

Suffrage for children - A polemic

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Foreword

When asked by a reporter at a 1995 press conference on the abolition of the voting age limit whether a five-year-old should be given the opportunity to obtain a driver's license in addition to the right to vote, Rainer Kintzel from Berlin, who was thirteen years old at the time, replied: "Of course, if he passes the test in theory and practice! Of course, Rainer Kintzel had the laughs on his side.

At the time, two "minors", supported by committed children's rights activists, made a mature and self-confident impression on the public on the question of whether people who had not yet reached the age of majority should be allowed to vote. With the support of the Munich lawyer Peter Merk, they appealed to the Federal Constitutional Court and filed a constitutional complaint. Unfortunately in vain. The responsible chamber refused to deal with it. However, there are many reasons to believe that this is only temporary. Increasingly, the question is being publicly discussed whether children in our society are purely a private matter and at best require parental and state care and protection, or whether they should not rather be understood as partners. For the commitment of the state, which uses tax funds, this means that children must no longer be understood as a so-called consumptive expense, but rather as an investment in the future.

In the 1990s, reforms took place that stand for a reassessment of the generation issue in the political arena. The so-called family burden equalization has been worked on and has led to an increase in child benefits. The laws governing parenthood, contact and custody have been revamped. Violence by parents against children is now prohibited by law. This process is also accompanied by international initiatives such as the UN Convention on the Rights of the Child. Two factors are crucial to the paradigm shift and are creating pressure on policymakers to readjust the relationship between the generations. The first is the social challenges that - confront many families, especially young ones and those with many children, with poverty and threaten to exclude them in their daily lives. On the other hand, it is the post-industrial, emerging knowledge society that is putting education policy and education infrastructure at the center of political decision-making. Despite these changes and debates, a serious democratic deficit must still be assumed. Over the past ten years, children's offices, mayors' offices for children, children's and youth parliaments, and participation in redevelopment and transportation projects have mushroomed. Participation is the buzzword for this. But sustainable impact can only be achieved where, in addition to local networking, committed politicians are actually at work. Good stamina is required. A PR number with children, who are known to be popular, can be organized quickly - improved living conditions require political staying power.

Children's associations and network organizations in interaction with a wide variety of partners (including from the business community) are already providing impetus, but the lobbyists, who have so far tended to lack influence, have by no means exhausted all their potential. Without committed people on the ground, the children's lobbyists would only be the tragic cryers in the wilderness. However, democratic deficits, practical pressures and social challenges are accelerating a policy field that previously seemed reserved for the parliamentary backbench. On sober reflection, however, one realizes that the adult world is assiduously defending its vested interests. When things get really serious between the - generations (as in the case of pension reform), the new generational policy quickly threatens

to come to an end. Established role patterns are reproduced only too readily in order to keep everything largely as it is. Paying lip service to the new intergenerational initiatives seems to be the way forward, quite apart from the fact that such strategies will be perceived almost seismographically among the younger generation and will tend to deepen the rift between the generations. The generational politics of the 1990s need to be intensified today. Mike Weimann's book puts it to the test. When it comes to voting rights, things get serious. Political participation in elections to the various parliaments has so far been denied to "minors" - with the exception of the local election legislation of some German states, which grants 16-year-olds the right to vote. The demand to drop the age limit in general unsettles the existing political cartels and lobby structures. A swarm of potential voters wants to be wooed, political fields of action will have to be re-evaluated. Suddenly, student councils representing their own ideas about educational transfer and democratic schools will become an important factor alongside teachers' unions. They already exist, but so far they have acted largely inconsequentially unless political actors or practitioners speak up for them.

Weimann's push has a counterpart in the current youth protection debate. There, too, the age limits are under attack. Children's rights and economic interests are entering into a coalition here that is not without risk. But when it comes to the double standard of wanting to protect children from the temptations of consumer terror on the one hand, while providing them with eight billion euros in pocket money every year in Germany on the other, the Gordian knot must be tied: Children are either moved into the light as objects of protection or left to their fate in the shadows. The fact that, for children and young people, the protection of minors can come into play as an instrument of terror in the adult world or, on the other hand, that the disinterest of adults in the lives of children seems unmistakable, is the other side of this coin. Behind Weimann's attempt to untie this Gordian knot is the legitimate understanding of a - social policy based on partnership. What is new about this is that it is conceived as transgenerational.

Understanding children and young people as partners does not mean, of course, that parents and the state should be allowed to terminate their protective function. But it must be - negotiated between the generations. Democracy is a discursive process. Excluding children and young people from it is outmoded. Even in stable parliamentary democracy, potentials for democratization can always be discovered. In this case, they touch on the coexistence of - generations, which is essential for every society. The future will have to show how this path is to be taken. What is certain is that a minimum consensus must be reached for this to happen. Mike Weimann supports this process through careful argumentation and the compilation of all relevant issues. Regardless of whether one shares his position or not (yet), one holds a book in one's hands that provides sufficient explosive material in the children's policy discussion.

Thomas Krüger

President of the Federal Agency for Civic Education

President of the German Children's Fund

Berlin, September 2002

1. To all children! Also suitable for readers in a hurry!

What is good for children - is also good for adults! Because I find this saying right, I would like to tell you at the beginning of this booklet the content in simple words. Of course only in a short version. Adults who don't like that can skip ahead to chapter 2. From there on, everything is explained in detail. For those children who want to read more than this first chapter, I wish a friendly adult who can explain the things (foreign words) that a child doesn't understand right away. And if you can't find one, feel free to write me; my address is at the very end of the book. I will answer you for sure, no matter if you have a question or a suggestion for improvement.

Children should have the right to vote - that is the demand of this book. Those who have the right to vote have a say in the politicians and the parties that govern the country. Our people's representatives, the members of the state parliament or the federal parliament, are concerned first and foremost with the problems of the people whose votes they want to have. They do everything possible for their voters, for example, they propose new laws that benefit these people. They want their constituents to do well - and to be re-elected themselves. Because children are not allowed to vote, they do very little for children and for the future. And that should be changed.

Currently, only people who are already 18 years old are allowed to vote. Many would like it to stay that way. They say that children are still too stupid to vote, that they lack experience, that they have no idea about politics and would therefore vote for the "wrong" party. Some are also afraid that children could "come to power." When children rule, everything goes haywire, these adults think, and they want to prevent that with the age limit of 18. Others say that some children can't even read and therefore don't even understand what is written on the ballot paper on which the cross is to be made on election day. Many say that children are easily influenced and would only vote the same way as their parents anyway. Or that they can be lied to or tricked by politicians. These opponents of child suffrage fear that politicians will give away gummy bears during the election campaign, and when they have won, won't do anything for children. Some opponents of child suffrage believe that children should play as long as possible and not be bothered with politics. Besides, they say, only those who have duties should have rights. And since children have fewer duties, they should not vote either.

So, as you can see, there are many reasons for leaving the age limit for voting rights as it is. Nevertheless, anyone who (like me) wants children to have a say in elections must have an answer to all this. Fortunately, there are people around the world and have been for many years who have thought about the benefits and problems of child suffrage. Already almost 30 years ago, the American Richard Farson wrote the book "Human Rights for Children", in which he justifies, among other things, why the right to vote is also important for children. In Germany, some young people have even gone to the Supreme Court in Karlsruhe and complained that they are not allowed to vote. So it's no wonder that almost all the questions that child suffrage raises have already been asked. The detailed answers will follow in the next chapters. But already here I would like to briefly answer the most frequently asked questions.

Why should children get the right to vote?

Nowadays, politicians need worry little about children's problems. They also get re-elected if they make decisions that are bad for children. The current politicians depend on the votes of

older people. Many of them don't care who cleans up the environmental pollution of today later (if that is still possible at all) and whether the raw materials will still be enough for the people in 50 years. They make debts now, afford themselves a nice life - those who are children now have to pay it back sometime. But even for the present, politicians decide some things badly, for example how school works and what children are forbidden to do. If children could vote, politicians would have to take their opinions into account, and they would care more about the future, because that is particularly important for children.

It is also a question of justice. If there are rules and laws to abide by, you also have to have an influence on the people who make these rules and laws. This does not apply to children at the moment; they are not taken seriously on this point. Rules are imposed on them without them being able to defend themselves against them. This even violates the Declaration of Human Rights, which applies to all people in the world.¹

At what age should children be allowed to vote?

The right to vote should apply from birth. In practical terms, this means nothing other than that everyone can vote as soon as they want to - no matter how old they are. "From birth" always sounds as if infants and small children should also be able to vote. But they "should" not vote at all. No one "should" vote, voting is always voluntary. And that is why only those who are interested will vote. It is similar to the right to demonstrate: This also applies from birth, but no one gets upset about it. Who cannot demonstrate yet, it does not need to be forbidden therefore! The right to vote without age limit must be demanded because every age limit would be unfair for those who want to vote but have not yet reached the respective age. An age limit is above all also unfair, because the right to vote is a right "of the people" - so it is written in the Basic Law of the Federal Republic. But the people also include children, not just adults.

Are children too immature to vote?

It would be best if only quite mature, that is, wise, decisions were made. No one wants to - depend on immature people. But who determines what is mature and wise? Should there be a maturity test for voting? What about the adults who don't pass it? Everyone also knows that many people under 18 are much smarter than some adults.

Adults naturally(!) have more life experience. However, it cannot be concluded from this that they are more mature, i.e. that their decisions are wiser. With increasing experience, one can also adhere to solidified prejudices and simplified world views.

People realized a long time ago that elections are only fair if everyone can really vote. Since then, it has been called "one person, one vote. In the end, the votes are counted, and whoever gets the most votes is elected. No one has to justify their voting decision. There is also no control. There is no longer any talk of maturity and wisdom - except in the case of children. And that is unfair.

Do children understand enough about politics?

Nowadays, politics is a difficult business. Hardly anyone understands how all the details are connected. Even the experts, the professional politicians, often disagree. There are usually different proposals on one and the same question. For example: Is the highway through the

nature reserve good or bad? The answer is: it depends on what for! So some are for it, others are against it. So which of the two understands something about politics?

Moreover, there are only a few parties to choose from in elections. Every voter considers which party, on the whole, comes closest to his or her personal ideas. Many people find this difficult, because they have to decide on a bundle of goals and not just for or against a - highway. So many decide on the basis of the party's reputation and whether they trust the politicians. Some also decide not to vote at all. Children can do all that, too.

Are children too impressionable?

Of course, most children are more impressionable than most adults. They do not yet know many backgrounds. That's why children can easily be talked into things. If children have the right to vote, this must be taken very seriously, especially during election campaigns. However, the danger that children will be lied to en masse and influenced to their disadvantage is not as great as is assumed. After all, they will talk to many people. They will compare the different opinions they hear at home, at school, on the street and on television. In the process, clumsy false influences don't stand much of a chance. Word will get around about who is trying to pull the wool over the children's eyes just to get a few more votes.

Is it enough to lower the age limit a few years?

There are proposals to lower the age limit from 18 to 16 or 14. That is half-hearted. In this case, not everything, but much remains the same. The new voters are already mature, they are almost adults - this is the attitude behind it. In fact, the older young people are no longer familiar with many of the problems of children, because they have almost left school and are dealing with completely different things. Many older young people even look down on the younger ones, as if they were worth less. If the voting age is lowered by only a few years, - there is therefore a danger that politicians will not have to worry about children and their future much more than they do now.

Any new age limit is also unfair to all those people who are below it. They will still not be taken entirely seriously.

Should parents vote for children, as proxies?

Some propose that children should have the right to vote, but should not cast their vote themselves. Under this proposal, the right to vote should remain with the parents. Behind this idea is the fact that the state currently helps families with children less than pensioners and the childless. With the additional votes of parents, a counterweight is to be created in politics against those politicians and their voters who do not care about the problems of children and families. This counterweight is certainly necessary, but when parents vote by proxy, it means nothing more than that children up to the age of 18 still have no say. They are still not taken seriously. Their opinions don't matter. It may well be that families will then have to pay less tax, for example. But whether that benefits the children is again decided by the adults.

Many parents, for example, demand very different decisions from school, peace, environmental and financial policies than their children would make if they were allowed to vote for themselves. As everyone knows from their own experience, parents and children often have very different ideas about the world.

Do children even want to vote?

This question is asked again and again because many young people say in surveys that they don't want to vote at all. This is probably because many are used to the idea of being immature and excluded. Maybe it's also because there's not much to choose from and the election campaign is boring these days. But even if they don't want to vote, that would not be a reason not to give them the right to vote or to take it away. Nor is anyone's right to freedom of assembly taken away simply because they do not want to assemble with others. Moreover, the right to vote should not depend on a majority of children and young people. What then is the minority supposed to say about it? What should be done if a single child wants to vote? The right to vote means: If I want to vote, no one may prevent me from doing so.

What will improve as a result of child suffrage?

It is very likely that the parties and politicians will care more about children and their interests. They will therefore have to change their election programs and policies and take up new topics, for example, making school interesting. And they will have to speak in clearer terms. If they don't explain their policies in an understandable way, they won't convince the children. By the way, this is also good for the adults, because even they often don't understand what the politicians actually mean these days. In addition - and this is perhaps the most important thing - everyone will start taking children more seriously than before. Word will get around that children are also full human beings who have a say. Just as when women were given the right to vote, this time it will be the children who will gradually be treated less and less from above. As a result, they themselves will no longer feel like half-men who need not be listened to. Everyone will realize that equality between children and adults - not only in politics - is the best way to lead a happy life. Children who are treated fairly from the beginning are likely to be kind to their children as adults.

With this beautiful view I end the first chapter. So you have already read the most important questions and answers. Of course, there are still many details to discuss. These will be discussed bit by bit in the following chapters. But watch out! From now on there will be long sentences and foreign words.

2. Who is interested in child suffrage?

Who is interested in children's suffrage? For years, the topic has been briefly in the press, but a whole book about it seems inappropriate to many people, so why the effort?

I want the benefits of true child suffrage to be noted and understood. Over the years, I have met many people who have become active advocates of voting rights for children. At present, child suffrage does not have the support of the majority, but if the benefits become known and word gets around that there are only minor problems standing in the way of its practical implementation, then that too may change.

For more than ten years, I have been involved with the right to vote for children and have - discussed it with many people. I have heard many counter-arguments a thousand times. I am familiar with the spontaneous resistance to the idea that children should become citizens of the electorate. Before you are ready to talk about child suffrage, you have to question some of your personal consciences. As we know, that doesn't come easily. There are two great questions of humanity at stake here: democracy and the question of children. Both are complicated things that most people have to learn and understand along the way. Very few are experts, although everyone is expected to have an opinion on them. What children are, how children must be educated - everybody knows that! Why, how and what is elected, how the electoral system is conceived and functions, that too is - ostensibly - common knowledge. In individual cases, gaps in knowledge may be admitted: Who knows which limits are the right ones for children or what the meaning of first and second vote is?! But why admit right away that you don't really have a clue? So old convictions are adopted and clichés defended that sound quite plausible, that people are used to. It is easy to be on the side of the majority, of experience or - as the Federal Constitutional Court calls it in the case of the voting age - of "historical corroboration. However, "it has always been like this"-this view is no good in the age of space travel and globalization.

What stage is the debate on children's suffrage currently at? The voting age for local elections is now 16 in some federal states. The issue is on the move. One might think so. But some people call this move illogical and half-hearted. They call - as I do - for the complete abolition of the age limit and even find support among recognized personalities and institutions such as former Berlin Senator of Justice Lore Maria Peschel-Gutzeit and one of Germany's major children's aid organizations, the Deutsches Kinderhilfswerk. One person - one vote, this basic principle of democracy is not fulfilled, this is how they justify their commitment, among other things.

You can't do it without an age limit, say the others. Children would tick the biggest nonsense boxes; the younger, the worse. The right to vote would deprive them of their undisturbed childhood, which is there for playing and not for making politics, and so on. The defenders of the status quo invoke common sense. Some are stunned. How can the advocates of children's suffrage ignore these - and some other - arguments?²

The debate comes at a time when more and more people are coming to the conclusion that - children and young people are important and hitherto neglected members of our society. The political participation of children has become a perennial topic of debate among educators, social workers, sociologists, as well as urban planners, local politicians and, most recently, even the president of the Bundestag, the German government and the European Union. A new wind is blowing; children are taken more seriously than just a few years ago. There is more

and more talk about the subject status of children. Children's rights are human rights, is the motto of the "National Coalition" to enforce the United Nations Convention on the Rights of the Child in Germany. The "Aktionsbündnis Kinderrechte" (Children's Rights Action Alliance), consisting of the four largest German children's aid organizations, organizes "Children's Rights Elections" throughout Germany and a "Caravan for Child Friendliness" travels through the country with huge trucks. "Kinder haben Rechte" (Children have rights) is the name of a ZDF television series. Nouns like "Bundesinitiative Beteiligungsbewegung" (Federal Participation Movement Initiative) and "Servicestelle Jugendbeteiligung" (Youth Participation Service Center) make the rounds. One could almost think that a jolt has gone through our country.

But doubts are warranted, and we must warn against excessive optimism. The concessions that have recently been made to children take place almost exclusively within children's institutions and in some families. And even there, pedagogical considerations limit self-determination and personality development. The concerns are that children lack the competence and maturity to participate in social decisions.

