

Adulthood and Voting Age Discrimination

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INTRODUCTION

Discrimination law in the United States and internationally is much more concerned with matters of gender, race, ethnicity, nationality, sexuality, and disability than it is with matters of age, and even when age discrimination is mentioned, it predominantly refers to the elderly and not the young. Even the Convention on the Rights of the Child (“CRC”) prohibits discrimination on the basis of the above factors but not on the basis of age itself (unless included under “other status”).¹ Legal and scholarly discourse understands children as objects of various forms of intersectional discrimination but rarely in their status as children as such.

This Essay argues that the widespread neglect of age discrimination against children is deeply problematic because the issue is not just occasional but systemic. It does so by first outlining a critical concept of adulthood, that is, the historically normative marginalization of children by age. It then applies this concept to understanding the social and legal issues surrounding a key question in age discrimination, namely children’s lack of the democratic right to vote. These explorations are undertaken under the broad rubric of childism, a term analogous to feminism, antiracism, and decolonialism that deconstructs children’s historical disempowerment by adulthood to help reconstruct more just and age-inclusive societies.² By showing how age discrimination against children is systemic, this Essay

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1. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

2. See JOHN WALL, *ETHICS IN LIGHT OF CHILDHOOD* 3 (2010); John Wall, *From Childhood Studies to Childism: Reconstructing the Scholarly and Social Imaginations*, 20 *CHILD.’S GEOGRAPHIES* 257, 258 (2022); Hanne Warming, *Childism*, in *THE SAGE ENCYCLOPEDIA OF CHILDREN AND CHILDHOOD STUDIES* 355, 355 (Dan Cook ed., 2020); Tanu Biswas & Nikolas Mattheis, *Strikingly Educational: A Childist Perspective on Children’s Civil Disobedience for Climate Justice*, 54 *EDUC. PHIL. & THEORY* 145, 150 (2021); Tatek Abebe & Tanu Biswas, *Rights in Education: Outlines for a Decolonial, Childist Reimagination of the Future*, 199 *FENNIA – INT’L J. GEOGRAPHY* 118, 119 (2021). See generally Childism Institute, <http://www.childism.org/> [<https://perma.cc/YQH6-6LKC>].

aims to make the case for a broad, normative adultist analysis of policy and law.

I. ADULTISM AS DISCRIMINATION BY AGE

The term “adultism” has evolved various meanings since it first entered the English lexicon in a book by the popular education writer Patterson Dubois in 1903. Dubois uses the word to refer to “the undue interposition by the adult of . . . his adult point of view,” which he argues is a reflection of the adult’s sense of “absolute possession, unlimited right, and infallible judgment.”³ This use of the term describes an immediate and direct imposition of adult privilege. It retains this sense all the way up to the 1970s, when, for example, the influential developmental psychologist Jack Flasher uses it to describe caregivers’ “misuse of power” over children,⁴ and the well-known education theorist John Holt applies it to understanding adults’ domination over children’s attempts at self-expression.⁵

More recently, however, and with the rising influence of critical theories such as deconstructionism, third-wave feminism, anti-racism, and decolonialism, the term adultism has gradually taken on more fundamentally normative senses. These prove more useful for understanding adultism as a form of not just occasional domination but systemic age discrimination. There are three increasingly complex ways of understanding this kind of discrimination that need careful distinguishing.

A first step toward a systemic understanding of adultism can be found in the work of activist and organizer John Bell, who argues that particular acts of adultism are rooted in a broader social attitude of “disrespect of the young.”⁶ Children’s mistreatment—for example, their being subject to physical punishment, being banned from public spaces, and lack of real voices in schools—is underwritten by the cultural acceptance of an in-built adult-child hierarchy. In a similar vein, the social work scholar Barry Checkoway explains that, in the political sphere, “adultism refers to all the behaviors and attitudes that flow from the assumption that adults are better than young people, and are entitled to act upon young people in many ways without their agreement.”⁷ This concept of a deep-seated disrespect toward children locates the problem in broad systems of historical preconception.

It is only in the 2000s, though, that scholars and practitioners start referring to adultism as a form of “discrimination.” More than just a broad-based disrespect for the young, adultism can refer to powerful systems of

3. PATTERSON DUBOIS, *FIRESIDE CHILD-STUDY: THE ART OF BEING FAIR AND KIND* 35 (1903).

4. Jack Flasher, *Adultism*, 13 *ADOLESCENCE* 517, 517 (1978).

5. See JOHN HOLT, *ESCAPE FROM CHILDHOOD* 1–4 (1974).

6. John Bell, *Understanding Adultism: A Major Obstacle to Developing Positive Youth-Adult Relationships*, *YOUTHBUILD USA* 1 (1995).

