

Two Arguments for Child Enfranchisement

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The right to vote is fundamental to democratic citizenship; it is one of the most important badges of political and legal equality. However, we deny it to children, generally without discussion. After exploring conceptions of ‘political capacity’, I launch two arguments. The first is the Symmetry Argument: whatever level of capacity we use for the disenfranchisement of children should be used in symmetrical fashion to disenfranchise the elderly. The second is the Argument from Domains: if we attribute responsibility to children in the legal domain, we should also attribute it to them in the political domain. If we do not actually disenfranchise the elderly, we must find a good reason why we displace that symmetry. I discuss such objections and show why they can be refuted or disregarded.

Keywords: enfranchisement; children; voting age; political capacity; symmetry

Political capacity is generally accepted to be something that adults have, and children do not.¹ We assume that children should not be enfranchised because they lack political capacity, but it is unclear what ‘capacity’ actually means for these purposes. We think that ‘since all adults are entitled to vote, they are obviously all capable of voting; hence, it is somehow assumed unnecessary to inquire into what it is they are all capable of doing’ (Schrag, 1975, p. 445). Then, when a child becomes an adult, he or she somehow attains the relevant capacity. Notice, though, that capacity eventually wanes with age, but we do not disenfranchise the elderly on those grounds. This article will explore the issue of symmetrical disenfranchisement between children and the elderly on the grounds of capacity.

The first section outlines a confused practice of treating children as lacking capacity in the political arena. We often suppose that children have a socially and politically distinct status from adults, but this may not be as clear-cut as we think. The second section surveys three possible meanings of ‘political capacity’. Theorists have applied the term inconsistently, resulting in confusion. In the third section, I introduce the Symmetry Argument as the first argument in my title: for any lower age boundary we have for enfranchisement, we ought to have an upper one where the old are disenfranchised on the basis of a same lack of capacity as the young. The fourth section offers my second argument: the age of legal responsibility may provide an appropriate lower boundary on the basis of consistent treatment of children across domains. Finally, I reply to some objections to the Symmetry Argument before concluding.

I will not be arguing for any particular age for the enfranchisement of children, nor will I be arguing for any particular form of enfranchisement. An actual blueprint for what a theory of child enfranchisement should look like warrants further empirical study and is beyond the scope of this article. All that I wish to do here is unsettle the existing convictions for the asymmetrical treatment of the young and the old when it comes to allowing those with the same levels of capacity the right to vote.

A Confused Practice

Just as adulthood is associated with work and responsibility, so childhood is traditionally perceived to be 'synonymous with innocence' (Alston *et al.*, 1992, p. 56). Perhaps the argument for child disenfranchisement is simply that we ought not to burden children with the difficulties of casting a responsible vote.² However, we should be suspicious of this argument, as the same kinds of considerations were historically offered against enfranchising women (Brownson and Brownson, 1885). Calling someone 'innocent' is often a covert form of oppression; it is a failure to take him or her seriously as a political agent. If we use the same argument of innocence against children, we are not taking *them* seriously as political agents.

The failure to take agents seriously goes to the issue of respect. John Rawls claims that civil liberties are necessary for citizens to have self- and social respect, and voting is the vehicle by which this occurs.³ That is, the franchise is symbolically valuable: those who hold the right to vote are seen to be sufficiently independent and competent to contribute to the decision-making process.⁴ Indeed, Judith Shklar notes that the possession of that right to vote is symbolically significant to providing political standing:

To be a voter was thus as much a condition as a call to action, and those who do vote today are still celebrating the civic estate for which so many generations of excluded men and women have fought so energetically ... Not the exercise, only the right [to vote], signified deeply (Shklar, 1991, pp. 27–8).

What motivates this discussion is the idea that political participation is crucial to full membership in the democratic state. But how do we decide who has the franchise? Norman Daniels suggests that what it means truly to enjoy democracy is that we cannot be constrained in having the franchise, except in cases of competence or maturity (Daniels, 1996, p. 268). If we adopt such an inclusive conception of democracy, our starting point for enfranchisement is the inclusion of everyone, regardless of age, gender, race and social status (Olsson, 2008, p. 57). This is distinct from an exclusive conception of democracy, where the addition of groups to the political community (such as women or racial minorities) had to be justified. Instead, on the inclusive conception, we assume that everyone is to be in the political community, and we justify the exclusion of children if they are seen to be an exception to universal suffrage.

But are they? The idea of childhood innocence is relatively outdated. Nowadays, children are given partial aspects of adult citizenship: there is an age range where we afford children rights to drive,⁵ have consensual sex,⁶ smoke cigarettes⁷ and consume alcohol.⁸ Even though these activities are more often than not associated with adult behaviour, we (somewhat) readily afford children these social rights. However, in most countries, we insist on withholding their political rights until they are eighteen.⁹ So although we engage children socially, the opportunity to participate politically as a logical step is usually not considered.¹⁰

I will survey some suggested meanings of political capacity below. I will not advocate any particular one of them. Instead I will simply note one remarkable fact: applied symmetrically, *all* conceptions of political capacity would lead to the disenfranchisement of the elderly if children are disenfranchised.

Three Conceptions of Capacity

If we are going to say that children should not be enfranchised because they lack political capacity, what does that mean? Unfortunately, authors have offered their own inconsistent accounts of capacity, such that usage of the term has led to confusion. Here, I will survey three different meanings for the term which are pitched at different levels of difficulty. These notions are not intended to be hierarchical.

