

# Chapter 9

## Democracy or Epistocracy? Age as a Criterion of Voter Eligibility

Jörg Tremmel and James Wilhelm

### 9.1 Introduction

After decades of stasis, debates on an appropriate minimum voting age for an active right to vote have gained traction at several levels and in different countries. For example, although the minimum voting age remains 18 in all UK elections, 16 and 17 year olds were able to take part in the 2014 referendum on Scottish independence. Moreover, a political pledge has been made by both the British Labour Party and Liberal Democrat Party to lower the voting age in all UK elections to 16 in the future. In the US, the last major modification to voting age electoral law was the twenty-sixth amendment to the United States Constitution in 1971, which lowered the minimum age threshold for federal elections from 21 to 18. There has, however, been recent downward pressure on the voting age in non-federal elections: in Illinois, for example, a bill is pending that would reduce the minimum voting age from 18 to 17. If passed, Illinois would be the twentieth US state to allow 17 year olds to vote in non-federal elections (Associated Press 2013). Meanwhile, in Germany, eleven states—starting with Niedersachsen—have legislated to allow 16 year olds to vote in local elections. In some states (Brandenburg, Schleswig-Holstein, Bremen and Hamburg), 16 year olds are even eligible to vote in state (‘Länder’) elections. Yet, with respect to the most important election in Germany, the elections to the Federal Parliament (*Bundestag*), the minimum voting age remains 18. Concerning EU member states, only Austria—since 2007—lets 16 year olds vote in national elections. Outside the EU, only a handful of countries (Argentina, Brazil, Cuba, Ecuador, Nicaragua and Palestine) have a minimum voting age that is lower than 18 for national elections.

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This article has two aims: First, with reference to the history of ideas, it seeks to demonstrate how the notion of who belongs to the *demos* and is eligible to vote has changed since the beginnings of modern democratic thought, drawing on the implications of this analysis for voting age boundaries. It is argued that the exclusion of under-18s is not self-evident, but in need of justification. In this respect, the most prominent justification in favour of exclusion—that under-18s lack political maturity—is found to be inconsistent with the normative foundations of democracy. Second, it specifies an original model to overcome this problem, based on no voting age boundaries and a system of young voter registration.

The article is structured in two main parts. The first part begins by introducing the model of epistocracy as a system of government, as presented by its historical exponents. Subsequently, epistocracy and democracy as systems of government are contrasted; the comparison concludes that the epistocratic model should be rejected. As a general rule, it is found that standardized age limits are being justified by their proponents on the basis that age is a meaningful and necessary proxy for political maturity. Using normative-theoretical argumentation, it is demonstrated that this line of reasoning and, as such, the voting age restrictions which are currently in force, are indefensible. Taking this into account, the second part presents a model for far-reaching electoral reform: no arbitrary voting age boundaries and a system of young voter registration. Analysis focuses on three key areas: the number of young people who may benefit from its implementation in the US, UK and Germany; the impact its implementation would have on electoral outcomes; and provisions to protect such a model from abuse.

With respect to its methodology, this contribution to democratic theory is in its normative part reminiscent of some important steps in the history of ideas; not as *l'art pour l'art*, but with explicit relevance for the political present. It is not the exegesis of historical texts which stands in the foreground, but the use of classical ideas to better clarify current debates. This usage can lead to the better evaluation of proposals for reform which will have an effect on the future of political systems. In its empirical aspects, an international comparative approach (US/UK/Germany) is employed. This article thus binds normative-theoretical and comparative-empirical analyses.

In terms of its scope, some limitations apply. For example, this article does not deal with parental suffrage in its original variant (also referred to as familial suffrage), which provides parents with additional votes, corresponding to their number of children; nor does it deal with the representative and vicarious variant, whereby parents discern the vote choice of their children on the basis of trust until they are in a position to vote themselves. In their consequences, both variants lead to parents being granted control of additional votes for a specific period of time, namely those of their children. Although parental suffrage has not been introduced in any country so far, it is the subject of intense debate—especially in Germany.<sup>1</sup> Meanwhile, the proposal for a reduction in the minimum voting age to 16, 14, or 12 years old—or

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<sup>1</sup> For a good political science overview article, see Westle (2006); for legal aspects, Quinterm (2010); on the potential implications for elections results after the introduction of parental suffrage, see Goerres and Tiemann (2009) and Hoffmann-Lange and Rijke (2008).

an even lower age—remains theoretically unexplored.<sup>2</sup> To at least begin to fill this lacuna is the aim of this article.

## 9.2 Democracy v. Epistocracy

Derived from the Greek words ‘episteme’/ ἐπιστήμη = ‘knowledge’ and ‘kratein’/ κρατεῖν = ‘rule’, epistocracy is, with reference to Estlund (2008), defined as a form of government in which the wise exercise power. Hereafter, the concept is used to denote all forms of government which make political participation dependent upon the possession of the power of political judgement and deny political participation rights to the ‘ignorant’.

‘Epistocracy’ must not, however, be equated with ‘aristocracy’. For the latter, there are two possible meanings: ‘rule of the best’ and ‘rule of the nobility’. There is therefore a need to differentiate the line of argument which would be necessary to justify the institutions of hereditary aristocrats (aristocracy) from the motive to propagate the rule of the wisest (epistocracy). Moreover, ‘rule of the best’, the first meaning of aristocracy, does not necessarily mean ‘rule of the wisest’.

Additionally, epistocracy should not be confused with a political system in which the entire population is granted the right to vote, except for those who have been diagnosed with an illness or debility by a medical practitioner. For epistocracy to exist, a significant portion of the mentally healthy population must be excluded from the franchise.

### 9.2.1 Epistocracy in Political Systems

In the political history of ideas there are various—some prominent—protagonists of epistocratic political systems.