7. Barry Checkoway, *Adults as Allies*, 38 *PARTNERSHIPS/COMMUNITY* 14 (1996).

anti-child bias that are enforced by social, legal, and institutional structures. For example, the psychologists Jocelyn Gregoire and Christin Jungers argue that children's therapists need to be aware of the "adulthood" of "systematic discrimination against young people" that impacts children's well-being because it is institutionalized in family, school, and societal barriers.⁸ Similarly, the sociologists Lucien Lombardo and Karen A. Polonko argue that, "similar to sexism, racism and classism, adulthood refers to a system of structured inequality or oppression that permeates relationships between children and adults."⁹ The psychoanalyst Elisabeth Young-Bruehl (somewhat confusingly) uses the word "childism" in place of adulthood to refer in the same vein to socially enforced "prejudice against children."¹⁰ Children face this broader discriminatory form of adulthood across their lives, such as in lacking democratic voices, being denied standing in court, and not being provided with required asylum procedures.

Finally, in the sense used in the rest of this Essay, adulthood can be understood even more profoundly as an expression of normative systems of social marginalization.¹¹ Adulthood, on this view, is not only cultural and institutional but also normative, that is, built into the often invisible assumptions organizing language, thought, and social relations. This concept builds upon the field of childhood studies, which seeks to understand children's own social agency and lived experiences.¹² Adulthood here is akin to sexism and racism, a deeply rooted historical bias structuring understanding as such. Children are understood as lesser human beings: less rational, less developed, less competent, and less valued as citizens. Adulthood so understood represents a side of "paternalism," when the *pater* or "father" is recognized as not only gendered but also aged.

So understood, the critical lens of adulthood calls on social actors and theorists to approach systems of age discrimination as built into societies' historically normative assumptions. Adulthood constitutes "the social and political foundations on which children's lives and experiences are already imagined and pre-constructed."¹³ Or, as the feminist theorist Mehmoona Moosa-Mitha uses the term, adulthood enforces social "norms" that, as for other groups in history, reduce children and youth to "not-yet-citizens" or

8. JOCELYN GREGOIRE & CHRISTIN JUNGERS, *THE COUNSELLOR'S COMPANION: WHAT EVERY BEGINNING COUNSELOR NEEDS TO KNOW* 65 (2007).

9. Lucien Lombardo & Karen A. Polonko, *Interdisciplinary Contributions to the Prevention of Child Maltreatment*, 4 INT'L J. INTERDISC. SOC. SCI.: ANN. REV. 89, 94 (2010); see also ADAM FLETCHER, *FACING ADULTISM* 3-4 (2015).

10. ELISABETH YOUNG-BRUEHL, *CHILDISM: CONFRONTING PREJUDICE AGAINST CHILDREN* 4 (2011).

11. See WALL, *ETHICS IN LIGHT OF CHILDHOOD*, *supra* note 2, at 3; John Wall, *Adulthood*, in *THE BLOOMSBURY ENCYCLOPEDIA OF SOCIAL JUSTICE IN EDUCATION* (Marek Tesar ed., 2023) (forthcoming).

12. See generally ALISON JAMES AND ALAN PROUT, *CONSTRUCTING AND RECONSTRUCTING CHILDHOOD* (2d ed. 1997); SPYROS SPYROU, RACHEL ROSEN, & DANIEL T. COOK, *REIMAGINING CHILDHOOD STUDIES* (2018); SARADA BALAGOPALAN, JOHN WALL, & KAREN WELLS, *THE BLOOMSBURY HANDBOOK OF THEORIES IN CHILDHOOD STUDIES* (2013).

13. Wall, *From Childhood Studies to Childism*, *supra* note 2, at 260.

“second-class citizens.”¹⁴ Adultism so understood is a social system of not only broad disrespect for children or institutional bias against them, but also, underlying these, children’s deep historical marginalization.

II. THE RIGHT TO VOTE: COMPETENCE AND CONSEQUENCES

One of the central battlefields of historical anti-discrimination campaigns has been the right to vote. Over time and across the world, the poor, women, racial and ethnic minorities, and others have fought and sometimes died for inclusion in this most fundamental of human rights. They have done so because, in democratic societies, suffrage is a key groundwork for political dignity and empowerment. This battle has always faced deep-seated historical biases. In the United States, for example, where “all men are created equal,” voting rights initially belonged by some estimates to only six percent of the population who qualified as landowning white men.¹⁵ And even in 1919, when the United States granted suffrage to women twenty-one and over, voting rights were expanded only to fifty-seven percent of the people, not even counting Jim Crow laws that reduced that number significantly.¹⁶ The right to vote has always been undermined by both explicit and implicit structures of class, race, and gender discrimination.

There is now a worldwide, if largely unknown, suffrage movement for the third of humanity who are children under eighteen years of age.¹⁷ Most policy makers and ordinary citizens consider “universal” suffrage already to have been achieved with voting rights for adult men and women. But, of course, people under eighteen are just as profoundly impacted by democratic choices. And they can be just as active participants in democratic life, as they have proven time and time again over historical participation in labor movements, women’s suffrage, anti-war campaigns, and most recently in the climate movement, Black Lives Matter marches, anti-gun crusades,

14. Mehmoona Moosa-Mitha, *A Difference-Centered Alternative to Theorization of Children’s Citizenship Rights*, 9 CITIZENSHIP STUD. 369, 371, 374 (2005).