Rational Decision Making

The most basic requirement for capacity is rationality. As long as the voter *could* make a rational decision, they would be enfranchised under this model. Carl Cohen advocates this model, but claims that intellectual ability only makes it easier to ‘make democracy successful’ (Cohen, 1975, p. 460). Clearly then, older children have the capacity to make rational decisions.¹¹ But how does one prove this?

Surely by ‘rational decision-making capacity’, Cohen does not mean the ability to do *strictly* rational things, like formal logic. Understood in this way, we could test people’s capacities by having them successfully prove a series of logical syllogisms, but very few people would qualify. But we could simply *infer* that adults have the right sort of capacity when they are put in a variety of everyday situations and act in ways that appear rational. Of course, they might not act rationally all the time; as long as it is done with sufficient frequency we can say that the actor has the *capacity* to be rational. Then, the argument goes, children are not placed in the same variety of situations and therefore have not demonstrated that they can act rationally, so they should not be enfranchised. However, whether this is true is contentious: Cohen’s ‘experiential’ version of rational decision making builds in considerations of maturity and social awareness that older children may possess.¹²

Understanding of the Political Process or Voting System

The next notion of capacity relates to the voter’s understanding of the significance of voting and its role in the political system. This involves recognising that a vote represents a choice of one candidate over another, that the person with the most votes wins, and that voting comes with social consequences. This is congruous to Tak Wing Chan and Matthew Clayton’s conception of ‘political maturity’, which addresses one’s ‘social awareness and responsibility’ in making decisions that affect the whole of society (Chan and Clayton, 2006, pp. 538–42).

One argument against children having political understanding is Chan and Clayton’s empirical evidence of ‘political knowledge’ (Chan and Clayton, 2006, pp. 547–50), based on the 1997 British Election Studies and the 1998 British Social Attitudes Survey as to how much political knowledge children have. In those surveys, respondents were asked to assess the truth of the following statements:

- (1) Margaret Thatcher was a Conservative prime minister.
- (2) The number of members of parliament is about 100.
- (3) The longest time allowed between general elections is four years.
- (4) Britain has separate elections for the European Parliament and the British parliament (Chan and Clayton, 2006, pp. 547–50).

Chan and Clayton report that, of all the age groups stated in their study,¹³ almost all respondents got the first statement correct, but there was 'a clear age gradient' with the other questions, such that the proportion of respondents giving correct answers increased with age (Chan and Clayton, 2006, p. 548). They conclude that 'young people are less knowledgeable than older people about political facts' and should not be enfranchised.

But are political facts necessary for enfranchisement at all? We could imagine a voter who was ignorant of the number of seats in parliament, but could critically assess and express what was politically important to him or her. Should *that* not matter more? In any case, these facts are not essential to know as a voter of *any* age. Voters vote when they are told to, for whatever parliament they are told to vote for. What is clear is simply that we are more prone to retain facts that we use.¹⁴

Furthermore, what Chan and Clayton – and a plethora of other studies of a similar ilk¹⁵ – are missing in their argument is the fact that some empirical knowledge about political systems comes from *participating* in that system. Since under-eighteens do not participate in elections, they do not need to know and use information required for the survey. However, were children to be enfranchised, their political knowledge would increase. The point here is that children would obtain and develop the relevant political knowledge through participation.

Here is an analogy from driving: to be given the right to drive, one has to show that one can drive, and this is achieved by practising driving. More complex skills – such as reverse parking – can be developed over time. Similarly, to be given the franchise, perhaps one has to show that one can vote, and this is achieved by voting at a basic level, and a more robust political understanding can develop over time (Macpherson, 1978, pp. 73–6). That is, participation in the activity gives rise to the ability to perform that activity. But then there is convincing evidence that children understand the concept of voting, given that they are already familiar with the practice of voting.

In most secondary schools, there is usually some form of student government. Student officers are elected to represent the students by working with other parts of the school's body, following a period of nominations, campaigning and voting. Given that these systems are designed to mimic 'real' politics, we cannot say that children who engage in student elections are ignorant of what it means to vote. Additionally, John Dewey argues that the presence of student councils engages students in learning about democracy and leadership, which in turn produces a more politically aware generation (Dewey, 1930). So children who understand the act of voting already have the same political capacity as adults.

Political Awareness of Specific Issues

The final kind of capacity requires an understanding of specific political issues and candidates. Party identification implies an understanding of a particular party's policies and key players. Francis Schrag's 'capacity test' sees potential voters being enfranchised based on their ability to associate a political representative or policy with a political party, with accommodation for language and accessibility (Schrag, 1975, pp. 542–3). The claim would be that children do not understand political issues and therefore lack the requisite capacity, but ignorance of political facts is not a bar to enfranchisement. Stefan Olsson asserts that there is a 'significant gap between what voters know about politics and what they ought to

have known if they were to be on the same level as their representatives' (Olsson, 2008, p. 63). Despite a large number of ignorant voters, the machinery of democracy does not fail as ignorant voters vote randomly.¹⁶ Consequently, no 'incorrect' answer garners enough support to override a 'correct' one. So ignorance should not be a problem for democracy.

The First Argument: The Symmetry Argument

Consider the following statement:

If whatever grounds we have for disenfranchising the young also apply to the old, then the young and old ought to be disenfranchised symmetrically.