#### 9.2.1.1 Plato

The root text of epistocracy is *Politeia*:

[I]n our states or those whom we now call our kings and rulers take to the pursuit of philosophy seriously and adequately, and there is a conjunction of these two things, political power and philosophic intelligence, while the motley horde of the natures who at present

<sup>2</sup> Most authors taking part in the German-speaking debate feature in two anthologies: Stiftung für die Rechte zukünftiger Generationen (2008); and Hurrelmann and Schultz (2014). In the English-speaking world, two reference articles are: Zeglovits (2013); and Wing Chang and Clayton (2006). The general literature referring to the status of children in political theory is of limited utility, since most sources do not touch upon the status of adolescents and teenagers. With respect to the discussion about the right to vote for younger minors and children, the following sources are helpful: Archard (2004); Beckman (2009); Cohen (1975); Schrag (1975); Schrag (2004); Harris (1982); Munn (2012a); Munn (2012b); Olsson (2008); Rehfeld (2011).

pursue either apart from the other are compulsorily excluded, there can be no cessation of troubles, dear Glaucon, for our states, nor, I fancy, for the human race either. (Plato 1969, 473d)

The context of this quote is Socrates' answer to Glaucon's question regarding how the ideal state can be realized. Earlier, Plato remarks that the masses are prone to error and easily led—only very few possess the faculties expected of a state ruler (Plato 1969, 412b–414b).<sup>3</sup> In the same way that men vary in their suitability to be a doctor, not all were considered by Plato as capable of holding political office. And just as good performance as a doctor requires steadfast dedication to training, political rulers must also be carefully chosen and rigorously educated. Since the conditions of the ancient polis only partially hold in other epochs, a survey of the positions of modern classical thinkers is conducted below. In England, the motherland of parliamentarianism, and, more generally, in debates on political theory from the seventeenth to nineteenth century, the universal right of men to vote—and what restrictions should be enforced—was an issue of intense philosophical debate.

### 9.2.1.2 Montesquieu and Kant

The sympathy of Montesquieu for elements of epistocracy is evident in many passages of his work:

All the inhabitants of the several districts ought to have a right of voting at the election of a representative, except such as are in so mean a situation as to be deemed to have no will of their own. (Montesquieu 2001, p. 176)

Here, Montesquieu uses free will as a criterion for the sovereignty of the people. Who lacks free will? For Montesquieu, it was women, children, the propertyless, uneducated and, often, non-whites. All were to be refused the right to participate in law-making. With these views, Montesquieu found himself in the mainstream of the progressive political theory of his epoch.

Montesquieu also advocated—as James Harrington more clearly before him—elements of plutocracy; more precisely, he favoured a system of class suffrage based on income:

In a popular state the inhabitants are divided into certain classes. It is in the manner of making this division that great legislators have signalled themselves; and it is on this the duration and prosperity of democracy have ever depended. (Montesquieu 2001, p. 27)

<sup>3</sup> Little evidence exists to support the thesis that, for Plato, the philosopher kings were merely an irony. As Plato states in *Politikos*, in the case of uncertainty the philosopher kings (*basileus*) preside over the law, since it was seen as rigid and, by itself, could not determine what was right in specific contexts. In his late work, *Nomoi*, he examines this stance, in which he contends that it is not only possible, but—except in the case of Divine Intervention—inescapable that possession of absolute power corrupts the philosopher. The impossibility of *akrasia* (the ability to act against one's better judgement) of the correctly chosen and skilful philosopher king is, however, the justification for the rule of the philosopher kings. Throughout his entire life, Plato spoke out against every form of government in which public office may only be occupied by those who enjoy a certain level of wealth.

For Kant too, economic autonomy stood more in the foreground than the possession of the political power of judgement. He writes:

The only qualification for being a citizen is being fit to vote. But being fit to vote presupposes the independence of someone who, as one of the people, wants to be not just a part of the commonwealth but also a member of it (...) from his own choice. (...) An apprentice in the service of a merchant (...); a minor (...); all women and, in general, anyone whose preservation in existence (his being fed and protected) depends not on his management of his own business but on arrangements made by another (except the state). All these people lack civil personality and their existence is, as it were, only inherence. (Kant 1996, p. 91 [§ 46 of the Doctrine of Right])

### 9.2.1.3 John Stuart Mill

With respect to Mill, we find a purely epistocratic line of thought, rather than one mixed with plutocratic or aristocratic elements. In his *Considerations on Representative Government* (1861), Mill advocates, on the one hand, multiple voting rights (plural voting) for especially well-educated and intelligent citizens and, on the other, the exclusion of all who cannot read, write or calculate from the franchise. On Mill's epistocratic exclusion criteria, he writes:

It would be easy to require from everyone who presented himself for registry that he should, in the presence of the registrar, copy a sentence from an English book, and perform a sum in the rule of three; and to secure, by fixed rules and complete publicity, the honest application of so very simple a test. (Mill 2004)

In this vein, Mill (2004) proposes that individual mental aptitude should be a criterion to determine the weighting of votes. As an indicator of mental aptitude, Mill was sceptical of general examinations because he regarded them as untrustworthy. He preferred using occupation as an indicator:

An employer of labor is on the average more intelligent than a laborer; for he must labor with his head, and not solely with his hands. A foreman is generally more intelligent than an ordinary laborer, and a laborer in the skilled trades than in the unskilled. A banker, merchant, or manufacturer is likely to be more intelligent than a tradesman, because he has larger and more complicated interests to manage (...) The liberal professions, when really and not nominally practiced, imply, of course, a still higher degree of instruction; and wherever a sufficient examination, or any serious conditions of education, are required before entering on a profession, its members could be admitted at once to a plurality of votes. (Mill 2004)

Additionally, Mill proposed that university graduates should be granted a plurality of votes. Given the fact of mass university education today, Mill's proposal would have much more far-reaching implications in the present than when he made his proposal, when it would have only applied to a small, well-educated elite.

At this point, a preliminary conclusion can be drawn: if Plato's 'rule of the philosopher kings' marks one end of the continuum of imaginable forms of epistocracy, Mill's model is located very close to the other end. The former excludes almost all citizens from political participation; the latter only the illiterate, who constituted a larger fraction of the population in Mill's time than today. As noted, Mill also advocated multiple voting rights, meaning greater influence for well-educated sections of the population.

### 9.2.2 *Why Epistocracy Should be Rejected*

‘Who constitutes the demos?’ For centuries this has been a core question for political theory.<sup>4</sup> Ideas about who should belong to the electorate have been subject to historical change. Two centuries ago, the demos consisted of men who paid the ‘right’ amount of taxes, had the ‘right’ skin colour, subscribed to the ‘right’ religion and were of the ‘right’ age. Today, women are allowed to vote—minors still cannot. For logical reasons, the decision regarding who should belong to the demos should not be democratically decided by existing voters.<sup>5</sup> An example to demonstrate this point is the 1959 Swiss referendum on the extension of the right to vote to women. Two-thirds of men rejected the proposal and therefore defined themselves as the present and future demos. Today, such a referendum would almost certainly be deemed illegitimate. Thus, it is the weighing up of normative principles that must take precedence in deciding who should constitute the demos. The great normative paradigm of our age is the notion of the equal value of all people. In this paradigm, we reject statements as ‘racist’ when someone ascribes a lower worth to ethnic minorities. With respect to women, we use the term ‘sexism’, and with respect to the old, we speak of ‘ageism’ or ‘age discrimination’. The notion of the equal value of all people appears today as so self-evident that it often remains undiscussed. A narration of the history of moral progress highlights the importance of this idea today compared with other historical epochs.

