on the part of the recipient) changes the semantic content of the concept of duty in its application to those 'perfect' duties that are of central relevance to morality and law as normative systems. At least for moral rights, having a right is more than being the object of others' moral duties. Differently from duties without corresponding rights, the right-holder can claim the fulfillment of his right as something that is due to him and for which, if fulfilled, gratitude would be out of place. Whoever has a *right* not to starve, need not wait for others to give him to eat.

No man is above the law and no man is below it: nor do we ask any man's permission when we ask him to obey it.
/ Theodore Roosevelt /

He is in a position to demand that he gets what is owed to him. One might even go further and follow Joel Feinberg by saying that rights seem to involve a second-order right that entitles the right-holder to claim, under appropriate circumstances, the fulfillment of his right.³ Conferring a right on someone means more than to postulate the legitimacy of a claim. It means to encourage and to support the right-holder in the attempt to make appropriate claims. This connotation of *empowerment* explains the close connection between the possession of rights on the one hand and *self-respect* and *human dignity* on the other. Moreover, the redundancy theory fails to do justice to the advocacy function of rights. Conferring a

right on someone does not only encourage the right-holder to put forward his right, but also others to speak up in his name, especially if the right-holder is temporarily or permanently unable to do so himself.

In the state of nature...all men are born equal, but they cannot continue in this equality. Society makes them lose it, and they recover it only by the protection of the law.

/ Charles de Montesquieu /

Another controversial question is of interest primarily for ethical theorists. The question is whether rights are fundamental or derivative in the order of logical priority. Should rights be seen as social constructs that are - in some circuitous way - derived from duties or is it the other way round, so that rights are the fundamental category? Joel Feinberg speaks for many legal philosophers in preferring the first route: "It is because I have a claim-right not to be punched in the nose by you, ... that you have a duty not to punch me in the nose. It does not seem to work the other way round."⁴ This shows that for Feinberg rights are more fundamental than duties. It does not show that rights are the last word. In a later remark Feinberg makes it clear that *interests* are the fundamental category and that it is they that lie at the basis of both rights and duties: "My claim and your duty both derive from the interest that I have in the physical integrity of my nose."⁵ Both rights and duties function to protect interests, either actual or prospective, with rights protecting those interests that are particularly crucial for a good life. However, the fact that there are 'imperfect duties' that do not correspond to rights militates against Feinberg's proposed order of priority. 'Imperfect duties' protect the conditions of a good life in the same way as 'perfect duties' do. The only difference is that the correspondence with rights enables society to put additional pressure on the fulfillment of perfect moral duties. This explains why many

philosophers, including Kant and Mill, have seen a close connection between perfect moral duties and duties that it is legitimate to enforce by legal sanctions. Another argument for the priority of duties over rights is that it is easy to imagine a system of morality or of law without rights, but that it is impossible to imagine a system of morality or law without duties. In a world of angels where everyone did what duty enjoins, rights might in fact become redundant.

Notes:

1. Brandt 1959: 440.
2. E. g., Frey 1980.
3. Feinberg 1980: 141.
4. Feinberg 1992: 205.
5. Feinberg 1992: 205.

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Should Democracy Grow up? Children and Voting Rights

by Prof. Dr. Steven Lecce

Abstract: This paper examines whether or not children's continued electoral exclusion is morally defensible. Ultimately, there is a deep tension between the egalitarian presuppositions of democracy and our apparent unwillingness to grant children voting rights. Unless a plausible distinction can be found, then, between adults and children that also tracks the underlying reasons for endorsing democracy in the first place, the continued political disenfranchisement of our youngest citizens is shown for what it is: social injustice. The paper begins by exploring some of the conceptual difficulties that childhood creates in relation to democracy. It then assesses the implications of two very different approaches to democracy for children's voting rights: proceduralism and a child's supposed right to an open future.

Introduction

At first glance, the idea that children should have voting rights probably strikes most people - if they ever contemplate it at all - as an absurdity. One need not be a pediatrician or psychologist (or, parent, for that matter) to appreciate the fact that, especially when they are very young, children are often emotionally unstable, ethically immature, and cognitively under-developed and, thus, typically ill-equipped for discharging the rights and responsibilities of democratic citizenship. However, the continued exclusion of children from the electoral franchise sits rather uneasily with both influential philosophical defences of democracy and the existing electoral practices of Western liberal-democratic states. What makes democracy ethically attractive as a political form is that all citizens are to share *equally* in shaping the law and public policy that sets out the basic framework of rights and responsibilities that determine, or at least greatly influence, their life prospects and opportunities. A democracy is better than its rivals, so the argument goes, because it treats its citizens with equal concern and respect. But *children* are citizens too, so why are they denied what is probably the single most important democratic right - the right to vote? Furthermore, why isn't that denial a straight-

forward violation of the equality that democracy is supposed to deliver? As we shall see, one answer is based upon children's manifest disabilities in relation to whatever capability benchmark is used to identify the legal age of majority. This move will not do, however, at least without further argument, because, beyond the legal age of majority, disabilities of those kinds typically do *not* disqualify adults above the threshold. In Canada, for example, neither the insane nor convicted criminals are barred from voting. In short, the common intuition about the absurdity of granting voting rights to children is, in fact, quite hard to sustain in light of both the best arguments for democracy and existing electoral practices.

We worry about what a child will become tomorrow, yet we forget that he is someone today.

/ Stacia Tauscher /

This paper explores some of the complexities surrounding this tension between the common intuition, on the one hand, and the arguments for democracy and existing practices, on the other. It begins by motivating the topic by showing how, in general, children's political disenfranchisement raises serious questions of justice that must be addressed rather than ignored. If we are to continue excluding children from the franchise, that exclusion, itself, should be based upon a defensible political morality rather than simply the result of unquestioned convention or habit. The rest of the paper takes up this challenge by exploring two very different approaches to democracy to see what they yield in connection with children's voting rights. If the core idea of democracy is the collective authorization of laws by voting for them, broadly speaking, there are two ways of defending that idea: first, as a fair *procedure* for adjudicating the competing preferences and interests of citizens, each of whom are assumed to be equally worthy of political concern and respect; and, second, as the implication of a character ideal rooted in the value of personal autonomy. This paper examines the implications

of proceduralism for children's voting rights via David Estlund's most recent contribution to normative democratic theory.¹ In Estlund's hands, the justification of democracy crucially depends upon the refutation of 'epistocracy' - the rule of the wise.² Like so many others, Estlund deliberately chooses to omit children from the purview of his analysis. However, his arguments bear directly upon the question of children's voting rights, because the case for excluding children from the franchise normally rests explicitly upon the premise that political authority should be knowledge-based, and it is *this* premise that Estlund attacks. Thus, if the critique of epistocracy succeeds, this might supply advocates of children's voting rights with much-needed theoretical support. Because the ideal of personal autonomy has played such an important role in recent moral and political philosophy, this paper considers what (if anything) is implied by a child's right to an 'open future' in connection with voting rights.³

What is a child?

From the moral point of view, what could be worrisome about the electoral disenfranchisement of children? Up until fairly recently, at least, children have not been central figures in ethical analyses of politics so the question was unlikely to arise in the first place.⁴ But in the West, now, after several hundred years of democratic theory and practice, there are *prima facie* tensions, perhaps even contradictions, between the most influential justifications of majority rule and our continued unwillingness to give the vote to anyone younger than, say, 18 years of age.⁵

I have repeatedly referred to 'children'. What, then, is a 'child'? Our modern conception of childhood is parasitic on that of adulthood, to the extent that children are often characterized primarily as *lacking* what defines an adult.⁶ In most philosophical accounts, children's relative capacity impoverishment is pervasive, deep and multi-perspectival. For instance, Archard states: "These include the moral or juridical perspective from which persons may be judged incapable, in virtue

of age, of being responsible for their deeds; an epistemological or metaphysical viewpoint from which persons, in view of their immaturity, are seen as lacking in adult reason or knowledge; and a political angle from which young humans are thought unable to contribute towards and participate in the running of the community.⁷

Analytically, then, a concept of childhood requires that children be somehow distinguishable from adults in light of some unspecified set of attributes; a *conception* of childhood is a specification of those attributes. In the contemporary Western world, a widespread, perhaps dominant, conception of adulthood (and therefore also of childhood) goes something like this: an adult is someone who is rational, physically independent, autonomous, and with a sense of identity that derives partly from critical reflection upon her beliefs and desires. Because of this, she can make free and informed choices for which she can / should be held responsible. It is because a child *lacks* these dispositions and capacities that she is thought unable to, say, work for a living, be legally accountable for her actions, or vote.

...the voice of children must be heard and respected in all matters concerning their rights.

/ Unicef /

A structural problem confronts *any* conception that indexes childhood to adulthood in the way that Western culture seems to.⁸ To be at all plausible, a psychological account of human development, or an epistemological account of the acquisition of knowledge will have to be gradual. As Locke sought to demonstrate, barring social or natural catastrophes, humans acquire reason gradually, so the transition from childhood into adulthood is typically both continuous and cumulative.⁹ But legal rights and responsibilities, including voting rights, would seem to be all or nothing - either one has the right to vote, or one does not. As Archard astutely points out, this creates the problem “of how to dovetail a psychological account of human development, or an epistemological account of the acquisition of knowledge, with the establishment of criteria whose possession guarantees a certain moral, political and juridical status”.¹⁰

Some critics have found the problem to be insoluble, such that any attempt to draw legal distinctions between children and adults on the basis of supposed age / com-

petence correlations alone is inherently unfair.¹¹ Clearly, there is something inherently arbitrary and therefore unfair about drawing legal distinctions on the basis of age *alone*. To discriminate against the young *because they are young* is as bad, morally speaking, as discriminating against, say, blacks or women because of the colour of their skin, or their sex, respectively. That kind of ageism, as it is now called, is indeed reprehensible. But there is nothing necessarily objectionable about using age as a reliable *proxy* for various competences that might be relevant to people’s abilities to effectively discharge rights and responsibilities.¹² Ultimately, the real questions are whether or not the proxy of age reliably tracks (in a probabilistic sense) the competences that are supposed to be relevant, whether or not those competences really *are* relevant, and, finally, whether a possession of them is fairly demanded of *everyone* or, instead, tested for or, even worse, assumed, only selectively.

For argument’s sake, then, let us divide childhood into the following subcategories: infancy (birth-6 years), childhood proper (6-12 years), and young personhood (12-18 years).¹³ With this framework in mind, we should ask: is there a compelling basis for excluding children from the franchise, one that will not also lead to the exclusion of some (perhaps many) adults, or to giving some adults plural votes? In sum, is their exclusion consistently defensible in light of the best arguments for democracy?

Is there a problem with children’s political disenfranchisement?

The core idea of democracy is the collective authorization of laws by the people who are subject to them. As such, democracy is inseparable from voting.

Symbolically, voting rights are the mark of democratic citizenship. Citizens are those who participate in the government of their society; they do so either by voting on laws directly, or by electing representatives to do so on their behalf. In the voluminous literature on democratic theory, there are many different explanations as to why voting has the normative significance that democrats allege, that is, why casting a ballot legitimates the results and makes them binding and authoritative on everyone, even on political losers.

Here are two promising candidates. First, democracy is implied by a principle of basic equality. At least among adults, “no persons are so definitely better qualified than others

to govern that they should be entrusted with complete and final authority over the government of the state”.¹⁴ On this view, majority rule follows from the assumption that a legitimate government must give equal consideration to the good and interests of every person bound by its decisions.

The major purpose of democracy, its ritual and its feast - this is the election.

/ Herbert George Wells /

Second, democracy is a fair procedure for translating individual preferences into social choices when people disagree. Any other social choice mechanism will either antecedently assume that some people’s interests count for more than those of others (violating equality) or it will incorporate some controversial pre-political standard of right and wrong that people’s votes should track (making voting dispensable). This violates equality and ignores pluralism.¹⁵ Both strategies are fraught with difficulties when it comes to denying children - certainly older teenagers - voting rights. The egalitarian argument invokes the interests of *every* person but proceeds, on the basis of that premise, to limit the franchise to every *adult* citizen. As critics have pointed out, this slide, while characteristic, typically occasions little notice.¹⁶ But sound arguments are required to justify denying children the vote, particularly when the unequal voting power of the elderly relative to the young leads (predictably) to the latter group’s heightened liability to poverty and all of its associated horrors. The procedural argument can exclude children *tout court* only by assuming that, as a group, they lack the capacity to make rational decisions about alternative parties and their policies in light of whatever information is available about them. Do they? Of course, this is an empirical, not a philosophical, question, but we can’t begin to answer it without doing philosophical legwork first, because precisely *which* capacities are required will depend upon how democracy is interpreted - its point, value and purpose. We cannot know whether or not their relative capability deficits should disqualify children from voting until we know which capabilities ground voting rights. And we cannot know what those capabilities are, in turn, without closely examining leading accounts of democracy. Shortly, we turn to procedural and substantive accounts of democracy shortly to see whether, in fact, children may be justifiably

excluded on the basis of their relative capability deficits. For now, we can say at least this much: in order for children's continued political disenfranchisement *not* to require justification, the following three highly dubious things would have to be true:

- (1) Children have no distinctive interests of their own;
- (2) Even if they do have such distinctive interests, their parents can adequately represent them at the polling booth;
- (3) The costs of disenfranchisement are borne by all children, not simply by the poor and powerless.¹⁷

As Schrag points out, the most obvious children's interest that is *not* shared by adults is the interest in receiving an adequate education, one that potentially conflicts with interests in maximally high after-tax parental incomes. Even if children's interests *could* be fully represented by their parents, however, such representation will hardly be equally influential or effective, given existing levels of socio-economic inequality, and this seems to violate the procedural fairness that many democratic accounts champion. Finally, because parents from different social classes are not equally likely to vote, children of the most vulnerable will remain the least effectively represented, even if we assume that children's interests are best represented by their own parents. In the end, if we want to continue to deny children the vote, we will have to confront questions that our political ancestors have ignored, that is, their exclusion must be justified rather than simply assumed. Can it be?