I call this the Symmetry Argument. If we disenfranchise the young on the grounds of a lack of capacity, we must be prepared to disenfranchise the elderly if the same is true of them.¹⁷ Notice that in the second section I did not advocate for a particular notion of what capacity should mean. This is because the strength of the Symmetry Argument lies in its flexibility to apply to *whatever* conception of capacity we adopt. Regardless of what we stipulate to be the appropriate meaning of political capacity, for any age, A, at which we disenfranchise children due to a lack of capacity, we can use the Symmetry Argument equally to disenfranchise the elderly over some other age A* who also lack that capacity.

So far I have been discussing the enfranchisement or disenfranchisement of people of a particular age group. However, we could ask why we should enfranchise voters on the basis of membership in an age group, rather than on an individual basis, such as in the case of licensing.¹⁸ Why not have individualised testing?

Here are three responses. First, it is a question of efficiency. The practical costs in individually testing each potential voter would make it a virtually impossible enterprise. Second, it is not clear how to set up this test. For the reasons I gave against Chan and Clayton, we cannot make it a test of political facts that no-one has reason to learn until they actually have the vote; to do so would be circular. Third, individualised determinations of incompetence are more of an affront to dignity than rough-and-ready group-based ones. Each individual thus excluded can imagine him or herself the exception, where there may be a stigma attached to those who fail the individualised tests. There is, therefore, more harm done to a person excluded on an individual basis than on a group basis, even if the result of disenfranchisement is the same in both cases.

Of course, there would have to be some testing to see which age groups proportionally fell below the relevant threshold for capacity. Because of the law of large numbers, however, tests that have a low reliability as applied to individuals may have a high reliability as applied to large groups. We could use a test of capacity that is unreliable at the individual level for saying which individuals should or should not vote to determine, with high reliability, the age at which large (e.g. age) groups are competent or not to vote. Furthermore, if we accept that there is harm done by excluding those who fail the test, we will actually reduce the risk of mistakenly harming people through exclusion by testing them as members of a particular group, rather than on an individual basis. If anything, these two reasons appear to be arguments *for* the use of groups.

So let us proceed on the basis of using age groups.¹⁹ Clearly, it is not the fact that children are eighteen per se that justifies their enfranchisement. Instead, it is that we think a sufficient

proportion of eighteen-year-olds are competent enough to justify their enfranchisement. Generalised to a rule, when X per cent or more of people of a particular age group have the requisite capacity (on any scale of capacity), that age group is entitled to the franchise. Conversely, we could argue that once X per cent or more of any age group sees its capacity drop *below* that threshold, that group ought to become disenfranchised. Presumably, there are a sufficient number of people between ages 20 and 70 with enough capacity for their entire age group to stay enfranchised, but senility and other forms of cognitive degeneration may work against people in the older age demographics.

This could be rephrased as the following argument:

- (1) Whatever age-based correlates we accept as surrogate measures of those 'grounds that really count' in the case of one age group ought to apply to all other age groups.
- (2) If the capacity argument works against children in keeping them disenfranchised if X per cent or more of their age group do not possess the requisite capacity, the elderly should be disenfranchised on the same grounds if X per cent or more of their age group also do not possess the requisite capacity.²⁰

For symmetry's sake, we should decide what proportion of the old are incompetent in the same way we decide what proportion of the young are incompetent. If age-based correlates of competence are what justify disenfranchising the young at present, we could point to scientific evidence about brain deterioration in the elderly and extrapolate that (Andrews-Hanna *et al.*, 2007; Richards and Deary, 2005; Spirduso, 1980). More accurately, we could also examine legal applications for guardianship, since guardianship appointments are made in the event that an individual can no longer manage his or her own affairs.²¹ Based on scientific evidence and (successful) applications for guardianship, we could determine an age group in which a proportion of members fall below the requisite capacity. Guardianship legislation also offers another point of symmetry in capacity, since adults who require guardianship are effectively seen as being identical in capacity to children.²²

Recall the inclusive account of democracy from the first section. There, if we wanted to exclude a particular group from the polity, we needed to justify that exception. It follows, however, that the exceptions should apply equally across groups. So either children should be enfranchised if their level of capacity is an exception, or both children and the elderly should be disenfranchised if both groups are seen to lack the requisite capacity.²³

Perhaps the actual numerical age for elderly disenfranchisement might be so high that hardly anyone actually attains it (such as 120) but the argument could still hold. Provided that X per cent of the 120-year-olds in a particular electorate fall below the requisite capacity requirement, they would, under the Symmetry Argument, be under a blanket disenfranchisement. Of course, if there are no 120-year-olds in the electorate, the argument, in practice, would hold but not actually obtain.

The Second Argument: The Argument from Domains

So far, I have presented a dilemma: we should either enfranchise some children or disenfranchise some elderly. If it is true that we ought not to disenfranchise the elderly, then for consistency's sake we ought to enfranchise *any* age group of children with the same political capacity as the oldest cohort of elderly voters.

We can be consistent, however, about different things. The Symmetry Argument asks for consistency across ages, but the argument I will present here will seek consistency across domains. Simply put, my two arguments for child enfranchisement are as follows:

Inter-ages consistency (the Symmetry Argument): if we enfranchise the elderly based on some level of competence then we should enfranchise children with the same level of competence.

Inter-domains consistency (the Argument from Domains): if we recognise children's competences in other fields of the law then we should recognise children's competences as voting agents.

The arguments as I have formulated them do not nominate ages for the enfranchisement of children (or the disenfranchisement of the elderly). All I suggest is that we ought to be consistent. So my account is sympathetic to the maximal enfranchisement of *all* children regardless of capacity, if we allow *all* of the elderly, regardless of capacity, to vote. Likewise, if we think children are competent in some domains, they should be competent in other, related, domains.²⁴ But perhaps we are pragmatically limited in other domains by what lower boundaries are stipulated there. This, in turn, would impose pragmatic limits on the argument I outline below, although it would not affect the principled reasons for making the argument in the first place.