Differences in the value of human beings were in the past based on profession and level of education, but, above all, on ethnicity and sex. Only after the end of the first and second world wars did democracies implement female suffrage,<sup>6</sup> while ethnic discrimination remained virulent until the second half of the twentieth century. For example, in the USA in the 1960s the view that Afro-Americans were intellectually and socially inferior led to attempts to curb the voting power of non-white citizens through intimidation, electoral rigging as well as capitation taxes and reading and writing tests.

The basic principle of all modern democracies—‘one person, one vote’—is directly derived from the postulate of the equal value of all people. Bartolini (2000, p. 127) therefore refers to the principle of ‘one person, one vote, one value’: every vote(r) has an equal value and an equal weight. To rank people with respect to their right to participate politically, as political theorists from Plato to Mill did in earlier centuries, contravenes the consensus of our time. In modernity, the notion of the equal value of all people is the premise of just political rule—and although this rule

<sup>4</sup> Cf. Goodin (2007). Goodin (2007, p. 40) prefers this formulation over framing it as an ‘inclusion problem’, since the latter tends to obscure questions about how the inclusion of groups which are already part of the demos can be justified.

<sup>5</sup> As per Goodin (2007, p. 47): ‘It is logically incoherent to let the composition of the initial demos be decided by a vote of the demos, because that demos cannot be constituted until after the demos votes.’

<sup>6</sup> With the exception of Switzerland, where women were only granted the right to vote in 1971 at the national level. At cantonal level this advance was realized earlier in some areas but in others only later conceded (Appenzell Innerrhoden 1990).

takes a different concrete form in individual cases, no regulation may contradict it diametrically. As such, democracy is preferable to its alternatives because it ensures that citizens, whose future prospects are determined by democratic outcomes, are treated with the same degree of respect. Terminologically, a form of government that contradicts the principle of the equal value of all citizens and excludes a cross-section of the electorate without reasonable grounds for doing so is not even an immature or partial democracy: it is not a democracy at all.

In contrast, the division of cross-sections of the population into ‘better’ and ‘worse’ voters is the basic principle of epistocracy. When such opinions are voiced in the present—in this vein Brennan (2011) advocates ‘tempered epistocracy’—they are rejected by the mainstream with valid arguments.<sup>7</sup> This is because the core argument of epistocratic thinkers—that the educated are in a position to identify and represent the general interest—does not hold. Scepticism is based on a number of grounds. Firstly, it is not possible that the interests and wishes of a group, even with the very best intentions, can be better identified by a third-party than by the affected group itself. The paternalistic conception that men understand women’s needs better than women themselves was successfully rejected by women during their long battle for the right to vote. By the same token, we deny that the interests of Afro-Americans could have been adequately represented by their white masters during the era of the declaration of independence, which was neither demanded by—nor beneficial for—the represented. The following truism, expressed by John Stuart Mill in his *Considerations on Representative Government* (1861), remains valid today (notwithstanding Mill’s own limitations):

Rulers and ruling classes are under a necessity of considering the interests and wishes of those who have the suffrage; but of those who are excluded, it is in their option whether they will do so or not; and, however honestly disposed, they are, in general, too fully occupied with things which they must attend to to have much room in their thoughts for anything which they can with impunity disregard. (Mill 2004)

That citizens themselves best understand their own interests is a generally accepted principle. Interests, according to the pluralist ‘point of view’, vary from one societal group to another. Furthermore, there is no point of reference for how to adjudicate between competing claims. Whether a general interest exists which is distinct from the aggregation of the individual interests of citizens has been one of the most discussed questions in philosophy and political theory for thousands of years. But even if such a general interest is held to exist, historical evidence demonstrates—with very few exceptions—that ruling elites of political systems promote their own interests at the expense of those who are unable to adequately represent their own. Knowledge per se does not liberate man from self-interested thinking. In ethics, it is contested whether ethicists who are able to identify the generalizable, ‘moral point of view’ act with greater moral integrity. If at all, a higher capacity for empathy is the crucial character trait, rather than a higher IQ or a better

<sup>7</sup> Dahl (1989) explains this argument in his defence of democracy against its critics; in part, through a fictitious dialogue between a democrat and an epistocrat called ‘Aristo’. Brennan’s arguments fall back on those of Dahl’s fictitious ‘Aristo’, whom Dahl lets have his say ‘for the sake of the argument’, in order to play devil’s advocate against democracy.

academic record. And even if this is true, how can other citizens (s)elect these especially empathetic peers other than through their own judgement and free elections? The problem of how the best, most intelligent and progressive politicians are to be found is one of the greatest weaknesses of epistocracy and it cannot be satisfactorily resolved. The experience of the recruitment of the ruling elite in Marxist-Leninist states demonstrates that the problem does not just concern how to choose politicians, but also how to remove them from office. And in this respect, no other form of government—other than democracy—offers a mechanism which is as smooth and unproblematic as the institution of free elections. Epistocracy, then, does not, either in theory or in practice, offer greater scope for the attainment of the ‘general interest’ or lead to necessarily better political outcomes.

A system of government requires justification; such justification requires that those who are subject to that system of government have an equal and universal right to participation. In democracy, this justification comes from the fact that all those who are subject to the rule of a government and its decisions can exert power through elections to affect that very government. This allows all to have influence over the laws which regulate their lives.<sup>8</sup> It is this promise alone that makes it tolerable for all political forces to accept possible defeat. As such, democracy is procedurally better at regulating conflicts of interests than any alternative. Subordination under existing laws is especially palpable for citizens in two fields: taxation and compulsory military service. These intrusions into one’s personal freedoms are only acceptable when determined by a just mechanism: universal and free elections. The compelling slogan ‘no taxation without representation’ encapsulates the democratic consciousness, whereby it is untenable to tax cross-sections of the population without allowing them to vote. And when one is torn from private freedom and family life for the sake of defending one’s country, the right must in principle exist for that person to be able vote on the government of the day, which decides upon war and peace. For this reason, wars with compulsory military service were also great accelerators of democracy, especially WWI.