15. Jill Lepore, *Rock, Paper, Scissors: How We Used to Vote*, THE NEW YORKER (Oct. 13, 2008), <https://www.newyorker.com/magazine/2008/10/13/rock-paper-scissors> [https://perma.cc/WPR7-3KYE]. However, for more complex discussions, see Donald Ratcliffe, *The Right to Vote and the Rise of Democracy, 1987-1828*, 33 J. EARLY REPUBLIC 219, 219 (2013); CHILTON WILLIAMSON, *AMERICAN SUFFRAGE FROM PROPERTY TO DEMOCRACY, 1760-1860*, at 20-39 (1960).

16. United States Census Bureau, *National Intercensal Tables: 1900-1990*, CENSUS.GOV, <https://www.census.gov/data/tables/time-series/demo/popest/pre-1980-national.html> [https://perma.cc/SU5S-KQSA].

17. UNICEF Data, *How Many Children are there in the World?*, UNICEF, <https://data.unicef.org/how-many/how-many-children-are-in-the-world/> [https://perma.cc/Y26C-7E8C]. In the United States, the population under eighteen is twenty-two percent. Kids Count Data Center, *Total Population by Child and Adult Populations in United States*, THE ANNIE E. CASEY FOUNDATION, <https://datacenter.kidscount.org/data/tables/99-total-population-by-child-and-adult-populations#detailed/1/any/false/2048,574,1729,37,871,870,573,869,36,868/39,40,41/416,417> [https://perma.cc/37C9-JT5H].

children's labor movements, child and youth parliaments, and much else.¹⁸ Children have even succeeded in gaining rights to vote in the twenty or so countries and countless cities, including several in the United States, that have so far lowered the voting age to sixteen.¹⁹ Although the issue in this Essay is eliminating voting age discrimination altogether, and although votes at sixteen campaigns often adopt quasi-adulthood claims that older children are sufficiently adult-like, nevertheless such efforts demonstrate a real groundswell for questioning assumptions related to suffrage age.

The movement to end adulthood discrimination in voting has been led by both children and adults who have increasingly challenged widespread democratic biases. As early as the 1970s, social reformers like John Holt and Richard Farson argued for "the right to vote for people of any age" on the grounds that being subject to laws in which one has no say "is the most serious injustice."²⁰ Sixteen-year-old Vita Wallace argued in the U.S. magazine *The Nation* in 1991 that it is "discriminatory" and hence "unconstitutional" to ban children from voting because "children of all ages must be given the same power to elect their representatives that adults have, or they will continue to be unfairly treated."²¹ The German child-led organization KinderRÄchTsZÄnker ("KRÄTZÄ") filed lawsuits against children's voting discrimination in 1995-96 and again in 1998; and another German child-led group, We Want the Vote, did so again in 2014.²² In the United States, the ten-year-old Kid Governor of Oklahoma, Charlotte Anderson, gave a speech to the Edmond Democratic Women arguing for the elimination of voting age discrimination; and the National Youth Rights Association ("NYRA") held a conference on "Age of Youth" in which youth and adults discussed ageless voting rights as an urgent discrimination concern.²³

18. MICHAEL CUMMINGS, CHILDREN'S VOICES IN POLITICS 4-6 (2020); Jonathan Josefsson & John Wall, *Empowered Inclusion: Theorizing Global Justice for Children and Youth*, 17 GLOBALIZATIONS 1043, 1043 (2020); see generally Michael Cummings, *Silence is Poison: Explaining and Curing Adult "Apathy"*, in EXPLORING CHILDREN'S SUFFRAGE: INTERDISCIPLINARY PERSPECTIVES ON AGELESS VOTING 27-46 (John Wall ed., 2022).

19. JOHN WALL, GIVE CHILDREN THE VOTE: ON DEMOCRATIZING DEMOCRACY 30 (2022).

20. HOLT, *supra* note 5, at 99-110; see also RICHARD FARSON, BIRTHRIGHTS: A BILL OF RIGHTS FOR CHILDREN 175-90 (1974).

21. Vita Wallace, *Give Children the Vote*, THE NATION, at 439 (Oct. 14, 1991).

22. KinderRÄchTsZÄnker (KRÄTZÄ), *Constitutional Appeal Against the Voting Age* (July 1997), <http://en.kraetzae.de/vote/faq/> [<https://perma.cc/K3T8-9TLX>]; see also a publication by one of KRÄTZÄ's founders, MIKE WEIMANN, WAHLRECHT FÜR KINDER: EINE STREIGSCHRIFT [SUFFRAGE FOR CHILDREN: A POLEMIC] (2002); We Want the Vote, (last accessed May 2022), <https://www.intergenerationaljustice.org/activities/projects/we-want-to-vote/> [<https://perma.cc/246N-MEZJ>]. See also similar arguments made by another German youth organization, founded in 1997 and still working today, Foundation for the Rights of Future Generations, (last accessed May 2022) www.intergenerationaljustice.org [<https://perma.cc/78R8-MDWU>].

23. Charlotte Anderson, *Let. Kids. Vote.*, Speech to the Edmond Democratic Women (2021), <https://www.youtube.com/watch?v=G5fC-IDA5u8> [<https://perma.cc/6PPR-XC7P>]; National Youth Rights Association (NYRA), *Age of Youth Conference* (Oct. 24, 2020), <https://www.youtube.com/watch?v=8Li4Oo0D-FM> [<https://perma.cc/DVK6-43NJ>].