In fact, the social structures created for children and young people still have the effect of excluding them from adult life. Even youth organizations like the BundesschülerInnenvertretung, in which small children play no role and quite a few - comrades-in-arms are already over 18 years old, are constantly fighting for their recognition. Whether the reason for this is the orientation towards the (nebulous) concept of the best interests of the child, or whether it is merely to avoid disturbing the "serious" world of adults, can be left open. The formula of the "uselessness of being a play child"³ brings it to the point. Even the undeniable natural developmental fact that children are dependent on protection, care and support and have less experience and knowledge than adults cannot justify this exclusion.

If children really have to be taken seriously, the question arises as to how this is to be done. In this context, children's suffrage represents a kind of touchstone. The debate on this issue to date has been disorganized and in many respects has not progressed beyond its initial stages. In particular, those problems and interests of children that affect their immediate present are given short shrift. Rather, the focus is on the financial and environmental problems society is likely to face in the long term. If a solution is tackled, it is sought in proxy models such as transferring children's voting rights to their parents or lowering the voting age by one or two years.

Another argument against child suffrage seems to be that the legislation on suffrage is characterized by a high level of regulation and formal rigor. For this reason alone, changes are associated with difficulties. On the other hand, there is no "right" electoral law. The changes made to electoral law in the past prove that eternally valid principles do not exist, because constitutional, procedural and organizational-technical norms are constantly being redefined in the area of conflict between politics and law. Thus, electoral law is one of the legal disciplines that is highly dependent on changing political and constitutional developments.⁴

This is where this book comes in. From the perspective of child and youth policy as well as human rights, it presents a proposal for a child suffrage without proxy.

3. What can be hoped for from child suffrage?

Uncertainties are inherent in all major changes to state rules. Nor is it possible to predict precisely the improvements and, if necessary, deteriorations in social conditions that will - follow the introduction of child suffrage. I examine the risks primarily in the chapter "How Should Child Suffrage Work in Practice?"

But what is the case for child suffrage? How do its proponents argue for changes to the highly complex political system, despite the partly unknown effects?

Some advocates refer purely formally ("principle-based") to legal and democratic-theoretical arguments. They invoke the formula: "One person - one vote", i.e. the principle of generality, the central element of the principle of democracy, which is enshrined in the Basic Law but not fulfilled. This will be the subject of the following chapters.

Other advocates are guided by the practical consequences of the change in electoral law. On the one hand, they expect improvements in the current living conditions of children and young people. On the other hand, they strive for a fairer family and future policy. I would like to outline both problems in the next two sections in order to clarify where and why changes are necessary.

In the present

"I grew up in the countryside in Bavaria. I had to go to bed at seven o'clock on school days until I was ten. I took over that," Chancellor's wife Schröder-Köpf replied when asked if she was a strict mother.⁵

Lafontaine's wife Christa Müller thinks a slap is "quite okay". She gave her son Carl Maurice (2) a slap and did not forgive him until he apologized. "That can not be otherwise, there you have to show toughness against his feelings," she said with approval of her husband.⁶

1.4 million children and young people under the age of 18 are abused by their parents in Germany every year. If you add physical punishments such as the "slap on the bottom" and slaps on the face, the Child Protection League arrives at eleven million minors per year.⁷

The slap is the most frequent form of domestic education punishment (81.2 percent). A comparison with other punishments such as a ban on watching television (66.7 percent), going out (64.2 percent), shouting down (52 percent), cutting pocket money (34.5 percent) and silence (36.9 percent) shows the prominent importance of "light" punishment in everyday family life. According to the young people's self-reports, as many as 43.5 percent have experienced more severe forms such as severe slaps and 30.6 percent a spanking.⁸

Up to 30 percent of German schoolchildren suffer from complaints that managers could also complain about: sleep disorders, lack of concentration, headaches and stomach aches. Eating disorders such as anorexia and bulimia are already appearing in children under the age of ten.⁹

Around 70,000 children and young people in Germany refuse to attend school. In large cities, there are extreme cases in which up to one third of the students are absent from class. This does not mean sporadic absence or mere physical participation in class without inner attention, but strict refusal over months or years.¹⁰

Around four million adults in Germany cannot read or write adequately.¹¹ The association "Lesen und Schreiben" suspects that the number of unreported cases is even higher.¹²

In Germany, more than €900 million is spent annually on tutoring.¹³

"You really have to worry about a quarter of German students," says Andreas Schleicher, the OECD's Pisa coordinator in Paris. Their reading test failures show that they are unlikely to make the connection to life, to the challenges in family, career and society.¹⁴

In Berlin, an average of 15 percent of students finished school without a diploma in the ten years from 1988/89 to 1997/98.¹⁵

Education

No matter how you look at it, not only good things happen to children in Germany. Children are objects of state and parental action - de jure and de facto. The quotes and figures make it impossible to downplay the problems and dismiss them as exceptions.

In addition, when assessing violence in the family, everyday punishments such as banning - children from watching television, forcing them to go to bed, cutting their pocket money, punitive work, yelling at them, blackmailing them and grounding them are taken just as little seriously as interfering with a child's order, clothing and hairstyle, banning certain friends, opening letters or forcing them to eat up.

Children have recently been protected by law against some of these acts, including the slap and the pat. The red-green government amended the relevant paragraph (§1631 of the Civil Code), which now states: "Children have the right to an upbringing free of violence. Physical punishment, mental injury and other degrading measures are inadmissible." This formulation addresses the countless indignities to which children are subjected; it unquestionably represents progress in the legal situation of children, but nevertheless remains half-hearted.

To educate means to bring children to a behavior desired by their parents and, if possible, to corresponding beliefs. "Badly behaved" children do things they are not supposed to do. But what to do when the child doesn't do what he or she is supposed to? Then "action" must be taken. Adults who use their superior power and threaten or use violence are using "degrading measures."¹⁶

Consequently, the new wording of §1631 BGB is still contradictory: namely, education cannot be had free of violence. The following wording could solve this problem: "Children have the right to grow up free of violence. Parents and children have equal rights."

For the time being, politicians lack the necessary courage for this proposal. People's own experience obscures their view of this problem, including the responsible politicians. "Up to now, people have assumed that hitting is something natural because they themselves have been hit. There are no other reasons for it."¹⁷ This applies mutatis mutandis to other methods of education. As long as this assertion has not been disproved, one can only wish that children would finally be asked how they want to be treated. If children had the right to vote, the usual educational "measures" would have to be seriously discussed, because no enlightened child wants to be treated with the methods mentioned.¹⁸

School

Let's look at the school system. Here, too, the aforementioned figures speak volumes. Children and young people do a lot to escape the stress of everyday school life. The reason is hardly to be found in their "lack of desire for education", but in deficiencies of the German school system, which can be outlined by keywords such as forced learning, heteronomy, alienation from life, mass processing, fear and boredom.

School is infinitely far from an institution that effectively helps children and young people acquire knowledge and social skills. The critic of pedagogy Ekkehard von Braunmühl once bitingly put it: "Anyone who still defends the rape of young people's bodies and souls that the existing compulsory school system represents in the future is himself proof of what it does."¹⁹

Have the students ever been asked? In schools, co-determination exists only as an alibi under undemocratic conditions: According to the law, only one-third of the most important school body, the school conference, is made up of students, even though students form the overwhelming majority in the school. In Berlin's elementary schools, they do not even have voting rights. The authority of the school conference is, moreover, quite limited. Only subordinate details can be decided; principles are not up for debate. Because of the risk that is always associated with substantial changes, the rigidity of the German state school system could perhaps be understood. In view of the experiences in other countries, however, this is mistaken, for there have long been numerous democratic schools around the world in which, with success, almost all school processes are organized differently than here at home.²⁰ Who would deny that children's suffrage would force politicians to look at education through the eyes of children and finally make it more flexible?

But the situation of children can be improved not only in everyday education and at school. The right to own property, the right to choose one's environment, the right to a guaranteed income, the right to work are civil rights that are largely denied to children in this country. The presence of children and their current problems, which are the subject of this article, have been neglected in the past. Statements in today's childhood research also take this into account. Critics of the so-called developmental paradigm of childhood sociology recognize a narrowing of the perspective on childhood, since children are seen only as something unfinished: "It is not the current life chances of the child that determine the view of the problem, but the life chances that he or she will have as an adult. [...] Through this, childhood is seen only as a transitional stage." It is overlooked that children's needs are already currently impaired and that problems of the present must also be addressed. It is necessary to strengthen the perspective of the children themselves or to consider it exclusively.²¹

For the future

However, children's suffrage is not only aimed at the immediate living conditions of children, but also at the relationship between the generations. Children are our future, says one formula; they have a right to a future, says another. What can one make of these phrases?

"Our society lives in many areas at the expense of its children. Examples of this are the progressive destruction of the environment, which is manifested by problems such as the hole in the ozone layer, the greenhouse effect, nuclear waste, species extinction, soil degradation, overfishing of the oceans, and deforestation of virgin forests. But also the rampant national debt is a phenomenon that negatively affects the life horizon of future generations," writes the Foundation for the Rights of Future Generations, which was founded in Germany in 1997 and advocates intergenerational justice and sustainability. Such "living at the expense of the

future" is taking place on a massive scale today, examples of which include youth unemployment and the discrimination of the younger generation in pension insurance.²²

Other authors also²³ lament the externalization of the costs and other consequences of current actions into the future. This "futurization" occurs both in public finances and in environmental protection. It is an undeniable fact that the high level of today's living conditions imposes tasks and debts on future generations. Whether it is anthropogenic climate change, nuclear waste, an old-age pension system that no longer functions or the debt of the state - the unborn and the children cannot defend themselves against the causation of these problems that they will have to deal with in the future. Those responsible cannot be held accountable later through death or the statute of limitations. Demographic developments aggravate the situation. The ratio of the elderly (over 65) to the working population (between 15 and 65) will double from 1:4 today to 1:2 in 2040.²⁴

The prominent lawyer Lore Maria Peschel-Gutzeit takes this situation as an opportunity for her initiative in the matter of "the right to vote from birth", which she justifies, among other things, as follows: "Families are disadvantaged, although it is precisely the families that - support our supply systems. We live ruthlessly at the expense of future generations and thus provoke the disintegration of the solidarity community. [...] Without family obligations, childless people achieve higher incomes and thus higher pension entitlements over the course of their lives than parents, although unlike parents they have invested nothing in the future of the system."²⁵ Several authors use similar considerations to justify their call for a change in electoral law.²⁶

The new electoral votes are intended to increase the pressure on politicians to ensure - intergenerational justice. In this context, most of the authors cited here favor so-called proxy voting, i.e. the fiduciary casting of children's votes by parents.

What youth researchers Klaus Hurrelmann and Christian Palentien write in the foreword to their handbook for research, teaching and practice, "Youth and Politics," applies both to the present and to the future: "In fact, the young generation is excluded from the political decisions that affect it at all levels of society. Countermovements are only beginning to emerge."²⁷

Among the counter-movements addressed are the initiatives for child suffrage, which are expected to have positive effects in two areas. On the one hand, the childless and the elderly in our society should no longer be given preferential treatment and the financial and ecological burdens should no longer be passed on to the coming generations. On the other hand, children should be taken seriously not only because of their future, but already in their present. Today, basic and human rights apply to children only to a limited extent; in everyday education and at school, children experience powerlessness and dependence. The - consequences have an impact far into the future. Children's suffrage can contribute to changing the object status of children.

4. Is the right to vote for children in accordance with the Basic Law?

Even the best political arguments and humanistic ideas are of little use if the demands derived from them cannot be brought into line with the law. Therefore, it is necessary to investigate which legal obstacles stand in the way of the right to vote without age limit. The most important question here is: Is the demand for voting rights for children constitutional?

Answering this fundamental question requires a brief digression into constitutional law. The Basic Law of the Federal Republic of Germany regulates the character of our state; for example, Article 20 contains the following provisions:

Article 20

(1) The Federal Republic of Germany is a democratic and social federal state.

(2) All state power shall emanate from the people. It shall be exercised by the people in elections and votes and by special legislative, executive and judicial bodies.

The first sentence of paragraph (2) establishes the principle of popular sovereignty, and the first half-sentence of the second sentence establishes the principle of representative democracy. Ultimately, the people exercise the "power in the state. For this purpose, the people make use of elections. From this follows, as the electoral law expert Wolfgang Schreiber emphasizes, that "every organ of state power and every exercise of state power [...] must then find its basis in a decision of the people, i.e. in elections, which are thus the central and decisive process for the formation of will in the democratic state and for the functioning of the democratic system. As the most important form of the active participation of the people in political life, elections are the basic process of every democratic constitutional life and the fundamental expression of popular sovereignty within the meaning of Article 20 (2) sentence 1 of the Basic Law."²⁸

The nation is composed of none other than the living citizens. As a rule, citizenship is - acquired at birth.²⁹ with the birth, that is legally undisputed. Consequently, children also belong to the people. For this reason, children should have the right to vote.

This is not the case, however, because Article 38 of the Basic Law, which regulates the active and likewise the passive voting age of interest here, excludes people under the age of 18:

Article 38

(2) Any person who has attained the age of eighteen years shall be eligible to vote; any person who has attained the age at which majority is attained shall be eligible to vote.

The State Fundamental Norm in Article 20 of the Basic Law

There is obviously a contradiction within the Basic Law, namely between Article 20 (2) and Article 38 (2), first half-sentence. However, it is not insoluble. On the one hand, all articles in the Basic Law are formally of equal value, equal rank. On the other hand, certain differences between the articles can be seen. Article 20 of the Basic Law enshrines the democratic nature of our state, which remains forever inviolable. No majority of the Bundestag and Bundesrat

can change this democratic principle as long as the Basic Law is in force. This is regulated in Article 79 (3) of the Basic Law.

Article 79

(3) No amendment to this Basic Law shall be admissible which affects the division of the Federation into Länder, the fundamental participation of the Länder in legislation, or the principles laid down in Articles 1 and 20.

For this reason, Articles 1 (human dignity) and 20 are also called fundamental norms of the state.³⁰ Article 38, in particular paragraph (2), 1st half-sentence, on the other hand, can be amended by the Bundestag. It merely concretizes the principles laid down in Article 20. Specifically, these include, in addition to the age limit cited above, the provisions of the character of elections, which are regulated in Article 38 (1) and are not objectionable:

Article 38

(1) The Members of the German Bundestag shall be elected by universal, direct, free, equal and secret suffrage. They shall be representatives of the whole people, shall not be bound by orders or instructions and shall be bound only by their conscience.

The generality principle in Article 38 of the Basic Law

The generality principle formulated in Article 38 occupies a central position in the discussion on children's suffrage. It states that all citizens must have the right to vote. As the commentary on the Basic Law puts it, this principle "prohibits the unjustified exclusion of citizens from voting. It prohibits the legislature from excluding certain groups of the population from - exercising the right to vote for political, economic or social reasons and requires that, as a - matter of principle, everyone should be able to exercise his or her right to vote in as equal a manner as possible."³¹

Various decisions of the Federal Constitutional Court make it clear that the legislature has only a narrowly measured leeway. "Differentiations in this area always require a special justifying reason." This means that "the right to vote may also not be made dependent on special preconditions (of wealth, income, tax payment, education, position in life) that cannot be met by everyone. [...] The general right to vote may be restricted only for compelling reasons."³²

If one follows these principles, the question arises as to what grounds can be sufficiently compelling to exclude all under-18s from the right to vote.

The details of the right to vote, which is only roughly outlined in the Basic Law, are regulated by the Federal Election Act. The most important commentary on this law states the following on the subject of minimum age: "The general capacity for political judgment is decisive in determining the voting age."³³ And elsewhere it says: "From the nature of the active right to vote as a highly personal right, it follows that certain minimum personal requirements must be met for a decision to be made in accordance with reason and the community. These include a certain age."³⁴ Thus, two independent aspects of the problem become clear:

(a) What is the definition of the voter's general political judgment, which is at a minimum required for "reasonable and commonsense decisions"?

b) Is "a certain age" a "compelling reason" for exclusion from the right to vote?

The difficult problem of capacity for judgment should not be of interest for the time being; I will return to it later in a separate chapter. It escapes legal handling, which therefore uses the more practicable criterion, namely age. The second question, on the other hand, formulates the actual legal problem that will now be discussed.

The issue has been addressed by several authors. For example, the Munich lawyer and political scientist Peter Merk concludes "that all the legal reasons put forward against the right to vote without age limits are not viable. The legal literature is also incapable of putting forward corresponding arguments. Only Theodor Maunz³⁵ mentions (probably involuntarily) the only 'argument', when he writes that this restriction results 'from the nature of the active right to vote' and is 'historically substantiated'. In fact, this exclusion from the right to vote is justified with the unspeakable argument of 'it has always been so'. This 'historically substantiated' means in substance nothing else than a fossilized prejudice. It should be evident that a 'historical hardening' is not suitable to serve as a 'compelling reason' in the sense of the Federal Constitutional Court's jurisprudence on the generality of voting."³⁶ If "historical corroboration" were a serious argument, women would not have the right to vote until today.

Also the Kiel law professor Hans Hattenhauer³⁷ and the former senator of justice Lore Maria PeschelGutzeit³⁸ come to the same conclusion in their reflections. As early as 1974, the jurist Konrad Löw was one of the first to come forward with the same view: "The history of the (...) electoral rights struggle in particular seems conceivably unsuitable for proving that there should not be a right to vote for children, because there has not been one so far."³⁹

If the view prevails in this way that age is not a "compelling reason" for imposing sweeping and legal restrictions on the fundamental right to vote, the only option left is to amend the contradictory Article 38 (2). What consequences this will have will be revealed by the discussions in the chapter "How should the right to vote for children work in practice?". Thus, for the time being, the right to vote without an age limit can be justified and enforced with the help of formal legal constructions.