To summarize, then, the plea of the democrats against the epistocrats is as follows: whoever, as a citizen of a state, is subject to the rule of government, must—in line with contemporary democratic thought—be able to have a meaningful say regarding the composition of that government and its removal from office. The principle ‘one person, one value, one vote’ today—after 2000 years of experience with political systems and after the achievements of the Enlightenment—belongs to the consensual core of the understanding of legitimate, just governance. The opportunity to cast a vote legitimizes the resultant outcome, even for the political losers. In its absence, election results are morally illegitimate and potentially legally contestable. It is only in democracies that the ruled also act as the rulers; objects of state rule also become its subjects. For all of these reasons, there is a greater normative basis for the justification of democracy than epistocracy.

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<sup>8</sup> For different versions of the so-called ‘all-affected-principle’, see e.g. Beckman (2013, p. 778); Dobson (1996, p. 124; and Dryzek (1999, p. 44).

### 9.2.3 *The Exclusion of the Underaged from the Franchise*

In Western democracies, the principle of the equality of the vote applies just as much to Nobel Prize winners as it does to unskilled labourers without professional training; it applies just as much to people with an IQ of 120 as it does to those with one of 80. Yet not as much to 88 year-old pensioners as it does to 17 year-old children. As Lecce (2009, p. 135) writes, the argument that ‘vindicates egalitarian democracy from Plato’s elitist shadow also casts serious doubt on the continued exclusion of children from the franchise.’ Robert Dahl, too, wonders why this objection has not been at the centre of a disciplinary debate in political science (Dahl 1989, p. 58, 123, 127). In an epistocracy, the exclusion of young people who wish to vote by means of an age limit can be legitimized. In all modern democracies, however, such a limit is incongruent with the normative justification of democracy and is, as such, an injustice against those who are excluded. It is for this reason that epistocratic principles are not applied to adults and rejected by political theory and in legal practice; hence illiterate adults are not denied the right to vote.<sup>9</sup> Even adults who are demonstrably not in full possession of their mental capacities—such as those who are totally intoxicated—may still take part in elections. Notably, the jurisprudential literature unanimously rejects the notion of a maximum voting age. The German administration cites the ‘potentially declining ability of older people to actively participate in the solution of societal problems’ as ‘no criterion for their generalised exclusion from the franchise once they pass a certain age, since, conversely, its presence or absence is no criterion for the granting of the right to vote.’ (Wissenschaftlicher Dienst des Deutschen Bundestages 1995, pp. 14–15). Though the right to vote is not explicitly linked to reciprocal responsibilities and should not be in the future, it is worth pointing out that young people who are at present excluded from the franchise, still—for all intents and purposes—have societal responsibilities. As citizens of the state, they are all subject to the laws of the land, even if children and adolescents do not feel the full force of the law. Consumption tax rates in no way favour the young over the old, even if the tax yield may fluctuate according to age groups. In many senses, then, they have no inherent advantage over adults. In the US and Germany, one can even sign up to become a regular soldier in the armed forces at just 17.

Prima facie, the existing age limits for national elections are defended in the following way: under-18s are not discriminated against on the basis of their age. This would be just as repugnant as the exclusion of women from the franchise on the basis of their sex or of old-age pensioners just because they are old-age pensioners. Rather, age is a meaningful and necessary proxy for the ability to exercise political judgement. This line of reasoning is, however, indefensible. It is not one which applies to older generations and cannot, therefore, be used to argue in favour of a minimum voting age. The deliberations which lead to the rejection of epistocracy

<sup>9</sup> According the World Illiteracy Foundation, one in every five UK adults has difficulties in reading and writing, with some unable to use a chequebook. In the US, 1 in 4 children are raised without being taught how to read or write.

must, to avoid internal contradictions, also reject as indefensible any quantitative threshold as a proxy for human knowledge. Even a minimum age threshold of 16, 14, or even 12 would be a form of epistocracy, albeit milder. In other words: every age boundary is arbitrary.

Moreover, it is worth pointing out that the proxy argument is not applied to basic political rights which are *less* important than the right to vote. The right to demonstrate, for example, is effective from one's first year of existence, without age restrictions. The same is true of the freedom of speech. That the majority of 13 year olds are not capable of writing a book or composing musical scores is not an argument which can be deployed to deny freedom of expression to a 13 year old. It is her basic right, regardless of what the rest of her cohort is able to do. As noted earlier, criminals and the psychologically ill are only excluded on a case-by-case basis. In this context, the (age) proxy argument for the removal of the right to vote is also justifiably impermissible.

The basic consensus is that all citizens in a democracy are in principle entitled to influence the composition of their government through elections. Therefore, a shift in the burden of proof is justified: it is not young people who must justify why they should be permitted to vote, but those who wish to deny that right to young people.

The history of the right to vote is, of course, one of expansion.<sup>10</sup> Yet, even though the end goal of granting the right to vote to all adult citizens has already been largely reached in democratic countries,<sup>11</sup> the historical path towards this varied from country to country. Table 9.1 traces the US, UK and German paths, with a special emphasis on changes in age boundaries.<sup>12</sup>

Worldwide, too, the trend is towards a gradual lowering of the minimum voting age, but not without some backlash (Grotz 2000, p. 14). Latin American states were in the vanguard of countries which lowered the voting age from 21 to 18 years old. Argentina, Costa Rica and Paraguay lowered it during the nineteenth century and Brazil, Costa Rica and Paraguay by the early twentieth century. In the majority of countries, the voting age was not lowered in one large step, but in frequent, small ones. The most important exception was the 'third wave of democratization', during which a multiplicity of African and Asian states introduced a minimum voting age of 18 in a single stroke.

Twenty-first century experiences have disproved the assumption that the extension of the right to vote to include women, the 'lower classes' and those be-

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<sup>10</sup> On the history of the right to vote, Bartolini (2000, p. 118) writes: 'Prior to the French Revolution, membership in a corporate estate—as the nobility, the clergy, or city corporations—was a condition for access to the vote. After the American and French Revolutions, individual wealth requirements supplanted the early corporate requirements, and suffrage qualifications were usually based on property, income, or tax contribution; education and or other cultural skills; and sex and age. This history of franchise expansion is the history of the progressive lowering of these qualification barriers and thresholds, frequently characterised by important “reversals”; that is, by the disenfranchisement of previously enfranchised people.'