These are just a few of many examples of the growing children's suffrage movement.

In addition, children have increasingly been joined by adult-led organizations that have either adopted or been formed specifically to advance the cause, including international groups like Plan International, Demos, Children's Rights International Network ("CRIN"), and the Children's Voting Colloquium (co-founded in 2019 by the author and activist Robin Chen); and national groups like Freechild Institute (United States), Association for Children's Suffrage (United States), Kids Can't Vote (United States), Children's Voice Association (Finland), and Amnesty International (United Kingdom).²⁴ The issue has furthermore been advanced in recent years in op-eds in publications like *The New York Times*, *Washington Post*, *The Guardian*, *New Republic*, and *Vox.com*; on radio shows on PBS and BBC4; and in white papers, Ted Talks, and blogs.²⁵

Although the ideas driving this movement are diverse and context-specific, its two main arguments are both, in significant part, about normative adulthood or age discrimination: one about competence and the other about consequences. These ideas have been developed both in activism and in scholarship.

As for competence, the claim is made that the prevailing adult standard excludes children on illegitimate grounds. In fact, no age restriction properly distinguishes capable from non-capable voters. Contra widespread assumptions, often voiced by political theorists,²⁶ many young children do in fact understand politics, engage in democratic deliberation, and bring to the table their own political experience. And many adults—from the politically incurious and naive to those with cognitive disabilities and dementia—arguably do not. Competence as a bar to adults has long been seen as problematic, as it is impossible to measure accurately and easily stands in as a biased proxy for class, race, or gender. As the political philosopher Nicholas Munn argues, age cannot be used to measure voting competence either: "the accepted standard for capacity for political participation is minimal, and many of those excluded [from voting] in virtue of their age could in fact satisfy the standard if they were subject to the same restrictions as adults."²⁷

24. See generally John Wall, *Introduction*, in *EXPLORING CHILDREN'S SUFFRAGE: INTERDISCIPLINARY PERSPECTIVES ON AGELESS VOTING* 1–24 (John Wall ed., 2022).

25. *Id.*

26. MATTHEW CLAYTON, *JUSTICE AND LEGITIMACY IN UPBRINGING* 193 (2006); DAVID ARCHARD, *CHILDREN, FAMILY AND THE STATE* 53 (2003); Philip Cowley & David Denver, *Votes at 16? The case against*, 41 *REPRESENTATION* 57, 57–62 (2004).

27. Nicholas Munn, *Against the Political Exclusion of the Incapable*, 35 *J. APPLIED PHIL.* 601, 613–14 (2018); see also Nicholas Munn, *How Low Can You Go? The Capacity to Vote Among Young Citizens*, in *EXPLORING CHILDREN'S SUFFRAGE: INTERDISCIPLINARY PERSPECTIVES ON AGELESS VOTING*, 47–66 (John Wall ed., 2022); Steven Lecce, *Should Democracy Grow Up? Children and Voting Rights*, 9 *INTERGENERATIONAL JUST. REV.* 133–39 (2019); Benjamin Kiesewetter, *Dürfen wir Kindern das Wahlrecht*

In a democracy, the capacity to vote should be defined broadly rather than narrowly, as an inclusive right rather than an exclusive privilege. According to the political scientist Claudio López-Guerra, the “franchise capacity” is present in most children if it is correctly understood as “the ability to experience the benefits of enfranchisement and the harms of disenfranchisement.”²⁸ Or, according to this Essay’s author, anyone who wants to vote has already demonstrated the requisite capacity to do so, the desire itself proving one understands what voting is for and why it is important.²⁹ Certainly there can be no literacy tests, bans for lack of knowledge or deliberation, or rulings against cognitive impairments, dementia, or plain stupidity.³⁰

Drawing age distinctions around voting competence is therefore arguably discriminatory in a normative sense. It is widely assumed to make sense while in fact lacking any substantive justification. There may be rights that are legitimately limited by age—such as marriage, driving, and making life-threatening medical decisions—but the right to vote is not one of them. Unlike these other rights, suffrage brings with it no risk of major immediate harm; the worst risk is a paper cut, not an accident, a life-long commitment, or death. And, like other fundamental freedoms, voting should be abridged anyway only for exceptional and well-founded reasons. Children already have freedom rights such as to expression, conscience, assembly (to a point), and protest. Voting is the same kind of freedom right extended into politics. As the pediatric scholar Neena Modi argues, children’s voting rights could be understood on the same basis as their medical decision rights: as freedoms a child can progressively exercise for themselves over time with the needed support of caregivers.³¹ If there really is a substantive competence beyond desire for voting, then “we ought either to disenfranchise the elderly, if we do not enfranchise children, or enfranchise children of an age group that has the same proportion of capacity as the elderly.”³² The presumption of children’s voting incompetence is *prima facie* adultistically discriminatory.

vorenthalten? [Should we deny children the right to vote?], 95 ARCHIV FÜR RECHTS UND SOZIALPHILOSOPHIE 252, 254 (2009).