Suppose that we *do* decide to enfranchise children. At what age is it reasonable to presume that children develop the sorts of capacities outlined in the second section? It is fine to claim that the voting age should be lowered, but harder to nominate another age for enfranchisement that still fits the criteria for capacity. If we hold that we should be consistent in how we treat children, we can look at other domains where we presume that children have similar sorts of capacity.

Generally, we think that children develop mentally, physically and socially. As children develop a social identity, we attribute them with increasing opportunities for participation and autonomy. This attitude is reflected in Article 12 of the United Nations Convention on the Rights of the Child:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.²⁵

Richard Powell claims that the main feature of a child's societal development is that 'a child capable of asserting rights is also capable of accepting the consequences of his or her actions'.²⁶ This notion of being capable of foreseeing the consequences of one's actions is reflected in our thinking that children have developing capacities for legal responsibility.

Those other areas of the law offer rationales for why we might attribute responsibility to children for cases that are as serious as voting. It is often said that it is worse to convict one innocent man wrongly than it is to let ten guilty ones go free. If this is true, then we should be very careful about attributing criminal responsibility to people, so as not to wrongly find someone guilty who is not. But one is not criminally responsible if one cannot be found to be criminally responsible. We often think that very young children lack the requisite capacity to commit a crime. However, in Australia, for example, children found guilty of a criminal offence may be held fully responsible for their actions

from the age of fifteen, without the prosecution having to prove that the child actually knew the wrongness of his or her act.²⁷ Why? Because we presume that fifteen-year-olds have sufficient knowledge of community expectations (including ideals of right and wrong) and, importantly, are aware of the consequences of their actions.²⁸ As a result, they have the capacity for criminal responsibility. The nature of *mens rea* in criminal law incorporates the element of appreciating the severity of one's actions, and we attribute this to children from fifteen onwards.

Given the seriousness of criminal offences and the understanding that a fifteen-year-old is expected to have in these matters, we can argue that, like the age of criminal responsibility, the age of *political* responsibility could similarly be around fifteen. Both require the agent to decide between several courses of action and to understand the consequences of those choices. Indeed, legislation for both crimes and voting in various jurisdictions requires an awareness of the 'nature and significance' of the action.²⁹ Both are also actions with great social and personal significance. The harm that is done in the case of irresponsibility affects society at large.

Of course, it might be objected that 'rule following' is easier to do than 'rule making', but this only applies on a simplistic understanding of rule following. On a robust understanding of rule following, individuals not only have to know what the rules are, but also *why* they are the rules. They have to know what is right and wrong, and also understand the broader consequences of non-compliance. This process is akin to viewing the laws from a Hartian 'internal point of view', and would be much closer to the kind of understanding and mentality required to be a rule maker as well (Hart, 1997, pp. 88–9).

It might also be objected that crimes are individual actions, while voting is a collective action, so they are dissimilar. It is not always true that crimes have to be done individually: one can conspire, be an accessory, or aid and abet. Similarly, one can vote even though there is only one voter. A vote does not stop being a vote on account of the number of people participating. (Of course, it might become less useful for decision-making purposes, but the fact that it is a vote is not invalidated by its usefulness.)

The age of fifteen is also not strictly important. The age for criminal responsibility varies by jurisdiction (say, 10 for England, 14 for Italy or 16 for Spain), but all this argument requires is mere consistency. *Whatever* age a government considers appropriate for children to appreciate the seriousness of their legal matters would also be the same age at which children would be able to appreciate political matters.

So what I have here are actually two consistency claims: the Symmetry Argument in the third section argues for consistency across age groups, in that we should treat equally competent groups the same. The Argument from Domains outlined here claims that we should seek consistency across domains in which relevantly similar responsibilities are involved (that is, criminal and political). The two arguments I have presented are independent, but connected.

If you do not agree that fifteen-year-olds should be enfranchised, that does not mean that the Argument from Domains fails. Rather, perhaps the age for criminal responsibility should be raised to eighteen, instead of the age for political responsibility being dropped to fifteen. I am not arguing for one solution in particular; rather, I suggest that the solution should be the same in both cases.

Objections and Responses

Here is a common objection against child enfranchisement: disenfranchisement is not unfair since the condition of childhood is temporary and universal (Weale, 1999, pp. 154–5). So there is no problem with having children wait a few more years for their right to vote. But it is also true that people will eventually become 30, or 50 or 60 years old, so being under *those* ages is also temporary and universal, yet we would object to the disenfranchisement of, say, 45-year-olds and their having to wait ‘a few more years’ if we made the voting age 50. Furthermore, I think this objection misses the point. The whole idea of enfranchisement is that those who have the capacity to vote should be allowed to, *at the time* at which they are perceived to have that sort of capacity, not several years afterwards.³⁰

But to ensure that the symmetry really holds, we must examine and refute arguments to justify why we should *not* disenfranchise the elderly – arguments that claim that there *is* a relevant asymmetry between the young and the old. As I have noted earlier, there are obvious asymmetries, but what we are interested in here is strictly normative. What an asymmetry needs to do in order to refute my point is outweigh the claim that we ought to treat those with the same capacities in the same way. So what we are strictly interested in is just the capacities of children below age A and the elderly above age A*. The logic of treating them consistently on the grounds of their same capacities means that not taking the vote away from the elderly needs to outweigh the fact that we ought to treat them consistently in the first place. Offered here are several arguments for that position, and my responses to uphold the Symmetry Argument.