<sup>11</sup> Excluding the aforementioned restrictions on the voting rights of convicted criminals and the psychologically ill on a case-by-case basis, which today vary from one democracy to another.

<sup>12</sup> Bartolini (2000, p. 120).

**Table 9.1** A short history of the (progressive) extension of voting rights in the US, UK and Germany. (Source: Own diagram based on White (2013) and KQED (2004))

Year	Voting rights reform
1787	US: The constitution of the United States is passed in September 1787. No agreement is reached on a national voting age, since the states retain competency in determining voting rights. In practice, only white, male landowners over the age of 21 were able to vote
1815	Germany: After the founding of the German state, a bicameral system was created in a number of German states ( <i>Länder</i> ) in which the members of the second chamber were elected. In general, those eligible to vote had to be 25 years old, Christian and be able to demonstrate a minimum level of wealth, income and tax contributions
1832	UK: Prior to 1832, the right to vote was regarded as the privilege of the wealthiest in society. In 1831, 127 years after Locke's demise, only 3.8% of the population aged 20 or over in England composed the electorate. Only male, aristocratic landowners over 21 were allowed to vote. However, following the upheavals of the French Revolution, the Representation of the People Act 1832 (better known as the (Great) Reform Act) extended the franchise to include small landowners, shopkeepers and tenant farmers. It is also extended the franchise to homeowners who paid £10 or more in rent per annum (see Bartolini 2000, p. 120).
1848	Germany: All male citizens who were able to demonstrate 'personal self-reliance' (a criterion which had a varying interpretation between the different Germany states) were granted the right to vote in elections of the German national assembly (' <i>Paulskirchenparlament</i> '). Despite its shortcomings, this reform, at a stroke, increased the percentage of eligible voters to 35%. The minimum voting age corresponded directly to the age of consent, which varied from state to state (from 21 to 30)
1856	US: After North Carolina's removal of property qualifications on the right to vote in 1856, property qualifications on the right to vote ceased to exist throughout the US. All white men over 21 could vote
1867	UK: The Second Reform Act reflected popular support for further electoral reform after the Representation of the People Act (1832). It extended the latter by granting the right to vote to lodgers over 21 years old in boroughs (urban areas) who paid a rent of over £10 per annum. It also relaxed property qualifications to extend the franchise to tenants and landowners with very small holdings Germany: Article 20 of the constitution of the North German Parliament of 16 April 1867 granted the universal and direct right to vote in secrecy (secret ballot) to over-25 year olds
1868	US: The Fourteenth Amendment to the constitution of the United States established a right to vote for former slaves by defining them as citizens and forbidding states from denying the right to vote to citizens, even though voting regulation (including regulation of voting age) remained a state competency
1871	Germany: The founding of the German Empire led to a slightly modified version of the North German constitution being adopted, including the direct adoption of Article 20 on voting rights
1884	UK: The Third Reform Act empowered rural voters (in the counties) by establishing the same voting rights for them as voters in the boroughs (21 years old with property qualifications). Women, however, remained completely excluded from the franchise

**Table 9.1** (continued)

Year	Voting rights reform
1918	UK: In 1918, as a result of the women's suffrage movement and the changing view of women after the instrumental role they played domestically during World War I—fulfilling many traditionally 'male' tasks in industry—women gained the right to vote in the UK, but only when aged 30 and over. Women also became eligible to stand as MPs Germany: After defeat in WWI, the Council of People's Deputies on 12 November 1918 declared an equal, secret, direct and universal right to vote for all men and women over 20 years old. Excluded from the vote remained those who were under the care of another and those who, through a legal ruling, had lost their civil rights. The voting age was not a point of consensus for the architects of the constitution. The 'Deutsche Volkspartei' (German People Party) representatives rejected a proposal to set a minimum voting age of 20 years old on the basis that, if it were accepted, one could also grant voting rights to infants
1919	Germany: Article 22 of the Weimar Constitution (11 August 1919) declared that representatives would be elected by men and women over 20 years old in universal, equal, direct elections using a secret ballot. The electoral system was proportional representation. With this reform, the number of eligible voters increased sharply for the second time in German history
1920	US: The Nineteenth Amendment to the constitution of the United States established equality between sexes with respect to voting rights at both the state and federal level, permitting women over the age of 21 to vote
1964	US: The right to vote in federal elections was decoupled from tax: failure to pay tax no longer denied anyone over 21 years old the right to take part in national elections. Yet, at the state level, it was only after the Supreme Court ruling <i>Harper v. Virginia Board of Elections</i> (1966) that the right to vote was also decoupled from tax at the state level
1969	UK: The legal voting age in all UK elections was lowered from 21 to 18 for both men and women.
1970–1972	Germany: Through a constitutional change (1970), the wording of Article 38 II of the German constitution was amended. From this moment on, eligible voters were those were over 18; eligible candidates in elections were those who had reached the age of consent. German electoral law was correspondingly amended in 1972. Hence in 1972, 18–20 year olds were able to vote for the first time
1971	US: The Twenty-Sixth Amendment to the Constitution of the United States is signed by President Richard Nixon in July 1971, lowering the voting age from 21 to 18 in federal elections. The key argument made by proponents for this change (mainly Vietnam war protesters) was that those old enough to go to war should also be able to vote
2006	UK: The Electoral Administration Act became law in 2006, lowering the age at which one can stand as an MP from 21 to 18, which replaced previous regulation dating back to the Parliamentary Elections Act 1695
2013	UK: In January 2013 a motion was passed in the British House of Commons by a large majority (119–46) to lower the voting age from 18 to 16 in all UK elections—but the outcome was not binding on the government, which opposed such a change US: In May 2013 Takoma Park in Maryland became the first city to grant those as young as 16 the right to vote in municipal elections and referendums (Powers 2013)

tween 18 and 25 years old would have catastrophic consequences. On the contrary: history teaches us that even the most well-meaning paternalism is inappropriate and harmful to the objective of increasing the level of political education of previously excluded groups of the population, who require that the system accepts them as politically mature. For example, it was only in 1968, after the extension of the franchise, that a law was passed to introduce elementary schools for general education in England.