28. CLAUDIO LÓPEZ-GUERRA, DEMOCRACY AND DISENFRANCHISEMENT: THE MORALITY OF ELECTORAL EXCLUSIONS 6 (2014).

29. See WALL, ON DEMOCRATIZING DEMOCRACY, *supra* note 19, at 39–64; John Wall, *Why Children and Youth Should Have the Right to Vote: An Argument for Proxy-Claim Suffrage*, 24 CHILD., YOUTH & ENV’T. 108, 108–23 (2014); John Wall, *The Case for Children’s Voting*, in EXPLORING CHILDREN’S SUFFRAGE: INTERDISCIPLINARY PERSPECTIVES ON AGELESS VOTING 67–88 (John Wall ed., 2022).

30. Eric Wiland, *Should Children Have the Right to Vote?* in THE PALGRAVE HANDBOOK OF PHILOSOPHY AND PUBLIC POLICY 223 (David Boonin ed., 2018).

31. Neena Modi, *A Radical Proposal: To Promote Children’s Wellbeing Give Them the Vote*, BMJ 361 (2018); Neena Modi, *A View from Paediatric Medicine: Competence, Best Interests, and Operational Pragmatism*, in EXPLORING CHILDREN’S SUFFRAGE: INTERDISCIPLINARY PERSPECTIVES ON AGELESS VOTING 197–214 (John Wall ed., 2022).

32. Joanne Lau, *Two Arguments for Child Enfranchisement*, 60 POL. STUD. 860, 873 (2012); see also Philip Cook, *Against a Minimum Voting Age*, 16 CRITICAL REV. INT’L SOC. & POL. PHIL. 439, 441

On consequences, the basic anti-discrimination argument is that denying children the vote places their political and related interests at a systematic disadvantage. Representatives are less beholden to the concerns of constituents who cannot vote them out of office, resulting in policies that will tend to favor adults across all political, economic, health, social, family, and even educational spheres. The political philosopher Stefan Olsson argues that children's suffrage would constitute "a way to guarantee that the people who really are deciding on the laws, the elected officials, do not forget to consider all interests equally."³³ The economist Luigi Campiglio argues that children's lack of voting rights places them at a disadvantage when it comes to long-term, inter-generational economics.³⁴ Or, as this Essay's author has put it, children's enfranchisement would "make politicians accountable to the real complexities of children's lives" by forcing them to move past simplifications and mere acts of beneficence to genuine democratic accountability.³⁵ When hard choices have to be made about resources, rights, and priorities, an adultist voting system implicitly renders children's concerns marginal.

The usual assumptions are that children voting would inflict uninformed ideas that harm children and adults both; that it would "adultify" children, robbing them of their childhoods both in politics and in other spheres like criminal justice and sexuality; and that it would undermine the responsibilities of parents and teachers toward children's care.³⁶ But these arguments ignore the existing and more profound disadvantages imposed on children by their disenfranchisement itself. By lacking a part in choosing their political representatives, children are reduced to second-class citizens without systemic social influence. They cannot directly pressure governments to address their being the poorest social group, their lacking access to health resources, and their denial of rights under unresponsive justice and education systems. The reason voting rights advantage people's lives is that democracies generally work. They amalgamate the concerns of diverse groups to make better-informed policy decisions overall.

In the end, the argument can be made, as it has been with other groups, that children's enfranchisement reverses systemic disadvantages not only for

(2013); Jörg Tremmel & James Wilhelm, *Democracy or Epistocracy? Age as a Criterion of Voter Eligibility*, in *YOUTH QUOTAS AND OTHER EFFICIENT FORMS OF YOUTH PARTICIPATION IN AGEING SOCIETIES*, 125–47 (Jörg Tremmel ed., 2015); Lachlan Montgomery Umbers, *Enfranchising the Youth*, 23 *CRITICAL REV. INT'L SOC. & POL. PHIL.* 732, 735 (2018).

33. Stefan Olsson, *Children's Suffrage: A Critique of the Importance of Voters' Knowledge for the Well-Being of Democracy*, 16 *INT'L J. CHILD. RTS.* 55, 74 (2008).

34. See LUIGI CAMPIGLIO, *PRIMA LE DONNE E I BAMBINI [WOMEN AND CHILDREN FIRST]* (2005); Luigi Campiglio and Loranza Alexandra Lorenzetti, *Generational Economics*, in *EXPLORING CHILDREN'S SUFFRAGE: INTERDISCIPLINARY PERSPECTIVES ON AGELESS VOTING* 155–76 (John Wall ed., 2022).