Loss Aversion

It is often thought to be worse to have something taken away from you than not given to you in the first place. The elderly already have the vote, so disenfranchising them means taking the vote away from them. However, children do not have the vote, so in being denied the vote nothing is taken away from them.

Goods are good: its being better to have them than not is their defining feature. But it is not clear why taking goods away from people is worse than their not having the good in the first place.³¹ Here are three things that could be particularly bad about it. The first might simply be the psychological fact that people tend strongly to prefer avoiding losses to acquiring gains, even for goods of the same value (Kahneman and Tversky, 1979). The objection, as it applies here, is that the elderly will feel a higher degree of dissatisfaction by the fact that they are disenfranchised than children, because their disenfranchisement means taking the vote away, whereas children never had the vote.

Loss aversion focuses on the psychological fact of feeling worse off from losses. Perhaps the elderly *would* be worse off, in the sense that they would feel worse about losing their franchise. But the fact that people are psychologically inclined to dislike it more when things are taken from them is not at all a good argument to displace the symmetry. It would be absurd to claim that the fact that someone has hurt feelings or feels offended about no longer having the right to drive is a sufficient reason to allow them to keep their right, when he or she is incompetent to do so. Why should voting be any different?

For an age-group-based case, consider the following example. Federal Aviation Association guidelines stipulate that nobody over the age of 65 can hold a pilot's licence, even if any such individual over that age is competent to fly a plane.³² For public policy reasons, it is better to impose a blanket restriction on possibly competent pilots than to risk errors that could result in serious harms. We can imagine a case of an elderly pilot who has her licence taken away on the grounds of age. It is understandable that she may be upset or indignant or even offended, but the fact that she does not want to lose her licence – even if she is competent – is no kind of argument against taking it away from her, if there are good and countervailing reasons why we should do so. Likewise in the case of voting, the fact that both groups are deemed to lack the requisite capacity outweighs the fact that the elderly might asymmetrically feel dissatisfied by their lack of the franchise.

If the loss aversion objection is simply the claim that people feel psychologically worse off for no good rational reason, then this is not a reason to keep them enfranchised. Here is the second way in which loss aversion might apply. Perhaps those who have the right to vote expect to maintain that right, in a way that those without the right to vote have no reason to expect to be granted the right. That is, there is a presumption that someone who enjoys the benefit of voting should continue to do so unless proven otherwise. Conversely, there is a presumption that someone without the benefit of voting does not deserve it unless proven otherwise. As such, the elderly would be worse off because they expect that they will continue to vote, whereas children have no such expectation.

The idea of expectations exists in related areas, such as grandfather clauses, where an old rule applies to an existing situation or group of people, while a new rule applies to everyone else.³³ These are common in planning and zoning ordinances. There, we may 'grandfather in' existing uses when bringing in new land-use planning laws: existing users of the land can continue using the land in a particular way, even if other (future) users are not permitted to use the land in that way. The reason for this relates to the sunk costs that are invested into the land; after all, those users were reasonably planning their future on the assumption that the laws would be a particular way. So it might be unfairly costly for them to change the way they are in operation.

But how does this analogy apply in the case of enfranchisement? The elderly do not plan their future crucially around the assumption of continued voting. There are no sunk costs for elderly voters in the franchise. Perhaps expectations do not apply in the franchise: it is not clear how a voter could plan their future because political decisions are made collectively, so individual planning might simply be pointless. Consequently, this interpretation of the loss aversion argument does not provide us with reasons for allowing the elderly to maintain their franchise.

But here is yet another way that loss aversion could be understood. Perhaps there is something morally worse about denying the elderly the right to vote: by removing the vote we are somehow punishing the elderly for not having the right kind of capacity, and it is morally worse to punish than not to punish (in that punishment is non-dignifying), and this is an asymmetry.

Whether or not it is actually asymmetrical is questionable. What is relevant is the fact of whether one possesses the right to vote, not the history of how one became disenfranchised. If we are punishing the elderly above some age A^* by denying them the vote on the

grounds of capacity, then surely we are equally punishing the young below some age A by denying *them* the vote on those same grounds. (If the argument is that we are depriving the elderly of a status that they have long held, then perhaps grandfathering people out of the franchise could soften the blow a little.) Furthermore, although the right to vote is status conferring, it does not come without cost. Having the right to vote confers certain obligations on the voter, and these obligations cannot be fulfilled if one is incompetent. But then, it seems unfair to impose obligations on people who cannot meet them. We have a responsibility not to put people into situations where they will fail to live up to the required norms because they have to act outside the scope of their (defined) capacities.

The Prior History Argument

The elderly have had experiences (of voting and following past campaigns) that children lack, and in so far as people learn by doing, the elderly have therefore learned more about politics and are more politically competent precisely because they currently do and in the past have exercised the right to vote. So the elderly can appeal to their voting history to justify their understanding of relevant political issues. As children do not have a prior voting history, they cannot appeal to one to show their voting capacity.

The point of this objection is that the elderly have had some justification for the way that they are voting. The fact that they have previously exercised their capacity for understanding specific political issues and platforms demonstrates their ability to vote. But this is not necessarily a good objection, for while there may be similarities in political issues across elections, the fact that we are talking about one particular election would presumably put children on the same level as everyone else.