### 9.3 Gradualness v. Absoluteness

Any pragmatic solution to end the epistocratic and outright exclusion of minors from the franchise must confront two established facts. The first is the gradualness of the maturing process of children and adolescents. Here, there may be controversies over when certain stages of psychological development are reached, both with respect to specific individuals and on average. Additionally there is a differentiation to be made between ‘experience’ and ‘biological mental maturity’.<sup>13</sup> That political judgement is gradually reached, however, is not in doubt. The second fact which must be recognized is that the core idea of democracy—the collective authorization of laws through a people, which is also subject to them—is *not* gradual. Democracy as a form of government is inseparably connected to the normative idea of voting rights for all citizens, independent of the extent of their political maturity. To make compromises would put democracy itself at risk.

At least in appearance, legal provisions regarding the right to vote offer an all-or-nothing solution: young people are either eligible to vote or not.<sup>14</sup> Accommodation is not made for both the categorical equality of all humans as a normative premise of democracy and the gradualness of the maturing process. For child right experts such as Kiesewetter (2009) or Weimann (2002)—in the tradition of Farson (1974) and Holt (1974)—a solution to the problem is that a right to vote from birth should be established. From a philosophy of law perspective, it is based on the demand for human rights equality for children. According to this view, the right to vote should not be dependent on the ability to exercise it. Children are entitled to it, simply because they are human beings. As Weimann (2002, p. 53) notes: ‘Because children are humans, the inviolability of human dignity must apply equally to them as it does to adults. The human rights which are derived from human dignity and apply to adults must therefore also apply to children.’<sup>15</sup> The focus of this argument is not on the act of voting itself, but the legal right to vote. Since the latter is not regarded as gradual, discussions about *pragmatic* solutions are regarded as unnecessary. Kiesewetter (2009, p. 271), writing with regards to voting age boundaries on pragmatic grounds, arrives at the following conclusion: ‘When it comes to fundamental rights,

<sup>13</sup> Cf. Tremmel (2008).

<sup>14</sup> Cf. Lecce (2012) and Archard (2004, p. 12).

<sup>15</sup> Own translation.

this type of pragmatic justification is indefensible. When, from one day to the next, one loses entitlements, it may lead to bitterness borne out of arbitrariness – but this is to be distinguished from the withdrawal of a fundamental right.’<sup>16</sup>

The assumed nexus between human rights, civil liberties and the right to vote is, however, problematic. First of all, human rights and civil liberties are not co-terminous; and even if, in light of this, the line of argumentation shifts from the right to vote as a human right to it being the most important of civil liberties, the right to vote is still, like every law, subject to justification. Laws cannot be final justifications.<sup>17</sup> Human rights did not fall out of the clear blue sky; they are neither God-given nor a product of nature (Tremmel and Robinson 2014). Rather, they are an invention of man. According to this reason-based, anti-natural rights position, humans only have rights (including fundamental and human rights) because they have been granted to them. For the most part, child rights in international law were granted by a special Convention on the Rights of the Child (1989), not by the Universal Declaration of Human Rights (1948). The former postulated additional rights for under-18s, even though universal human rights already existed and young people are clearly human beings. This is meaningful: for some rights, such as sexual self-determination, special regulations are necessary for children. For understandable reasons, special protection provisions—e.g. the ban on the pornographic presentation of one’s own body—must be added to the formal rights that apply to all humans equally (Maywald 2010, pp. 8–15). When child rights experts object that rights must not be *guaranteed* because they already *exist*, it must be questioned why the advocacy efforts of child rights experts for the legal anchoring of a right to vote from birth has until now been unsuccessful.

### 9.3.1 *A Pragmatic Proposal: A Voting Right for Minors Through Registration*

If the premise that the right to vote is a human right and all humans are therefore entitled to it is abandoned, scope for pragmatic solutions becomes available. This article does not therefore advocate a right to vote from birth; even the description ‘voting rights for children’ would be misleading. Rather, what is recommended here is that all young people who *want* to vote are incorporated into the electorate by means of a ‘right to vote through registration’. This solution prioritizes intent over age boundaries; the will of young people is its focus.

A ‘right to vote from birth’ would require all citizens to be included on the electoral register from birth onwards. A ‘right to vote through registration’ does not necessitate such a practice. Minors are, at first, not included on the electoral regis-

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<sup>16</sup> Own translation.

<sup>17</sup> There is not sufficient space here to thoroughly analyze legal-philosophical issues regarding the nature and existence of rights. For such analysis, see Tremmel and Robinson (2014), p. 145–190 and Tremmel (2009), p. 46–63.

ter and therefore have no right to take part in elections. In the model put forward here, they instead have the right to register as a voter to take part in elections. It is undeniable that a fraction of under-18s has no interest in politics and no desire to vote. This fact is entirely normatively unproblematic: it does not contravene the basic principle of the equal value of all citizens. In many democracies voting is not compulsory—a right to abstain exists.

This paper advocates that young people and children should be able to claim the right to vote, at a point in time chosen by them. In practice, the decision would be taken by the child by means of a visit (in person) to the authorities of his or her respective electoral constituency, where a registration process could be completed. Once there, the young person would have to inform the authorities that he/she would like to be registered on the electoral roll for under-18s. Such a registration would not be an ‘application’—an application can be rejected—but a ‘declaration of intent’. An examination of the electoral aptitude of young people would not take place in any form whatsoever. As there are elections on different levels (national, local, and European), the young person would decide for him/herself which elections he/she would like to take part in—or the young person can register for all of them, just like an adult.

An appropriate name for this voting rights model is ‘the right to vote for minors through registration on the electoral register’ (for short: ‘the right to registration for voting’). It would be a right to vote without age limits, but it would not be a right to vote from birth onwards as all babies, infants as well as large fractions of older children and young people would be excluded from the right to vote by this model. For defenders of the status quo, this model is likely to go too far, while for the child rights movement, it may not go far enough. To answer the criticism of the latter, it is important to note that very old voters are *often* not in possession of the power of political judgement. One year olds, on the other hand, *always* lack this faculty. The notion that the opportunity to vote should be extended to babies and small children is absurd, both at first glance and after long consideration. Babies would prefer to eat the ballot paper than fill it out (Lecce 2009, p. 137). Defenders of the status quo, meanwhile, may argue that modes of political participation should correspond to age. References to youth parliaments and children’s rights should not, however, be used to block the debate on a right to vote for under 18s who wish to do so. Consequential political choice (in actual elections) is the ritual and feast of democracy<sup>18</sup>—and for the large majority of the general public, choice through elections is their only form of political engagement.