But does this really give children access to the ballot box? The authors cited are lawyers. They predominantly favor the right to vote by proxy. In this model, they distinguish between the holders of the right to vote (which should include the children) and the proxies who then actually go to vote (the parents). In other words, in arguing for a right to vote for children, the above-mentioned authors need only prove that the generality principle in the right to vote - includes children. They do not have to deal with the ability to judge as an alleged prerequisite for access to the ballot, since the voters are the same as before.

One consequence follows from the commentary on the fundamental state norm in Article 20 of the Basic Law. "Even if it is not in the basic rights catalog of Articles 1 to 17 of the Basic Law, the right to vote is constitutionally a-traditionally and historically resulting from citizenship-'political' basic right, according to other statements a right equivalent to a basic right."⁴⁰ In practice, however, the right to vote is not treated as a fundamental right. With the statement of the fundamental right character "constitutionally probably a 'principle hope' is formulated, but hardly an empirical fact. [...] The right to vote of the citizen of the Federal Republic of Germany consequently represents, in accordance with the still binding provisions of Article 38 (2) of the Basic Law, not a fundamental right of the citizen, but a political - privilege granted (or withheld) to him on the part of the constitutional legislator."⁴¹ However, the right to vote must not remain a privilege.

5. Children's suffrage - a step towards real democracy?

Even if the unrestricted right to vote for all were not protected by Article 20 (2) of the Basic Law, one would have to ask why children are not allowed to have a say in elections.

The so-called fathers and mothers of the Basic Law certainly did not think that children should also be given the right to vote. The time was not yet ripe for this in 1949, just 30 years after the introduction of women's suffrage in Germany. However, they took the principles of a modern democracy very seriously, so that child suffrage can be derived from the general formulations of the Basic Law. In this way, the advocates of child suffrage are lucky in a way. Members of the Bundestag can remove the age limit from Article 38 (2) of the Basic Law. With a bit of bad luck for the child suffrage advocates, who argue only in legal terms, things could have turned out differently, for example, if the age limit had been enshrined in Article 20. It is also conceivable that the right to vote would not have been protected by the inviolability clause of Article 79 (3). In this case, Article 20 and Article 38 would oppose each other as norms of equal rank, and the formal legal argumentation without the possibility of reference to the fundamental state norm of Article 20 would yield nothing. Beyond all legal contingencies, however, the need for children's suffrage arises above all when higher, pre-state, non-statutory principles, in particular the principle of democracy, are brought into play.

What does democracy mean?

The term democracy is fuzzy. In ancient Athens, it described a process of state governance in which all citizens⁴² citizens made decisions jointly and directly. This extended both to the enactment of laws and to the control of their observance and the condemnation of lawbreakers. This is also called "direct democracy" because there was no intermediate authority between the sovereign (the people) and the power to make decisions. The people ruled directly. The more refined contemporary variants of popular rule therefore have their name: Democracy (from Greek demos - people and kratos - strength, rule).

It was not only for practical reasons that direct democracy was out of the question for larger social contexts in the long run. Thus a variant of popular rule developed: "representative democracy. In this form of government, too, the people basically had the power to make decisions, but they elected representatives who enacted laws and controlled the government's work. The representatives were accountable to the people.

After the French Revolution, the idea of inalienable human rights began to be expressed in the Declaration of the Rights of Man⁴³ and the Declaration of Independence of the United States of America in 1776.⁴⁴ began its triumphal march around the world. Each individual was to be protected from decisions and actions of the majority that were detrimental to him or her and from stronger individuals. Ultimately, this sociopolitical innovation can be understood as a bulwark against the law of the fist. Human rights found their way into the constitutions of many states. As civil or fundamental rights, as rights to freedom and equality, they were not at the disposition of the government. The form of government remained a representative democracy, but with the condition of respecting fundamental rights. Until then, the rules of democracy had always applied only to a privileged part of the population. Now previously disadvantaged groups, for example slaves and women, could invoke their rights, including the right to vote. At present, the 30-article "Universal Declaration of Human Rights" of the United Nations of 1948 is the recognized basis for fundamental human rights. The member states of the UN have committed themselves to realizing human rights and fundamental

freedoms. The preamble states in justification, among other things: "Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family (constitutes) the foundation of freedom, justice and peace in the world." In this sense, human rights are also enshrined in the Basic Law of the Federal Republic of Germany. There it says: "Article 1 (1) The dignity of man is inviolable. [...] (2) The German people therefore profess inviolable and inalienable human rights as the basis of every human community, peace and justice in the world." This further developed form of representative democracy is also called "constitutional democracy" because there is a constitution.

The principle of equality before the law or - in other words - the principle of equal rights arises from the human rights idea that everyone is entitled to the same fundamental rights. - Article 2 of the "Universal Declaration of Human Rights" states: "Everyone is entitled to the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Equality in terms of human rights was introduced in the course of historical development of social rules because people are different. All people have the same human dignity. "A difference in their human dignity would simply be unfounded. Otherwise, women and men would probably also have to have different human dignity, clever and less clever, handicapped and not handicapped, poor and rich, and in general all people would have to have different human dignity. That would be nonsense, of course."⁴⁵

Age limits for human rights

Since children are indisputably human beings, they must have the same inviolable human dignity as adults. Therefore, they must also have the same human rights derived from human dignity as adults. Since children are indisputably among the weakest in society, their rights must be given very special protection. The peacemaking meaning of human rights derives precisely from the protection of the weaker members of society from the power of the stronger. Everyone, no matter how weak, should be able to live without fear of being threatened. The strong must not ruthlessly assert themselves, possibly by force, against the weaker. In a society in which human rights are respected and protected, they must expect to be punished if they disregard the human rights of others. Since the human rights are entitled to all in the same way, the "strong" on his part need not fear that his freedom and his right will be restricted. Since all people are born free and equal in dignity and rights,⁴⁶ there is no danger of society losing itself in arbitrary, limitless freedom, in unbridled chaos. Rather, it is a matter of constantly balancing freedom and equality.

This concept of equality with respect for fundamental rights should finally be realized - between children and adults. This includes the right to vote as defined in Article 21 (1) and (3) of the Declaration of Human Rights: "Article 21 (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. [...] (3) The will of the people shall be the basis of the authority of public authority; this will must be expressed through periodic and genuine elections by universal and equal suffrage by secret ballot or by an equivalent free electoral process." This wording contains no room for - interpretation to exclude children from the right to vote.

The rights and the duties

Not only when it comes to the rights of children, it is often argued that whoever has rights must also fulfill duties. And since children cannot fulfill certain duties, they are not entitled to

certain rights. When we talk about fundamental rights, we have to break a habit of thought: Everyone is entitled to fundamental rights without any consideration and regardless of their abilities.

Furthermore, when it comes to the question of who may dispose of which rights, a widespread and misleading formulation is of central importance.⁴⁷

It is repeatedly claimed that rights are "exercised." This notion has even found its way into the Federal Election Act: Clause 14 is called "exercising one's right to vote." People also talk about "making use" of their fundamental rights. This use of language creates the impression that the holder of the right must perform an act, that is, that he or she must have the necessary abilities to do so. This idea is expressed by the widespread term "fundamental rights capacity". If one applies the idea of fundamental rights to children against this background, one runs into argumentation difficulties. If rights have to be "exercised", it is concluded that a representative is needed, since children are not (yet) capable of "exercising" their rights. This conclusion, however, is a mental fallacy. To explain it, I draw on an Ekkehard von Braunmühl definition of rights and duties, which above all attacks the traditional habit of thinking of rights as "to be exercised," i.e., dependent on abilities (strictly speaking, on power). But it also makes transparent the usual conflation of fundamental rights and duties. "Three distinctions are significant in justifying this definition: first, the distinction between the self and all other human beings; second, the distinction between doing and not doing, that is, between acts and omissions; third, the distinction between commandment and prohibition."

The categories of rights and duties according to Ekkehard von Braunmühl can be compared in a table:

Right	Duties
<ul style="list-style-type: none"> • If I have a right, it is not I who must do something, but everyone else must refrain from doing something. My right does not command me to do anything, but forbids everyone else to do something. 	<ul style="list-style-type: none"> • If I have a duty, I must do something, I am commanded to act.
<ul style="list-style-type: none"> • My right obliges me to nothing, puts all other people passively. My right obliges all others to endure my activity or passivity under this right. 	<ul style="list-style-type: none"> • My duty places me in an active position - and for this I need the - necessary skills.
<ul style="list-style-type: none"> • My right of freedom frees me/me to do and not to do what I want and forbids all others to prevent/punish me for it, although they would have the power to do so. 	<ul style="list-style-type: none"> • Conversely, the liberties of others prohibit me from preventing them from doing or failing to do anything covered by those rights, or from - punishing them for doing so, even if I had the power to do so.
<ul style="list-style-type: none"> • My right is a commandment for all others. 	<ul style="list-style-type: none"> • My duty is a commandment for me.

Referring to the concept of human dignity, Ekkehard von Braunmühl continues: "This right of all human beings by no means obligates me or state organs to dignify all human beings all the time, but it does prohibit me or the state from ever degrading them, i.e. touching their human dignity."⁴⁸

For the right to vote, it follows that no human being, including a child, must fulfill any duties or have any abilities as a prerequisite for it, because the right to vote is considered a fundamental right under both the Basic Law and the Declaration of Human Rights. It follows from the definition that "all others" even have the duty not to prevent any child from doing the act that is covered by the right to vote: voting. In this way, the distinction between the right, on the one hand, and the act or omission covered by the right, on the other, is likely to - revolutionize the debate about children's suffrage. "Voting is an activity, the right to vote is not," Ekkehard von Braunmühl succinctly states.

Example: Article 12 of the UN Convention on the Rights of the Child

The effects of the error in thinking inherent in the term "fundamental rights capacity" are particularly evident in the UN Convention on the Rights of the Child. Article 12 (Consideration of the Will of the Child) reads: "States Parties shall ensure 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 and shall give due weight to the views of the child in accordance with his or her age and maturity."

Children who are incapable of forming an opinion cannot express it. Why is it then necessary to deny them the right to express an opinion? Did the fathers and mothers of the Convention on the Rights of the Child want to express with this formulation that children do not have an opinion of their own, but of others? Why are children only allowed to express themselves - freely in "all matters affecting the child"? Whoever wants to express his or her opinion on a matter obviously has something to do with that matter just by doing so. What should a matter not affecting me look like on which I say something? No one gets the idea of wanting to regulate such things with an adult in articles and paragraphs.

This article really has it all: What is the difference between "taking into account" and "giving due consideration"? In the adult world, no one assumes that taking an opinion into account - automatically means that the demand it contains will be fulfilled. But taking an opinion into account does not mean also assuring that it will be fulfilled. It means to take it into consideration, as far as this is possible in the relationship of tension with other considerations. The appropriateness, which reduces the consideration of the child's opinion by a possibly considerable size, is a presumption, perhaps it should better be called "presumptuous consideration". To whom it seems presumptuous, imagine the article applied to adults: "States Parties shall ensure to the pensioner who is capable of forming his or her own opinion the right to express that opinion freely in all matters affecting the pensioner, and shall take due account of the pensioner's opinion in accordance with his or her age and frailty."

What follows from the belief that a right can only be exercised if corresponding abilities are available can be demonstrated not only in Article 12 of the Convention on the Rights of the Child. But it is precisely here that the reference to the right to vote becomes clear, because voting is also an expression of opinion. Appropriately, an expert opinion of the Federal Ministry of Youth comes to the conclusion "that rights for children in the member states of the UN are not directly established by the Convention at all". It "guarantees the protection and

care of children by adults (Articles 2 and 5), so that the Convention is systematically rather an expression of the principle of the best interests of the child."⁴⁹

Let us summarize the chapter after this digression: One of the principles of a modern democracy is that basic and human rights belong to all people, including children. The right to vote is no exception. A society like ours in which there is still no child suffrage is therefore undemocratic - as harsh as that may sound.

6. Is lack of judgment a counterargument?

Now, one could object that constitutional democracy with its catalog of fundamental rights has the formal consequence of treating children as whole human beings, but that was never the intention. Originally, only people who had political maturity and the ability to make judgments were to determine the fate of the state. And the so-called developmental fact - the fact that children do not have an overview of many things - cannot be denied. Who would want to be governed by children?

Historical view

Indeed, a look at the history of suffrage reveals that the mind of the voter has played a role in it. As early as 1687, an essay stated: "The rule applies that everything that is done by virtue of decision can only be done with perfect and conscious knowledge of the matter."⁵⁰ Moreover, until 150 years ago, the link between the right to vote and property and economic freedom was undisputed. "One cannot deny all justification for this principle and [...] add the question whether, in fact, those who have to bear the costs of politics do not proceed more responsibly and cautiously in political decisions. After all, it was also more than a thought experiment to claim that the landowner will not easily part with his house in times of need and will defend it to the best of his ability, while the have-not will make off for lack of risk to save his life when the enemy approaches. The principle applied: he who orders the music must pay for it, but he who pays for it may also alone determine what is to be played",⁵¹ writes the jurist and voting age expert Hans Hattenhauer in a treatise on children's suffrage and quotes a deputy from the constitutional debate of 1848/49: "The whims of the lower classes had brought ruin to the states of antiquity." This deputy wanted to work toward ensuring that only "self-reliant, blameless Germans" could be granted the right to vote. The right to vote would thus have determined the distribution of power, because the "unindependent" without the right to vote would remain more or less at the mercy of the "self-employed." The latter probably rarely govern in the interests of the people as a whole; in case of doubt, they will put their own interests first. At the end of the protracted debates about the conditions to be attached to the right to vote, it was finally decided in 1849 that "every blameless German [is] a voter who has completed his twenty-fifth year."⁵²

Obviously, this result of the 1848 Revolution, the inclusion of all - for the time being all male - citizens in the right to vote, did not come about after examining the judgment of the - additional voters. Rather, it is an expression of the political power relations of the time. Strategic considerations tipped the scales in favor of changing the electoral law.⁵³

Hans Hattenhauer summarizes this insight as follows: "In addition to the purpose of appointing representatives of the people, elections were increasingly assigned a task stabilizing the political order. This integration character of electoral law also made the two fictions with which democratic electoral law is burdened appear tolerable. Fictions are legal white lies that no legal system can do without, but they must be used sparingly. One of these consists in the assumption that all voters are equally experienced politically and act with equal prudence and deliberation; the other pretends that the majority is wiser than the minority."⁵⁴

With the reference to the first fiction, the question of the quality that is or should be hidden behind the individual electoral vote could be considered answered. However, the power of judgment nevertheless and persistently plays a role in the discussion of electoral law.

The "Blind Spot" of the Theory of Democracy

Even in the theory of democracy, there is still a dispute today about what is required of the voter. One of the basic principles of modern democracies is that all people are considered equal and free. Linked to the recognition as free and equal is the notion of private and public autonomy.⁵⁵ Private autonomy refers above all to the rights of freedom that allow citizens to develop as unhindered - by the state as well as by fellow citizens - as possible. In this area, the principle applies that individual action does not need to be justified. Public autonomy, on the other hand, refers to the possibility for citizens to participate in the collectively binding decisions of the political system through elections and thus to contribute their own conception of the "good life." "Therefore, within the liberal tradition of democratic theory, the right to vote is the paradigm of rights in general [...] because it is constitutive of political self-determination." (Habermas)⁵⁶

However, previous democratic theory, in attributing public autonomy (specifically, the right to vote), "unstatedly presupposes the capacity"⁵⁷, to oversee certain contexts.

In her work "One child, one vote?", political scientist Franziska Törring examines the - requirements a citizen must fulfill in order to be allowed to vote. The right to vote is highly formalized; abstract theory is simply not enough for a functioning practice. Thus, it would also have to be possible to specify precisely the conditions that must be met in order to be granted the right to vote. However, apart from the blanket age limit under discussion here, this is obviously not the case,⁵⁸ is obviously not the case. The current theory of democracy cannot name any explicit requirements for the ability of the electorate to make judgments; this is what Franziska Törring calls the "blind spot".

A scientific expert report prepared for the Bundestag on the question of discernment also - confirms the "blind spot": "Thus, to date, there is a lack of sound scientific knowledge to define the concept of political discernment [...]." This finding leads the experts to their demand to clarify, before lowering the voting age, "which criteria must be fulfilled (i.e. which degree of maturity must have been attained) in order to certify young people's ability to participate in elections."⁵⁹

The current practice of our electoral law also confirms the "blind spot". If the tacit assumption is that adults are mature and capable of judgment, this is not confirmed by anything. There is no control of adult maturity. Not only does this control not take place, it is not even provided for.

As a result of this section, it can be stated that both in democratic theory and in practice, the age limit is justified in no other way than on the basis of "intuitive preconception," according to which children lack political maturity. This justification is consistent with the legal view described in chapter 3 that the exclusion of children is "historically substantiated."