Even if we insist that adults might be able to process the new information on policies and parties more quickly than children, this is not problematic for my argument. In fact, we can explain why this happens. Most people tend to vote on the basis of party loyalty (Apter, 1964; Rose and McAllister, 1990). There, the elderly have an advantage over the young of equal capacity, by virtue of their having formed a view about what the 'right' party identification was for them, back when they still could do that. Now, all they have to remember is 'which party', not 'why'. This can be done with relatively low levels of capacity. However, the task for children as first-time voters is to answer both the 'which party?' and 'why?' questions, which requires more capacity.

If it were really true that remembering 'which party' to vote for without understanding (any longer) 'why' is sufficient to cast a good vote, then that would be grounds for treating existing voters differently from new voters of the same capacity. But it is not true, because parties might have changed their positions or new issues might have emerged which would have led a voter to change his or her party identification if he or she still had the capacity to do so.

The Objection from Self-Defence

If we disenfranchise the elderly, they will be unable to participate politically ever again. Then, they may be at the mercy of younger voters who could vote for policies that harm them. Voting is how we defend ourselves politically, so we should not take the vote away from the elderly as it leaves them politically defenceless. Furthermore, an asymmetry may

exist between the elderly and children in that policy makers have an incentive not to act against children who will one day become voters (and may vote them out if they make unfavourable policies), whereas no similar disincentive exists in relation to the elderly.

This objection assumes that people will have and act on the same interests later in life, when they have become voters, as they had and did when they were children. If they do not, then it does not follow that voters would necessarily punish policy makers for the way they were treated as children. If they did, we would expect to see policy makers punished more heavily than they typically are for underfunding education or child health (Hinrichs, 2002, pp. 37–9). Furthermore, there is another countervailing asymmetry that is equally strong. Remember, policy makers age too. Surely they would not want to be subject to poor treatment when they are old. It is therefore unlikely that they would implement harmful policies against the elderly if it means one day they would be subject to those as well, even (or especially) if they did not then have a vote with which to defend themselves against such policies.³⁴

It is also not clear that we use the franchise as a mechanism to defend our political rights in the first place. Instead, there is often evidence that we vote in the public interest, given that voting is seen to be a collective exercise (Grafstein, 2009; Kinder and Kiewiet, 1981). Given that our individual votes typically are so instrumentally weak, the idea that voting should be used as a means to protect oneself does not apply for *any* voter. Even if they had the vote, the elderly would not be able to defend their claims on the basis of individual voting, given that they are a minority in the voter population. Instead, we have other mechanisms – such as the rule of law – that offer much better ways for individuals to protect their rights.

Finally, notice that children are at present disenfranchised, and hence unable to defend themselves politically. But they do not seem to be terribly harmed by policies. Why is that? The answer is obvious: children have family members, guardians and ombudspersons to protect their interests. But why cannot family members, guardians and ombudspersons do the same for the elderly? Indeed, guardians for the elderly are not uncommon and we often employ them *precisely* because the person is deemed incompetent. Furthermore, recall that the argument for disenfranchising the elderly is because they are deemed similarly incompetent as disenfranchised children. That incompetents should have their political interests represented is something that seems quite clear. But while children who are currently disenfranchised are defenceless in the political sense, they are not harmed by policies because other political agents look out for their interests. Likewise, were the elderly to be disenfranchised, we could reasonably think that other political agents would look out for them as well.

The Problem of Statistical Dispersion

Suppose we say that if half or more of the members of any age group lack the requisite capacity, then members of that group should not be entitled to vote. Let A be the maximum age such that, below that age, fewer than half the members of that group have the requisite capacity; and let A^* be the minimum age such that, above that age, fewer than half the members of that group have the requisite capacity. But now suppose that there is a much greater spread in capacity among members of the elderly excluded than among the young

excluded.³⁵ In that case, a much larger proportion of the elderly denied the vote would be very far over the requisite threshold than the younger. That is another asymmetry, and it challenges the idea that the young and old are relevantly similar in terms of capacity, as the distribution of the elderly along the scale of capacity would be much greater.

The objection here is that these elderly would suffer a substantial injustice, where 'substantial injustice' is calibrated in terms of how many of them are disenfranchised despite being far over the threshold. But that seems to be irrelevant. If capacity is a threshold notion, then all that matters is which side of the threshold they are on, not *how far* they are over or under the threshold.³⁶

If competence to vote were a scalar rather than a threshold notion, it might make sense to worry about how far someone is from the threshold. But treating competence to vote in that way would have other implications that we would, nowadays, regard as unacceptable. If competence were scalar, for example, then weighting votes according to where they lie on the scale and giving double votes to super-competent people (those who were, say, two standard deviations or more above the threshold) would be acceptable. J. S. Mill may have thought that a good idea (Mill, 1861, pp. 155–80). However, that would be fundamentally against the basic conception of democracy as currently understood.

Perhaps we could insist that the magnitude of the injustice done to the elderly is relevantly asymmetrical. Given that we have a greater dispersion of capacities in the elderly, we might, for example, have to disenfranchise a very old but brilliant political scientist (who perhaps is brilliant precisely because he or she has witnessed and analysed so many elections) on the grounds of age. But their disenfranchisement seems to be more unjust than not enfranchising a random fourteen-year-old who barely makes it over the accepted threshold for capacity. Even so, although it might be true that the degree of injustice is different, the only way by which we arrive at this formulation is by examining people's capacities at an individual level, and I have already given reasons against individualised testing.