### 9.3.2 *Estimated Number of Under-18s Who Want to Vote*

To ascertain the number of young people who wish to vote in the US, UK and Germany, Table 9.2 multiplies the number of individuals in each age cohort by an assumed participation rate. The assumed rate for 16 and 17 year olds is based on

<sup>18</sup> Cf. Eith and Mielke (2006).

**Table 9.2** Estimation of underage people who want to vote in the US (2010), UK (2011) and Germany (2013). (Source: Based on own calculations)

Age cohort	Number of young people			Assumed percentage of willing voters (%)	Additional new voters/number of excluded voters		
	US	UK	Germany		US	UK	Germany
17	2,420,000	665,300	846,000	55	1,331,000	366,000	465,300
16	1,940,000	648,000	823,000	45	873,000	292,000	370,350
15	1,480,000	650,900	791,000	35	518,000	228,000	276,850
14	1,040,000	640,700	788,000	25	260,000	160,000	194,500
13	820,000	629,100	802,000	20	164,000	126,000	160,400
12	620,000	618,900	817,000	15	93,000	93,000	122,550
11	410,000	605,500	791,000	10	41,000	61,000	79,100
10	210,000	586,800	774,000	5	10,500	29,000	38,700
9	80,000	571,900	772,000	2	1,600	11,000	15,440
8	40,000	572,800	738,000	1	400	6,000	7,380
Sum	9,060,000	6,189,900	7,932,000		3,292,500	1,372,000	1,730,570

the actual participation rate of these age cohorts in German regional elections, for which the minimum voting age is 16 years old. For younger age groups the rate was then proportionally scaled down. Following this method, it is possible to determine that a right to vote through registration would translate into the addition of 1.7 million votes of young, politically engaged Germans to the German national election results. This estimate is most likely conservative when one takes into account that voter turnout is higher in national than in regional elections; thus the number of young people who wish to vote but are excluded from the franchise could—not unrealistically—be 2 million. The youngest accepted age cohort is 8 year olds (1%).

When the German youth participation rate is applied to the UK and the US on the assumption that a similar number of young people would vote in those countries as they do in Germany, it can be deduced that the implementation of a right to vote through registration would add the votes of 1.4 million young people in UK national elections, and in the US the votes of 3.3 million additional young Americans would be taken into account. To emphasize: these are conservative figures based on turnout rates at regional, not national elections, and are therefore likely to understate the number of willing but excluded voters. The actual figure for the UK could be closer to 2 million and the US figure more likely to be 5 million.

Perhaps political theorists and legal practitioners would have already taken the contradictions in electoral law more seriously if young people themselves had spoken out more strongly. Yet despite the fact that evidence of young people protesting against their exclusion from the franchise is plentiful, their voices have been largely marginalized in the media. For example, the UK ‘Votes at 16’ coalition, which is composed of young people, politicians and youth organizations, has already attracted 3,440 members since its creation in 2003. In Germany, a petition created

by a children's rights NGO (*Kinderrechtszaenger*) has been signed by over 1,000 young people who are too young to vote but wish to be granted the right to do so.<sup>19</sup> Another group has challenged the outcome of the September 2013 German election on the basis that citizens under 18 were excluded against their will.<sup>20</sup> Participation rates in youth elections speak for themselves: UK Youth Parliament elections attract over 500,000 voters nationwide. Meanwhile, in Germany, a similar youth election takes place, known as the U18 Election (*U18-Wahl*); it is held shortly before German national elections and is open to all children and young people.<sup>21</sup> According to data from the U18 website ([www.u18.org](http://www.u18.org)), 127,208 children took part in the German U18 Election in 2009; in 2013, around 200,000 participated. They had the opportunity to vote in 1,500 temporary polling stations which were set up by youth centres, ensuring comprehensive coverage. On their polling card for the 2013 election, which took place on 13 September 2013, the young participants were given the opportunity to voluntarily declare their age and sex, and two-thirds did so.<sup>22</sup>

### 9.3.3 *Ramifications for Election Results*

Due to a lack of data, predictions about the effects a right to vote through registration would have on the election results of any nation-state is far from a perfect science—demoscopic institutes tend to only concern themselves with the voting behaviour of eligible voters. We have therefore based our calculations of the U18-elections in Germany. Such data is suitable for our purposes because there is no age

<sup>19</sup> The original petition statement (own translation): 'I am under 18-and I want to vote. Like all people who live in this country, I am affected by political decisions: especially, in the present, by child, youth, families and education policy; and long-term by, for example, the implications of today's public debt as well as environmental and pensions policy. Other policy fields, such as questions of war and peace, social and economic policy or public policies towards minorities also concern me to some extent. In a parliamentary democracy, political decisions are reached by representatives who are elected by eligible voters, whose interests they claim to represent. The interests of those who are not eligible to vote are often noticeably neglected—though the representatives should, in fact, represent the entire population. This is because policies are mainly designed for those who can vote. If, one day, decisions are made at the national level in another form (e.g. through referendums), I would also like to participate. I would like to be taken seriously and be recognized as a person equal in value to others. A right to vote in elections would be a clear statement to this end. Please create the legal basis for me to be able to participate in elections and votes—in person and without parental proxy voting.' The number of ineligible young voters was retrieved from <http://www.ich-will-waehlen.de/index.php?kat=Statistik+der+Petition&alter=>. Last accessed on 01.12.2014.

<sup>20</sup> [wir-wollen-waehlen.de](http://wir-wollen-waehlen.de). Last Accessed on 01.12.2014.

<sup>21</sup> The U18-Wahl is organized by many youth organizations and NGOs as well as the Berliner U18-Network. It is financially supported by the German Ministry for Family, the Elderly, Women and Young People and the Federal Agency for Civic Education.

<sup>22</sup> The data can be summarized as follows: 5.87% of the young people were 17 years old; 9.83% were 16; 13.04% were 15; 11.93% were 14; 9.93% were 13; 7.16% were 12; 4.95% were 11; 3.42% were 10; 1.49% were 9; 0.77% were 8; and the rest (0.54%) were younger.