Democracy, Plato's shadow and the rule of the wise

Western political theory begins with the suggestion that democracy is not naturally plausible because it hands over political decision-making to those too stupid to be entrusted with power.¹⁸ Today, and at least openly, this is almost universally denied, but the conclusion is surprisingly hard to resist. After all, when it comes to life and death medical decisions, for example, could there be anything more moronic than holding a vote instead of relying on a doctor's expertise? Surely, the stakes in political decisions are sometimes equally high, involving as they do national security, warfare, the administration of criminal justice, the provision of essential educational and social services, and so on. If the ancient medical/political analogy is apt, we seem to have the basis for an anti-democratic argument with the

following general structure:

- (1) There are true (procedure-independent) normative standards by which political decisions ought to be judged;
- (2) Some (relatively few) people know those normative standards better than others; therefore
- (3) The normative political knowledge of the relative few is a warrant for their having political authority over the rest.¹⁹

Call this the argument for 'epistocracy', or rule by the knowledgeable.²⁰ Let us ignore the separate and admittedly difficult issue as to the precise *content* of the relevant knowledge and the education responsible for producing it. Assume that such knowledge exists and also that people with that education will tend to rule more wisely than those without it.²¹ Both seem like fairly minimal assumptions and, if we concede them, we finally have a promising basis for justifiably excluding children from the franchise because, along with the majority of adults, they lack the expertise of the politically wise.²² Given our purposes, then, it is worth pondering whether or not the argument for epistocracy succeeds.

A child becomes an adult when he realizes that he has a right not only to be right but also to be wrong.

/ Thomas S. Szasz /

Premise (1) looks unassailable and child liberationists, in particular, are certainly in no position to reject it to the extent that their demand for children's political inclusion itself is advanced as a *true* requirement of political morality. Premise (2) might render the argument tautological, but only if we *identify* the content of the requisite political education as whatever happens to lead the relative few to rule more wisely. If there is a way of giving content to that education such that, contingently, people with it will tend to rule more wisely, then (3) seems to follow from (2), and democracy is a non-starter along with children's voting rights, because it is certainly reasonable to think that children, especially the very young, will in all likelihood lack the relevant knowledge that grounds political authority.

How to reject epistocracy

Perhaps this is too quick, though. Even if we concede (1) and (2) - and we probably should - the inference from (2) to (3) commits the '*expert/boss fallacy*' by illicitly assuming that because someone would rule better they are

pro tanto a legitimate or authoritative ruler.²³

David Estlund makes the point as follows: "It is important to see that authority does not simply follow from expertise. Even if we grant that there are better and worse political decisions (which I think we must), and that some people know better what should be done than others (we all think some are much worse than others), it simply does not follow from their expertise that they have authority over us, or that they ought to. This expert/boss fallacy is tempting, but someone's knowledge about what should be done leaves completely open what should be done about who is to rule. You might be correct, but what makes you boss?"²⁴

Like so many other contemporary defenders of liberal-democracy, Estlund invokes a principle of political legitimacy in which state power must be publicly justified, that is, reasonably agreed to by everyone subjected to it.²⁵ It is this justificatory standard that rules out epistocracy: the inference from (2) to (3) above would be reasonably rejected by free and equal citizens unwilling to irrevocably surrender power to putative political experts. The kind of pluralism - cultural, religious, ethical, metaphysical - likely to survive and thrive under free institutions is not conducive to generating a normative consensus that would identify the relevant experts.²⁶

Estlund highlights the expert / boss fallacy in order to block epistemic justifications of plural voting systems, that is, of systems that grant *more* votes to those better qualified (because better educated) to rule.²⁷ He chooses to ignore children, but the omission is rather curious in this context. The reasonable rejection standard of political legitimacy that he deploys to vindicate egalitarian democracy by blocking the inference from (2) to (3) seems to cut both ways. On Estlund's view, all adults are to have the same voting rights despite their being differentially endowed with political wisdom *because* such wisdom is not the basis of justified authority. Fine, but why should we deprive *children* of the vote on the basis of their relative epistemic deficits when similar deficits are not grounds for excluding adults? The argument that vindicates egalitarian democracy from Plato's elitist shadow also casts serious doubt on the continued exclusion of children from the franchise.

One way for proceduralists to resist this conclusion would be to identify a threshold level of competence below which children are thought to fall. On this satisfying conception, voting rights require people to have

enough of whatever composite of abilities is relevant to collective self-rule but, over and above that amount, differential abilities would not translate into unequal entitlements. If the legal age of majority is actually a reliable proxy for that composite, then procedural accounts of democracy may, in the end, justifiably exclude children from the franchise. Lacking the requisite knowledge and abilities, children would not count among those whose reasonable consent was required to justify state power. Subjected to parental authority, they would be as Locke described them - gradually on the way to acquiring freedom (including political freedom) as they developed over time into competent reasoners.²⁸

So the central question is this: are children *unreasonable*? Before rushing to the conclusion that they most certainly are, there are several things to keep in mind. Some of the children currently below the legal age of majority in Canada (18) are 'young persons', as I'm calling them, between 12-18 years of age. Many of these children are probably more computer literate, news savvy and politically sophisticated than their parents, and in a way that makes it likely that they possess basic abilities to understand and rationally evaluate alternative parties and policies. This seems like a *prima facie* reason to lower the voting age to somewhere around 15, perhaps even lower.²⁹ In any event, rationality - the ability to relate ends to means in logically consistent and coherent fashion - is not critical to the proceduralist's standard of political legitimacy. Failing to be rational in that sense will certainly impugn a person's capacity to be autonomous, that is, to live a partly self-chosen life that's reflective of one's fundamental values and commitments. We examine the connection between personal and political autonomy later in connection with a child's supposed right to an open future. But personal autonomy, itself, is a contested value about which reasonable people will disagree.³⁰

A child's right to an open future?

For some political philosophers, the central task of governments is to help people lead decent, or ethically valuable, lives.³¹ Today, such lives are often characterized as personally autonomous ones.³² Suppose, then, that children have a moral 'right to an open future'³³, one in which they, rather than their parents, are to choose the ethical ideals that guide their lives.³⁴ Distinguishing between autonomy as a substantive character ideal

and autonomy as a set of capacities for critical self-reflection, we could then say, and on the basis of that supposed right, that parents have positive duties to foster, and negative duties not to harm, those capacities. In attributing fairly sophisticated autonomy rights to children, admittedly many of whom are not yet capable of exercising them, we are not making a fundamental category mistake, as some critics allege.³⁵ Instead, we are only ruling out kinds of violating parental conduct *now* that will guarantee, or at least make it significantly more likely, that important options for children are foreclosed *later*. So the kind of autonomy that's invoked here might be called anticipatory: "[a child's] right while he is still a child is to have these future options kept open until he is a fully formed self-determining adult capable of deciding among them".³⁶

Does children's political exclusion violate their right to an open future? If so, this would be problematic for both children *and* democracy, because democratic institutions are often defended precisely on the grounds that, under them, personally autonomous lives are likely to flourish.³⁷ There are several reasons for thinking that children's political disenfranchisement might undermine their interest in their having futures left sufficiently open. To begin with, there is the correlation I hinted at earlier between that disenfranchisement and heightened levels of poverty and its concomitant miseries. Since the young are so disproportionately powerless relative to the elderly, law and policymakers have very little incentive to take young people's interests and preferences seriously. As a result, they are neglected along various dimensions - health, education, and day care, for example - in ways that adversely impact the range and quality of options open to them later in life as adults, as well as their capacities to assess and make use of those options. Children's anticipatory autonomy is damaged by adults / parents choosing to fund education inadequately, thereby damaging what might be called its internal resources. There are many different accounts of personal autonomy and, therefore, many different ways of interpreting its anticipatory dimensions. However, any plausible interpretation will make personal autonomy a composite of three distinct conditions: appropriate mental abilities, an adequate range of options to choose from, and independence from outside manipulation and coercion. Clearly, if a person is to be partly the author of her own life by choosing

and pursuing projects - relationships, commitments, goals - then she must possess a range of cognitive skills. She will require, at minimum, practical reasoning skills that enable her to conceive of alternative options for choice. Additionally, she must have the mental abilities to form complex intentions as well as the capacity to comprehend the means required for the realization of her goals. Such cognitive skills and mental abilities are clearly damaged by inadequately funded, under-staffed and poorly managed educational systems.

A child educated only at school is an uneducated child.

/ George Santayana /

Children's anticipatory autonomy is also thwarted by adults / parents pre-committing expenditures, thus damaging the material means for its exercise. Alongside the cognitive capacities necessary for project pursuit and freedom from manipulation and coercion, the final precondition of personal autonomy is an adequate range of options for choice. This adequacy criterion is satisfied primarily through variety, and not number, of options. Because choices are guided by reasons, the options available for an autonomous individual must differ enough to rationally affect choice. To be sufficient for personal autonomy, then, an option-set must contain: (1) a plurality of options with (2) distinct opportunities that yield (3) significantly different reasons for choice and, of these (4) at least one and ideally several of them must be thought of as worthwhile by the person in question.³⁸ When adults / parents pre-commit public expenditures in ways that unfairly shift fiscal burdens onto subsequent generations, there is the worry that such generations will have *their* capacities for personal autonomy stunted via a diminished and impoverished range of choices - social, economic, cultural, recreational, artistic, aesthetic, and so on.

Children's voting rights: addressing the lingering worries

Granting children the vote is one way to block uses of parental / political power that foreclose the anticipatory autonomy of children in these various ways. On the one hand, there is an obvious flaw with this suggestion, namely, that while anticipatory autonomy implicates future abilities, the effective and intelligent use of voting rights depends upon children's *present* capacities to

share in collective self-determination.³⁹ There is something incoherent about granting ‘rights-in-trust’⁴⁰ to people (children) whose very capacities to exercise them are developed by having their freedom paternalistically limited now. On the other hand, and within limits, children’s present incapacities might, themselves, be partially related to their political disenfranchisement. In *On Liberty*, J.S Mill argues that: “The human faculties of perception, judgment, discriminative feeling, mental activity, and even moral preference, are exercised only in making a choice. He who does anything because it is the custom makes no choice. He gains no practice either in discerning or in desiring what is best. *The mental and moral, like the muscular powers, are improved only by being used*” [emphasis mine].⁴¹ If the capacities for effective democratic participation track those implicated in children’s anticipatory autonomy, that is, if being personally autonomous is, in some sense, a constitutive part of what makes someone a good democratic citizen, then we should not be too quick to point to children’s relative disabilities to deny them voting rights which we currently grant to adults.⁴² Why not? Because, if Mill is right, some of those capacities will likely be developed and subsequently improved only by regular use. Therefore, one familiar objection can be turned on its head: we shouldn’t exclude children because they are incompetent; we should include them so they become less so, and much sooner. Children have to grow up; *perhaps* democracy should too.

This conclusion also reveals a critical but unnoticed flaw in recent proposals for the political enfranchisement of children via proxy votes. Some philosophers argue that, in order to instantiate genuinely universal suffrage, parents should be granted plural votes, for example, either one extra vote if they have minors living with them, or one extra vote for each minor in their household.⁴³ The idea assumes that children’s interests are best represented by their parents or whoever is rearing them, given the fairly predictable workings of affection and natural partiality. The standard objection is that, unfortunately, we *cannot* count on parents to effectively represent their children’s interests.⁴⁴ Because of a variety of factors - selfishness, shortsightedness, irrationality, and ignorance, to mention but a few - they often will not do so. But Mill reminds us of a deeper worry, namely, that empowering

parents (or other indirect strategies for that matter, including the guardianship proposal) does nothing to address or rectify the underlying cause of children’s exclusion in the first place - their relative capability deficits.

Conclusion

Where does all of this leave us? In connection with the franchise, a child’s right to an open future leads to less decisive conclusions than does the procedural understanding of democracy. However, an appropriate solution to the balance of considerations seems to point in the direction of a gradualist compromise, *not* to a total rejection of the case for lowering the age at which people are legally entitled to vote. While there is not much to be said in favour of politically empowering young infants who are as likely to eat, rather than mark, a ballot, we should do more than we presently do to expedite and facilitate children’s full inclusion into the political process. Aside from encouraging various forms of democratic participation at home and in school, we should encourage children to take a more active interest in the values, processes and results of political decision-making. Lowering the voting age would be a good way of doing so. Nothing in this proposal is offensive to the proceduralist argument, because that argument does not determine a particular age cut-off. It is also consistent with the essentially evolving nature of childhood.⁴⁵

Notes

1. Estlund 2008.
2. Plato 1974.
3. Feinberg 1980.
4. In the canon of Western political thought, the three most notable exceptions are, of course: Plato 1974; Locke 1964; Rousseau 1979. For a comprehensive survey of the growing contemporary (Anglophone) literature, see the ‘Bibliographical Essay’, Archard 2004: 231-242. I have written about the ethics of upbringing. See Lecce 2008b.
5. For an especially clear and succinct statement of these tensions and potential contradictions, see Schrag 2004.
6. Schapiro 1999: For example, Schapiro claims that childhood is essentially a predicament that must be overcome before moral responsibility can be ascribed to people. See Archard 2004 for a very illuminating discussion of how Locke’s picture of children as fledgling but imperfect reasoners is typical of much contemporary philosophical writing

on childhood.