35. WALL, *ON DEMOCRATIZING DEMOCRACY*, *supra* note 19, at 139.

36. See Geoffrey Scarre, *Children and Paternalism*, 55 *PHIL.* 117, 120 (1980); Katherine Silbaugh, *Developmental Justice and the Voting Age*, 47 *FORDHAM URB. L.J.* 253, 256 (2020); MARTIN GUGGENHEIM, *WHAT'S WRONG WITH CHILDREN'S RIGHTS* 5 (2005).

children themselves but also for adults and democratic societies. Critiques in terms of sexism, classism, racism, colonialism, and the like have improved democracies for all, and the critique of adulthood would have the same effect. This is because non-discrimination helps democracies function with broader information—in the case of children, with all instead of just two-thirds of the pixels on the screen. Indeed, as some have argued, it would encourage governments to think in new ways: for example, about longer-term issues of the environment, economics, health care, and much else that impact children the most but also impact all.³⁷ And, according to political theorist Michael Cummings, it would provide a stronger bulwark against authoritarianism and improve democratic engagement: “the civic disengagement and loss of social capital plaguing democracies today is rooted in the systemic silencing of people’s political voice during their early years.”³⁸

III. ADDRESSING ADULTISM IN VOTING RIGHTS LAW

These arguments for ageless voting, grounded in a critique of normative adultist discrimination, ultimately call for rethinking voting rights law. Legal scholars have taken steps in this direction, both internationally and nationally, as described below, even if much more work needs to be done to develop effective responses to the profound biases involved. These biases are both explicit and implicit, combining unsupported restrictions on voting by age with unspoken assumptions about competencies and consequences. Voting age law can be subject to effective anti-discriminatory critique only by addressing both explicit and implicit bias at once through a systemic adultist analysis.

International law is particularly interesting in this respect, as it reveals in quite stark terms the gap between legal rights and adultist biases. For example, the 1948 Universal Declaration of Human Rights (“UDHR”) states in Article 21(3) that “the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage.”³⁹ Similarly, the 1966 International Covenant on Civil and Political Rights (“ICCPR”) asserts in Article 25 that “Every citizen shall have the right and the opportunity . . .

37. See Bob Franklin, *Children’s Political Rights*, in *THE RIGHTS OF CHILDREN* 24–53 (Bob Franklin ed., 1986); Luigi Campiglio, *Political Participation, Voting, and Economic Policy: Three Problems of Modern Democracies*, in *UNDERSTANDING DEMOCRACY: ECONOMIC AND POLITICAL PERSPECTIVES* 196–97 (Albert Breton ed., 1997); Luigi Campiglio, *Children’s Right to Vote: The Missing Link in Modern Democracies*, 12 *SOC. STUD. CHILD. & YOUTH* 221, 225 (2009); Philippe van Parijs, *The Disenfranchisement of the Elderly, and Other Attempts to Secure Intergenerational Justice*, 27 *PHIL. & PUB. AFF.* 292, 312–13 (1999); Karl Hinrichs, *Do the Old Exploit the Young? Is Enfranchising Children a Good Idea?*, 43 *EUR. J. SOCIO.* 35, 39 (2002).

38. MICHAEL CUMMINGS, *CHILDREN’S VOICES IN POLITICS*, *supra* note 18, at 288.

39. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

[t]o vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage.”⁴⁰ All 193 countries in the world are signatories to the UDHR, and most, including the United States, have ratified the ICCPR.

But, of course, the world’s apparently inclusive affirmation of “universal and equal suffrage” is nowhere understood to extend to citizens under the age of eighteen (or in a few countries, sixteen). This is not because international law provides an explicit rationale. Nor is it even because human rights committees have explored the question. Rather, children’s non-enfranchisement is simply taken for granted, an assumed dimension of voting rights that does not require justification or consideration. But such is the very essence of systemic discrimination, in principle demanding a universal human right for all while in practice silently withholding it from entire social groups, in this case a third of humanity. The paradox here only deepens when one considers that “Universal” is the first word in the title of the UDHR, establishing that today’s era of human rights should be built upon the full and equal humanity of everyone. The only explanation for this clear yet widely held self-contradiction is that international law is built upon profound historical adultism.

A related problem is found in the CRC, the key international framework on children’s rights and history’s most widely ratified treaty (by every country besides the United States). There have been broad critiques of the CRC as a discriminatory document in and of itself, in that it separates children’s rights from larger human rights frameworks, thereby giving free reign to children’s differential treatment (as indeed just illustrated with the UDHR and ICCPR).⁴¹ The CRC may be adultist by its very act of separating children’s rights from human rights. In addition, the CRC famously excludes any reference to politics, defining even its freedom rights, as Aoife Nolan has shown, in almost entirely apolitical terms.⁴²

But the actual language of the CRC could be argued to simultaneously deny and require children’s universal rights to vote. Most of the discussion here has focused on Article 12, which asserts children’s “right to express [their] views freely in all matters affecting the child.”⁴³ Expressing one’s views freely in “all matters” would seem to include politics broadly and electing representatives specifically. The Amnesty International lawyer Katherine Walton suggests in this vein that CRC freedoms of expression should include children’s rights to vote because they do not impose limits

40. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

41. See Afua Twum-Danso Imoh & Samuel Okyere, *Towards a More Holistic Understanding of Children’s Participation: Foregrounding the Experiences of Children in Ghana and Nigeria*, 112 CHILD. & YOUTH SERV.’S REV. 1, 1–2 (2020); Ann Quennerstedt, *Children, But Not Really Humans? Critical Reflections on the Hampering Effect of the “3 p’s”*, 18 INT’L J. CHILD. RTS. 619, 624 (2010).