**Table 9.3** Results of the German national elections and the U18 elections (2009 and 2013) compared. (Source of the U18 election results: [www.u18.org](http://www.u18.org))

	CDU/ CSU	SPD	Die Grüne	FDP	Linke	Piraten	NPD	Tier- schutz	Other
Political position	Centre- right	Centre- left	Green party	Centre- right	Left- wing	Pro- trans- parency	Far- right	Animal rights	
U18 (2013) (%)	27.1	20.4	17.0	4.6	7.8	12.1	3.2	1.8	7.9
National (2013) (%)	41.5	25.7	8.4	4.8	8.6	2.2	1.3	0.3	2.5
U 18 (2009) (%)	19.4	20.5	20.0	7.6	10.4	8.7	4.2	5.2	4.1
National (2009)	33.8	23.0	10.7	14.6	11.9	2.0	1.5	0.5	2.0

restriction on participation and a high level of motivation is necessary to actually vote. The minors were required to locate a voting booth—an experience that was probably unknown to most of them prior to taking part—and successfully negotiate the voting procedure. Table 9.3 compares the results of the U18-elections elections with the national election results in Germany for 2009 and 2013.

The results demonstrate consistent differences in party preferences between the currently eligible electorate and minors across 2009 and 2013. Most strikingly, the major parties performed relatively badly among young voters: the CDU/CSU loses roughly one-third of its share of the vote among minors and the SPD approximately one-fifth. Linke and the FDP both received roughly as many votes from minors as they did from adults. The clear winners of an introduction of a right to vote through registration for minors in 2009 and 2013—mainly profiting from the losses of the main parties—would have been the Piraten (the party received a share of the vote from minors which was 4–5 times larger than from adults), Tierschutz (6–10 times larger) and the NPD (3 times larger). It should be noted, however, that even despite the increases, the German political party for animal rights (Tierschutz) (2009: 5.2%; 2013: 1.8%) and the German far-right party (NPD) (2009: 4.2%; 2013: 3.2%) still only received a small share of the overall vote. The so-called ‘pirate party’ (Piraten) (2009: 8.7%; 2013: 12.1%), a newly-founded pro-transparency party, on the other hand, received a considerably more significant share.

Despite these findings and the temptation to draw conclusions for other countries, anticipated election results are an illegitimate criterion for the granting of the right to vote. Voting patterns of eligible voters already vary: there is already variation between the voting patterns of 20–30 year olds and 70–80 year olds—but nobody would deploy this line of reasoning to advocate for the exclusion of these age groups from the franchise. Moreover, one would be very dependent on conjecture

(as per our analysis): demoscopic institutes have, until now, not carried out enquiries into the voting preferences of young people without age limits.

This line of reasoning poses fundamental questions of any type of ‘right to vote on trial’ for certain age groups. The history of voting age boundaries demonstrates that almost every lowering has been ‘no strings attached’, in the sense that lowering has not been linked to empirical variables, such as the party preferences of new voters. In Norway in 2011, however, the minimum voting age was lowered from 18 to 16 for local elections only—and only in 21 of 430 boroughs.<sup>23</sup> The so-called ‘Norwegian 2011 voting-age trial’ is an attempt to test the political maturity of young Norwegians—and then to decide if the voting age should be lowered from 18 to 16 for all boroughs. Apart from the empirical outcome of the ‘test’, the experiment highlights the difficulty involved in operationalizing the concept ‘political maturity’: can a preference for a transparency party, animal rights party or even a ‘radical’ party at the left or right-end of the political spectrum be indicative of immaturity? History is replete with examples of established party positions which were considered ‘extreme’ for the majority of one generation, and for the following ‘mainstream’. It is simply unimaginable that the older fraction of an existing demos could expel the younger fraction on the basis that the latter did not ‘vote correctly’. It would be understood as the organized defence of the old against the young, and the right of every generation to determine the values of the society in which it lives would be undermined.

### 9.3.4 *Provisions to Prevent Abuse*

The threat of abuse of a new regulation does not in all cases mean that it should be repealed. Often, there is no other choice than to find a lesser evil. Nevertheless, before the introduction of a ‘right to vote through registration’, possible abuses should be anticipated and, to the greatest extent possible, minimized. For instance, it is conceivable that, on the basis of their dependence, young people are unable to vote freely. More than any other voting group, they could be at risk of being influenced—in this case, by their parents. With respect to such arguments, the basic principle of the freedom of choice applies, which stipulates that all voters should be protected from influences which are able to compromise their freedom to choose, legitimizing the use of secret ballots. In particular, this basic principle stipulates that the authorities should not have any influence; that is to say, no system should exist—set up by the ruling government, for instance—which binds voters into voting for a particular party/nominee. The freedom to choose, however, is not intended to imply the elimination of all influences from contemporaries—such as parents, partners or friends. One cannot even ensure the elimination of influence with respect to voters who are over 18. If it were attempted, it would not only be the end of party

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<sup>23</sup> Bergh (2013).

political broadcasts on radio and television, but would require all political discussions to be banned. Since freedom from influence among adult voters is neither intended nor feasible, it could be argued that freedom from influence among young voters must not be problematized. In the final analysis, all young voters would be alone in the voting booth and can, as such, tick whichever box they want.

On the other hand, parents may have completely different means of creating pressure on their children than adults do in relation to one another—but voting in person would be of great value in negating it. It therefore appears advisable that the (formerly) underaged are not permitted to take part in postal voting. Here, there is a distinction to be made between ‘real’ postal voting, whereby a vote is cast by post, and preselection, whereby a vote is cast at the polling station through the delivery of a voting card. Postal voting and, in particular, ‘real’ postal voting are generally more susceptible to electoral corruption than a vote cast at a polling station. A direct influence on the underaged by family members to the point of filling in the voting card on the child’s behalf cannot be ruled out, since in contrast to the polling station, adherence to secret voting cannot be observed. That is not to imply that a large number of parents or older siblings would behave in such a way—but even a small percentage would be too much. It would there seem legitimate to protect the young people by only allowing them to vote in person and ruling out the possibility of them taking part in postal voting.

## Conclusion

It has been demonstrated with reference to the history of ideas that the current exclusion of young people and children from the franchise is a last, anachronistic bastion of epistocratic thought which contradicts democratic principles, as they are today generally understood. This delay is the result of both the superficiality of the current debate and the voicelessness of young people in the media. As Dahl (1982, p. 98) notes, ‘[the problem of inclusion] is an embarrassment to all normative theories of democracy, or would be were it not ignored.’

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