More Generally

Recall the formal structure that the Symmetry Argument takes. The objections that I have presented here all attack the idea that we should treat those with the same proportions of capacity in the same manner. However, this is a non-exhaustive survey. Obviously, there are *some* asymmetries between the young and the old, but if the lack of capacity is the morally relevant fact that distinguishes the enfranchised from the disenfranchised, then any asymmetry that we have between the young and the old needs to be weighed against the symmetry that exists between their levels of capacity. For instance, it is obviously true that the elderly have more life experience, but how much life experience does an enfranchised eighteen-year-old have? Since we are at present giving the right to vote to people without experience, the fact that there is an asymmetry in experience does not add much, and cannot trade off with capacity. Given how fundamentally important the franchise is for democratic participation and how harmful the wrongful disenfranchisement of any citizen would be, an objection against the Symmetry Argument would have to be quite serious indeed in order justifiably to displace the symmetry. However, I find the objections presented here to be unconvincing to justify the asymmetrical treatment of otherwise similar people when it comes to allowing them to vote.

In summary, the reasons against the Symmetry Argument for why we do not disenfranchise the elderly are not sufficiently important to displace the principle that we should treat like kinds alike. As a result, the symmetry still stands, and 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.

Conclusion

I have offered two arguments for granting children the franchise. Despite ambiguities in the literature on what is meant by political capacity, I argued via the Symmetry Argument that whatever account of capacity we adopt should be used equally to exclude young and old from the franchise once the relevant proportion of members of a particular age no longer show that capacity.

My second argument is the Argument from Domains: for any age at which we might think that children are legally responsible, we could equally argue that they should likewise be seen to be politically responsible. Both of these are simply arguments from consistency: we should treat like kinds alike, whether they are the domains in which we interact with each other or the people to whom we afford democratic membership.

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Notes

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- 1 Of course, this does not mean that *all* children lack political capacity and *all* adults have capacity. Both adults and children have *some* degree of capacity, which is to be measured on a continuum rather than considered a binary property. However, the ordinary use of the language suggests that adults have political capacity over some relevant threshold for enfranchisement, and children do not meet this threshold.
- 2 Usually, voting is not terribly taxing. 'Burden' here is to mean that there are some non-negligible costs associated with voting as well as the responsibility that comes with the franchise.
- 3 Freeman, 2007, p. 76; Rawls, 1999, p. 234; 2001, p. 131; 2005, pp. 318–9.
- 4 Voting is also instrumentally and expressively valuable, but I am not defending those views here.
- 5 In Australia, children can obtain learner driver's permits at 16, while 16-year-olds in the United States can already have full licences, having obtained a learner's permit at 14.
- 6 The age of consent can be as low as twelve in parts of Canada, or as high as twenty in Tunisia, or could depend on whenever the parties become married (such as in Saudi Arabia).
- 7 Children in Ireland can smoke cigarettes from sixteen, but cannot purchase them until they are eighteen. In Japan and Kuwait the smoking age is twenty and twenty-one, respectively.
- 8 In Germany, a child can buy and consume wine and beer at sixteen but has to wait until eighteen before he or she can buy and consume hard liquor.
- 9 Perhaps it is one thing that children are in control of their own lives, but something else to be in power over other people. Mill suggested in *On Liberty* that 'the individual is sovereign' only in so far as one's actions do not harm others. Perhaps we think that children should not vote because their decisions could potentially harm others. But they are not the only individuals with power over other members of the community – if anything, they are merely adding their political voice to a collective decision-making process (Goodin and Lau, 2011).
- 10 There have been some moves to reduce the voting age. In the 1990s, the voting age for municipal elections in some states of Germany was lowered to sixteen, but kept at eighteen for elections for the chancellor. In Britain in 2006, the Power Inquiry called