The elective ability test

The testing of judgment may not be an issue at present, but - as is repeatedly objected - if children were allowed to vote, they would first have to pass a test of their ability to vote. What abilities would even have to be required in such a test, however, is completely unclear.⁶⁰ The only thing that is assumed in the professional discussion as well as in the vernacular is the above-mentioned belief that adults have these unspecified, special abilities. This is the first

fiction with which Hans Hattenhauer sees the right to vote burdened. It is revealed not only in the fact that some adults are less knowledgeable and others more knowledgeable about political matters. It is also a fiction or white lie because the ability to judge does not set in punctually - and certainly not equally for all people - on the 18th birthday.

The aforementioned expert opinion for the Bundestag confirms, using the example of the "mature" cohorts, that test criteria are lacking: "The possibly declining abilities of older people to actively participate in the solution of societal problems in a creative way cannot be a criterion for the general withdrawal of the right to vote after a certain age limit, since the existence of these possibilities is conversely also not a criterion for the granting of the right to vote."⁶¹

However, the demand for a test (to be defined in more detail) for children can be justified by the assumption, according to another objection, that adults have more life experience. This experience could be accepted as proof of the required maturity. But this criterion is also - unsuitable because of its vagueness. The above-mentioned expert opinion for the Bundestag, for example, states that life experience "could have an effect in two directions: In clarifying reflections on such experiences and testing, on the one hand, as well as in hardening of prejudices, in bondage to group opinions and group interests, in a dragging on of outdated, - simplified ideas of history and politics, on the other."⁶² The fact that life experience is a difficult criterion is also noticeable in the election campaign, when the highest and most intelligent representatives of the parties deny each other's political judgment with great matter-of-factness.

Since the search for a maturity criterion remains inconclusive, a test of voting ability, political competence, maturity or judgment is not feasible. It is also inconceivable because - it is to be assumed - it would have to lead to the disenfranchisement of numerous adult voters. This would be tantamount to a historical step backward and would not be politically feasible.

[The current practice](#)

One can supplement the previous findings on the voter's ability to judge with some observations from practice. The electorate's ability to vote is commonly measured in terms of their knowledge and their ability to act rationally. Their knowledge, however, seems to be nowhere near as great as is generally assumed, or it comes into play only to a limited extent. Many adult voters give little thought to the issues, lack a political overview, and have no clear ideas about either their own future or the demands on the party they will vote for. The rigor with which expertise is demanded of young people seems unreasonable when one looks at the way many adults make their voting decisions.

There are numerous so-called regular voters. They always vote for the same party. The specific successes or goals with which their party contests the election are not that important to them. They apparently do not decide on the basis of a rational examination of the election alternatives, but simply have confidence or follow a habit.

Surveys confirm time and again that, conversely, in some elections considerable sections of the electorate still do not know what to vote for even immediately before election day. These undecided voters then decide in the few remaining hours. Here, too, one wonders what criteria are used to make this decision. Practical experience shows that these people - in some cases up to 30 percent of voters - hardly evaluate facts and factual information. This means that they, too, decide predominantly on the basis of a feeling, since they have no clear criteria.

Last but not least, the election campaigns make it clear that it's all about moods - and less about wisdom, clarity and verifiable decisions. The parties woo voters with slogans and images that have an emotional impact. They demand "loyalty" and tout their "credibility." Not to forget the question of why some politicians - even with almost completely identical political goals - are better received by voters than others: It's because of their personal charisma.

As can be seen, trust, faith, hopes, assumptions, feelings, moods, loyalty, credibility and charisma play a major role when it comes to an individual's decision to vote. In this respect, it is difficult to claim that today's voters have solely factual reasons and that their decisions are rational. Reality is at odds with the tacit assumption that voters survey the consequences of their choices and vote rationally and in a politically enlightened manner. It can therefore be said that in political elections, too, human factors play a decisive role alongside factual ones: Sympathy, fears, anger, etc. Children and young people naturally also have the ability to decide in this way.

Incidentally, the skills one must have to "cast" one's vote are not numerous. You have to know where the polling place is, when it opens, and how to put crosses on a ballot paper.⁶³ make.

To summarize: The ability to judge is not a criterion for the right to vote. In political disputes, there is no authority that can decide on the quality of the arguments, only the individual with his or her personal conscience. That is why majorities, the number of votes, decide in a democracy. Each vote has the same weight, regardless of the arguments behind the individual's decision to vote. The quality of motives and arguments can be assessed very differently subjectively, but in democracy it is not these qualitative assessments that count, but the quantitative results. It is therefore undemocratic to deny children the right to vote on the basis of arguments concerning their quality and qualifications.⁶⁴

The "blind spot" of democratic theory "can be understood, on the one hand, as a vulnerability that has historically been used to justify the exclusion from the right to vote of, for example, the dispossessed, women or other groups. However, it can also be interpreted as a free space that continually offers new groups the opportunity to claim political rights for themselves, as the dynamic element that has historically favored the emergence and assertion of political - participation rights for ever wider segments of the population."⁶⁵ This book attempts to explore that space.

7. Eligibility and some other objections - a triviality?

In addition to the central point of contention of electoral eligibility, other critical arguments keep cropping up in discussions about children's suffrage. These will also be discussed.

The eligibility

Do children also have to be eligible to vote? Like the right to vote, the right to stand for election is regulated by means of the principles of generality and equality. "Thus, everyone must have equal opportunities to become a member of parliament when standing for election, without regard to social distinctions, in particular to their ancestry, origin, education or wealth."⁶⁶ However, eligibility is expressly subject to some conditions, of which only the minimum age is of interest here. This minimum voting age is determined by the Basic Law in Article 38 (2) as "the age [...] at which the age of majority occurs."⁶⁷ Since the age of majority is regulated in the Civil Code, the age limit cannot be attacked with the same legal construction - unlike in the case of active suffrage, where the limit is numerically fixed at 18. So much for the current legal situation.

The question of eligibility is irrelevant to the problem of the age limit for active suffrage. Active suffrage can be changed and eligibility left as it is. In this way, the issue could be left completely out of the equation.

Nevertheless, the general question remains whether age is a reasonable reason to exclude persons from eligibility. The most important reason for restrictions on eligibility is to protect people from representatives who do not act in the interests of the community. For example, criminals may not be elected because they are denied the right to act responsibly.

It therefore makes no sense to exclude children across the board, as the following consideration shows. A minor would have to want to be elected (1), he would have to - overcome a number of hurdles to be formally appointed as a candidate (2), and he would then have to win a majority of the votes (3). If he were to succeed, he would have influence, but would have to seek agreement with the other elected officials in parliament (4) in order to implement his "immature" ideas. It is unlikely that a minor could succeed in taking these four steps. If he nevertheless succeeds, it can be assumed that he is suitable as a representative of the people. In this respect, there is nothing to be said in favor of the age limit for eligibility, since even without it the goals pursued with it can be achieved.

It is likely that the introduction of eligibility would have formal consequences in areas of society where the age of majority plays a role. However, it is beyond the scope of this book to assess these problems, which offer sufficient material for legal research.

Other age limits

Critics point out, among other things, that someone who is not even allowed to drive a car should certainly not have the right to vote.⁶⁸ Others reject children's suffrage, claiming that it would mean that (adult) criminal law would also have to apply to children. What is the element that connects these strange-seeming arguments?

Age limits represent a statistical abstraction that does not take into account individual differences in people's abilities (and needs). As demonstrated in the section on eligibility, the

decision as to whether someone is suitable for a matter can be made without setting an age limit. What matters is whether the specific individual is qualified for the specific task. How this is determined is simple in the case of being elected: the candidate must receive sufficient votes. In the case of driving, one encounters two conditions: a blanket age limit and the driving test. The age limit is just as redundant in this case as it is for eligibility. If the candidate passes the driving test, he has the required knowledge and can confidently participate in traffic. Nothing more is required. If the test does not ensure the learner driver's qualification, the test must be tightened - and not the discriminatory age limit maintained.⁶⁹

I will let the child rights activist Ekkehard von Braunmühl have his say once again: "Age limits often generalize and standardize outdated experiences into 'average' expectations of the ability and willingness of groups of people. In this way, however, they document the state's distrust of the freedom of specific individuals and lead to senseless discrimination in many - areas. In order to advance the equality of generations, it is therefore advisable to work out need- and ability-based alternatives to any age limit." In order for "any age-based discrimination/inequality" to cease, it must be clarified how "the greatest possible reduction - or even complete elimination - of age discrimination can be achieved with the least possible additional bureaucratic effort. [...] People who need and want anything special (protection, help, care, etc.) do not need and want it primarily because of their age, but because of their situation and needs. If I should become an ancient old man, I will be dependent on some help, but I do not want to get this help because I have reached some age, but because I am dependent on help. Likewise, children certainly have many legitimate claims, but these need not be derived from their age group membership, but can be derived without disadvantage from their concrete stage of development and performance (in)ability."⁷⁰

The idea can also be applied to criminal law. Even now, the same criminal acts committed by different offenders are not punished in the same way; rather, the judge examines the offender's personal situation before pronouncing the sentence. For example, someone who was drunk at the time of the crime can hope for a lighter sentence. Why shouldn't children also be punished first and then sentenced individually?

Incidentally, children are already entitled to other fundamental rights without therefore being subject to adult criminal law. A similar insight has also found its way into the Federal Government's 10th Report on Children and Young People: "In order to maintain certain protective rights/privileges for minors, it would, moreover, be harmless if, for example, the age limits for legal capacity and criminal responsibility, on the one hand, and for the right to vote, on the other, were to be 'decoupled' from one another".⁷¹

After all, there are already widely differing age limits in many social areas.⁷² For example, after reaching the age of 14, a child is entitled to decide which religion he or she wishes to profess; anyone who is 15 can apply for social welfare benefits; from the age of seven, children are generally liable for damage they cause; and at the same age, so-called limited legal capacity begins, while juveniles are held criminally responsible at 14. This enumeration does not in any way limit what was previously stated about the idea of capacity-related limits. Still less does it relativize what has been said about age limits in human rights cases. However, the limits mentioned should make the critics of child suffrage aware that the strictness demanded for the voting age is arbitrary.

[The people's representatives](#)

Some opponents of children's suffrage argue that elected representatives are representatives of the whole people and must also look after the interests of those who do not want to or are not allowed to vote. They are formally bound only by their own conscience, but at the same time they would have to orient their political actions to the common good, for which they are responsible. "Members of parliament [are] by no means 'only' subject to their private conscience, but are bound above all to the applicable constitution and the 'official conscience' established by it."⁷³ Therefore, according to the objection, there is no need for the direct participation of children at all. Responsible politicians would also responsibly look out for the welfare of all young people.

The latter may be the case. But practice shows that there are probably too few responsible politicians. Who wants to close their eyes to the shortcomings outlined in chapter 3? The impression is confirmed again and again that child and youth politicians try to attract attention and financial resources, but are defeated in the competition with the representatives of the major political fields. Children's suffrage is a means of changing this situation; it serves as a necessary corrective. In addition, many members of parliament make demands on behalf of children - as the debate on school reform shows - but represent their own views and not those of the children.

Children's Parliaments

Children and young people should not be given the right to vote straight away; in children's parliaments they could also - for the time being even better - assert their interests, according to a widespread objection to children's suffrage. So-called participation projects can indeed be effective instruments. I know of no advocate of children's suffrage who opposes well-organized children's offices or children's councils. However, only a few initiatives exist so far that have effective co-determination possibilities. In most cases, they depend on the goodwill of the local council or mayor and cannot decide on finances. They practically always operate in a limited local context; their work corresponds to citizens' initiatives, which exist in adult circles as well and are never cited as an alternative to voting rights. Unfortunately, many of the so-called participation projects still have an alibi character and are intended to improve the reputation of politicians - without demanding concessions from them.⁷⁴

Elections change nothing...

...otherwise they would be banned, is a widespread view, children's voices don't help either. In the opinion of many people, parliamentarism is not (or no longer) able to do justice to numerous social problems. Sluggishness, self-interest on the part of politicians and the dependence of politics on business interests feed doubts about parliamentary democracy.

But that is no reason to deny children the right to vote. On the contrary. Children and young people will benefit from the right to vote - in the form of increased respect. This effect would also occur if the prevailing system of parliamentary democracy actually proved to be - unsuitable in principle for shaping society.

The criticism of the weaknesses of parliamentarism is conducted under the motto: "Whoever votes, has already cast his own vote!" To deal with this question further is beyond the scope of the present book. However, if the introduction of child suffrage would also give an impetus to the critical discussion of parliamentarism, this would not be a mistake. I would even like to

claim that children and young people are among the potentially constructive critics of parliamentarism.⁷⁵

8 Is proxy voting or lowering the voting age enough?

As explained above, the right to vote for children derives directly from human rights and - democracy and can be implemented in conformity with the constitution. But how should one imagine this change in electoral law in practice?

Advocates of child suffrage differ on the answer to this question. Some, mostly prominent representatives, prefer less provocative variants such as proxy voting and lowering the voting age, while others insist on the introduction of genuine, unrestricted child suffrage. If one attempts to systematically summarize the various proposed solutions, it is noticeable that the different concepts are each advocated by representatives of specific professions.

The advocates of genuine child suffrage are publicists, critical educators and representatives of youth organizations. They invoke human rights and moral philosophical principles such as equality, and measure their demands by the effect they can have on children. For them, the right to vote is only one of the steps, a methodological element, on the way to a world that is peaceful for children, that takes their needs seriously and is characterized by more justice between the generations.

The proponents of proxy voting can be summarized in a second group, which is predominantly recruited from lawyers. In their considerations, references to current children's interests are completely absent; children do not appear as personalities in childhood and adolescence. Rather, they only play a role as providers of pensions or payers of the increased national debt who will suffer from the consequences of the current misguided policy - that is, only when they are adults. With admirable stringency, some lawyers work out the equivalence of children and adults from constitutional court decisions and the Basic Law. But in the style of the widespread view of the child as an object to be developed and protected, they deny him actual political participation.

A third group is made up of politicians and others who are asked to make practical mediation proposals in current affairs. They call for minor reductions in the voting age. Their motives are mixed. In part, they hope to achieve improvements at least for older young people; in part, they believe that a compromise will satisfy more far-reaching demands for voting rights. And some believe they can counteract the so-called disenchantment with politics.

The proxy voting right

The proposals

As already mentioned, it is mainly lawyers who propose granting children the right to vote, but having their parents cast their votes in trust.⁷⁶ Advocates of the right to vote by proxy - joined together in 1997 to form the association "Allgemeines Wahlrecht e.V." and set themselves the following goal: "The aim is to allow children to vote by proxy until they reach the age of majority."⁷⁷ Apart from the fact that the very concept of "exercising the right to vote" is questionable in itself, this position does not go unchallenged even among lawyers because of its legal implications.⁷⁸

A special case here is the position of the Munich political scientist and lawyer Peter Merk, who advocates a mixed system. Already before the Children's Commission of the German Bundestag in 1996, he expressed the view that children should vote for themselves if they had

first officially expressed their "will to participate" - the desire to vote themselves. This variant comes closest to the form of voting rights without age limits favored in this book. However, Peter Merk also wants to ensure that parents vote by proxy for children who do not want to participate, so that children's votes are not "lost" and the hoped-for gain in intergenerational justice is not diminished by not-yet-voters.⁷⁹

Another special case of the right to vote by proxy is family suffrage, according to which children remain without the right to vote even in the legal sense, but parents receive one additional vote per child. This amounts to plural suffrage⁸⁰ and violates the principle of equality enshrined in the constitution, which is considered indispensable in all modern democracies.⁸¹ This variant is not currently being seriously discussed.⁸²

The criticism

It must be doubted that parents really vote in the children's best interests. According to the argumentation of the proponents of the right to vote by proxy, they are obliged to do so under Article 6 of the Basic Law. There it says: "Care and education of children are the natural right of parents and the duty incumbent on them first and foremost." From this, the Bavarian jurist Konrad Löw concludes "that parents are the representatives of their children's interests appointed by nature"⁸³. From my - and probably not only my - experience with numerous young people, this is a very formal, purely legal and unrealistic view, which is also reflected in the statement of Lore Maria Peschel-Gutzeit: "In exercising the right to choose, parents would have to be guided solely by the best interests of the child - as in all other decisions concerning the child."⁸⁴ This is an uncontrollable provision.

Surprisingly, even Hans Hattenhauer, one of the proponents of proxy voting, states, "Where it concerns the minor children, one suddenly works there with the cloudy vocabulary 'child's welfare' instead of the appropriate term 'law.' So far, despite great efforts, no one has been able to bring the 'best interests of the child' down to a clear term."⁸⁵ The ubiquitous discrepancy between the expectations that parents, on the one hand, and children, on the other, have of the school alone can make clear the dubiousness of the phrase "the best interests of the child. The lawyer Konrad Löw is unimpressed by such facts: "If parents are nevertheless recognized in principle as the legal representatives of children, it is because experience shows and the legislator assumes that parents recognize the true interests of children better than the children themselves and it may be assumed that they are very concerned about the welfare of their children."⁸⁶

"Because experience shows and the legislator assumes"-this formulation from the mouth of a lawyer can be interpreted as an attempt to round off his plea and save his own position. But in reality, experience - even if not in all families - teaches otherwise. In families where there is a good relationship between the generations, parents would certainly be fair, accepted advisors who do not exploit their power. But why should they, of all people, take the choice away from children and young people? In families in which children are afraid, feel uncomfortable, are exploited and in which the parents command the children, it may be "assumed," contrary to Konrad Löw, that the parents do not (know) the best interests of the children. Rather, it must be asked with the political scientist Claus Offe: "And would they care at all about the welfare of the child - instead of about the improvement of their current household income in at least primarily their own interest, which need not always coincide with the long-term welfare of the child?"⁸⁷ child's best interests?"⁸⁸ In these families, there is a pernicious parent-child power imbalance. It is precisely there that children should be allowed to choose for themselves.