7. Archard 2004: 32.
8. The contemporary Western conception now insists upon a sharp distinction between the behaviour demanded of children and that expected of adults. There is now a marked division of roles and responsibilities that did not always obtain, or at least not nearly so sharply. Other non-Western cultures today also possess the concept of childhood, recognizing as they do a difference between children and adults, but “they see children differing from adults in a far less dramatic and obvious fashion than is implied by the modern conception”, Archard 2004: 39.
9. Locke 1964.
10. Archard 2004: 12.
11. Farson 1974; Holt 1974.
12. Clayton 2006: 186.
13. Archard 2004: 65.
14. Dahl 1998: 79.
15. Lecce 2003; 2005; 2008a.
16. Schrag 2004.
17. Schrag 2004: 374.
18. Plato 1974: 206-212.
19. Estlund 1993/ 2008.
20. Estlund 2008: 30.
21. Estlund’s examples are the following: “basic literacy, basic knowledge of how one’s government works, some historical knowledge, knowledge of some variety of extant ways of life in one’s society, some knowledge of economics, some knowledge of the legal rights and responsibilities of oneself and others, basic knowledge of the constitution of one’s political community, and so forth”, Estlund 2008: 212.
22. Schumpeter 1976.
23. Estlund 2008: 40.
24. Estlund 2008: 3.
25. Barry 1995; Cohen 1997; Larmore 1987; Lecce 2008a; Nagel 1991; Rawls 1971; 1993; Scanlon 1998 and see Lecce 2008a for analyses of alternative formulations of the liberal principle of political legitimacy.
26. “Even if some have knowledge, others have no way of knowing this unless they can know the same thing by independent means, in which case they have no use for the other’s expertise”, Estlund 1993: 84.
27. See Mill 1972 for a liberal justification of plural voting.
28. Locke 1964.
29. See, for example, *Wahlrecht ohne Altersgrenze? Verfassungsrechtliche, demokratietheoretische und entwicklungspsychologische Aspekte*, Foundation for the Rights of Future Generations 2007, for claims that the ap-

- propriate age should be 12.
 30. Lecce 2008a.
 31. Raz 1986.
 32. Dworkin 1990; Feinberg 1980; Kymlicka 1989; Raz 1986.
 33. Feinberg 1980.
 34. See Lecce 2008b for reasons to doubt that they do have this right, at least as it is typically interpreted.
 35. Onora O'Neill insists that the way for children to overcome their dependence and vulnerability is not to assert their rights but to 'grow up'. O'Neill 1989: 204.
 36. Feinberg 1980: 126.
 37. Dworkin 1990; Kymlicka 1989; Mill 1972.
 38. Lecce 2008a: 106.
 39. Tremmel 2006; Van Parijs 1999.
 40. Feinberg 1980: 126.
 41. Mill 1972: 126.
 42. Callan 1997; Gutmann 1995.
 43. Van Parijs 1999.
 44. Schrag 2004.
 45. "...children change through the process of intellectual, emotional, and moral development from being the sort of creatures whose interests are protected by rights to being the sort of creatures whose rights protect their choices". Brennan 2002: 54.

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New Release

The Institute of Development Studies has devoted issue 13 (november) 2009 of its "Policy Briefing" to the topic: Climate Change, Child Rights and Intergenerational Justice.

From the cover: "The response to climate change will profoundly affect the quality of life of future generations of children, yet this intergenerational aspect has yet to be placed at the heart of climate change discussions. A child rights approach to climate change would take the concerns of intergenerational justice into account and radically transform the policies and commitments of those in power."

More information: www.ids.ac.uk

Improving Public Policy for Children: A Vote for Each Child

by Prof. Dr. Robert H. Pantell and Prof. Dr. Maureen T. Shannon¹

Abstract: Changes in social policy in the United States (US) over the past four decades have provided health insurance for 100 percent of persons over age 65 and decreased poverty for this group while the number of children in poverty has risen and ten million are uninsured. This increasing intergenerational inequity reflects political decisions where children lack a voice. The purposes of this paper are to: 1) summarize, from the fields of ethics, government, law, social welfare and public health, current thinking about enfranchisement of children; 2) review the evolution of voting and representation in the US and identify misperceptions about barriers to equitable representation of children; 3) discuss the legal basis for children being regarded as adults and adult proxy decision making for children; and 4) suggest strategies to stimulate an equitable system of child representation by altering our current system of voting.

Analyses of intergenerational inequity: the case for proxy voting

The status of children in the US reflects how they are regarded in the American political system. Every child born in the US is a citizen and granted equal protection under the law by the 14th Amendment to the US Constitution. Each child is also counted for apportioning representatives to the US House of Representatives as declared in the Constitution. Therefore the 75 million children under the age of 18, representing about

25 percent of the population, should have considerable influence in how policy is made in Congress. However, due to disenfranchisement, children's issues are no match for the political agendas of groups with voting power.

Peterson was one of the first to analyze the consequences of children's disenfranchisement.² Using data from 1959 to 1990 he documented the steady fall in poverty among the elderly from 35 percent to 11 percent while the poverty rate in children increased from 14 percent to 21 percent. He anticipated that if children were given the right to vote, substantial changes in health care, funding of public schools, and policies addressing retirement pensions would result. He concluded, "Benefits to children would become a matter of right rather than a public benefaction".³

Paralleling the discrepancy in poverty is the inequity in healthcare. The upcoming (2010) budget for Medicare, which provides health insurance for all individuals over age 65, is 453 billion dollars. In contrast, the national initiative for insuring low-income children has been funded at five billion dollars annually since 1997 with funding for 2010 scheduled to be increased to ten billion dollars. This budget, less than 20 percent of the amount Medicare spends on prescription drugs, was considered a major accomplishment with passage of the Child Health Insurance Reauthorization Act of 2009, yet

there are still ten million children who will be uninsured due to the disparity that characterizes healthcare funding.

Newacheck highlighted the shift in spending toward the elderly that occurred within the last generation.⁴ In response to the high poverty rate in the elderly in 1965 there was a rise in the percent of all social welfare expenditures allocated to the elderly from 21 percent to 33 percent by 1986. However there was a simultaneous decrease in children's share of social welfare spending from 37 percent to 25 percent. Between 1980 and 2000, the gap between the funding of programs for the elderly compared with children's programs increased by 20 percent. He clearly articulates the basis for the inequity: "democracy does not always yield fair results, especially when important segments of the population are disenfranchised from the voting process".⁵

Children, after all, are not just adults-in-the-making. They are people whose current needs and rights and experiences must be taken seriously.

/ Alfie Kohn /

Newacheck proposes the federal government guarantee children a minimum benefit level to parallel the support offered to the elderly. While recognizing this would require an increase in taxes to more closely reflect the European Union he believes "the country can

choose to meet the basic needs of both populations”.⁶ However, given the insight of his previous statement, this seems unlikely without addressing directly the core problem of disenfranchisement.

Van Parijs developed proposals to promote intergenerational justice based on several assumptions including that each generation should make sure the situation of the next generation is no worse than its own.⁷ This could occur with “genuine universal suffrage: every member of the population is given the right to vote from the very first day of her life”.⁸ He recommends granting parents proxy votes.⁹

Rutherford provides a foundation for legally establishing proxy voting. “Proxies are a common system for delegating the right to vote. In fact, the entire system of democracy can be seen as giving elected representatives proxies to vote for their constituents”.¹⁰ Her criteria for who should hold a child’s proxy include personal familiarity, the child’s access to the representative, accountability on the part of the representative and an emotional bond. She argues this is consistent with existing legislation and the premise that parents will make decisions in the best interest of their children. In reviewing the constitutionality of proxy voting she cites many ways in which parents already act as proxies for their children in medical and legal issues but concludes that the Supreme Court is unlikely to hold that states should extend voting rights to children. She notes that voters without children comprise 34 percent of the population but control 46 percent of the vote and argues that this extra voting power dilutes the votes of parents. She concludes that “a law to expand the franchise to children through proxies would be both desirable and constitutional because neither the Constitution nor sound public policy requires that we give disproportionate electoral power to childless individuals”.¹¹

Proxy voting has also been advanced through writings examining a broader approach to improve the status of children. Hewlett and West advocate a pro-family electoral system that would give parents incentives to vote through mechanisms such as waving fees for drivers’ licenses and providing monetary bonuses for parents receiving public assistance.¹² They also state that “serious consideration should be given to the suggestion that parents be given the right to vote on behalf of their children”.¹³ Aber, contributing to a monograph focusing on ‘big ideas’ to improve the well-being of

children, advocates proxy voting, “I can think of no other single act which, if achieved, would more dramatically change the ‘political economy’ of children’s issues than to enable parents/legal guardians to vote for their children”.¹⁴

Despite substantial writing on intergenerational inequity resulting from children’s disenfranchisement, there has yet to be movement towards change. This may in part be due to misperceptions about who gets to vote and who decides who gets to vote. The following section provides a brief historical overview and some common misperceptions about US voting.

Voting in the United States

The history of voting in the US is one of struggling to achieve ever increasing representation. While a rallying cry of the American Revolution was ‘No taxation without representation’ and the Declaration of Independence called for ‘equal representation for all’, the path to universal representation has been a slow, difficult and often violent struggle that still excludes the 75 million children constituting a quarter of the population. Although free elections are the hallmark of a true democracy, the Constitution did not guarantee voting rights to its citizens but in 1789 granted decision-making about voting to the thirteen states.¹⁵ However, the way in which representatives to Congress were apportioned was specified. All ‘free persons’, including women and children, were to be counted. Slaves were included as ‘three fifths of all other persons’ as they were considered both property and

We cannot solve the problems we have created with the same thinking that created them.

/ Albert Einstein /

persons. This was done to assure slave holding states were not under-represented and would therefore vote to ratify the Constitution. The Census was established to count the population every ten years for apportionment to remain accurate.

Voter qualifications, established by each state, were fairly uniform; only white male property owners over the age of 21 would have the right to chose representatives. The age of 21 was a holdover from the Middle Ages in England because males of that age could wear armor and therefore were eligible for knighthood. Some states allowed those under 21 who fought in the militia during

the Revolutionary War to vote. However, the majority of soldiers, at any age, could not cast a ballot even if they had taken a bullet to establish the right to have an elected government because they did not own property. Neither could Catholics, Jews nor Quakers vote.

Over the next century states changed voter requirements so that virtually all white males over 21 years of age could vote. The post Civil War amendments prohibited states from denying voting privileges to former slaves under penalty of losing representatives in Congress. However, starting in the late 19th century states found ways to limit voting by requiring literacy tests which were able to exclude voting by former slaves in the south or Irish immigrants in Massachusetts and Connecticut. Poll taxes and judgments of moral fitness by election workers were also methods used to eliminate voting rights.¹⁶ A number of states (Wyoming in 1910, New York in 1917) allowed voting by women before the 21st Amendment was ratified August 18, 1920. Widespread disenfranchisement of African-Americans in southern states resulted in the Voting Rights Act of 1965 and 1970 which prohibited barriers to voting including poll taxes and literacy tests. There was also growing pressure to allow voting by 18-21 year olds since many soldiers serving in the Viet Nam War had access to the cartridge box but not the ballot box. The 1970 Voting Rights Act lowered the age of voting to 18, but was challenged by several states. In *Oregon v. Mitchell* (400 US 112 [1970]), the Supreme Court held that Congress did not have the right to set the age for state elections, but could for federal elections, allowing 18 year olds to vote for the president. Confronting two sets of registration procedures (for national and for state elections) the states quickly ratified the 26th amendment lowering the voting age to 18. The importance of voting rights is underscored by the fact that since ratification of the Bill of Rights in 1791, nine of the subsequent 17 constitutional amendments address electoral policies.

Voting misperceptions

Perhaps the leading myth is that the Constitution guarantees the rights of citizens to vote. It does not. The Constitution sets the qualifications for office holders but criteria for who votes for them are set by states and local districts. Constitutional amendments have ensured that groups are not excluded from voting in state or federal elections.

It is erroneous that age qualifications ensure voting by mature/responsible individuals. The argument for what indicates a responsible voter has been progressively changed as states shed the rule that only property owners could vote and constitutional amendments recognized the abilities and rights of slaves, women and 18 year olds to cast ballots. In addition, individuals with cognitive or psychiatric impairment are permitted to vote in all 50 states. Seven states have no provision to exclude persons on account of mental disability, 34 exclude only those who have been declared legally incompetent while eight have electoral laws that are vague or unlikely to be enforceable

The greatest truth must be recognition that in every man, in every child is the potential for greatness.

/ Robert F. Kennedy /

(in one state a person must be of 'quiet and peaceable behavior' several states exclude 'idiots'). Only one state has an affirmative statute stating that all developmentally disabled persons are eligible to vote.

Another myth is that citizenship is required to vote. As districts can set qualifications for local elections a number of districts in cities with large immigrant population such as Chicago and New York have granted non-citizens the right to vote in school board elections. In 1991 a Maryland community allowed non-citizens the right to vote. These local decisions have been upheld by the courts.

Prisoners and ex-felons are not necessarily excluded from voting. The Constitution ignores a criminal's "right to vote except for not reducing states' congressional representation for disenfranchising citizens participating "in rebellion, or other crime".

States retain the authority to grant voting privileges to current or former prisoners. With 2,3 million prisoners and 4,9 million on probation or parole, this issue has been widely addressed with substantial changes in the past decade. In another example of intergenerational injustice, there is currently greater advocacy for enfranchising adults convicted of crimes against children than there is for enfranchising children.

Another misperception is that 'one person one vote' is the law of the land and therefore proxy voting cannot happen. The concept of 'one person one vote' was first put forward in a 1962 Supreme Court decision (Baker v Carr) addressing legislative apportionment

and re-affirmed in a series of related cases in 1963-64.¹⁷ None of these cases addresses persons with no vote (children), nor whether a proxy could deliver their vote. Ironically, in the apportionment process, children are counted as persons when allocating representatives to Congress. The 'one person one vote' concept was summarized by Bennett, "Despite the slogan, the apportionment decisions were not about the assignment of a single vote to each voter".¹⁸ Rutherford takes an even stronger position: "If, however, children are viewed as persons with a right to be represented in the political process, then the principle of one person, one vote authorizes, if not requires, such proxies".¹⁹

Another myth is that persons under 18 are legally barred from the electoral system. Teenagers and younger children can volunteer in campaigns. In addition the Supreme Court in 2003 (McConnell v. Federal Election Commission) overturned a section of the 2002 Bipartisan Campaign Reform Act Law by permitting persons less than 18 years old to participate in the electoral process by contributing money to candidates. There have been bills introduced in twelve states to lower the voting age. None has been successful. However, 18 states now allow 17 year olds to vote in primary elections if they will be 18 by the time of the subsequent general election. This, in effect, gives 17 year olds the vote in certain situations, such as when a political party dominates voting in a district or a candidate runs without an opponent from another political party.

Legal basis for child enfranchisement

While persons under 18 years old cannot vote they are treated as adults by the criminal justice system with many states prosecuting and sentencing juveniles as young as age 14 as adults. Until 2004, 16 year olds could be sentenced to execution. Persons under 18 are also granted many other legal rights that require 'adult' judgment. Eight year olds need to give assent for participating in human experimentation; twelve year olds can obtain hunting licenses enabling them to carry loaded weapons; without parental involvement children can consent to certain medical treatments (sexually transmitted infections) at any age; if a legally emancipated minor they can consent to medical procedures; they can serve in the military at age 17; and while most states set the legal age for marriage at 18, several allow it legally at 16 and all allow substantially lower ages of marriage (as low as 13) with parental consent.

Finally, all children pay sales, local, state and federal income taxes at the same rate as adults. Unfortunately, for children, the concept of taxation without representation continues to be a reality.