- for a reduction of the voting and candidacy age for the House of Commons to sixteen. In 2007, Austria became the first of the world's leading democracies to adopt a voting age of sixteen for all purposes (*The Independent*, 2008; White, 2006).
- 11 For further discussion on this point, consider arguments for enfranchisement based on the Condorcet Jury Theorem (Goodin, 2007; Goodin and Lau, 2011).
 - 12 Children come across the same experiential situations that warrant decision making as adults, and these situations may in fact occur more frequently than we like to acknowledge. Roche claims that children have proven that they can act in 'mature and responsible capacities' (Roche, 1999, p. 475).
 - 13 The groups were divided as follows: 16–17-year-olds were one data point, and 18–19-year-olds another. The age groups were then divided in 10-year increments from 20 onwards, until about 80 (Chan and Clayton, 2006, pp. 547–50).
 - 14 This exists in communication processes but can be extrapolated to political discourse (Selnow and Crano, 1987, p. 131).
 - 15 There have been extensive empirical studies along these lines, and the findings I have used are representative of the bodies of work available in this area. For another example, see Hudon and Fournier (2003, pp. 36–41).
 - 16 See also Page and Shapiro (1992), and List and Goodin (2001) for further information about 'information pooling' and the Condorcet Jury Theorem. It could be objected – as Jakee and Sun do – that the votes would not be entirely random if voters are more likely to check the first box on the ballot paper. But mechanisms can be built in to meet these concerns, such as printing equal numbers of ballot papers with each candidate's name at the top. Then, any such 'donkey votes' or 'information cascading' would cancel each other out (Jakee and Sun, 2006).
 - 17 The disenfranchisement of the elderly can also be argued for on the grounds that they are disproportionately influential over the electoral outcome (Poterba, 1998, pp. 316–7; Van Parijs, 1998). Samuel Preston also argues that the political influence of the elderly may have adverse effects on age-specific public goods (such as education) (Preston, 1984). However, the argument in these discussions is primarily one about stakeholders and intergenerational justice, and is a different approach to the one I am using for elderly disenfranchisement.
 - 18 Currently, there is with the old (but not the young) personalised competence testing, with disenfranchisement as a consequence, via individual medical assessments. In Australia, federal legislation removes individuals from the electoral roll at the request of a doctor who has assessed him or her to be of 'unsound mind' (Commonwealth Electoral Act, 1918 [Australia], ss. 98, 99A). In the United States, Paul S. Appelbaum *et al.* offer a test based on the *Doe* requirements, showing that there was a 'strong correlation between dementia severity and the capacity to vote'. If this is the case, then, following the result of *Doe*, there is now effectively a standardised way in which we can ascertain the capacity of the elderly to vote on an individual basis (Appelbaum *et al.*, 2005, pp. 2097–9).
 - 19 When I talk about 'age groups' I mean 'cohorts of one particular age', such that all twelve-year-olds would be one group, and all thirteen-year-olds would be another group and so on, instead of using groupings by age range.
 - 20 The focus is on the percentage of individuals in a cohort as opposed to, say, an average competence, because the average competence could quite easily be affected if one extreme outlier dragged the entire cohort above – or below – the threshold. Having a percentage requirement reduces the risk of this occurring, as each individual's competence in the (increasingly small) cohort affects the overall group equally.
 - 21 While this usually refers to financial affairs, it can be argued that those who cannot manage financial affairs are also not able to manage political ones. This line of reasoning is consistent with the disenfranchisement of individuals who have filed for bankruptcy (Bankruptcy Act [Australia], 1966, ss. 263–71; Commonwealth Electoral Act [Australia], 1918, s. 93).
 - 22 Title 14 in the 2005 Arizona Code, for example, reads: 'A guardian of an incapacitated person has the same powers, rights and duties respecting the guardian's ward that a parent has respecting the parent's unemancipated minor child' (Arizona Code – Revised Statutes, 2005, pp. 14–5312).
 - 23 Of course, this does not necessarily have to be restricted to age groups. *Any* identifiable social group such that X per cent lacks the right capacity would be equally disenfranchised. The crucial thing here is the high level of correlation between a lack of capacity and membership in a group, where that correlation is not spurious – that is, it is relevant and causal.
 - 24 This assumes, of course, that what is required for competence is generally the same in other domains.
 - 25 Convention on the Rights of the Child, 1990, 1577 UNTS 530. Notably, the Convention only gives examples of such evolving capacities within judicial and government decision making, and not with regard to political rights.
 - 26 Presumably, this must mean that the child also *understands* the significance of what he or she is asserting, instead of making a mere claim to a particular right (Powell, 2001, pp. 19–20).
 - 27 This is distinct from the *doli incapax* presumption which states that while a child over ten can be charged with a criminal offence, the prosecution must show that the *particular* child knew what he or she was doing was 'seriously wrong', and not just naughty or mischievous (*R v. Gorrie*, 1918, 83 JP 136; *C v. DPP*, 1996, 1 AC 1).
 - 28 Of course, there are also arguments to lower the age of criminal responsibility on the basis that children mature a lot faster now than when the age of fifteen was nominated, but I will ignore those for now.
 - 29 See, for example, Commonwealth Electoral Act (1918, s. 93(8)(a)); Criminal Code Act (Australia) (1995, Part 2.2, Divs. 5 and 7); and the case of *Doe v. Rowe* (2001, 156 F Supp 2d 35), which ruled that persons are considered incompetent to vote only if they 'lack the capacity to understand the *nature and effect* of voting such that they cannot make an individual choice' (emphasis added).
 - 30 I am arguing for the right to vote, not the right to an election. In most democracies teenagers must wait until the next election after becoming enfranchised before being allowed to vote. Someone who turns eighteen the day after a general election may not get to vote until they are 22, for example. However, this would also apply, *mutatis mutandis*, to my proposal.
 - 31 Chan and Clayton allude that taking away a child's right to work is an enhancement of their status, but the withdrawal of *voting* rights is a loss of status. However, whether some rights enhance or diminish status is not discussed by them (Chan and Clayton, 2006, p. 557, fn. 26).
 - 32 US Code of Federal Regulations, < Title XIV, s. 61(3)(j).
 - 33 Somewhat ironically, this term originated in legislation and constitutional amendments after the American Civil War in some southern states to exclude African-Americans from voting, while still including illiterate whites whose ancestors (that is, grandfathers) had a right to vote before the Civil War (Riser, 2006).

- 34 Gosseries and Daniels suggest that the right to vote might be sufficiently important not to be constrained by time (or age). However, both of these accounts allow for exceptions on the basis of competence. Since my argument is that the elderly should be disenfranchised on the basis of incompetence, it follows that even a continuist account of intergenerational justice would accommodate my account, even if it appears to be counter-intuitive to the idea of democratic participation at first (Daniels, 1996, p. 268; Gosseries, 2003; LaFollette, 2003, p. 481).
- 35 My speculation is that environmental factors (such as education levels, life experience, acquired mental deficiencies, etc.) have not had time to come into being with the young. Consequently, we do not have enough data upon which to test them to notice the spread in the same way we could attribute these environmental factors as explanatory of the spread in older people. In addition, the sample size of the elderly is quite small.
- 36 It may be that there is some greater *degree* of injustice done by disenfranchising the elderly. However, it is not clear whether it would be enough to outweigh the moral principle that we should treat like kinds alike when it comes to political capacity.

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