It seems to me that the argumentation of the lawyers regarding the parental interest in the child's welfare is based on abstract considerations. At least some doubt also shimmers through in Konrad Löw when he has to state: "However, as with all other decisions that parents make in favor of and to the detriment of their children, it is they who ultimately decide, since they also bear the responsibility. If our deputies are not bound by orders and instructions, parents are certainly not bound by the wishes of their children. Otherwise, there would be no objective reason not to let the children themselves make the decision."⁸⁹ With this comparison of parents and deputies, Konrad Löw has probably himself made clear the central weak point of the right to vote by proxy and has thus refuted himself in the final analysis. Members of parliament are voted out of office when the sovereign no longer wants them. Children cannot vote their parents out of office.

The highest personality

First of all, it can be stated that the right to vote by proxy is not linked to any hopes that children, starting from their subject status, will receive more attention and thus more opportunities for emancipation. To be taken seriously, to have a say and to be able to exert - influence - all this remains fundamentally and permanently unconsidered in the case of the right to vote by proxy. Because several strands of argumentation are intertwined in the case of children's suffrage, there are many arguments against proxy suffrage, not only from the - perspective of equality and the subject status that should also be recognized in the case of children, but also from a legal point of view.

The justification for the right to vote by proxy boils down to the relationship between Articles 20 (2), 79 (3) and 38 (2) of the Basic Law, which has already been discussed. However, it has a central weakness - the violation of the principle of the highest personality of the election.

In the most important commentary on the Federal Election Law, Wolfgang Schreiber emphasizes: "The advocates of the model of a 'child suffrage' overlook the fact that proxy voting in active suffrage is not constitutionally permissible at all, and thus a simple-law - introduction of the proxy model is not possible. It cannot be interpreted in the sense of merely a regulation on the exercise of electoral rights, which can be separated from it. As an (active) status right and (political) fundamental right, the right to vote is a highly personal right and thus not at the disposal of the citizen; it can neither be alienated nor assigned, nor can it be - waived, nor can it be transferred for exercise. The requirement of a highly personal vote, as set out in section 14 (4) of the BWahlG, is the concretization of the principles of direct, secret and free voting enshrined in Article 38 (1) sentence 1 of the Basic Law. [...] The current Bundestag election law therefore assumes the inadmissibility of proxy voting (also in the case of absentee voting and the assistance of auxiliary persons in the context of voting)."⁹⁰ At another place of the election law commentary the latter is explained: "With the activity of the auxiliary person it concerns only a 'technical' assistance with the proclamation of the voter will, not a representation. [...] An influence on the vote on the part of the selected person is inadmissible. The assistance shall be limited to the fulfillment of the voter's wishes."⁹¹

Lawyer Ingo von Münch is unequivocal on the subject of children's voting rights: "When - minors exercise their voting rights through their legal representative, it is not a matter of mere 'technical assistance', but of the substantive voting decision itself. The substantive voting decision, however, does not permit proxy voting."⁹² This seems to be a damning judgment against proxy voting.

However, since the defenders of proxy voting continue to adhere to their idea despite the argumentation contradicting them, their positions and justifications shall be briefly presented. Lore Maria Peschel-Gutzeit, probably the most prominent advocate of the right to vote by proxy, makes things rather simple for herself when she writes: "Of course, these critics cannot explain why the principle of the highest personality has already been breached under the law currently in force. Both the absentee ballot and the polling agent are, in their practical implementation, exceptions to the principle of controlled maximum personality."⁹³ Lore Maria Peschel-Gutzeit summarily introduces a new category, "controlled maximum personality," to support her position. She leaves open, however, how this differs from the "actual" supreme personality. At the same time, she passes over Wolfgang Schreiber's argumentation regarding the right to vote by mail and the inclusion of auxiliary persons - without comment. The proponent of the right to vote by proxy, Hans Hattenhauer, also argues similarly to Lore Maria Peschel-Gutzeit. It is true that "the introduction of the right to vote by absentee ballot was already legally questionable and that, according to the principle of 'abusus non tollit usum', the violation of the maxim of personality committed there does not justify further violations". Since, however, "in our legal system the possibility of graded, relative maximum personality cannot be asserted," in electoral law already now "its - only absolutely possible - validity can no longer be asserted."⁹⁴ If one follows Hans Hattenhauer's line of argument, one could also reason that in self-service stores there is never any need to pay, since some people steal anyway. But there is no equality in injustice. His attempt to locate the highest personality in the area of tension between the law of persons and the law of property, and there to attribute the right to vote to property, also seems very far-fetched and inconclusive. "The person 'may' freely deal with the ownership of property. He can be represented in this. With itself however only it is to deal 'most personally'. [...] That the exercise of the right to vote belongs to the legal ability, in the broader sense 'property' of the person - as a subjective-public fundamental right - is not doubted today. Therefore one must give the reason if one insists on highly personal voting. [...] A convincing reason, however, is still lacking today." It may be doubted that this legal construction would hold up in a court of law. Hans Hattenhauer's mistake arises when he places the fundamental right of political co-determination, the right to vote, on the same level as "economic law, tax law, tenancy law, property law, etc."⁹⁵ "No one doubts in our country that the newborn child can be owner, taxpayer, liable to the police, debtor as well as creditor, that a fortune of billions can belong to it, although it has absolutely no idea of this at its mother's breast. The central concept with which we summarize this bundle of rights and duties is that of legal capacity. Manifestations of legal capacity are also fundamental legal capacity and electoral capacity."⁹⁶

If the principle of unconditionality of fundamental rights, which has already been stated earlier, is not to be abandoned, this is illogical and untenable. For all the legal ingenuity, the position of Hans Hattenhauer must be called confusing. After proving elsewhere that the right to vote is a fundamental right and must therefore also be granted to children, he now disputes this fundamental right for children because he wants to give the vote to the parents.

The reference to another fundamental right is made by Winfried Steffani in his justification of the proxy model ("temporary exercise of rights by authorized persons"): "Having a fundamental right (such as the right to property) from birth does not at all mean that it must also be exercised from birth."⁹⁷ In addition to the usual false habit of thinking about the "exercise" of rights, he also makes an effort, of all things, to use the "fundamental right to property." The fundamental right to property is, however, an unsuitable means of proof for the proxy, since it is equipped with a condition: "Property obligates" is written in the 2nd paragraph of Article 14 of the Basic Law. Property gives rise to tax obligations, for example;

taxes must also be paid by a property-owning infant. Thus, one is represented only in situations with an obligation to act and this obligation is not bound to the highest personality.

Lore Maria Peschel-Gutzeit puts forward another argument. Since she only considers the two alternatives of proxy voting rights (violation of maximum personality) and voting rights from the age of 18 (violation of generality), she concludes that if the principle of maximum personality is observed, the principle of generality would necessarily have to be restricted. "Within the framework of a necessary balancing of interests between the two constitutional principles [the] generality principle [should] be granted priority."⁹⁸

Incomprehensibly, neither Hans Hattenhauer nor Lore Maria Peschel-Gutzeit mention the proposal of a genuine child suffrage, in which the principle of maximum personality is - preserved without colliding with the principle of generality, although both are aware of the relevant arguments.⁹⁹

Moreover, proxy advocates do not answer the problem in the case of stepparents, nationally mixed marriages, parents who are themselves under 18, foreign parents with German children, divorce disputes, etc. In the case of orphans, should the youth welfare office be able to cast the vote to which the parents are entitled?¹⁰⁰

The lowering of the voting age

The proposals

In addition to the model of proxy voting, there is the increasingly popular proposal to partially lower the voting age. In addition to other authors, the well-known youth researcher Klaus Hurrelmann¹⁰¹ but also parties (PDS, SPD, Bündnis90/Die Grünen¹⁰²) have had their say.¹⁰³ For reasons of legal and formal feasibility, they are in part limiting this demand to local elections. In the German states of Lower Saxony, Saxony-Anhalt, North Rhine-Westphalia and Schleswig-Holstein,¹⁰⁴ Mecklenburg-Western Pomerania and, in the meantime, in Hesse, they have already pushed through a local youth voting right from 16. The PDS even wants to lower the voting age for federal elections to 16, and Bündnis 90/Die Grünen in Berlin wants to introduce a minimum voting age of 14 for local elections.

Klaus Hurrelmann even advocates twelve years. "Cognitive development research shows that in the age range between twelve and fourteen, almost all young people experience a surge in intellectual development that enables them to think abstractly, hypothetically and logically. Parallel to this, the ability to think socially, ethically, and politically and to make appropriate judgments also increases in this age range."¹⁰⁵

Behind the various considerations of a lower voting age, as the quote demonstrates, is the questionable notion of "exercising the right to vote," i.e., adherence to the ability to vote. - Moreover, the diversity of age requirements confirms the impossibility of naming the necessary abilities or even assigning them to a specific age. Therefore, this procedure is unfair from the outset, since it always excludes people who are below the age limit drawn at will.

Although the lowering of the voting age is only a moderate version of child suffrage, there is nevertheless clear criticism from the conservative corner.¹⁰⁶ "The voter must be taken seriously. They feel they are being taken for a ride when they see that politicians are giving the right to vote to someone they do not consider responsible enough to drive a car. In other words, child suffrage not only doesn't cheer up kids, it pisses off adults. Why should I still

vote if I have to fear that the 16-year-old brat next door will enter the voting booth after me, miss his rock singer on the ballot, and therefore increase the number of invalid votes."¹⁰⁷ It remains open how the author of these lines copes with the numerous adult voters who have had their driver's license revoked again because of their irresponsibility. But unobjective statements, which prefer to work with prejudices and emotional rejection instead of arguments, can be found in many places. The chairman of the CSU parliamentary group in the Bundestag, Michael Glos, takes the same line: "The voting age can only be an indicator of the political and legal maturity of young people, which, as we know, is not given at 16. [...] The current regulation with the voting age has proven itself and does justice to the social and political reality of life."¹⁰⁸

With mere assertions without substance, these voices come along and make it difficult for the advocates of lowering the age limit. "All polls - most recently the one in Brandenburg - have shown that the majority of young people do not want a change in voting rights. Show me a single poll with a contrary result! [...] The fatal impression remains that a tactical game is being played here to catch votes."¹⁰⁹

The proponents of age reduction are hoping for tactical advantages, is this typical accusation. First, the objection remains unproven; second, it is not a serious argument against lowering the age, as the example of Lower Saxony proves. There, contrary to expectations, the CDU benefited from the SPD government's lowering of the voting age in the local elections - and has become more restrained in its opposition, at least locally.

Above all, critics of child suffrage act inconsistently who argue with the above survey results. The fact of the survey proves that they take young people seriously. They unspokenly assume that they are sufficiently "mature" to decide on a change in voting rights. The result of the survey - if the majority opposes it - is actually taken seriously; they are deprived of the actual electoral decision and paradoxically justified by the "lack of political maturity." In this case, the question arises as to why young people are not allowed to vote in the first place. After all, those who do not want to vote because they do not consider themselves mature enough will simply not go. The argument based on the survey results has another catch. If the majority of young people oppose their own right to vote, the consequence is that the minority who want to vote will not be allowed to vote either. The same logic could be used to prohibit people from demonstrating because they are not in the majority.

The proposal to lower the voting age by only a few years doesn't get any better when the traditional critics have only weak counterarguments.

The criticism

The partial lowering of the voting age relies on several effects. First, young people are to be taken more seriously and actually involved. Second, the parties are to be forced to take certain interests into account better in their policies, or at all. Proponents also hope that this will - reduce the much-lamented disenchantment with politics.

The critic must first admit that lowering the voting age to twelve, for example - and for all elections nationwide - can have these effects, which are also sought with genuine suffrage. Nevertheless, the concept of partial age lowering is to be examined here for its weaknesses.

Criticism of the lowering of the voting age is clear for several reasons. One reason is that the aforementioned limit of twelve years for all elections is a long way off. Instead, the usual

demand is to lower the voting age to 16, and only for local elections. With this minor age reduction, the above-mentioned goals can hardly be achieved. The societal push cannot occur because politicians are only slightly motivated to bring about serious changes. In this case, - federal and state politics are not dependent on the new voters, although many decisions relevant to young people are made only there. The important issue of schools, for example, is subject to state law. Moreover, if 16-year-olds had the right to vote at the local level (and even at the national level), politicians would have just two percent additional voters.¹¹⁰ Moreover, the new electorate has only been added because it is "already mature." The parties and candidates therefore hardly have to take them into account any differently than the previous adult voters. Consequently, the election programs do not have to be changed; everything can remain the same. Of course, this also applies to the style of politics and the election campaign.

Politics can neglect issues that are important for children - for example, at home and at school - with the same obviousness as in the past, because 16- and 17-year-olds, even if they vote 100 percent and enthusiastically, have little interest in children's issues because they are already too old for them.

A central element of the idea of lowering the voting age by a few years is the view that the "little ones" must be protected first and foremost - and are thus in effect patronized. The fact that only the supposedly "mature" young people can participate solidifies the prejudices against younger children and young people. And even the new voters continue to be discriminated against under the usual proposals, as they are supposedly only capable of having a serious opinion in a communal context until their 18th birthday. The effect that children are still considered incapable of political participation weighs heavily. They are not taken seriously. The great opportunity for parents and adults in general to engage differently with their children because of children's suffrage, to see them as fellow human beings with equal rights and not as objects to be protected, is being squandered with the partial lowering of the age limit.

Finally, in addition to the criticism of the political implications, the main legal objection to lowering the voting age should not be forgotten. It violates the constitutional principle of the generality of the vote. The compatibility with the principle of generality has so far been justified by the fact that the age limit is a "traditionally substantiated" and "customarily - recognized" exception. Advocates of the partial age reduction would first have to challenge this in order to abolish the previous age limit, and then defend it again in order to establish the new age limit. The partial, rather minor change in the voting age thus involves an arbitrary act that is difficult to justify.

At the end of the chapter, the two proposed amendments to child suffrage can be summarized. The right to vote by proxy suffers from a double inconsistency: children are not taken seriously and the maximum personality dogma of our electoral system is violated. Moreover, the hope that parents will truly represent children's interests is vague.

From a human rights perspective, the partial age reduction is half-hearted and, especially with the proposal of "16 years of age for local elections," largely lacks perspective, since noticeable changes in policy content cannot be expected and reservations about the "little ones" are solidified-particularly with regard to their fundamental rights and the question of whether they are taken seriously. It also violates the general principle of our constitution.

For the above reasons, which are both substantive and formal in legal terms, the conclusion should be drawn to oppose the hasty, ill-considered, only seemingly modernizing lowering of the voting age by a few years as well as a proxy solution. The reasons and the more far-reaching goal must also be conveyed so that there is no confusion with conservative criticism.

9. How should child suffrage work in practice?

I now come to real child suffrage, which assumes that children vote for themselves regardless of their age. Experience has shown that this idea takes a lot of getting used to, yet this position is seriously advocated.

The radical demand for a supreme right to vote was first raised by classical child rights activists Richard Farson, John Holt, and Howard Cohen in the 1970s. Some German¹¹¹ and international¹¹² authors and groups have since taken up their arguments and are making them public. They have recently been supported by other groups, e.g. by youth organizations of political parties, the Catholic Church and by the German Children's Fund. I, too, am convinced that only this variant of child suffrage will survive at the end of the discussion.

However, since the discussion suffers from being conducted primarily in the abstract, I would like to present a draft that is practicable and comprehensible. The right to vote must not only comply with the constitutional principles of equality and freedom, it must also be practicable without errors and be understood and accepted by the voters. Many people are probably skeptical about child suffrage because they cannot imagine the details.

The following section will therefore examine the practical feasibility of genuine child suffrage. The overriding criterion here is not to risk any foreseeable deterioration for those involved and for society as a whole. If, in addition, the thought experiment suggests improvements, it could and should be put into practice. I will try to discuss all conceivable risks and effects and would like to answer the following questions:

- Is there general political damage if the current "proven system" is disrupted?
- What burdens and additional tasks will the various social groups face?
- Last but not least: Are children being saddled with responsibilities that harm them?

The conversion of electoral law is, of course, a complex action that can and must be qualified by many stakeholders and experts in corresponding legislative procedures or pre-procedures. The following considerations must be seen as a first step in this process.

The initial assumption preceding everything, the axiom of my thought experiment, shall therefore be:

Any person who wishes to vote must not be prevented from doing so, regardless of age.¹¹³

This corresponds to the deletion of Article 38 (2)¹¹⁴ of the Basic Law, which sets the age limit at 18 - with corresponding consequences in the Federal Election Law and other federal regulations, which I will discuss later. However, the considerations are to be transferred from the federal level to the states and municipalities, so that the new norm can apply to all - elections and votes.

The danger of political upheaval

The new regulation of electoral law must not trigger chaos in the party landscape, in parliaments and thus in legislation. If the age limit is to be abolished, this reassuringly does

not require any change to parliamentary and administrative structures, not even to those in need of improvement. It does not call our political system into question.