Parents are responsible for overseeing their child's growth, development and well-being and are given legal rights over decisions regarding their children such as signing legal contracts. Also, they are held accountable for their child's well-being and there are legal consequences for failures in responsible parenting. There is a long legal (and moral) tradition that allows parents to make proxy decisions for their child. Allowing parents to make proxy decisions for their child in electing officials or voting on public policies could be considered in this tradition. It has been argued that parents given proxy votes for a child might not vote for what is in the child's best interest. While this may be true, it also applies to every decision a parent makes for a child from those legally granted to parents (e.g. the right to commit a child to a mental institution) to financial decisions (e.g. choosing a college based on the cost of tuition rather than the school's ability to provide the best education suitable to the child's needs and abilities).

Strategies for Reform

While this paper focuses on children's disenfranchisement in the US it is surprising there has not been greater international attention to the issue since the United Nations Convention on the Rights of the Child, ratified by 193 countries (but not the US or Somalia) states in article 12 "Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child". While Semashko advocates children's suffrage in an analysis focusing on the Russian Constitution,²⁰ only Germany has taken action with 43 members of the German Parliament submitting a bill in August 2008 to give parents proxy voting rights for their children. As for a lower voting age, Austria, Brazil, Cuba, Somalia and Nicaragua have 16 as a voting age while East Timor, Indonesia, Sudan, North Korea set the age at 17.

Despite proposals to increase children's representation summarized in this paper, the idea has not gained traction. It is unlikely, given the current international economic crisis, that this will become a priority in the

next few years. Nevertheless, it remains as important to work towards increasing the visibility of children's enfranchisement as securing voting rights has been for other historically disenfranchised groups. Bennett argues that ignoring children's enfranchisement, an idea with "such normative appeal and one with great potential to change the pattern of public policy decisions",²¹ is due to complacency with American democracy. While the Civil War and Viet Nam War were sentinel events underpinning changes in the voting rights of slaves and persons 18-21 respectively, securing woman's suffrage in the US took more than seventy years from the 1848 issuance of The Declaration of Sentiments in Seneca Falls. The timeframe for achieving women's suffrage may have been even longer without the conceptualization and framing of women's right to vote as a fundamentally important and just issue of gender equity combined with the persistence of those who believed in this right.

To achieve equity in enfranchising all citizens, including children, we propose four core strategies.

"The ballot is stronger than the bullet."

/ Abraham Lincoln /

- Proxy voting: parents/guardians should have the right to represent each child in the voting process. The process of allocating proxy rights would be a matter of decision by each state (or country) and a variety of scenarios are likely including allocating 1/2 vote to each legally responsible parent with odd number of children and single parents getting one vote for each child. Administrative processes are already in place to identify the legally responsible guardian for purposes of taxes, schooling and medical-decision making and could form the basis for determining who holds a child's proxy vote. Special situations such as foster care and institutionalized children would need to be addressed. Parents/guardians should have the right to allow children to vote on their own above a certain age. This would parallel parents' abilities to permit their children to marry as governed by state marriage laws.

- Lower voting age: follow the lead of some countries by lowering the voting age for all children to age 16. An alternate proposal would be to set a specific age (e.g. 16 or 17) or have evidence of completing three or four years of high school education, whichever is achieved first.

- Facilitate voting: given the additional time constraints involved in raising children, providing polling sites in all schools and daycare centers would increase accessibility to voting by parents and guardians of minor children. This would also facilitate voting by students granted the right to vote. Additional monetary incentives can be given to parents to vote as suggested by Hewlett and West²² and mirroring the cost transfers discussed by Aber.²³

- Monetary consequences: children are clearly in the position of American colonists prior to the Revolutionary War in terms of being taxed without representation. Eliminating taxes for goods purchased for and/or by children without enfranchisement is a suggestion with historic underpinnings.

Potential inequities created by proxy voting.

While enfranchising children would be a step towards intergenerational justice, no change is without consequence and there is the potential for creating other inequities. The foremost concern would be to increase the inequities between rich and poor children. It is well established that voting rates are influenced by socioeconomic status. Therefore parents in higher socioeconomic groups would have even greater power to implement a political agenda than parents in lower socioeconomic categories.

Furthermore, single mothers, who have the highest rate of poverty, have on average fewer children than two parent families. This factor could also shift voting patterns favoring more affluent two parent families. Nevertheless, it might be expected that the common concern of rich and poor, single and two parent families, would be to ensure the current and future well-being of their children.

Translating ideas into action

While there are many voices speaking about enfranchising children they do not seem to be speaking to each other and they are not speaking collectively. Historically, sentinel events have often been the impetus to overcoming the inertia that accompanies the 'good idea' phase of a movement. Upheavals such as the Civil War directly enfranchised slaves while the Viet Nam War did the same for 18-21 year olds. Events such as the Seneca Falls Convention for women's suffrage²⁴, and the less well-orchestrated events such as Rosa Park's refusal to acquiesce to segregation on a public bus²⁵ or the

refusal to tolerate police harassment at the Stonewall Inn encounter that galvanized the gay rights movement²⁶ are examples of defining events in launching social change. We believe it unlikely that a spontaneous singular event or social movement is about to happen. Therefore, we advocate emulating the approach that launched women's enfranchisement,²⁷ by holding a summit of invited participants that would include scholars in social welfare, education, health, law, ethics, economics, journalists, advocacy groups, parents, religious organizations; boys and girls clubs, organizations with experience in 'framing' social movements; and, importantly, children. Also critical would be involving groups likely to oppose expanding the franchise to children. The goal would be to initiate a public dialogue about considering children's enfranchisement not as a novel idea but a logical step in guaranteeing universal suffrage to all persons and establishing intergenerational justice.

Another goal could be to identify potential avenues for progress where there has been related success. One potential would be to build on the success of enfranchising non-citizens with children in local school board elections. Building upon the logic that formed the basis for this electoral reform, it can be argued that parents should have proxy votes in such elections as it bears directly on the education and well-being of their children. Another incremental strategy would be to have a state that currently grants 17 year olds voting rights in primaries lower the voting age for general elections.

Conclusion

In spite of the pressing need for economic and healthcare reform that has been magnified by the current economic crisis, we should not become apathetic to the intergenerational inequity that exists for children. A continuing decline in the political voice of children means a continuing decline in the status of children. This should not be the legacy of this generation. While this paper

The greatest Glory of a free-born People is to transmit that Freedom to their Children

/ William Havard /

has frequently highlighted intergenerational inequity, the most persuasive argument for children's enfranchisement is that it is the fair thing to do and, therefore, should be and can be done.

Notes:

1. This paper was presented in part at the annual meeting of the Pediatric Academic Societies in Boston on May 4, 2009. We are grateful for the opportunity to have discussed ideas in this paper with many individuals particularly Laura Rosenbury, professor of law, Washington University School of Law, Saint Louis and John Takayama, associate professor UCSF. Inspiration was provided by Kate Pantell who graduated from New York University School of Law in 1909 but was not allowed to vote for another eight years.

2. Peterson 1992.

3. Peterson 1992: 171.

4. Newacheck 2004.

5. Newacheck 2004: 145.

6. Newacheck 2004: 145.

7. Van Parijs 1998.

8. Van Parijs 1998: 17.

9. From a child welfare perspective Duncan agrees that the political system fails to provide a mechanism to represent children's interests (Duncan, 2003). Concerned with the high number of children in poverty (14 million in 1991) he argued that in order to end childhood poverty, children must have the right to representation in order to ensure their interests are protected. Imig questions why the richest nation in the world could rank next to last among developed nations in child poverty without evolving a social movement to improve the status of children (Imig, 2006). He argues that while US Americans agree that children are in trouble, there is no agreed upon master frame defining the plight of children or what needs to be done. Bennett also believes that children's disenfranchisement has a substantial impact on public policy. He advances the idea that for meaningful representation of children parents should have extra votes (Bennett, 2000) and that this principle "is grounded in the liberal vision and its basic belief that politics is about adding up private interests, though it is republican in its faith that at least part of the accounting can be accomplished by the representation of the interest of one by another".

10. Rutherford 1998: 1502.

11. Rutherford 1998: 1516.

12. Hewlett and West 1999.

13. Hewlett and West 1999: 240.

14. Aber 2008.

15. Amendments to the Constitution since 1789 have not changed the fundamental right of the states to determine voting qualifications but have denied the rights of states to discriminate based on a class of

individuals (race, women, 18-21 year olds).

16. A brief history of the origin and abolishment of poll taxes can be found at www.usdoj.gov/crt/voting.

17. Despite these rulings, in the current electoral college system, a Wyoming resident has four times the voting power as a resident in Texas in selecting the President.

18. Bennett, 2000: 9.

19. Rutherford, 1998: 1516.

20. Semashko, 2004

21. Bennett, 2000: 41.

22. Hewlett and West 1999.

23. Aber 2008: 201.

24. This convention, held in Seneca Falls, New York in July 1948, produced the first document demanding the right to vote for women.

25. Rosa Parks became a symbol of the civil rights movement when on December 1, 1955 she refused a bus driver's request to vacate her seat for a white passenger in Montgomery, Alabama.

26. Following a June 28, 1969 raid by police on the Stonewall Inn in New York a series of riots ensued protesting police hostility towards homosexuals. This is regarded as launching the gay rights movement.

27. See endnote 24.

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On Behalf of Children? The Plural Voting System in Belgium – from 1893 to 1919

by Prof. Dr. Laurent de Briey, Aurélie Héraut and Elise Ottaviani

The voting rights of children have received renewed attention in recent years. One idea being discussed is to allow legal representatives to exercise this right by proxy from the day the child is born until he/she reaches the legal voting age. The concept behind vicariously exercising children's voting rights - *ChiVi*¹ - is supported in the academic literature by political scientist Paul Peterson (1992) and sociologist Stein Ringen (1997). Several publications² have also dealt with the arguments in its favour as well as the objections raised. Recently, there have been attempts to establish *ChiVi* in the political arena, too. In Germany, a bill was introduced to the Bundestag in 2003 by 47 MPs from a range of political parties but it was eventually turned down.

This short article primarily deals with historical examples: a legal system existed in Belgium between 1893 and 1919 which did in fact permit fathers to cast several votes.

In 1893, Belgium opted for 'universal male suffrage tempered by the plural voting system'. The new article 47 of Belgium's Constitution stated that all men had the right to vote, with up to two additional votes being granted to some categories of the population. One additional vote was granted to fathers over 35 years of age who owned accommodation costing at least 5 Belgian francs in taxes, as well as the owners of real estate (worth at least Belgian 2,000 francs) and those who earned at least 1,000 Belgian francs. A third vote was also granted to those who held a university degree or a secondary school certificate. These requirements were relatively restrictive: around 20 percent of the 1.4 million voters had two votes and around 15 percent of them had three votes. In practice - except for the exemption of women - the *ChiVi* and the Belgian plural voting system lead to a similar outcome whereby fathers can in fact vote several times. However, the plural voting system is based on principles which are opposed to those of the *ChiVi*.

Universal suffrage tempered by plural voting is a hybrid system. It originates from a compromise between supporters of universal

suffrage, who were helped along by workers' strikes and conservative circles, concerned with maintaining the privileges that the suffrage granted to the favoured social classes (based on capabilities and on ownership of property/tax assessment).³

Political rights versus civil rights

Supporters of this system also underline the specific nature of political rights in opposition to civil rights. Usually political rights are considered as 'functional rights'. Citizens are not granted these rights in their own interest and for their own satisfaction, rather they have to exercise them 'in the interest of the state' or at least according to their perception of this interest. Citizens exercise, by means of these rights, the functions they have been invested with by the Constitution.⁴ As far as the right to vote is concerned, the functionality of this system consists of one major factor - taking part in the nomination of political authorities.

According to the supporters of the plural voting system suffrage is an important function, so obtaining it requires some abilities and competencies.⁵ This is a justification for giving the most competent people *in society* increased electoral weight. Consequently those with higher levels of education were able to exercise up to three votes each. Real or personal property was seen as proof of a certain financial independence and an ability to administer one's goods. This meant that the owner, by means of the taxes paid, contributed to public finances. This provided legitimate grounds for one to be able to influence the administration of public finances. Moreover, because the right to vote was deemed as a function, it was made compulsory in 1893.

The additional vote granted to the head of the family functions via the same logic. A family is conceived of as a fundamental social reality, which deserves to be represented as such. However, the system was not intended to allow the father to represent his wife and children. As specified by article 47, which describes the additional financial requirements, it is justified through the image of the father as an administrator, who is used

to take into consideration the interests of several people and whose behaviour is honourable.

In the then parliamentary debates, the only explicit mention of children's representation by their parents is an *a contrario* argument against the thesis of equality put forward by supporters of universal suffrage. Catholic deputy Auguste Beernaert conceived that, "if the absolute right to vote could be admitted on grounds of political equality, it should be enforced with all its consequences. Women and children would also have their say. However, the father would exercise the child's right, such as for the civil rights. The father would also exercise the woman's right".⁶

The differences between the Belgian plural voting right and the *ChiVi*

Conversely, the most interesting argument in favour of the *ChiVi* is one which intends to establish a real universal suffrage by making a distinction between the right to vote and the exercise of that right. According to the universality of suffrage, the right to vote should be granted to every citizen from the day of his/her birth. However, suffrage should no longer be assimilated as a function, but as an individual right which should be handled in the same way as civil rights: when a child is unable to exercise his/her right himself/herself, his/her legal representative should exercise it in his/her name.

In reality, the principle of *ChiVi* came closer to being put into practice in France than in Belgium. Several bills were seriously discussed by the French between World War I and World War II. They aimed at enforcing full universal suffrage through family voting. Of note the National Assembly almost adopted the following bill in 1923, proposed by M.H. Roulleaux-Dugage:

"Article 2: The personal exercise of the right to vote belongs to all French citizens, men and women, who are at least 21 years old.

Article 3: The father exercises the right to vote for himself, for his legitimate, natural or recognized children, male or female."⁷

In actuality, although these voting systems are based on opposite principles, the *ChiVi* suffers from its similarity to the plural voting

system. It produces a reactionary aspect while the *ChiVi* intends to push further the logic of the universality of suffrage. The fact remains that, in practice, it results in an inequality between citizens when it comes to casting votes. This inequality mainly explains why the *ChiVi* has found difficulty gaining support.

