

### Improving Public Policy for Children: A Vote for Each Child

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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."

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## Improving Public Policy for Children: A Vote for Each Child

by Prof. Dr. Robert H. Pantell and Prof. Dr. Maureen T. Shannon<sup>1</sup>

**A**bstract: 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.<sup>2</sup> 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".<sup>3</sup>

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.<sup>4</sup> 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".<sup>5</sup>

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”.<sup>6</sup> 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.<sup>7</sup> 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”.<sup>8</sup> He recommends granting parents proxy votes.<sup>9</sup>

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”.<sup>10</sup> 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”.<sup>11</sup> 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.<sup>12</sup> 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”.<sup>13</sup> 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”.<sup>14</sup>

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.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> 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".<sup>18</sup> 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".<sup>19</sup>

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,<sup>20</sup> 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",<sup>21</sup> 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 West<sup>22</sup> and mirroring the cost transfers discussed by Aber.<sup>23</sup>

- 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 suffrage<sup>24</sup>, and the less well-orchestrated events such as Rosa Park's refusal to acquiesce to segregation on a public bus<sup>25</sup> or the

refusal to tolerate police harassment at the Stonewall Inn encounter that galvanized the gay rights movement<sup>26</sup> 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,<sup>27</sup> 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](http://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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