42. See Aoife Nolan, *The Child as Democratic Citizen: Challenging the Participation Gap*, PUB. L. 126, 138 (2010).

43. CRC, *supra* note 1, Art. 12.

of competence and do require any freedom in matters that affect children's lives.⁴⁴ And the legal scholar Aoife Daly argues that Article 12 in fact calls out states' voting age "discrimination" because "we fail to permit children the right to political influence, and we fail ourselves by imposing a lack of diversity on the civil processes in which we engage."⁴⁵ Although CRC Article 12 does not explicitly mention voting, it can be read implicitly to demand it.

In the author's view, an even stronger case can be made from CRC Article 13.⁴⁶ Article 13 states that "[t]he child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds." There can be "restrictions" on this freedom "only" as necessary "(a) For respect of the rights or reputations of others; or (b) For the protection of national security or of public order (ordre public), or of public health or morals."⁴⁷ As in Article 12, the freedom to impart "ideas of all kinds" seems to deal with matters outside politics, but at the same time it in fact patently includes them, including ideas about who should be one's political representatives. This is "information" a child may wish to "impart." Most important of all, however, Article 13 explicitly forbids restrictions on this right outside of limited cases. These restrictions echo standard language throughout international law, for example in the ICCPR's Articles on freedoms of expression, movement, thought, conscience, religion, assembly, and association. Thus, according to Article 13, children's freedom of expression is "only" to be restricted to protect the rights of others and national security and public order, health, and morals. Clearly, however, children's voting does not fall under any such restriction. On the contrary, it would be easier to argue that it is adult-only voting that fails to respect the rights of children by denying their equal treatment and dignity. CRC Article 13 thus makes an even clearer argument than Article 12 that children are owed the right to vote as a matter of freedom of expression without unnecessary restriction.

In terms of national law, the only legislative efforts toward children's voting rights have been aimed at either votes at sixteen or parent/guardian proxy votes. Votes at sixteen campaigns, as mentioned, argue that sixteen- and seventeen-year-olds suffer age discrimination because they possess similar enough political competencies to adults.⁴⁸ The parental proxy vote concept dates all the way back to 1848, when, during history's first

44. Katherine Walton, *Votes for Children: The Case for Universal Suffrage*, AMNESTY INTERNATIONAL UK (Oct. 6, 2019), <https://www.amnesty.org.uk/blogs/childrens-human-rights-network-blog/votes-children-case-universal-suffrage> [https://perma.cc/4Y4S-K232].

45. Aoife Daly, *Free and Fair Elections for Some? The Potential for Voting Rights for Under-18s*, in *THE CHALLENGE OF HUMAN RIGHTS: PAST, PRESENT, AND FUTURE* 290 (David Keane and Yvonne McDermott eds., 2012).

46. See WALL, ON DEMOCRATIZING DEMOCRACY, *supra* note 19, at 33–34.

47. CRC, *supra* note 1, Art. 13.

48. Daniel Hart & Robert Atkins, *American Sixteen- and Seventeen-Year-Olds Are Ready to Vote*, *ANNUALS AM. ACAD. POL. & SOC. SCI.* 633 (2010); Vivian E. Hamilton, *Democratic Inclusion, Cognitive Devel-*

enfranchisement of all adult men in the Second French Republic, it was proposed (but not enacted) that men should also have proxy votes on behalf of their wives and children.⁴⁹ This was also legislatively contemplated at various other points in French, German, and Hungarian history.⁵⁰ Most recently, the German Parliament's cross-party Children's Commission twice developed proposals, in 2003 and 2008, to grant infants from birth proxy votes by parents to be passed to children when parents see fit, but this proposal was ultimately rejected on the constitutional grounds that a proxy vote could not be personal, secret, and free.⁵¹ There have been several arguments for parental proxy voting by legal scholars: Jane Rutherford claiming, for example, that it is the best way to enact the notion of "one person, one vote"; and Robert Bennett asserting that "extra votes for parents on account of their children could help put American democracy into a semblance of liberal order."⁵²

Nevertheless, legal scholarship is now emerging around eliminating national voting age discrimination fully. The most developed discussions here are in Australia, Canada, and the United States. The Australian legal expert Robert Ludbrook argues in a 1995 paper, for instance, that because laws in every Australian state prohibit "age discrimination," these apply also to children's voting rights, which Australian democracy needs "if [their] political leadership and [their] political and social policies are to truly reflect the views of all sections of [the Australian] community."⁵³ Also in Australia, Robert Goodin and Joanne Lau argue that children's voting could be justified by the concept of legal "suretyship," a mechanism for combining competencies that could be applied so that "all the voters are 'co-signatories' with regard to electoral outcome."⁵⁴ In Canada, Cheryl Milne explains why a legal case can be made to use anti-discrimination law to amend Sec-

opment, and the Age of Electoral Majority, Faculty Publications, The College of William & Mary Law School Scholarship Repository 1467 (2012).