Notes

1. Grötzinger 2001.
2. Hinrichs 2002, 2007; and de Briey 2007, among others.
3. See Pilet 2007: 23.
4. Delpérée 2000: 152-155.
5. Chambre des représentants de Belgique, 1892-1893: 797-1176.
6. Chambre des représentants de Belgique, 1892-1893: 797-1176.
7. Toulemon 1933: 125.

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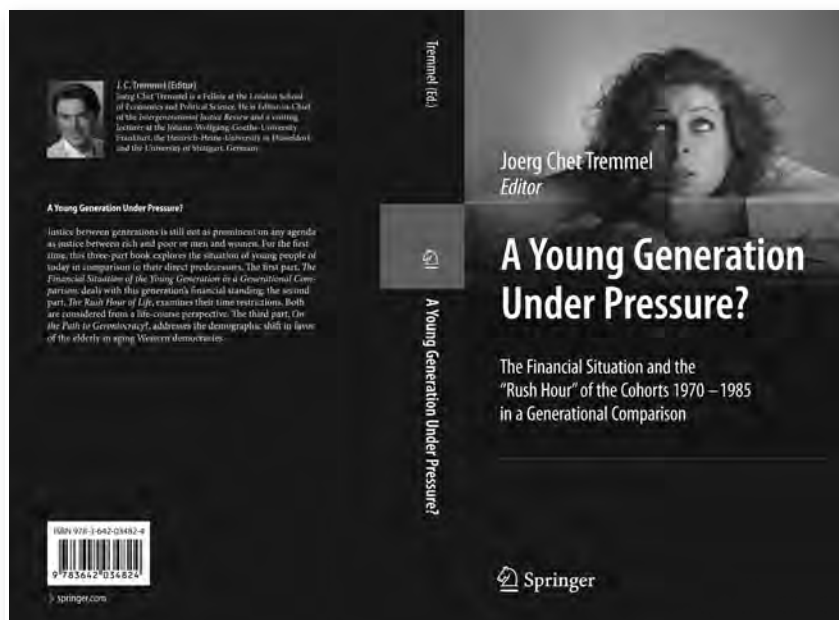
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New book release

This three-part book explores the situation of young people of today in comparison to their direct predecessors. The first part, *The Financial Situation of the Young Generation in a Generational Comparison*, deals with this generation's financial standing; the second part, *The Rush Hour of Life*, examines their time restrictions. Both are considered from a life-course perspective. The third part, *On the Path to Gerontocracy?*, addresses the demographic shift in favor of the elderly in aging Western democracies.

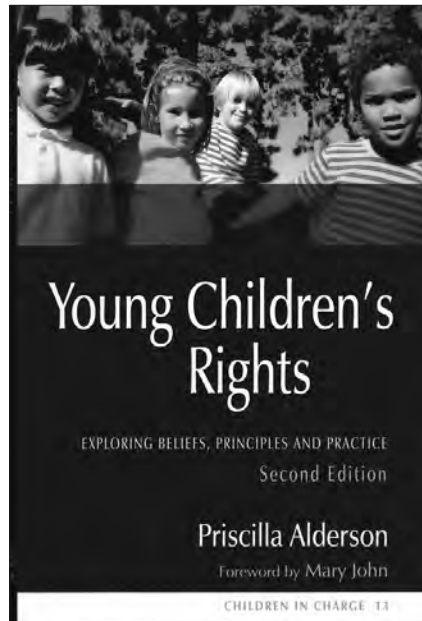


Priscilla Alderson: Young Children's Rights. Exploring Beliefs, Principles and Practice

Reviewed by Alessy Beaver

Whilst twenty years have passed since the United Nations created the Convention on the Rights of the Child (CRC), its influence on the civil, political, economic, social and cultural rights of children is still a hot topic of debate. Of the body of literature that exists on the subject, few works have focused specifically on the impact for the very youngest in society. Priscilla Alderson's latest book - an updated edition of her 2000 publication *Young Children's Rights* - makes a welcome exception, offering a brief overview of how the implementation of the CRC has affected British children 8 years old and under. The book is designed to cover the basic inalienable rights children are entitled to in accordance with the Convention, with particular focus on the '3 Ps'; protection, provision and participation. As well as providing a solid introduction to the subject area the book also presents the case for greater involvement of, and consultation with children in private and public sphere to ensure their needs and interests are adequately represented.

The book opens with an examination of the '3 Ps'. Chapter 1 deals with the right to provision by succinctly setting out the standards of care and consultation British children are entitled to in accordance with the UNCRC. This includes a brief overview of issues such as health care, education, child care and living and working standards. Alderson argues in favour of a more meaningful consultation process between young children and adults to ensure appropriate standards of care are set that reflect the needs and desires of both parties. She believes this is required to avoid adult-centric policies and child based exclusion from the decision making process on the basis of perceived lack of agency and capacity. The reader is provided with several good reasons to believe that children are capable of playing an important part in determining their own care, with a number of well chosen case studies supporting this hypothesis. From a three year old diabetic who is able to monitor her own blood sugar levels to children in Rajasthan who set up their own night



school, the reader is offered a compelling evidence for the empowerment of children as determiners of their own welfare.

Chapter 2 tackles the issue of children's protection rights through an examination of the ethical, social and financial implications of their implementation. Alderson cites a range of data highlighting the need for greater protection for the countless millions of vulnerable children worldwide. With well chosen evidence showing the alarming number of young people living in precarious conditions, who face the daily prospect of abuse, exploitation, discrimination, people trafficking and extreme poverty the moral force of Alderson's claim for increased protection appears hard to refute. With reference to the 'Every Child Matters' government Green Paper, Alderson suggests that state legislation should reflect a baseline which starts with every child being at risk, rather than assumed safe. This is not offered as a merely idealistic proposal; Alderson is more than ready to consider the practical difficulties of its implementation. To begin with the level of bureaucracy required to execute this baseline could be problematic, especially when it comes to reconciling the right to privacy with universal application. For example, the right to security and protection could be seen conflict with the equally

inalienable right to non-interference (articles 16.1 and 16.2 UNCRC) when, as has been proposed in the UK, the creation of data bases and vetting procedures supporting these protective measures contravene the basis of familial privacy. Other cases of over-protection are also referenced, including the international labour market, where overly zealous protective measures have served to limit children's working opportunities, thereby pushing them into more precarious forms of labour such as begging and sex work. Again this point seems to reiterate the key message of the chapter that a meaningful counter-balance between children's entitlements to security and exercise of basic freedoms is required to ensure protection rights are not counterproductive.

In addition to presenting a powerful case for respecting children's provision and protection rights, Alderson tackles the more contentious issue of whether children should have active participation rights in chapter 3. Alderson argues that greater respect for children's views is necessary in familial, public and policy fields to ensure children are not overlooked or excluded from opportunities and resources. This point is continued in chapter 4 where Alderson examines what she sees as the route of children's omission from the sphere of adult's right; traditional perceptions of 'childhood.' Alderson argues that children have been too rigidly defined in legislative and familial circles to adequately represent their worth, dignity and agency, which has led to their exclusion from certain autonomous rights. She says that respect for children and their capabilities can only be achieved through deconstructing the myths and normative conceptions which have resulted in their initial misrepresentation and exclusion.

In comparing the plight of children's rights to that of standpoint feminism, Alderson convincingly argues that children's exclusion from the 'we' of society closely mirrors that of women who were previously barred from aspects of public life due to arbitrary and erroneous assessments pertaining to their competence and ability. Alderson suggests it

is necessary for society to deconstruct the rhetoric, language and perceptions of childhood in much the same way as it was important to re-conceptualize gender. Key to this is recognising children as full-human beings, rather than sub-people, who should have access to a full range of rights, not on the basis of age, but because of their personhood.

Chapter 5 provides a brief synopsis of the case for and against the consultation of children, drawing on the work of Professor Freeman, University College London. In turn this includes an examination of how the process of consultation advocated throughout the book can be reconciled with rights of children to be protected from the adult world. Through providing a list of useful starting points for debate, Alderson challenges readers to reconsider their own position and common beliefs about the role children should play in the consultation process. Alderson believes that regardless of the side of the debate the reader sympathises with, there needs to be a greater emphasis on trusting children's capabilities to ensure they are not excluded from decisions which affect them directly.

Leading on from the merits of consulting children, chapters 6 and 7 consider the appropriate means and levels of involving children in this process. Alderson argues that the consultation process itself is fraught with practical barriers including time restraints, language obstacles, skill deficits, managing a work/play mix, which complicates the process of involving children. Drawing on the work of other authors in the field, including Miller, Treseder and Morrow, Alderson presents a range of appropriate measures to facilitate work and communication with young children in order to increase their level of involvement. Alderson claims that a wider level of adult and child participation can only be achieved through gaining confidence and experience in the consultation process.

Chapter 8 considers how children can be actively involved in sharing decisions and responsibility for matters which directly affect their own wellbeing. Alderson claims young children are capable of making rational decisions even when presented with a wide range of information and that this should serve as a justification for their involvement in major personal decisions. She cites examples such as health care where hospital staff are increasingly allowing children to make autonomous decisions concern-

ing their treatment. Alderson fiercely rebukes those who claim children lack the moral sense to take part in such decisions, claiming it is adults rather than children who have difficulty delineating between right and wrong.

Chapter 9 provides a succinct summary of Alderson's research and findings. It reiterates the key objections to children having full autonomous rights (can not/should not/must not) whilst offering valuable counter arguments, which are detailed throughout the case studies and evidence listed in her book. Alderson sees our functionalist society as the main barrier to progress on the rights issues, stating that people are unlikely to be critical of present inequalities if the structure of society best suits their interests. She believes that the best way to promote a moral and just order is to move towards the CRC's vision of "inherent dignity and inalienable rights for all members of the human family." Alderson states that the focus on the CRC is crucial because it sets out a practical framework from which duties can be discharged, which also allows for the views of the children to be represented, not as a matter of privilege but as a matter of justice. This ensures children are protected from adult centric policies and allows them to be represented as active competent social beings.

Alderson concludes by calling for the empowerment of children; advocating the creation of power sharing arrangements to enable greater respect for children's rights and change the current dynamics by which they are infantilised. She offers that the redistribution of power between old and young is a necessary requisite of social justice in much the same way as the redistribution of resources is necessary for global justice. Alderson believes this is unlikely to come about because society's attitudes towards children are so deeply entrenched that the balance of power will always be in the favour of adults. Alderson suggests that a radical rethinking of perspectives and policies is required to ensure adults and children can co-operatively create a better future.

Alderson's *Young Children's Rights* is a valuable addition to the existing body of literature on children's rights. It offers an excellent introduction to the subject area and provides a unique insight into the lives, relationships, experiences and aims of young children. From the outset it is clear that Alderson's book is not intended to be a solely academic exercise, rather a straightforward,

relatable text which aims to appeal to a wide-ranging audience. The book competently cuts through the extensive policy language of the CRC, simplistically relating how the key concepts relate to young children, without ever alienating the more casual reader with cumbersome rhetoric. Alderson's positions are clearly explicated and forwarded with a commendable amount of passion, though the book never verges on being a moral crusade for children's rights. Instead it should be seen as a list of pragmatic reasons for respecting children's dignity and worth which would be hard to refute. An excellent use of case studies and evidence is employed to explicate Alderson's arguments, which humanises the debate for those not well acquainted with the issues discussed. In doing so a 'child-centric' approach is provided, which serves to challenge pre-conceived ideas about the nature of childhood and capabilities of young children, which have resulted in their uncompensated exclusion from major aspects of society.

Whilst the majority of the book's audience are likely to sympathise with the moderate arguments Alderson forwards, there will be others who find the case for children's involvement too modest, and conversely those who believe it is overstated. In relation to the first claim, some readers might wonder why Alderson – who so adeptly argues for young children's inclusion in a range of 'adult' rights - stops short of advocating full voting rights. Indeed the exemption of children from the electoral process is barely addressed by Alderson, although neither explicitly rejected. Throughout the text frequent reference is made to children's interest in, and comprehension of a plurality of complex political and social issues such as citizenship, racism, inequality, poverty, and the environment, which could be viewed as an implied justification for their electoral involvement. Whilst the text may be seen by some to tacitly support the concept of for children's voting rights, Alderson's reticence to dedicate more space to its discussion means that her position remains somewhat unclear.

In relation to the second point, many of the arguments Alderson forwards for wider participation and consultation of children could be viewed as unjustified, since they rely on a conception of children which will not be shared by everyone. Indeed to state that most children are intuitive, capable beings, with basic human facets is hardly

problematic, but to imply that they may possess the level of abstract thought and logic necessary to dictate their own provision of care for example, is far more controversial. Considering the book deals with very young children, sceptics maybe not be convinced that the examples of children arranging ribbons or organising discos really translate into a realistic argument for their involvement in key decision making matters. Another point which readers may find contentious is Alderson's claim that the current inequitable distribution of resources between young and old is somewhat unjust. If we consider that, in most cases, a person's life span is expected to cover both youth and old age, the distribution of resources is not technically unjust since the age bias favours everyone at some point. In this sense Alder-

son's argument for a radical overhaul of resource distribution between age brackets as a requisite of generational justice might be seen to miss the point of what justice requires.

However none of the issues constitute a real sticking point for the book. The key argument, for a better understanding of children and their needs, remains convincing, even if the level of their participation and consultation remains open for debate. Indeed when the book focuses on issues that are intergenerational in scope, such as the provision of resources in the near future, it is clear to see that allowing children a say in matters which will directly influence their present and future prospects is essential.

Young Children's Rights is to be recommended to anyone with an active interest in the

subject of children's rights. It touches on a largely neglected subject area – the nature and scope of young children's right - which is desperately in need of consideration and provides a voice and forum for the youngest and most vulnerable in our society. Alderson's claims are cogently argued and well thought out, and she is able to circumvent serious objections to children having rights through relating her wealth of experience and research in the field. In doing so she produces a book full of sensible ideas, which carries both moral force and practical use.

Priscilla Alderson (2008): Young Children's Rights. Exploring Beliefs, Principles and Practice. London/Philadelphia: Jessica Kingsley Publishers. Second Edition, 231 pages, ISBN 978-1-84310-599-2, price: £19.99 / \$39.95:

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David Archard and Colin M. Macleod (ed.): The Moral and Political Status of Children

Reviewed by Marisa dos Reis

The questions 'what is a 'child?' or 'what rights do children have?' are far from being consensually answered. In fact, children have been more commonly defined for what they are not than for what they are.