Quantitative considerations

The added voices of children and young people do not have the power to lead jarringly to a new set of rules for society. Decisions still depend largely on adult voters, who make up about 80 percent of the population. According to official figures¹¹⁵ there are around 74.6 million Germans in Germany,¹¹⁶ of which 14.1 million are between the ages of zero and 18. This corresponds to a share of 18.9 percent.

Of course, not all of the new under-18s will actually vote. If only those at least 6 years old are taken into account for a rough calculation, that leaves around two-thirds of children and young people under 18, or about 13 percent. This 13 percent is unlikely to be united, so potentially subversive ideas have no direct chance.

The representativeness of democracy

Voters have no direct influence on political decisions. It is not politics that is elected (so-called factual votes); politicians are elected (personal votes). The people's representatives make their decisions to a much greater extent than the ordinary voter makes his or her electoral decision on the basis of comprehensive information and after several "readings" in which the consequences of the decisions are weighed against each other. Parliament, with or without child suffrage, is also bound by legal provisions and procedures and must respect - constitutional provisions; in particular, it must protect fundamental rights and the constitutional order. Our democracy grants, as the well-known constitutional lawyer Günter Dürig states: "no freedom to the enemies of freedom. [. . .] If the Basic Law protects the 'free democratic basic order', it is about the fact that the political competition has to take place non-violently (peacefully) despite all harshness. Conflicts are not suppressed, but their settlement must take place in a civilized manner".¹¹⁷ These commitments result in a stability that should reassure every child suffrage skeptic.

Referendums

Even in referendums in which children then participate, it must remain guaranteed that important constitutional principles are not violated. However, such violations do not stem from the young voters, but rather from basic principles of referendums that have not yet been fully clarified. Thus Günter Dürig speaks of "completely unprofessional bungling, when, for example, in all demands that 'the people' be allowed to vote in the future, it was left unsaid: but on what. At least a precise negative catalog should have been included in the debate. For it could surely not be true that, to cite a few horror examples, the reintroduction of the death penalty, the expulsion of all foreigners, the abolition of the federal states, withdrawal from the UN, the rebuilding of the Berlin Wall, etc., should be put to a referendum."¹¹⁸

It is not evident that children's votes represent an additional risk here. Instead, however, children's right to vote would give them a better chance of putting issues and problems of interest to them on the agenda in popular initiatives and similar forms. For the final referendum, however, the same quantitative considerations apply as those made earlier with regard to elections.

Thus, if the collapse of our political system can be precluded by the introduction of child suffrage, it is now necessary to examine how the electoral law must be changed and whether it remains workable in the process.

Legislation and election management

The Federal Election Act

According to the requirements of the experiment, from the axiom and the omission of Article 38 (2) of the Basic Law, a change in the Federal Election Act results. The regulation of the age limit in paragraph 12 must be repealed. For comparison, I have indicated the necessary change by deletion.

Electoral rights and eligibility

§ 12 Right to vote:

(1) All Germans shall be entitled to vote¹¹⁹ within the meaning of Article 116 (1) of the Basic Law, who on the day of the election

~~1. das achtzehnte Lebensjahr vollendet haben,~~

2. have been resident or otherwise ordinarily resident in the Federal Republic of Germany for at least three months,

3. are not excluded from the right to vote pursuant to § 13.

Although it is only tangential to our topic, I would like to interject a brief consideration of disqualification from voting under Section 13:

§ 13 Exclusion from the right to vote:

Excluded from the right to vote is,

1. anyone who does not have the right to vote as a result of a judge's decision,

2. a person for whom a guardian has been appointed to take care of all his or her affairs, and not only by temporary order; [...]

3. who is in a psychiatric hospital on the basis of an order pursuant to Section 63 in conjunction with Section 20 of the Criminal Code.

Because of Section 13 No.1 (loss of the ability to hold office, eligibility and voting rights, Section 45 of the German Penal Code), only a total of three people were deprived of the right to vote in Berlin between 1992 and 1998. Therefore, the potential political damage would be small if these individuals were punished other than by disqualification from voting. The other excluded groups (§ 13 nos. 2 and 3) could also be admitted, considering that the votes themselves must be cast (principle of maximum personality). It cannot be assumed that a significant proportion would vote. Irrespective of this, the influence on the election result would be minor for the following reason: In Berlin in 1999 (1995), only 563 (629) adults were

excluded from voting altogether because of Paragraph 13 (answer to Kleine Anfrage 149/00 (133/96)). In both cases, this figure corresponded to 0.04 percent of the valid votes. I.e., even if all these persons had participated in the election in person, all had cast a valid vote and all had voted for the same "wrong" party, the resulting "error" in the election result would have been negligible. The number of invalid votes alone was 17,646 (24,683) for the second votes. Therefore I suggest in the sense of the demanded norm clarity of the electoral law to delete paragraph 13 BWahlG because of its negligible effects completely and to leave in paragraph 12 only (1) No. 2. Among other things, this would save a lot of judicial trouble, do no political damage and not unnecessarily violate the dignity of those affected. Such a pragmatic approach is quite common in electoral law, as the considerations of Wolfgang Schreiber (1999) in connection with, for example, the two-vote system, the right to vote for foreigners and also with the problem of "care cases" prove.

But even if one wants to avoid this, in any case minor, influence on the election result, it is clear from the current wording of paragraph 13 that, except in the case of children, an individual examination of the individual case precedes the exclusion.

Back to the topic. Are the amendments to the Basic Law and the Electoral Code proposed above sufficient to guarantee the smooth operation of children's suffrage, or do further measures become necessary?

The will to participate

Under the new conditions, does every citizen have to receive a voting notification that gives them the certainty of being registered and informs them where and when they can vote? Since not all young people will develop an interest in voting, unnecessary expense (administrative, printing and postage costs) should be avoided. One possible solution can be copied from the electoral system of other Western democracies.

In the USA, as in Germany, there are certain requirements to which voter qualification is linked, but unlike in our country, the voter must express his or her will to vote and be registered on a voter list for this purpose.¹²⁰ This principle could counteract the nonsensical transmission of voting documents to very young people who are not yet interested in voting. In contrast to the U.S. system, everyone would only have to register once in their lifetime and would only then receive the election documents automatically, as usual.

However, this raises the question of how voter turnout should then be calculated.¹²¹ This is a problem because voter turnout usually reflects the loss of commitment to the state and political dissatisfaction. Does one refer to the totality of eligible voters (i.e., everyone from birth onward)? Then voter turnout would automatically fall in percentage terms. Or does one take only those registered to vote as the basis from which the percentage is calculated? In that case, little is known about the number of non-voters. One solution could be to indicate the number of unregistered voters separately in the election analyses, sorted by age group if necessary. It should not be forgotten, of course, that - in absolute terms - voter turnout would increase as a result of child suffrage.

In short, the application system proposed here avoids bureaucracy, which means that electoral participation must be viewed in a more differentiated manner. In no way can a threat to democracy or the legitimate conduct of elections be derived from this.

Influence, extortion, secrecy of the ballot and absentee voting

One objection frequently voiced against child suffrage is that children can be manipulated and influenced. Behind the suspicion of manipulability lies the fear that the participation of children will restrict the freedom of the vote, which is guaranteed by the Basic Law, and thus make distorted election results possible. In order to understand what freedom of choice entails, a quote by the jurist Wolfgang Schreiber from the commentary on the Federal Election Law is reproduced. "Freedom of choice means, first and foremost, that every eligible voter may exercise his or her active right to vote without (physical) coercion or (psychological) pressure or other inadmissible direct or indirect influence on freedom of choice from outside -by the public authorities, by political parties or other election proposers [...] and their candidates, by other institutions, social groups or from the private sector - and that, in particular, no external influence may be exerted during the act of voting, but also no control of any kind may be exerted on the content of the individual vote after the election.

Moreover, freedom also means that voters must be able to prepare and then make the decision that corresponds to their convictions in a free and open process of opinion-forming. He must therefore be protected from any influence that could seriously impair his freedom of choice despite the existing secrecy of the ballot. [...] The principle of freedom of choice encompasses not only the 'how' but also the 'whether' of an election."¹²²

So legally the matter is clear, nothing needs to be changed for children. But how should we imagine the implementation of these provisions in practice?

When young people "cast" their vote at the polling station, respecting the secrecy of the ballot is not a problem. When children know that they are alone in the voting booth and no one can control what they vote for, attempted non-consensual, possibly extortionate influence goes - nowhere. Freedom of choice is assured. (I come to the consensual, non-blackmailing influence of parents in the section on parents). In the other case, if children cannot or do not want to come to the polling station on election day, the rules of absentee voting as set out in Section 36 of the Election Act also apply to them.

§ Section 36 Absentee Ballot

(1) In the case of absentee voting, the voter shall [...] b) send his ballot paper in a special sealed envelope in such time that the ballot paper is received no later than 6 p.m. on the day of the election. [...]

(2) On the ballot paper, the voter or the assistant shall affirm to the county election officer in lieu of oath that the ballot paper has been marked personally or in accordance with the declared will of the voter. The district election officer is responsible for taking such an affirmation in lieu of an oath;

In addition to this, the Federal Election Code (Bundeswahlordnung, BWO) stipulates that the voter must also tick secretly ("unobserved") in the case of absentee voting. Here again, the relevant paragraph is quoted in its wording.

§ Section 66 Absentee Voting

(1) Any person voting by absentee ballot shall personally mark the ballot paper, place it in the official ballot envelope and seal it, sign the declaration in lieu of an oath on the absentee ballot printed on the ballot paper, stating the place and date, insert the sealed official ballot envelope and the signed ballot paper in the official ballot paper envelope, seal the ballot paper

envelope and send the ballot paper envelope by post in due time to the [...] address indicated on the ballot paper envelope. [...]

(3) The ballot paper shall be marked unobserved and placed in the ballot envelope [...].

Section 57 shall apply mutatis mutandis

to the

voting of disabled voters. If the voter has had the ballot paper marked by an auxiliary person, the latter shall confirm by signing the affirmation in lieu of oath for the absentee ballot that he or she has marked the ballot paper in accordance with the declared will of the voter. [...]

Already under current conditions, many eligible voters make use of the option to vote outside the polling station. In the election for the House of Representatives on October 10, 1999, exactly 316,403 Berliners voted by absentee ballot. That is 20 percent of all voters.¹²³ In federal elections, the proportion was lower, usually around ten percent.¹²⁴

It is clear that a certain degree of abuse cannot be ruled out with the current absentee voting system. If it is assumed that children voting by absentee ballot do not vote themselves because their parents or other persons do so unlawfully and despite the perjury required for this purpose, which is punishable under criminal law, countermeasures should be taken in view of this relatively high number of absentee voters. Under certain circumstances, in order to reduce the risk of falsified children's votes, the conditions for absentee voting should be made more difficult again. Considerations in this direction are already underway without the children's vote law. "The absentee ballot must not lead to sparing the eligible voter a trip to the polling station for reasons of convenience. In the sense of securing the freedom to vote and the secrecy of the ballot, as well as to exclude manipulation in postal voting, the tightenings that have been made by the BWO [...] with regard to the handing out/transfer of ballot papers and postal voting documents are to be seen. [...] The opening of the possibility to vote by absentee ballot already when collecting the absentee ballot documents 'on the spot' are to be seen in this context."¹²⁵

In the case of adults in need of assistance, secrecy is naturally at particular risk, thus increasing the possibility of illegal influence. In this case, too, the Federal Election Code contains provisions guaranteeing freedom of choice. The existing parallels between the limited abilities of younger children and persons with disabilities make it easy to adopt the rules available in Section 57 BWO.

§ Section 57 Voting by voters with disabilities

(1) A voter who is unable to read or who is¹²⁶ or is incapacitated by physical infirmity to mark the ballot paper, to place it in the ballot envelope, to place it in the ballot box himself or herself or to hand it over to the election officer, shall designate another person whose assistance he or she intends to use in casting the ballot and shall make this known to the election committee. An assistant may be a member of the election committee designated by the voter.

(2) The assistance shall be limited to the fulfillment of the voter's wishes. The assistant may visit the voting booth together with the voter to the extent necessary to provide assistance.

(3) The assistant shall be obliged to keep secret the knowledge of the election of another person which he/she has obtained during the assistance.

In order to exclude, as far as possible, the strictly forbidden abuse by the auxiliary person, the auxiliary person could be made aware of his duties in a special way. If a suspicion of abuse falls on the auxiliary person, he must be replaced. In this matter, reliance can be placed on experience, which will gradually produce a reasonable regulation.

I assume that most parents or other helpers will not use their power to dissuade the child from its own opinion by unfair or unlawful methods. A relationship of equality in principle will develop between children and adults as soon as children are citizens of choice. However, I will return to the role of parents in children's suffrage later.

In the event that, contrary to expectations, adults abuse their influence, a quantitative estimate of the risk to the outcome of the election is also helpful. For the purposes of a rough - calculation, I will assume that the proportion of children who need help will roughly amount to 75 percent of the group of five- to eight-year-olds. That's about 3,000,000 people in the four cohorts, because each cohort is about one million. Assuming that only ten percent of this subgroup in total actually vote, that leaves only about 300,000 voters at risk of abuse nationwide. If, of these children - an intentionally high estimate - one in ten is alienated by the influence of the auxiliary, that is 30,000 false votes out of about 40 million nationwide, assuming a deliberately low voter turnout of 50 percent. This results in an error of 0.075 percent, i.e. not even a tenth of a percent. This figure refers only to the case of reckless use of power by adults. To avoid this unfortunate effect, the exclusion of all under-18s can in no way be said to be appropriate. In addition, it must be kept in mind that abuse of power is practiced in different political camps, so the errors in the election results compensate each other.

In addition, adult 'false' assistants risk the children spilling the beans about how it went down, and therefore take the risk of punishment. Election obstruction, election fraud, violation of the secrecy of the ballot, voter coercion, voter deception and voter bribery already carry penalties of up to ten years' imprisonment.¹²⁷ In no case does a potential violation of the law legitimize the withholding of the fundamental political right to vote. The election administration has the task of providing better information during the (pre-)election campaign and of monitoring compliance with the rules.

The election procedure

Under the conditions of child suffrage, the election administration must adapt to the abilities of young voters in its communications to them. However, more comprehensible wording and more detailed explanations of the electoral system are certainly not a major problem. The election administration would also only be responsible for the technical implementation. More complicated issues, such as the meaning of first and second votes, would have to be explained by the media or the candidates themselves during the election campaign anyway. The changes in the way elections are conducted would benefit all voters, true to the motto "What's good for children is also good for adults."

On the one hand, the electoral regulations in their details are also unknown to many current voters, on the other hand, this does not mean any difficulty for the course of the election. What one does not know will be explained if necessary. That's how it will stay, even if something is incomprehensible to children.

Even increasing the number of votes by an estimated maximum of 15 percent will certainly not lead to problems (for example, in counting). At worst, a few additional voting districts

will have to be formed. In most polling stations, however, the expected additional expense - will be bearable given the usual voter turnout. Increased postage, printing costs, etc. are not an argument, since the principle of generality in the right to vote weighs more heavily than any stamp.¹²⁸ The newly introduced registration procedure requires a certain amount of effort, but - since it is caused by each person only once in a lifetime - it is just as little of a hurdle in principle.¹²⁹

The uneven regional distribution of children may make it necessary to change the layout of constituencies. However, major changes are expected only once, on the occasion of the introduction of child suffrage.

The politicians and the parties

The party programs

Politicians and parties can expect considerable pressure. At the same time, this is the greatest opportunity for politicians. They must change and expand the content of their programs, because equality between generations, sustainability, military service, drug policy, media policy, telecommunications and many other things need to be put to the test.

With the new issues, the parties are facing a renewal of personnel. Many social forces - for example, Greenpeace, which is highly regarded by young people - would have a chance to gain influence.¹³⁰ Greenpeace, for example, which is highly regarded by young people, would have an opportunity to influence the parties. The parties could not afford to ignore the voter potential of around ten to 13 percent. They would have to reach out to young people and take young forces into account more than before. The youth department currently plays a rather modest role - measured in terms of financial expenditure - and would then receive the¹³¹ and would then be given the status it deserves. A serious electorate would back motivated politicians. They could count on support for the youth portfolio, each in his or her own party. As with environmental policy, which is now taken seriously by all parties, the search for the best concepts for the children's issue would begin in all political camps.

The 'gummy bear tactics' repeatedly feared or predicted in discussions by opponents of child suffrage, i.e. the plan to fob children off with cheap gifts and to distract, deceive or even corrupt them, will therefore hardly work. All parties will keep a close eye on whether their political opponents are using dubious means to promise the children the moon and, if necessary, expose this deception.

Irrespective of this, it should not be forgotten that the candidates would not only be facing young voters, but also people who are committed to children, and not just in the sense of higher child benefits and tax allowances. The parties therefore risked not only the children's votes, but also their reputation and thus the votes of committed adults. Children would also be able to make good use of their right of co-determination in the municipal sector, where those responsible cut the budget for youth welfare every year. If the parties do not budge, the children and their friends will "honor" that.

Campaign and political style

Every party and every politician must express themselves in the public sphere with more transparency, clarity and honesty if they do not want to fail. That would be a positive consequence of children's suffrage.

The parties and politicians must change the style of their address to "the electorate". Many imprecise, woolly formulations run the risk of being exposed as hollow. "But the emperor is naked"-it was a child who spoke this truth, while all the clever adults doubted their own sanity despite the naked facts or remained subserviently silent against their better knowledge!