49. See generally Andre Toulemon, *LE SUFFRAGE FAMILIAL OU SUFFRAGE UNIVERSEL INTEGRAL* [FAMILY SUFFRAGE OR INTEGRAL UNIVERSAL SUFFRAGE] (1933); Jean-Yves Le Naour and Catherine Valenti, *LA FAMILLE DOIT VOTER: LE SUFFRAGE FAMILIAL CONTRE LE VOTE INDIVIDUEL* [THE FAMILY MUST VOTE: FAMILY SUFFRAGE VERSUS INDIVIDUAL VOTING] (2005).

50. See Jenny Gesley, *Family Voting as a Solution to Low Fertility? Experiences from France and Germany*, GLOB. L. GUEST POST (Apr. 19, 2018), <https://blogs.loc.gov/law/2018/04/family-voting-as-a-solution-to-low-fertility-experiences-from-france-and-germany/> [<https://perma.cc/P2ML-WSHK>].

51. See Harry De Quetteville, *Germany Plans to Give Vote to Babies*, DAILY TEL. (July 9, 2008), <https://www.telegraph.co.uk/news/worldnews/europe/germany/2275407/Germany-plans-to-give-vote-to-babies.html> [<https://perma.cc/8KNR-XRM2>]; Deutscher Bundestag, *Fragen zum Wahlrecht von Geburt an*, WD 3 - 3000 - 157/17, 8–10 (Sept. 7, 2017), <https://www.bundestag.de/resource/blob/531942/6669f3e29651882065938fc6a14fd779/swd-3-157-17-pdf-data.pdf> [<https://perma.cc/F9J9-5EQF>].

52. Jane Rutherford, *One Child, One Vote: Proxies for Parents*, 82 MINN. L. REV. 1463, 1512 (1998); Robert W. Bennett, *Should Parents Be Given Extra Votes on Account of Their Children: Toward a Conversational Understanding of American Democracy*, 94 NW. U. L. REV. 503, 565 (2000).

53. Robert Ludbrook, *Should Children Have the Right to Vote?*, NAT'L. CHILD. & YOUTH L. CTR. 1, 27 (1995).

54. Robert E. Goodin & Joanne C. Lau, *Enfranchising Incompetents: Suretyship and the Joint Authorship of Laws*, 24 RATIO 154, 165 (2011).

tion 3 of the Canadian Charter of Rights and Freedoms “to strike down the age restriction [on voting rights].”⁵⁵

In the United States, the anti-discrimination argument for ageless voting has revolved chiefly around the U.S. Constitution’s Fourteenth Amendment Equal Protection Clause, which guarantees that “no state shall . . . deny to any person within its jurisdiction the equal protection of the laws.”⁵⁶ The Constitution offers no legal precedent for barring children’s voting, only for protecting it for adults. The most detailed analysis is made by the legal scholar Samantha Godwin, who shows that children’s suffrage is demanded by a rigorous application of established equal protection jurisprudence. According to Godwin, “a persuasive case can be made that children represent a suspect class for equal protection purposes [similar to race, religion, and national origin], and that children’s fundamental rights are implicated in many of the restrictions against them.”⁵⁷ Voting is a constitutionally established fundamental right that cannot be denied to children for any compelling state interest or legitimate state encroachment. On the contrary, “without [children’s] political enfranchisement, politicians have little political incentive to act in accordance with children’s political interests, and children cannot exert political pressure to ensure that their interests are taken into consideration.”⁵⁸

Although no international or national laws therefore explicitly establish ageless suffrage, it is also the case that in general they can be argued implicitly to require it. If so, then voting age restrictions in international and national law are *de facto* discriminatory. The democratic right to vote is a universal and equal freedom that can legitimately be denied only for clear reasons of harm to others or societies. It is difficult to show, as we have seen, any such harm to either children or adults, and on the contrary, there are clearly widespread and systemic advantages. The reason why this legal and human rights logic is not followed can only be attributed to uncritical adultist biases about children’s political competencies and the likely political consequences. In the realm of voting rights, absent significantly more compelling evidence against them, children are discriminated against simply because of their age.

CONCLUSION

The problem of age discrimination against children is consequently profound. It is an expression, not just of children’s occasional denial of re-

55. Cheryl Milne, *Legality of Age Restrictions on Voting: A Canadian Perspective*, in *EXPLORING CHILDREN’S SUFFRAGE: INTERDISCIPLINARY PERSPECTIVES ON AGELESS VOTING* 177, 192 (John Wall ed., 2022).

56. U.S. CONST. amend. XIV, § 1.

57. Samantha Godwin, *Children’s Oppression, Rights, and Liberation*, 4 *NW. INTERDISC. L. REV.* 247, 301 (2011).

58. *Id.* at 294.

spect or rights, but rather of a deep and systemic normative adultism. As illustrated by the case of children's suffrage, age discrimination rests on a historical groundwork of largely invisible and untested assumptions. Adultism, akin to sexism and racism, marginalizes children's experiences and renders invisible the ways they are impacted by and impact democratic life. It cuts short centuries of progress toward voting equality and universality. But in recognizing the systemic nature of the problem, it is possible also to imagine children's voting, as well other structural issues, as a question of fundamental human rights, one that demands strict scrutiny of shared beliefs about voting competencies and consequences. An adultist analysis is thus vital to unpacking normative discrimination across law, policy, and society.