In a 1973 article, *Children Under the Law*, Hillary Clinton (then an attorney) argued for an interesting point of view: children's rights were a "slogan in need of a definition".

Her suggestion was to abolish the legal status of children as minors, and instead ensure that all the procedural rights guaranteed to adults under the American Constitution should be granted to children whenever the state moves against them. For her, describing a 'minor' as 'everyone under 18 or 21' was artificial and did not take into account the differences in competency levels and maturity amongst children of different ages.

In a very creative and surprising move, Clinton argued in favour of creating something like a 'scale' whereby children could 'gradually' see their maturity and competence recognised.

Now, in 2009, 20 years since the Convention on the Rights of the Child was created, the notion of children's rights is yet to be well defined. There is no singularly accepted definition or theory on the rights held by children. Today Somalia and the United States are the only countries who have not ratified the Convention. In fact, in 2002, Somalia's previous transitional government signed the Convention, just as the United States did under Clinton's presidency in 1995, though neither has ratified it. However UNICEF announced last November that the Somali Cabinet of Ministers has agreed to ratify the Convention. This makes the Convention the most widely ratified international human rights treaty, leaving the United States as the only country outside the pact.

In the Introduction of *The Moral and Political Status of Children*, (from 2002), the editors recognise that an apparent trend already exists towards viewing children as distinct individuals and as subjects of moral and political theory. They clarify in the book that the so-called status of children does not really refer to their 'moral or political status'. Better,



it addresses the question of how we should define a child (p. 13).

They argue that defining someone as a child under chronological criteria seems inappropriate. It also seems inaccurate to define a child by referring to their lack of ability when compared to adults when some adults lack those same competencies. Archard and MacLeod argue against the division generally made between 'childhood' and 'adulthood'. More properly, we should distinguish between the terms 'infants', 'young people', 'teenagers' and 'adolescents', instead of using 'childhood' to refer to all groups (p.14).

The anthology is structured in three parts which explore the different dimensions of the main topic: *I. Children and Rights; II. Autonomy and Education and; III. Children, Families and Justice.*

The first block consists of five articles on the definition of children's rights.

An interesting thesis is one defended by James Griffin in the first article *Do children have Rights?*. He contributes to the extensive debate around legal and human rights. He argues confidently for children having legal rights but questions if they also have *human rights* (pp. 19-21). He starts by comparing children's vulnerable status to zygotes, embryos, fetuses, animals or severe mentally impaired people. Griffin believes human

rights can be defined as a shield for our human standing, our 'personhood'. Personhood can be defined when we analyse the concept of 'agency'. Being an agent means having the ability of assessing and making choices, taking decisions concerning one's own course through life. Furthermore, the author argues that 'personhood' cannot be the only ground for human rights. He is not particularly explicit when explaining which other grounds should be taken into account when we are referring to human rights. But he briefly describes those grounds as 'practicalities' (pp. 23-24).

Referring to the Convention, the author identifies the purpose of this legislation as an instrument to protect vulnerable children. The author concludes that infants have no 'human rights', just like severe mentally impaired people, but that society in general imposes on itself heavier obligations towards them. Nevertheless, many children, though not infants, are capable of agency. For that reason, the author agrees that children may be entitled to rights, given that human rights are claims that individuals can make against others, including their society (p. 28).

Harry Brighouse's point of view, in *What Rights (if any) do Children Have?* does not differ greatly from Griffin's article. He begins by saying that fundamental rights, seen from the liberal perspective, are concerned with autonomous capable individuals and for that reason, we cannot assume that children have them. However, he argues children can be granted legal rights. He believes that children have solely welfare rights instead of agency rights (pp. 31-32). And he goes further: children not only lack fundamental rights but attributing those types of rights to them would risk their best interests (p. 32). Here the author makes an exception. He says that it is acceptable to grant children some agency rights, but only in as far as those rights are different from those of adults and when the age of entitlement is clearly specified. This ought to be made in respect to their welfare rights and their prospective autonomy. Brighouse argues that the Convention jeopardizes children's prospective autonomy, granting some legal agency rights to young children, and at

the same time, giving parents too much effective control over the development of their rational abilities and their access to information (p. 51-52).

In *Children's Choices or Children's Interests: Which do their Rights Protect?* Samantha Brennan intelligently presents the debate between the choice theory of rights and the interest theory of rights (pp. 55-63). Again, there is the suggestion of graduating the conceptions of rights in such a way that one can protect both choices and interests. She stands for a 'compromise' between the two models where, in the beginning, rights for children function to protect their interests and as they grow up and become autonomous choosers, rights function as a protection of their own individual choices. This theory is directly connected to Neil MacCormick's, who argued for a reconciliation of both theories: choices' and interests'. He stands up for a common foundation for both sorts of rights. Brennan finds his theory attractive but disagrees with him when he believes that rights do not only protect interests but choices as well. The author argues that MacCormick does not give us the answer about the foundation of these rights. She argues that these rights base themselves on the protection of choices even if those choices are against the chooser's best interests. For her, children are "would-be choosers" and, such as adults, they do have rights, only from a different kind (pp. 63-67).

Barbara Arneil brings us *Becoming versus Being: A Critical Analysis of the Child in Liberal Theory*. The early liberal theory classifies children as potential right-bearing citizens: on one hand, "half beings with a kernel of rationality" and, on the other hand, "the negation of their future adult form" since there are still seen as irrational creatures. The definition of 'becoming' derives from seeing children as future adults and not as already existing independent human beings. For John Locke, the 'product' of 'becoming' will be the rational citizen or the property owner, capable of understanding rules and accepting authority and the State (pp. 71-74).

Several theories on children's rights have tried to deny this point of view, arguing that children are beings entitled with rights. Against Locke's position, where only the father had something to say, here the state and society must get involved in their lives and take care of them as well. Similarly to Brighouse, Arneil finishes by saying that a possible solution should emphasize *responsibilities* towards children rather than focusing on *rights*, in a way that allows us to better address children's

interests (pp. 75-86).

The article is quite descriptive albeit coherently argued. However, it may not add much to the discussion. The solution pointed out by the author does not seem creative or a true answer to the question. It opens a second door towards ethics but does not close the first towards rights (pp. 89-91). The other three authors in this chapter assumed a more practical and interesting approach, even if, in some cases, like Brighouse's, the article does not have so many references or a well balanced structure. In fact, Brighouse barely stepped away from Onora O'Neill, Robert Godin and Dianne Gibson in his references. Griffin and Brennan have clear and profound articles, carrying true answers and pointing out relevant references on the subject.

The second part of the book tries to relate the progressive autonomy gained by children as they grow up with progressive moral evolution, achieved by education.

Robert Noggle starts his chapter with a very explicit position: children should not be given a completely open future by making their present free of values or religious concepts (pp. 112-115). In *Special Agents: Children's autonomy and Parental Authority* he says that if we do so, we would be preventing children from progressing from what he calls "a special agent" to a full developed, "temporally extended moral agent" with a sense of moral decency. He describes the relation between children and their parents as a fiduciary one where the parents should decide under a kind of Rawlsian "veil of ignorance" how to raise the moral new being (pp. 97-100). He believes children should carry the moral values of their families in the early stages to avoid them from being raised without principles at all. Otherwise, we could expect a "moral psychopath" (p. 111). However, parents cannot force children to keep these values when they grow up.

The idea of applying Rawl's theory to children's education is not new. However, the way the author relates it with the fiduciary special relationship between parents and children is very interesting and seems to explain well the moral relationship between both agents. Noggle does not hide himself behind hypocrisy and assumes that children are not free to choose their moral and religious values. On the other hand, parents do not have permission to *perpetuate* their own beliefs in time nor have they the right to do it in an intolerant, unreasonable way.

The second article, *Autonomy, Child-Rearing, and Good Lives* by Eamonn Callan tries to

explain that autonomy is a sine qua non condition to a 'good life' at least, from a liberal point of view (p. 118). However, what 'a good life' is or what 'a good life' seems to be is unclear. Thus, *autonomy* would be an instrument which helps enable agents to make their own choices according to their own conception of good (p. 119-121). Nevertheless, the instrumental theory collapses once we acknowledge that autonomy can be a virtue and not just an instrumental insipid thing. Therefore, the author tries to explain that emphasizing *autonomy* as an instrument, could lead to failure of our judgement about *goodness* (p. 123). Callan argues that, not only have we to gain autonomy, but we also need to recognise the importance of fostering our capacities leading to a conception of good. Autonomy belongs to character rather than being a mere instrument. From Callan's liberal point of view, exposing children to a multicultural environment may not facilitate this task (p. 137-138).

David Archard develops this issue in his article *Children, Multiculturalism, and Education*. He attempts to become clearer about the balance required between individuals' or groups' interests and children's interests to acquire (or not) an identity as an individual. He argues that it is legitimate for a group or family to transmit its own values to children and that the existence of cultural diversity is not, in itself, a bad thing.

However it is wrong to raise children merely as means to the fulfilment of parental or a group's wishes. Children have, as future adults, an interest in how they will be raised. But raising a child as a mere future group member may contribute to prevent her to choose any other paths in her life. So then what does it mean to have a right to an 'open future'? There is a right for parents to *share* their family life with children to such an extent that children may be raised to share the values of the group. Just like Noogle, Archard believes neither the parents nor groups have the right to *impose* their way of life to the next generation. (pp. 158-159).

Archard claims that children may bear the cost of being exposed to differences between their families' values and the ones existing in society (pp. 150-152).

Joe Coleman's brilliant article *Answering Susan: Liberalism, Civic Education and the Status of Younger Persons* starts with an hypothetical situation where Susan, a 15 years old girl and a 10th grade student, addresses a panel of political theorists that are debating topics such as what does liberalism require in

the way of civic education. Coleman realises that if on one hand, young children lack a capacity to understand a Rawlsian concept of the good, on the other hand, we cannot advocate that an adolescent closer to majority lacks that power as well. Coleman advocates a more democratic, participation-orientated approach where educators and students are seen as equals.

The author points to a very relevant and fallacious aspect of liberal theory about *citizenship* and *age* (pp. 163). Liberals accept a person as a citizen as long as that person achieves 18 years of age (in most countries). The status of childhood cannot be limited by any artificial criteria (p. 170). Joe Coleman's article is, indeed, one of the most well written articles in the whole book and deserves our praise. In fact, Coleman reaches important conclusions, written in a pleasantly amusing albeit serious way.

Hillel Steiner starts the third chapter of the book. This final cluster of essays is dedicated to issues concerning *distributive justice*. In *Silver Spoons and Golden Genes: Talent Differentials and Distributive Justice* he approaches some polemic – and still present – ethical questions. Steiner theorizes about what people should give or get from others. The author says that this question should be answered by taking into account one's talents or abilities (p. 183). This is important when we deal with children's education or the development of children's abilities. The author wants to show how differences in natural endowment can lead to inequalities (p. 184). It is said that children have a right to claim against adults, for they have the obligation of creating the necessary environment for children to develop in. Is it possible for children to claim from their parents a better genetic heritage? Steiner argues that children could claim a right against bad genetic endowment, as long as the changes that could have been made did not change the person's (child's) identity (p. 190).

From a softer point of view, Peter Vallentyne in *Equality and the Duties of Procreators* advocates that the only special duty procreators have towards their children is to ensure that they have good perspectives in life and that they do not violate their rights (p. 195). It is offered that agents have the moral duty of deciding not to have children when there are bad prospects for the offspring's life (p. 199). However, there is no special duty to assure the offspring have the highest standards of life possible.

Colin MacLeod's article *Liberal Equality and*

the Affective Family tries to conciliate liberal theory with children's special status. He recognises that liberals did not pay much attention to the role of children or their status. Children should be seen as full, equal and distinct subjects. If liberal ideology allows some inequalities among adults, those inequalities should not be reflected (or completely reflected) on children. (p. 219) Public provisions could help to reduce these inequalities. It is acceptable that some inequalities arise among adults due to individual choices made in an initial position of equality, but it is not that when those differences arise due to other factors such as social or natural contingencies. Another interesting point is that inequalities arise among children because parents care more about their own children than about others'. MacLeod believes that it is possible to limit these 'side-effects of love' by pursuing social policies that constrain parents to express themselves impartially about their own children (pp. 226-228).

It is hard to understand how this would be possible in a liberal society. This may be the only weakness of his thesis. This position could hardly cope with the liberal ideals of choice, freedom and propriety.

What Children Really Need: Towards a Critical Theory of Family Structure, by Shelley Burtt, tells us about the family structure in the USA. During the 90's, approximately half the children that were born were raised by single-parent families, thereby increasing poverty rates (p. 231). This phenomenon made most politicians and scholars argue in favour of a return to the traditional family model in order to 'disguise' the moral and economical failure of society (p. 232-234). Burtt thinks it is more important to create new policies that cope with the different family models existing at present. She stands for a "critical theory of family structure" where one evaluates children's needs and also gives some clues on how to achieve those needs in each kind of family model (pp. 241-245).

The book ends with Véronique Muñoz-Dardé's article, addressing some questions MacLeod already approached. In *Family, Choice and Distributive Justice* she says something very pertinent: the simple existence of family is so strong, that it can for itself impair the access of individuals to equal opportunities. This affects not only material distribution. It affects the moral and psychological development of the child and their ability to have a future in equal circumstances.

However a fair society must contain a family in some form. But if we agree with it, we

must be aware that individuals will not have equal opportunities in life. The conclusion is that a theory of justice, even a Rawlsian one, cannot have equal opportunity as a prior principle to family (pp. 267-268).

This book offers a good opportunity to go deeper into such subjects concerning children's rights (especially the debate around children's status, welfare or agency rights).

It is especially pertinent given that the debate about children's rights has grown in the last years.

Should today's adolescents be treated as infants, when it is known that they possess nearly the same capacities and knowledge as an adult? Should we abolish the idea of majority because it is based on artificial and mainly historical criteria? Again, the question of creating a "graduation scale" arises.

After reading the preamble of the Convention on the Rights of the Child, we could say that the Convention was created under the vision that entitles children to welfare rights but without agency rights. It is said that children should be "afforded the necessary protection and assistance, recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding". Moreover, it is said that a child should be fully prepared to live an individual life in society. It goes without saying that in this legislation, the child is not yet seen as a full moral individual, but rather like a human being 'under construction'. This Aristotelian concept of children – as being something similar to 'unfinished human beings' – is still the predominant theory.