All politicians and parties are coming under pressure to explain more precisely than before what they want, when and why. Even if many children will not understand, for example, the detailed explanation of the budget, individual problems of the eastward enlargement of the European Union and other complex topics, enough comprehensible and controllable program points remain. Adults also generally cope better with explanations aimed at children.

The danger of simplification

Child suffrage is a vision of dreamers! This is the cry of terror from the critics. Summarizing their objections, the following horror scenario emerges:

In the battle for votes, parties resort to all means. They hire infamous advertising agencies to make superficial slogans that are effective for children. Since it can be assumed that children do not understand complex interrelationships, they simplify things mercilessly. They present their program in a woodcut-like manner and promise individual measures, some of which - actually benefit children, but which only conceal the essence of their other plans. Possibly, fear and terror are additionally spread for the case of the election of the political opponent. The votes won in this way will then be used to attack either the welfare state and the environment for the benefit of the economic bosses - in the variant of social(istic) critics - or the liberal state, its free citizens and the market economy - in the variant of conservative critics - which alone offer a guarantee for social upswing.

First of all, these nightmares of the critics of child suffrage express a deep mistrust in current politics. Politicians are capable of anything, they imply. If this were true, then - given the centuries-long history of politics, which has produced nothing better - significantly more serious measures than child suffrage would have to be introduced. However, the restructuring of the political system is not at issue in this book.

At the same time, it is implied that children are stupid and cannot see through these tricks. But not only that. The idea also suggests that children are suddenly "in power" and can and must be controlled remotely, admittedly without noticing it themselves. I have already explained how unjustified these fears are, because the parties do not only depend on children's votes, which hardly amount to more than 13 percent. If all children should fall into the trap of the better lying party, the more prudent adults will turn away from that party to at least the same extent. Parents, the media and other groups will, less for educational reasons than for their - own political interests, expose the lies and explain the background to the children.

Irrespective of the horror vision described above, it is feared that young people would not act responsibly and could tend toward extreme positions in political elections and votes and encourage right-wing or left-wing extremist social tendencies. This assertion is countered by studies on political socialization in adolescence, which reveal the exclusion of young people from political decision-making as the cause of extreme positions. "Demoralization, depression and deprivation are the consequences when a person feels that he or she cannot influence his or her own conditions and the shaping of his or her life, i.e., precisely when participation in important life issues is withheld or seems to be withheld."¹³²

Opportunities

Of course, the outcome of elections would be less predictable after the introduction of child suffrage, but critics should bear in mind: elections would be meaningless if certain groups regulated the electoral law in such a way that their desired outcome would be the result. If adults exclude children so that they do not vote for the CDU, SPD, PDS, NPD, DKP or whatever, this would be deeply undemocratic and thus unconstitutional.

Moreover, the doubters unintentionally admit to themselves that they themselves cannot - counter the lies of the opponents with any programmatic substance that could be communicated to children. Either they do not consider themselves immune to the evil methods, or they do not trust themselves to make constructive contributions with integrity. A party cannot seriously have this self-image. Logically, all parties should support the idea of children's suffrage, since it offers the chance to advance underdeveloped important policy areas - and to do so better than political opponents.

The parents, teachers, etc.

The dialogue

"Child-centered measures, even if ostensibly aimed at children, are mostly based on adultistically distorted notions of the best interests of the child: children are generally - classified by adults as immature. From this, it is inferred that children are not capable of identifying and representing their interests, and therefore the best interests of the child must be determined by adults (parents, teachers, social workers, judges, experts, etc.). This view, however, does not coincide with the findings of modern pedagogy and psychology, according to which maturity and competence of children are generally underestimated in the - conventional interaction of adults with children."¹³³

Under the conditions of children's suffrage, parents and other adults will often not know at first how to answer children's questions about political conditions and the candidates in the election campaign. Nevertheless, they will be forced to answer these questions. In doing so, they must expect that their opinions will be compared by the children with other sources of information, so that they risk revealing their gaps in knowledge. This may sometimes be perceived as embarrassing, but it is not a bad thing; in fact, I consider it an advantage that children would be confronted with the fallibility of their parents, which contributes to a greater sense of reality and promotes equality.

The educational campaign expected from many social forces¹³⁴ about the new electoral system, which is expected from many social forces, will place the burden on some parents to deal with the new rules and more than before with everyday politics. After a few years, however, or after a generation at the latest, a certain naturalness in dealing with them will set in.

Parents and educators face the problem of education in different ways, depending on the prior knowledge and interest of children and young people. The younger the children, the more difficult it will be to convey the specific content of politics. Without further ado, children can be told that they need not feel compelled to go to the polls. They can safely let their first election, in which they are already developing a general interest, pass if they feel overwhelmed, for example.

Conversations will arise between parents and children both about democracy, the meaning and purpose of elections, and about the parties and their policy offerings. They will talk about the responsibility that one assumes when deciding to vote. Influencing factors of - representative democracy must be clarified, for example, what charm and wit a politician should have despite all his or her professional competence. A politician's charisma sometimes - and not without good reason - plays a decisive role, as shown by the example of Oskar Lafontaine, who was surprisingly elected party chairman in 1995 because of an emotional speech.

Communication about the elections serves political education and perhaps even the family climate. Even in families where there is not an open-minded atmosphere and children are "brought up strictly" and not taken seriously, a boost in children's self-confidence can be expected, as they are reinforced in other circles by their friends and by the media that they, too, are important and their opinions count.

In schools, youth clubs and other public institutions, children's professional partners will have to think *ex officio* about how to explain elections and election campaigns. In doing so, these adults must also make it clear to the children that part of the right to vote is the freedom not to vote, not yet to be drawn into the "swamp of politics."

Schools and similar public buildings are then subject to certain campaign rules for billposting and other advertising that ensure equal opportunity for all candidates and preclude harassment of those who do not wish to vote.

Influence that respects children

The term 'influencing' sounds - when it comes to the electoral vote - almost like a crime. On the one hand, it is, if it violates the principle of freedom of choice, as explained above. On the other hand, however, the entire election campaign is nothing other than a systematic attempt to influence voters. This is not only permitted, but the purpose of the election campaign. Without influence, little would change.

Influencing also takes place constantly in the circle of family and friends. It often happens in a self-determined way, by asking others and getting advice. One's own opinion is usually nothing more than the mixture of other opinions that have arisen before in the same way. - Children will also ask for advice themselves in a fear-free environment. Responding to them in a well-founded way then represents the real challenge for adults.

Critics fear that many children will choose what their parents choose even without - manipulation because they depend on them. They will simply do what the parents recommend or even command. First, these assumptions do not seem plausible to me, because children do not just talk to parents, they develop a different opinion - especially in the case of paternalism. Second, these assumptions are not questionable, because even if all children voted the same as their parents, no harm would come to our democracy and our state. Parties favored by parents would receive more votes than before. Moreover, child suffrage will also have the opposite effect. Parents and other adults will be influenced by children and young people and their - convictions.

[The mass media](#)

Mass media have to do two things in the election campaign. On the one hand, they must communicate policy content, and on the other hand, they must explain what rules apply when voting. The interests of children and young people will then be taken into account not only in special publications, but also in all general political broadcasts and print media. This applies to both the style of presentation and the topics. Presenters on political talk shows will require their guests to be clear and to use language that is simple but not simplistic. They will produce youth-focused analyses of political accounts and programs and publish the opinions of the new electorate. Surveys - both on the election itself and on other realities - will make clear where youth see problems and help remedy them. Parents will also be informed about their rights and those of their children (both in voting and in general). Finally, political parties and the public will receive information and input that has so far tended to have a shadowy existence in the study rooms of childhood researchers. The Internet and school newspapers provide opportunities for those "affected" to publish their own positions and communicate about them. The emerging public space thus also acts - in the sense of the human right to freedom of expression enshrined in the Basic Law as a ban on censorship and freedom of the press - as a protective space that helps to protect children from disinformation.

In the context of my thought experiment, however, I have to ask above all whether anyone or rather who risks disadvantages as a result of the new tasks of the media. Even among publishers and broadcasters, there are some who are not interested in social peace or balance, but in asserting their own advantages.¹³⁵ After the introduction of children's suffrage, psychological tricks and lies must be expected to captivate children.

The competing media, as well as the major parties and their voters, will try to expose these forces' sentiment by any means necessary. This strategy cannot be entirely denied success under the conditions of adult suffrage. For example, in the 1998 federal election, radical parties received only a few percent of the vote: Republicans 1.8 percent, NPD 0.3 percent, ProDM 0.9 percent, DKP 0.1 percent. The Basic Law also sets limits on certain actions, including those in the media:

Article 9:

(2) Associations whose purposes or activities are contrary to the criminal laws or are directed against the constitutional order or the idea of international understanding shall be prohibited.

As before, the only way to combat all other views and their dissemination is to address their content. Or as the philosopher Ulrich Beck writes: "Too much political freedom can never - justify totalitarian rule."¹³⁶

Finally, the potential damage that the media could do can also be weighed quantitatively. On the one hand, demagogic publications will hardly gain dominant influence; the media market is too large and too crowded for that. On the other hand, as in the previous sections, it can be assumed that only a relatively small percentage of young voters are susceptible to one-sidedness. In any case, child suffrage can hardly be rejected on the grounds that some mass media might succeed in using subtle methods to temporarily seduce children into making rash voting decisions.

The children and teenagers

Already at this point it can be stated that the presented draft of a real child suffrage is feasible. Child suffrage hardly conflicts with current values. If one looks at the consequences of child

suffrage in detail and examines the areas of society affected, the advantages outweigh the disadvantages. The risks are small and are compensated by the disadvantages that the current suffrage system has. A plea must therefore be made clearly in favor of suffrage without age limits. So far, however, the discussion has focused only on the opportunities on the one hand and the burdens and dangers for the community on the other. Finally, the question of the risk associated with the right to vote for children and young people will be addressed.

As emphasized several times, children and young people - just like any adult - can in principle ignore the election process. In fact, however, they are inevitably confronted with the elections. The technical-practical handling of the act of voting, including its preparation, as well as the time required to vote, do not seem to pose a serious hurdle for young voters. Even children who cannot read will be able to mark the ballot paper, provided they are motivated.¹³⁷ ballot, provided they are motivated. This, in turn, can be assumed, since under the present proposal there are only voters who have previously expressed an interest.

According to critics, the psychological burden could become problematic. What happens to a child who can't decide whether to go to the polls at all? What tensions affect a child who does not know whom to vote for? How does a child deal with the conflict of being pressured to make a decision? Wouldn't it be better to leave each child untroubled rather than saddle them with responsibility for politics? Politics is not only a difficult field, it is said, that even adults do not understand. It is also a dirty business into which children are drawn early enough.

Authoritative childhood researchers apparently do not share this view: "Modern childhood policy recognizes children as they are and not only in their function as future adults. Finally, it fundamentally stands by the subjectivity of childhood in all decision-making processes that affect it, at both the individual and societal levels."¹³⁸ However, this position does not remove the difficulty of answering the questions posed above. Neither can the degree of current distress be stated, nor has it yet been possible to establish unequivocally a connection between distress during childhood and the (late) consequences in a person's life. This book cannot - answer this difficult psychological question. Despite the difficulties, however, I think it is inappropriate to pretend that children's suffrage is an imposition that would mean the end of the "perfect child's world." In any case, children have long had a high degree of independence in the areas of media use, leisure and consumer behavior, and educational and occupational choices, and are exposed to a wide range of influences.¹³⁹ To narrow down the problem, plausible considerations can again be used to differentiate. Very young children, by their very nature, do not perceive the choice-related personal overload at all. Older children (from the age of twelve) who can already read well are able to cope with the demand, either by deciding not to participate or by actively orienting themselves and making inquiries.

It is primarily the six to twelve year olds who remain¹⁴⁰ who may be at risk of being overtaxed. Experience shows that about three to six elections take place during this period of life. I assume that one is seriously irritated by the election process at most once in one's life, namely only during the first confrontation. At this stage, adults need to be especially attentive and helpful. A public support program could offer certain assistance and impose obligations on the adult world, as discussed in the sections on the roles of parties, parents, and the media. But even if the effect of imposing burdensome responsibilities on children with the opportunity to vote is not entirely negligible, its magnitude is put into perspective when several aspects are weighed. Some children may have bad experiences that have a lasting impact on their lives. The alternative, therefore, of excluding all children from voting is a guarantee that far more children will have negative experiences or be deprived of opportunities for their personal development.

If one follows the famous child rights activist John Holt, there are two main reasons for demanding child suffrage. The first main reason is "a question of justice. If I am affected by decisions that someone makes, then I should be involved in those decisions. If someone has power over me, then I should have some power over them."

But to answer the question of whether children should be given the right to vote, one must look first and foremost at the second reason. And who better to put it than John Holt: "The other main reason why people should be able to control their government, and thus their lives, is that it can and perhaps does make them more informed and responsible. People do not always learn from experience, but without experience they learn nothing at all. And even experience alone is not enough: not only do they need to have experience, but they also need to have the ability to influence that experience. If what they have chosen and decided means a difference to them, changes their lives, they will have every reason to try to choose and decide more wisely next time. But if their opinion doesn't matter anyway and doesn't change anything - why even bother to think and rack their brains? It is not only power that corrupts people, but also powerlessness. It makes people apathetic, lethargic, cynical, irresponsible and, above all, mindless."¹⁴¹

10. What steps lead to child suffrage?

The court route

Constitutional complaint

The right to vote is a fundamental political right. Basic rights are not dependent on majorities. Individual citizens are entitled to them directly and they are enforceable. This thought occurred to some young people from the Berlin children's rights group K.R.Ä.T.Z.Ä. in 1994.¹⁴² They selected a 13-year-old and a 16-year-old youth from their ranks to file the lawsuit. The Federal Constitutional Court was responsible. The constitutional complaint was filed on August 23, 1995.¹⁴³ The motions presented were:

I. "It is established that the complainants' fundamental right to participate in the exercise of state power pursuant to Article 20 (2), first sentence, second sentence, first sub-sentence, and Article 1 (1) of the Basic Law is violated by the exclusion from the right to vote based on Article 38 (2), first sub-sentence.

II. it is established that Article 38 para. 2, 1st half-sentence GG is unconstitutional due to violation of Article 20 para. 2, sentence 1, sentence 2 1st part-sentence, Article 1 para. 1 and Article 33 para. 1 GG."

The constitutional complaint thus invoked the internal contradiction in the constitution outlined in Chapter 4. The complaint failed because it was not accepted for decision by the Federal Constitutional Court. In justification, the supreme judges referred "in the name of the people"¹⁴⁴ to the failure to observe the one-year time limit of Section 93 of the Federal Constitutional Court Act.¹⁴⁵

The plaintiffs criticized the ruling because the precedent cited by the court had nothing to do with their case: Furthermore, they argued, the court was taking a position that precluded from the outset the legal amendment of norms of the Basic Law by constitutional complaints. Thus, the question could be raised here whether the court did not violate Article 19(4) of the Basic Law by refusing to hear the case ("If someone's rights are violated by public authority, legal recourse is open to him.").¹⁴⁶ However, it is idle to analyze the disputed judgment, since it is unappealable.

Entry in the electoral roll

In order to counter the objection of the Federal Constitutional Court that the deadline had been exceeded, the young people from K.R.Ä.T.Z.Ä. applied for entry in the electoral register at the responsible electoral office. From the outset, they expected to be rejected, but by rejecting their application, they had obtained a decision which - according to the children's rights activists - was unconstitutional, as it violated the state fundamental norm of Article 20 (2).

After receiving the rejection notice, they took legal action before the Berlin Administrative Court. The action was found to be inadmissible and dismissed because the administrative court was not allowed to interfere with the conduct of the Bundestag election. The court - in formal legal terms - denied that the plaintiffs had an "interest in a declaratory judgment that

was too abstract", since the general issue at stake was the legality of the exclusion of under-18s from the election. Thus, legal recourse was once again cut off.

Election challenge

If children and young people were not allowed to vote, even though this is their basic constitutional right, then the Bundestag was not legally elected - was the next consideration of K.R.Ä.T.Z.Ä.

Three young people from K.R.Ä.T.Z.Ä., aged 13, 17 and 18 at the time of the Bundestag election, applied to the German Bundestag "to declare the 1998 Bundestag election invalid on the grounds of unconstitutional restriction of the group of those actively entitled to vote and to determine the consequences arising from this".¹⁴⁷

The German Bundestag rejected the objection "in part as inadmissible pursuant to Section 2 (2) WPrüfG and in part as manifestly unfounded pursuant to Section 6 (1a) No. 3 WPrüfG". It was inadmissible in the case of the two younger objectors because they were not eligible to vote. This is not without a certain humour, since it was precisely a matter of establishing that they were eligible to vote. In the case of the objector, who was already 18 years old at the time of the election, the objection was "manifestly unfounded", since the alleged unconstitutionality was usually¹⁴⁸ subject to review by the Federal Constitutional Court. K.R.Ä.T.Z.Ä. again appealed to the Federal Constitutional Court.¹⁴⁹ On November 2, 2000, the court dismissed this election petition as "manifestly unfounded. In justifying their ruling¹⁵⁰ the judges stated: "Limitations of the general right to vote are 'constitutionally permissible if there is a compelling reason for them'.¹⁵¹ It has always been considered compatible with the principle of the generality of the vote, for compelling reasons, that the exercise of the right to vote be conditional upon the attainment of a minimum age."