However, today we can observe a rising interest in the idea that children should be recognised as capable individuals. A good example of this change in focus is the motion for a resolution presented to the Council of Europe last May which proposed lowering the voting age to 16 in all the countries from the Council.

Despite the fact that it may be a little exhaustive or repetitive concerning liberal theory and John Rawls' works – and sometimes not particularly innovative – we can surely recommend this book as a major, provocative and still up to date reference on the topic.

David Archard and Colin MacLeod (eds). (2003): The Moral and Political Status of Children. Oxford: Oxford University Press. 296 pages. ISBN 0199242682. Price: £64.60/\$65.

What Would Happen if Citizens Under 18 Years Old Had the Legal Right to Vote? The German U18 Project Experience

by Dan Sylvain and Marisa dos Reis



In recent decades increasing attention has been given to children's and young people's civil and political rights. Some authors argue that the principle of democracy requires us to recognise that all citizens have the right to express their voice, independent of their gender, beliefs, ethnic or cultural background – and age. A discrimination according to age is dubbed 'ageism'.

In fact, it is very contested if people under 18 should have the legal right to vote. On the one hand, some theories argue that people under 18 are not yet mentally and emotionally developed in such a way that they could have a valuable political point of view. Some go even further and argue that people under 18 years old don't really care about politics and don't have any idea of what a democratic society is. On the other hand, some authors defend the idea that people should be entitled to vote from the cradle through familial representation until they are of vote casting age. Some theories take a more moderate position, defending the proposal that societies should lower the minimum age limit to vote to 14 or 16 years old, but are against the idea of having their children and youngsters opinion 'represented' by their families while they're younger.

Thus, regardless of what your own opinion is on this topic, the following question arises: *What would happen if citizens under 18 years of age had the opportunity to vote in an election?*

On 18th September 2009, nine days before the 'real' general elections in Germany, an interesting political education initiative unfolded: the U18 election (under 18 election). People under 18 years old could vote and freely express their political

opinion. Even though the minimum age for local elections in some Länder is 16, the voting age for general elections is 18. This does not count for the U18: for several years this initiative has called on children and youngsters to participate in their own 'general elections'. Meanwhile, the most influential child and youth German organisations supported the non-party and independent initiative. Even though the results of the U18-elections have no direct repercussions for the composition of the German Bundestag it reflects the opinion and the political interests of today's young generation. The aim of this initiative was to direct politicians' and parties' attention to children's and young people's will to actively participate in a democratic process and to produce their own political choices.

The purpose of the U18 was to help young people to understand politics, to identify differences between party programmes and to question promises made by politicians. This way children and youngsters could learn to recognise and formulate their own interests, and to find answers to political questions, whilst taking an active part in shaping their future.

This was the second time the U18 promoted an election for people under 18 years old. In 2005, 48,461 children and youngsters expressed their political opinion by voting in 583 polling places.

But on 18th September 2009, the number of votes cast in the U18 reached a surprising 127,208 at 1,000 polling places: in schools, leisure facilities and other places where

young people usually go. The Foundation for the Rights of Future Generations also opened a polling station in Oberursel and thus contributed to the success of the U18 project. The youngest voter was a nine year old girl.

Here are the results, in comparison to the real German election one week later:

Young people have chosen the Social Democrats (SPD), with 20.45 percent of the votes, closely followed by the ecological party 'The Greens' with 20 percent. The third place was given to the Christian Democrats (CDU/CSU) with 19.35 percent. Another important result, is the one for the smaller parties, such as the Far Left party, with 10.35 percent, the 'Pirates', with 8.7 percent, the Liberals (FDP) with 7.6 percent and the Animal Protection party, 5.19 percent. 13.54 percent of the votes were spread among other parties.

As a matter of fact, on the German elections, that took place on 27th September 2009, the incumbent Christian Democrats won, with 33.8 percent of the votes and the Social Democrats were second with 23 percent. The Liberals came in third, with 14.6 percent, the Far Left party reached 11.9 percent and the ecological party 'The Greens' gained 10.7 percent. The 'Pirates' had 2 percent of the votes and the Animal Protection Party only 0.5 percent.

The party's leaders commented on these results. For instance, Andrea Nahles, party leader for the Social Democrats considered the U18 election a full success and said it showed that children and youngsters know

U18 results	German general election results
SPD: 20.45 percent	CDU/CSU: 33.8 percent
Die Grüne: 20 percent	SPD: 23 percent
CDU/CSU: 19.35 percent	FDP: 14.6 percent
Die Linke: 10.35 percent	Die Linke: 11.9 percent
Die Piraten: 8.7 percent	Die Grüne: 10.7 percent
FDP: 7.6 percent	Die Piraten: 2 percent
Die Tierschutzpartei: 5.19 percent	Die Tierschutzpartei: 0.6 percent
Others: 8.36 percent	Others: 3.4 percent



how important it is to participate in democracy and to defend their interests through the medium of voting.

Kai Gehring from 'The Greens' party reacted to their good U18 election results by saying that many youngsters support their demands for climate protection and for the strengthening of civil rights.

Diana Golze from the Far Left party added that more important than the results is the fact that all over Germany about 125,000 children and youngsters were listened in an



Ballot Boxes created by young people

electoral procedure.

Jens Seipenbusch, chairperson of the 'Pirates' is pleased with the results and believes that they are related to his party's manifesto, which include crucial topics for

the 21st century.

Had young people's participation in the U18 translated into real votes the Animal Protection Party would have received ten times its actual volume of votes in the Bundestag. Its chairman Stefan Bernhard Eck considers this result a gigantic success for his party's cause.

There is no doubt that after crosschecking the results for both the U18 election and the German official election there are several significant discrepancies. The younger generations have contrasting political views from those who are older. In a true democracy, their opinion would have the same strength per capita as the ones from older individuals. Moreover, we have strong reasons to believe that if young people already had the legal right to vote, even more citizens under 18 years old would feel motivated to vote and to participate in a democratic society.

The 20th Anniversary of the Convention on the Rights of the Child

As the international community celebrates the 20th anniversary of the Convention on the Rights of the Child (CRC) in November 2009, it is time to take a closer look at this document. As a legally binding document, the Convention has been instrumental in setting standards of children's rights and motivating institutional capacity-building for the promotion and protection of children.

The Convention acknowledges provision, protection and participation rights, for instance that every child has the right to life, his or her own name and identity, to be raised by his or her parents within a family or cultural grouping and have a relationship with both parents, even if they are separated. Here is a summary of the rights under the Convention on the Rights of the Child:

Article 1 (Definition of the child): The Convention defines a 'child' as a person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger. The Committee on the Rights of the Child, the monitoring body for the Convention, has encouraged States to review

the age of majority if it is set below 18 and to increase the level of protection for all children under 18.

Article 2 (Non-discrimination): The Convention applies to all children, whatever their race, religion or abilities; whatever they think or say, whatever type of family they come from. It doesn't matter where children live, what language they speak, what their parents do, whether they are boys or girls, what their culture is, whether they have a disability or whether they are rich or poor. No child should be treated unfairly on any basis.

Article 3 (Best interests of the child): The best interests of children must be the primary concern in making decisions that may affect them. All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children. This particularly applies to budget, policy and law makers.

Article 4 (Protection of rights): Governments have a responsibility to take all

available measures to make sure children's rights are respected, protected and fulfilled. When countries ratify the Convention, they agree to review their laws relating to children. This involves assessing their social services, legal, health and educational systems, as well as levels of funding for these services. Governments are then obliged to take all necessary steps to ensure that the minimum standards set by the Convention in these areas are being met. They must help families protect children's rights and create an environment where they can grow and reach their potential. In some instances, this may involve changing existing laws or creating new ones. Such legislative changes are not imposed, but come about through the same process by which any law is created or reformed within a country. Article 41 of the Convention points out the when a country already has higher legal standards than those seen in the Convention, the higher standards always prevail.

Article 5 (Parental guidance): Governments should respect the rights and responsibilities of families to direct and guide their children

so that, as they grow, they learn to use their rights properly. Helping children to understand their rights does not mean pushing them to make choices with consequences that they are too young to handle. Article 5 encourages parents to deal with rights issues "in a manner consistent with the evolving capacities of the child". The Convention does not take responsibility for children away from their parents and give more authority to governments. It does place on governments the responsibility to protect and assist families in fulfilling their essential role as nurturers of children.

Article 6 (Survival and development): Children have the right to live. Governments should ensure that children survive and develop healthily.

Article 7 (Registration, name, nationality, care): All children have the right to a legally registered name, officially recognised by the

government. Children have the right to a nationality (to belong to a country). Children also have the right to know and, as far as possible, to be cared for by their parents.

Article 8 (Preservation of identity): Children have the right to an identity – an official record of who they are. Governments should respect children's right to a name, a nationality and family ties.

Article 9 (Separation from parents): Children have the right to live with their parent(s), unless it is bad for them. Children whose parents do not live together have the right to stay in contact with both parents, unless this might hurt the child.

Article 10 (Family reunification): Families whose members live in different countries should be allowed to move between those countries so that parents and children can stay in contact, or get back together as a family.

Two optional protocols were adopted on 25 May 2000. The first restricts the involvement of children in military conflicts, and the second prohibits the sale of children, child prostitution and child pornography. All nations of the world except Somalia and the US have ratified the convention. Compliance is monitored by the United Nations Committee on the Rights of the Child which is composed of members from countries around the world. Once a year, the Committee submits a report to the Third Committee of the United Nations General Assembly, which also hears a statement from the CRC Chair, and the Assembly adopts a Resolution on the Rights of the Child. All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially two years after acceding to the Convention and then every five years. The Committee cannot consider complaints by individuals.

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Voting Rights and Age Restrictions – The Position of the Foundation for the Rights of Future Generations

The aim of the FRFG is to ensure a generationally just and sustainable society on the basis of democratic principles. One fundamental principle of democracy is that attention is being paid to the rights and interests of all societal groups that are being affected by the decisions taken. This includes children and young persons. Nevertheless their needs are only considered insufficiently in many cases.

This year marks the 20th anniversary of the approval of the UN Convention on the Rights of the Child. The gap between the standards and reality is especially obvious concerning participation rights. Article 12 of the Convention states: "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child." For voting rights, the inflexible age limit of 18 years does not meet these requirements from our point of view.

The vast majority of countries in the world have established a voting age of 18, lowering it in many cases in the 1970s. Although an artificial criterion, countries consider those under this preassigned threshold to lack the necessary capabilities and knowledge to vote. Age restrictions vary a lot around the world. In the Indonesian case everybody is entitled to full voting rights providing he/she is married. If not, voting rights become available on reaching 16 years of age. Countries such as Austria, Brazil, Cuba, Nicaragua, as well as some *Länder* in Germany (see below), and a Canton in Switzerland have already set 16 as the minimum voting age.

However, at present, some countries like Japan and Saudi Arabia respectively still have 20 and 21 years of age as the minimum age to vote, and in Saudi Arabia only men can vote.

Iran is a particularly interesting example. Until 2006 the voting age was 15 but in 2006 parliamentary legislation increased the

country's voting age to 18 years.

Despite the Iranian case, there is a worldwide trend in favour of lowering the voting age.

In Germany, the voting age has been lowered to 16 in the 'Land' of Bremen in a historical decision – this is the first time in the long German history that 16-18-year-olds are allowed to cast their ballot on a *Länder* level. The FRFG supports the lowering of the voting age to 16 but deems this limit as being chosen at random and being unfair in individual cases. The politically interested 15-year-old, who has been engaged in cleaning up the environment in a Green-team for years, is still being treated unfairly. Thus the FRFG advocates a voting right through registration independently of age. It is not to be confused with a voting age of zero. FRFG's solution does not feature the downsides of a fixed limit and is much more creative than a step-wise lowering of the voting age.

Thus we demand the implementation of an individual voting right for minors. To be

more precise, we suggest that children and young people can claim the right to vote at a self-chosen moment. The adolescent is of course free to register for only the local elections, without making use of the voting right for the regional, federal and European levels. The adolescent can make his decision to claim his voting right official, by registering at the electoral authority in charge. The young boy or girl would pay a visit to the competent authority (on his own, without being accompanied by his parents) and sign a form stating: „I want to participate in elections.“ This is not a ‘claim’, since a claim could be turned down, but a declaration of intent. This declaration of intent works the same way as registering in many other states, like the USA, where adults have to register once before they are allowed to vote in elections. There should be no examination whatsoever of the ability to vote of the adolescents, since this would lead to a two-tiered society as there is no examination of



Young girl in a ballot box

the ability to vote of persons who have reached the legal voting age.

Apart from this ‚individual‘ voting age that is created by the free choice to claim a right, a general voting age of 16 should be implemented. This would mean that everybody from the age of 16 onwards should be granted the right to vote and thus receive a polling card at his home address automatically.

We recommend not letting children below 16 participate through postal voting in order to ensure that the child has the maximum chance to vote without being influence by his parents. We deem the polling booth is the best place to ensure this.

FRFG has published a book (in German) on the complex question of voting rights for minors. An English summary can be found at <http://www.intergenerationaljustice.org> > Publications > Books > "Wahlrecht ohne Altersgrenze? Verfassungsrechtliche, demokratietheoretische und entwicklungspsychologische Aspekte" (engl. translation of the title: "Voting Rights without Age Limits? Constitutional Law, Democratic Theory and Psychological Development")

FRFG's position paper on Children's Rights is available (only in German) at www.generationengerechtigkeit.de > Publikationen > Positionspapiere

The FRFG board members

Motion for a resolution presented to the Council of Europe's Parliamentary Assembly: "Expansion of Democracy by Lowering the Voting Age to 16"

In May 2009, a motion in favour of lowering the voting age to 16 in all countries of the Council of Europe was presented to the Parliamentary Assembly (not to be confused with the European Parliament):

1. Twelve years have passed since the Assembly adopted Recommendation 1315 (1997), recommending to "rapidly harmonise the age for the right to vote and stand for election at 18 years in all countries and for all elections". Since then, we have witnessed a significant development in issues concerning the minimum age for voting. It is therefore time to re-evaluate the Assembly's position on this very important topic.

2. The trend of lowering the voting age has spread throughout Europe: In Austria the voting age has been lowered to 16 years for all elections. In Germany and Switzerland, 16-17 year olds can vote at local elections in some of the constituent states. Current



knowledge on the experiences from elections in these countries is very promising in terms of 16-17-year olds level of participation.

3. In Great Britain, Finland, Norway and the Czech Republic the possibility of lowering of the voting age to 16 is currently being evaluated by the governments. The primary reason hereof has been a deep concern over young people's reluctance to participate in democracy. Despite a widespread interest in political issues amongst the

16-17 year olds, they apparently do not show up at the ballot boxes or register as voters. According to IDEA, International Institute for Democracy and Electoral Assistance, voter turn-out amongst young people in the age from 18-29 years in Western Europe is systematically lower than the average level of turnout in the population (see Voter turnout since 1945, a global report – IDEA, 2002).

4. Furthermore, there is a fear that the demographic development in many European countries will worsen the problem. According to EUROSTAT statistics we will for instance see a 44,5 percentage increase in the 65-79 year olds and a 24,3 percent decline in the 15-24 year olds by year 2050. There is a real risk that young people will be marginalised in the political process, both on a specific level as they will be numerically out-numbered, but also because the political agenda risks becoming dominated by issues that are primarily interesting for older

people. This is particularly problematic in a time, when societies more than ever will need the commitment and work efforts of young people in order to keep up economical growth, social security systems and social cohesion.

5. Needless to say, this development is dangerous for the future stability of European democracy. We need to find means to make young people engaged in democracy. Lowering of the voting age could be a part of that solution.

6. Recalling Recommendation 1019 (1985) on the participation of young people in political and institutional life, the Assembly said that it was “convinced - if democracy is to survive and develop – of the importance of the active and effective awareness, under-

standing, participation and commitment of young people in political and institutional life at local, national and European levels.”

7. Recalling Resolution 1630 (2008) on Refreshing the youth agenda of the Council of Europe that underlines that in the youth policy of the Council of Europe: “A key element has been encouragement of the active participation of young people in civil and institutional life.”

8. The Assembly recommends an investigation on the advantages and drawbacks of engaging and securing young people’s participation in democracy by lowering of the voting age to 16 in all member countries of the Council of Europe.

The motion was signed by:

Jensen Mogens, Denmark, SOC
Ayva Lokman, Turkey, EPP/CD
van der Bellen Alexander, Austria, NR
Bilozir Oksana, Ukraine, EPP/CD
Brasseur Anne, Luxembourg, ALDE
Duesund Åse Gunhild Woie, Norway, EPP/CD
Dzembitzki, Detlef, Germany, SOC
Freire Antunes José, Portugal, EPP/CD
Hancock Michael, United Kingdom, ALDE
de Melo Maria Manuela, Portugal, SOC
Muttonen Christine, Austria, SOC
Neugebauer Fritz, Austria, EPP/CD
O'Hara Edward, United Kingdom, SOC
Poulsen Jørgen, Denmark, ALDE
Wurm Gisela, Austria, SOC

.....
At the time of writing (December 2009), the motion has not yet been discussed.

mdr

Barring Adults from Voting: Disenfranchisement of Felons and Mentally Disabled People Around the World

by *Marisa dos Reis*

The revocation of the right to suffrage to a person or group of people, or rendering a person's vote less effective/ineffective is called *disenfranchisement*. Law can determine it or it can occur implicitly by intimidation or due to lack of conditions to make voting effective.

Around the world, there are several countries that restrict the possibilities to vote of their citizens if they are convicted criminals.

The USA (in the majority of states) and New Zealand for example disenfranchise those who have been convicted of serious crimes even after they are released from prison. In these countries, the denial of the right to vote is automatic on a felony conviction, whereas in other countries (e.g. China, Cape Verde, France and Germany, Portugal, Spain,) voting rights can be limited in accordance with certain crimes such as those against the electoral system or are dependent on a court's decision. In other places such as Brazil or East-Timor prisoners who are in pre-trial detention are not disenfranchised. However, like in Ireland, where prisoners are not spe-

cifically denied the right to vote, they are also not provided with appropriate access to a ballot station, so are effectively disenfranchised. Until 2002 Canada allowed only prisoners serving a term of less than 2 years the right to vote, but this was found to be unconstitutional by the Supreme Court in *Sauvé v. Canada* (Chief Electoral Officer). Now, prisoners are allowed to vote. Besides Canada, countries like Israel, Hungary, Japan and South Africa also allow felons to vote.

There are several movements against felon disenfranchisement around the world. In the US the Democracy Restoration Act (DRA) is an example of federal legislation that seeks to restore voting rights in federal elections to ex-felons. The bill was introduced on July 24th, 2009 by Senator Russell Feingold and Representative John Conyers.

In Brazil in July 2009 several religious and civil organizations created the “Movimento Nacional pela Cidadania da Pessoa Presa ou Internada” (National Movement for Citizenship of Arrested or Hospitalized Persons) which attempted to fight the *de facto* disen-

franchisement of hospitalized persons and prisoners in pre-trial detention who have not lost their right to vote but do not have access to a ballot station.

Mentally disabled people are also the subject of disenfranchisement. With the exceptions of Canada, Sweden, Nicaragua, Italy and Ireland, the majority of countries worldwide limit their right to vote. In some countries there has to be a court decision declaring such impairments, but in others, it will be enough that the person is visibly mentally disabled. (e.g. Portugal). In the USA, again, legislation differs across states.

New trends towards the enfranchisement of these two excluded groups (felons and mentally impaired persons) are becoming increasingly visible around the world.

The table on page 157 gives an overview on disenfranchisement of adults around the world. Moreover, it lists the legal voting age.

The Right to Vote in the World - December 2009

Countries	Age	Mentally disabled	Felons (in prison)	Additional informations on voting legislation
Angola	18	Not allowed to vote.	Not allowed to vote.	Compulsory.
Argentina	18	Not allowed to vote.	Not allowed to vote.	Compulsory. Exceptions: older than 70, impaired persons; judges and their assistants working in the electoral act; some State workers.
Australia	18	Not allowed to vote.	Not allowed except people serving relatively short prison sentences, up to 3 years can vote.	Compulsory for all over 18.
Austria	16	Not allowed to vote.	Allowed to vote with restrictions.	Compulsory in two Länder.
Brazil	16	Not allowed to vote.	Not allowed to vote except prisoners in pre-trial detention.	Compulsory for individuals from 18 to 70.
Canada	18	Have the right to vote.	Have the right to vote.	
Cape Verde	18	Not allowed to vote.	Have the right to vote, but if the penalty is more than 3 years or if the felon was convicted for a crime against the State they cannot.	Compulsory.
China	18	Not allowed to vote.	Have the right to vote except those stripped of their political rights.	Compulsory.
Cuba	16	Not allowed to vote.	Not allowed to vote.	
East-Timor	17	Not allowed to vote.	Not allowed to vote unless they are in pre-trial detention.	
France	18	Not allowed to vote.	Have the right to vote. Permits disenfranchisement only when it is imposed by a court.	
Germany	18. 16 for municipal elections in some Länder.	Not allowed to vote.	Have the right to vote except those convicted for electoral crimes or crimes that undermine the democratic order, and whose court-imposed sentence expressly includes disenfranchisement.	
Hungary	18	Not allowed to vote.	Have the right to vote.	
India	18	Not allowed to vote.	Not allowed to vote except in pre-trial detention.	
Indonesia	16 if single, any age if married.	Not allowed to vote.		
Iran	18	Not allowed to vote.		Before 2007 it was 15.
Ireland	18	Have the right to vote.	Have the right to vote.	
Israel	18. 17 for municipal elections	Not allowed to vote.	Have the right to vote.	
Italy	18	Have the right to vote.	Have the right to vote with restrictions.	
Japan	20	Not allowed to vote.	Have the right to vote	
New Zealand	18	Not allowed to vote.	Not allowed to vote.	
			They cannot vote for several years even after completing their sentence, but only in cases where they were convicted for buying or selling votes or for corrupt practices.	
Nicaragua	16	Have the right to vote.	Have the right to vote with restrictions.	
Norway	18	Not allowed to vote.	Have the right to vote with restrictions.	
Portugal	18	Not allowed to vote.	Have the right to vote. Except those convicted for crimes against the State. Permits disenfranchisement only when it is imposed by a court order.	
Russia	18			
Saudi Arabia	21	Not allowed to vote.		Only male citizens.

South Africa	18	Not allowed to vote.	Have the right to vote.	
Spain	18	Not allowed to vote.	Have the right to vote. Permits disenfranchisement only when it is imposed by a court order.	
Sweden	18	Have the right to vote.	Have the right to vote.	
Switzerland	18. 16 for cantonal and municipal elections.	Not allowed to vote.	Have the right to vote.	Compulsory in one Canton only.
United Kingdom	18	Not allowed to vote.	Not allowed to vote, except those in pre-trial detention.	
USA	18. In many states people can vote in primary elections if they will be 18 on or before the day of general election.	Not allowed to vote for presidential election, but different rules in state elections depend on the State.	Not allowed to vote, but rules about this depend on the State.	The Democracy Restoration Act (DRA) is federal legislation that seeks to restore voting rights in federal elections to ex-felons. The bill was introduced on July 24th, 2009. Currently, 35 states continue to disenfranchise people after release from prison.
Turkey	18	Not allowed to vote.	Not allowed to vote except felons convicted of negligent offences	Compulsory.
Venezuela	18	Not allowed to vote.	Permits disenfranchisement when it is imposed by a court order.	

Call for Papers for the *Intergenerational Justice Review*

'Intergenerational Justice and the Scourge of War'

We are looking for articles in English for the upcoming issue 1/2010 of the *IGJR* with the topic Intergenerational Justice and the Scourge of War.

The Charter of the United Nations signed in San Francisco on 26 June 1945 starts with the words "We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind [...]". The Charter was obviously formulated and signed under the impression of the recently ended Second World War, which was the single event with the sharpest decrease of human welfare in history. The priorities have since shifted during an era of unprecedented peace in the OECD world and on a global scale. But even though as many as 192 states have signed the UN Charter, starting with an expression of determination to rid the world of the scourge of war, conflicts still ravage large parts of the world, particularly in Africa, the Middle East

and Central Asia. According to findings of the AKUF (Working Group on the Causes of Wars) in Hamburg, Germany, the number of conflicts has even steadily risen since the end of the Second World War, while inner state conflicts increasingly dominate the statistics.

The persistence of the institution of 'war' might be the greatest threat of all to future generations. Its negative consequences for the future of societies are obvious. Apart from the people dying, traumatised soldiers and victims pass down the psychological damages they suffered in war times to the future generations as parents. Additionally new forms of inner state conflicts have a much longer duration in comparison to classic interstate wars and leave the economies, state structures and societies of the states they ravaged in ruins for decades to come. Thus modern inner state conflicts are more likely to affect future generations than classical wars with clearly defined warring parties that usually end with a truce or a peace treaty. Evidently the problem the 'scourge of war' poses to mankind is far from being solved.

In this context it is remarkable that studies on intergenerational justice have so far neglected the topic, especially considering that the UN Charter specifically pointed out 'succeeding generations' as the beneficiaries of its determination to rid the world of wars.

The upcoming issue 1/2010 of the *Intergenerational Justice Review* addresses this issue, with the aim to establish the groundwork for a comprehensive discussion of peace policies in the scope of intergenerational justice. The issue aims to clarify the relation between the rights of present and future generations for a peaceful life, the role of humanitarian interventions based on chapter VII of the UN Charter and interventions in general. This includes interventions for conflict management, peacebuilding, peace enforcement, peacekeeping, state and nation building. Weapons of mass destruction pose an exceptional danger to the future of mankind. Therefore the ban and demolition of nuclear arms as well as the elimination of chemical and biological weapon are important elements of the topic.

Deadline for the submission of full articles is 12th February 2009.

Possibilities and Limits of Party Cooperation in Democracies

The editors are seeking articles in English for an upcoming issue in 2010 of the *IGJR* with the topic 'Possibilities and limits of party cooperation in democracies'.

Every democratic system requires the competition of political parties and parliament factions, and to a certain degree it is part of the democratic role play to maintain such competition. Nevertheless, in a democratic system it is important to aim for as much competition as needed and as much cooperation as possible, in order to achieve the majorities for

necessary decisions. Democracy is always a struggle to balance between cooperation and competition. Across the globe there are many different approaches to finding this balance; the British Majority system, the concordance system in Switzerland, the coalition system in Germany and the Presidential democracies of France and the USA. But which system is preferable from the point of view of future generations?

Deadline for the submission of abstracts is 15 February 2010.

Deadline for the submission of full articles is 30 March 2010.

Ways Towards a Legal Implementation of Intergenerational Justice

Future individuals are not yet born, that is why they cannot participate in our decision-making processes today. How can we legally guarantee that their rights are not infringed upon?

One upcoming issue of *IGJR* 2010 will be devoted to this topic. The Call for Papers will be published online in January 2010.

New Editorial Staff



Marisa dos Reis

Mrs. dos Reis has been collaborating with the Foundation for the Rights of Future Generations in the Intergenerational Justice Review since September 2009 and her project is financially supported by the European Commission. She is 30 years old and comes from Lisbon, Portugal. She

has a licentiate degree in law by the Faculty of Law of Universidade Nova de Lisboa. During her studies, she worked as a free-lance journalist in the portuguese regional press and radio. After completing her studies in 2002, she worked in a lawyers's firm in Lisbon and then worked as a deputy district attorney from 2003 to 2007. In that context, she had a close professional relationship with two commissions for the protection of minors at social risk. She achieved a specialist

diploma in international law by the Faculty of Law of Universidade de Lisboa and now she is writing her final thesis on Human Rights for an Advanced Masters Degree Course that she attends at that institution. Marisa dos Reis: "Collaborating with this Foundation and contributing to this noble mission is the perfect scenario for pursuing my studies and self development, both in a professional and personal dimension".

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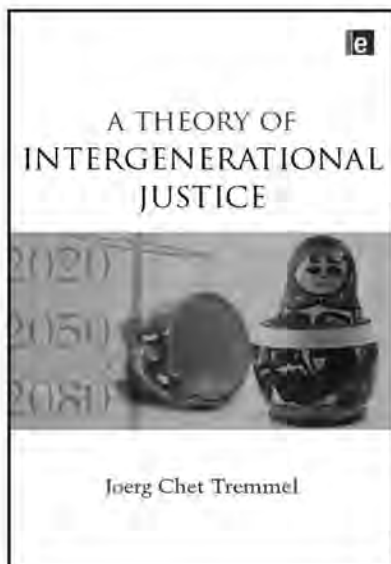
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