Attorney Dr. Peter Merk, representing the plaintiffs, commented on the outcome of the proceedings, saying: "The court has blatantly violated its responsibility to be the guardian of a dynamic constitution. The impression is created that, as far as the right to vote is concerned, the 2nd Senate of the Court sees itself as the guardian of a museum-like age limit that has long been out of date and disregards, without justification, the fact that in this way the basic political right of active voting is withheld from an entire population group without any necessary compelling reason."¹⁵² The chances for further legal steps on the way to child suffrage are thus poor.

The public debate

In Germany

With a two-thirds majority, the legislature could amend the constitution in the sense of children's suffrage at any time on its own initiative and without a ruling by the Federal Constitutional Court. But we are a long way from that. So far, child suffrage has failed to gain majority support, either among the population or among members of parliament. That is why public debate must be conducted and supported, addressing the pros and cons.

The dispute in the courts outlined in the previous section is not meant to be disparaged as a tactical measure for the necessary public debate. But there is no doubt that the legal - proceedings have had a catalytic effect on the public through the interest that the media have developed in them.¹⁵³

The group K.R.Ä.T.Z.Ä. has worked towards this through numerous press releases, its Internet offering, a list of prominent supporters and other actions. For example, at a festive event in Berlin's Red City Hall, it demonstrated to Walter Wilken, the federal managing director of the German Child Protection League, that his criticism of children's suffrage is untenable.

If one transferred it to the situation of humans with handicaps, its deeply handicapped-hostile character would be obvious, could the representative of K.R.Ä.T.Z.Ä. the functionary of the child protection association before assembled public unchallenged counter.

A constructive proposal that could be implemented in the short term comes from K.R.Ä.T.Z.Ä. comrade-in-arms Martin Wilke. Since local election law - as has been practiced in some German states for several years - is simple state law and does not require an amendment to the Basic Law, the voting age could be set to zero in one German state. Perhaps, in order to avoid panic, such a scientifically accompanied pilot project could initially be limited in time, similar to a school trial.

Other constructive proposals will not be long in coming.

With a nationwide signature campaign under the motto "I want to vote," a coalition of numerous organizations has been addressing all children and young people in Germany since spring 2002. At the end of the campaign, a petition is submitted to the Bundestag demanding that under-18s have the right to vote. Adults can also join the petition.¹⁵⁴

Abroad

In the USA and Canada, a number of groups are working on comprehensive concepts to achieve fundamental social improvements for children. "Americans for a Society Free from Age Restrictions" (ASFAR) demands that no one's freedom be restricted on the basis of age. Regarding voting rights, the group advocates abolishing the age limit, but also formulates "lowering the voting age" as an alternative (www.asfar.org). YouthSpeak is a group of young people with similar demands (www.oblivion.net/youthspeak).

The Association for Children's Suffrage writes: "We call for a simple universal criteria for voting: citizenship and sufficient interest to register and then vote on election day."¹⁵⁵ This call is in line with the concept I advocate. The Canadian Youth Rights Association (CYRA, www.cyra.org) takes a similarly fundamental view.

Certainly, these organizations alone are not capable of turning the tide. But their activities prove that a social discourse has begun, at the end of which the right to vote for children can become a reality.

"Whoever ties political freedoms too closely or even exclusively to the already existing rule of law not only fails to recognize the political effectiveness of the idea of freedom, which can be seized and claimed at any time. He also denies all civil rights and freedom movements in dictatorships of all kinds any real power, deprives resistance, which is always and everywhere possible, of its dignity."¹⁵⁶ If one invokes this idea of freedom, many avenues are open for - moving closer to the ideal of true equality between children and adults.

11. Balance

"Every person who wants to vote - regardless of age - must not be prevented from doing so." That is the demand at the heart of this book. Of course, it is not an end in itself. It is directed against the lack of equality, democracy and other values that are always held so high in the speeches of educators and politicians. Children in particular are still the objects of adult decisions. For most of them, the democratic principles of our society do not apply either at school or at home. Looking for a starting point to make tangible progress on these issues, I heard many years ago about the idea of letting children have a say in elections in person. Those who call for the abolition of the age limit on voting rights are confronted with a large number of very different questions. Aren't children too politically immature? Aren't they manipulated by their parents? Is this even legally possible? Doesn't this lead to excessive demands? Do the chances of radical parties improve? Many people even fear that democracy will be endangered.

The book has attempted to bring together all the arguments that are relevant to changing the electoral law accordingly. In doing so, the numerous objections have been taken very seriously. The risks possibly associated with child suffrage must be comprehensively clarified theoretically before one can proceed to test it in practice.

Can the demand for a right to vote for children be maintained after all these questions have been answered? What essential findings have emerged from the examination of the opportunities and the assessment of the risks?

The implementation of a real child suffrage without proxy voting and without partial lowering of the voting age is legally possible within the framework of our Basic Law.

Human rights considerations show that it is contrary to democratic principles to deny children the right to vote on the grounds that they lack the necessary qualifications. The widespread but erroneous conviction that duties are also attached to fundamental rights is reinforced in the case of the right to vote by the nonsensical linguistic regulation of the "exercise of the right to vote. Voting is an activity, but the right to vote is not. It cannot be "exercised", but is a fundamental and human right to which everyone is entitled solely by virtue of being human.

Proxy voting and partial lowering of the voting age - the usual demands - appear counterproductive and unbalanced on closer inspection.

The scenario developed in this book of a society without a voting age limit, on the other hand, results in hardly any problems that threaten the common good. Neither the legislature nor the electoral process, neither parties and politicians nor the mass media, neither parents and other caregivers of children and adolescents nor the children and adolescents themselves are confronted with insoluble problems as a result of the abolition of the age limit.

A discussion process has begun in public about abolishing the age limit, supported by initiatives of several youth and other organizations, which can no longer be scaled back. I am convinced that the equality of children and adults is the key to a peaceful and happy world. By all means, we must try to eliminate the power imbalance that has historically been created to the detriment of children. The realization of children's suffrage can contribute a great deal to this.

12. Appendix

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List of frequently asked questions

In many cases, criticism of child suffrage is expressed directly and firmly. However, it can also be formulated as a question. The table provides an overview of the most frequently voiced concerns.

	Responses:
Aren't children far too immature to vote?	1 , 2
Aren't children far too easily influenced?	1 , 2
Will radical parties benefit from child suffrage?	1
Do young people know politics well enough to know what they are voting for?	1
Children also have fewer responsibilities than adults, so why should they get more rights?	1 , 2
Do children even understand the importance of their choices?	1 , 2
Does the right to vote overburden children and place too much responsibility on them?	1 , 2
Do children even want to vote?	1
Can children then also be elected?	1
Should infants then also go to the ballot box?	No.
Is there a danger of parents forcing their children to vote for a certain party?	1
From when should one be allowed to vote?	1
Aren't children's parliaments better forms of participation?	1
Is lowering the voting age to 16 enough?	1
Should parents vote by proxy for children?	1
What should child suffrage improve?	1
Elections don't change anything anyway!	1

¹ Article 21 of the UN Declaration of Human Rights states that "Everyone has the right to take part in the management of the public affairs of his country, directly or through freely chosen representatives.

² A list of frequently asked questions is included at the end of the book.

³ Stallion 1995

⁴ Recorder 1999

⁵ Die Tageszeitung, 9.5.2001, p. 24

- ⁶ Berliner Zeitung, 30.10.1999
- ⁷ Der Tagesspiegel, 13.12.1999, p.2
- ⁸ Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, Materialien zur Familienpolitik 8, 21/22.3.2000
- ⁹ The Time, 20.4.2000
- ¹⁰ Information of the Christliches Jugenddorfwerk CJD, October 1999
- ¹¹ Bundesverband Alphabetisierung e.V., Goebenstraße 13, 48151 Münster, Germany
- ¹² AP report, 8.9.1999
- ¹³ Kramer/Werner 1998, p. 42
- ¹⁴ Spiegel-Online, 12/13/2001
- ¹⁵ Information from the Berlin State Statistical Office; values vary between 17.1% and 12.4%.
- ¹⁶ Unless they do it out of self-defense. However, parents who pursue educational goals cannot invoke the principle of self-defense.
- ¹⁷ Alice Miller in interview, in: Der Tagesspiegel, 13.12.1999, p. 2
- ¹⁸ Questions of radical criticism of education, questions of the deplorable generational relationship and corresponding alternatives are presented in detail in relevant publications: German Children's Rights Movement 1984; von Braunmühl 1986, 1990, 1997; Hinte 1990; Heimrath 1991; Weimann 1992; Weingartz 1992; Stern 1995; Böhm/von Braunmühl 1994.
- ¹⁹ von Braunmühl 1990, p. 191
- ²⁰ Fischer-Kowalski/Pelikan/Schandl 1995, Gribble 2000
- ²¹ Honig/Leu/Nissen 1996, p. 12f.
- ²² Information from the Internet offer: www.srzg.de/html/kurzinfos.html
- ²³ See, for example, Merk 1997 with further reading.
- ²⁴ Peschel-Gutzeit 1999, p. 558
- ²⁵ *ibid.*, p. 557
- ²⁶ Hattenhauer 1997, p.239, Löw 1993
- ²⁷ Palentien/Hurrelmann 1997, p. 5
- ²⁸ Schreiber 1998, p. 32
- ²⁹ I will disregard the acquisition of citizenship through immigration for our discussion.
- ³⁰ Duke 1991
- ³¹ Jarass/Pierot, Kommentar zum GG, Art. 38, Rdn. 5; quoted from Merk 1997, p. 265.
- ³² Quoted from Merk 1997, p. 265
- ³³ Schreiber 1998, p. 238
- ³⁴ *ibid.*, p. 233
- ³⁵ Maunz-Dürig, Kommentar zum GG; quoted from Merk 1997.
- ³⁶ Merk 1997, p. 268
- ³⁷ Hattenhauer 1997
- ³⁸ Peschel-Gutzeit 1999
- ³⁹ Löw 1974, p. 29
- ⁴⁰ Schreiber 1998, p. 40
- ⁴¹ Steffani 1999a, p. 789
- ⁴² Admittedly, only the adult male free.
- ⁴³ Declaration des Droits de l'Homme et du Citoyen (1789), which later became the preamble to the French Constitution.
- ⁴⁴ "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."
- ⁴⁵ K.R.Ä.T.Z.Ä. 1998, P. 6
- ⁴⁶ Article 1 of the Universal Declaration of Human Rights
- ⁴⁷ Von Braunmühl 1998 at the founding congress of the Foundation for the Rights of Future Generations. - Unless otherwise indicated, I refer to this source in the following.

- ⁴⁸ von Braunmühl 1998
- ⁴⁹ Federal Ministry for Family Affairs, Senior Citizens, Women and Youth 1998, p. 86
- ⁵⁰ Clingius 1687, quoted after Hattenhauer 1997, p. 241
- ⁵¹ Hattenhauer 1997, p. 242
- ⁵² Hattenhauer 1997, p. 243
- ⁵³ The historical development of age limits for voting rights in particular was described in detail by Groß-Bölting in 1993.
- ⁵⁴ Hattenhauer 1997, p. 243f.
- ⁵⁵ The following explanations follow the 1997 diploma thesis of political scientist Franziska Törring in a highly abbreviated form.
- ⁵⁶ Törring 1997, p. 7f.
- ⁵⁷ *ibid.*, p. 9
- ⁵⁸ Another exception are so-called foreigners and people who have been denied the right to vote by court order - i.e. after actual individual examination.
- ⁵⁹ Scientific Services of the German Bundestag 1995, p. 4
- ⁶⁰ *ibid.*, p. 3
- ⁶¹ Scientific Services of the German Bundestag 1995, p. 9
- ⁶² see footnote 60
- ⁶³ In the USA, voting machines are also in use; in Germany, the Federal Election Act also provides for "voting machines" (§ 35 Voting with Voting Machines). However, these are hardly used in practice, since their use is opposed by high acquisition, storage, transport and maintenance costs (Schreiber 1998, p. 475).
- ⁶⁴ von Braunmühl, in: www.kraetzae.de/2wekki.htm, abridged
- ⁶⁵ Törring 1997, p. 14
- ⁶⁶ Schreiber 1998, p. 102f.
- ⁶⁷ For the sake of completeness, it should be noted that this limit has only been 18 since 1972, and in other EU countries other values apply in some cases, for example the completion of the 21st or 25th year of age.
- ⁶⁸ cf. Roellecke 1996
- ⁶⁹ Holt 1978
- ⁷⁰ von Braunmühl 1992
- ⁷¹ Federal Ministry for Family Affairs, Senior Citizens, Women and Youth 1998a, p. 174
- ⁷² quoted after Merk 1995
- ⁷³ Steffani 1999a, p. 791
- ⁷⁴ cf. Frädriich, Jerger-Bachmann 1995; Palentien, Hurrelmann 1997; Frowerk, Sombetzki, Stiftung Mitarbeit 1999; Bruner, Winklhofer, Zinser 2001
- ⁷⁵ see also: Special issue on the critique of parliamentary democracy in: Grassroots Revolution 1994
- ⁷⁶ Hattenhauer 1997; Löw 1998; Peschel-Gutzeit 1997, 1999, 1999a; Steffani 1999
- ⁷⁷ Press release "Allgemeines Wahlrecht e.V.", Munich, 9.4.1997
- ⁷⁸ Pechstein 1991; Schreiber 1998, 1999; Zivier 1999, Wassermann 1999
- ⁷⁹ Children's Commission of the German Bundestag 1996, p. 39
- ⁸⁰ Voting system in which a portion of the electorate is entitled to multiple votes.
- ⁸¹ Schreiber 1998, p. 240
- ⁸² On rejection, see Pechstein 1991, Post 1996.
- ⁸³ Löw 1998
- ⁸⁴ Peschel-Gutzeit 1999, p. 561
- ⁸⁵ Hattenhauer 1997, p. 255
- ⁸⁶ Löw 1998
- ⁸⁷ It should be added: and short-term.
- ⁸⁸ Offe 1994, p. 5

- ⁸⁹ Löw 1998
- ⁹⁰ Schreiber 1998, p. 240; he elaborates on this idea in his most recent work (Schreiber 1999).
- ⁹¹ *ibid.*, p. 466f.
- ⁹² by Münch 1995
- ⁹³ Peschel-Gutzeit 1999, p. 562
- ⁹⁴ Hattenhauer 1997, p. 256
- ⁹⁵ Hattenhauer 1997, p. 255
- ⁹⁶ *ibid.*, p. 254
- ⁹⁷ Steffani 1999a, p. 792
- ⁹⁸ Peschel-Gutzeit 1999, p. 562
- ⁹⁹ Hattenhauer has been familiar with the proposal at least since his participation in the 1996 hearing of the Children's Commission in Bonn (German Bundestag 1996), Peschel-Gutzeit knows it from personal contacts with the children's rights group K.R.Ä.T.Z.Ä.
- ¹⁰⁰ cf. Offe 1994; Zivier 1999
- ¹⁰¹ Hurrelmann 1997
- ¹⁰² For example, motion of the Bündnis 90/Die Grünen parliamentary group on amending the law on elections to the House of Representatives and district councils (State Election Act), Berlin House of Representatives, printed matter 15/297 (dated 12. 3. 2002) -Party program of the PDS for the 1998 Bundestag elections, bill of the PDS parliamentary group in the Bundestag dated 9. 6. 1999 - The SPD has already lowered the voting age for local elections to 16 in some federal states.
- ¹⁰³ for example Knödler 1996
- ¹⁰⁴ Schreiber 1998, p. 239
- ¹⁰⁵ Hurrelmann 1997, p. 287
- ¹⁰⁶ See also the thesis by Bücheler, 1998.
- ¹⁰⁷ Roellecke 1996
- ¹⁰⁸ In a letter to the Catholic Young Community Würzburg, 4.8.1997
- ¹⁰⁹ Ziolko (CDU) in the Berlin House of Representatives, 10.4.1997, plenary protocol 13/26
- ¹¹⁰ With about 700,000 to 800,000 young people per cohort and 74 million eligible voters over the age of 18.
- ¹¹¹ von Braunmühl 1998; children's rights group K.R.Ä.T.Z.Ä.; von Schoenebeck 1990 (on von Schoenebeck, however, the essential criticism in von Braunmühl 1997).
- ¹¹² see p. 145
- ¹¹³ Other conditions that do not belong to the subject at hand, such as membership of the national people, are of course not affected by this abbreviated formulation.
- ¹¹⁴ First half-sentence; the second half-sentence regulates the passive voting age, see Chapter 7.
- ¹¹⁵ Information from the Federal Statistical Office for 1997.
- ¹¹⁶ The population is 82 million, but only Germans are eligible to vote.
- ¹¹⁷ Dürig 1998, p. XVIf.
- ¹¹⁸ Dürig 1998, p. XX, emphasis in original
- ¹¹⁹ In my opinion, the condition of being German could also be dropped. It would suffice to have one's center of life here, i.e. to be affected by political decisions (cf. Schreiber 1999).
- ¹²⁰ Hunter/Welz 1998, p.249
- ¹²¹ In the U.S., all over-18s count as eligible to vote, regardless of whether they have registered.
- ¹²² Schreiber 1998, p. 88
- ¹²³ Information from the Berlin State Office for Statistics
- ¹²⁴ Schreiber 1998, p. 480
- ¹²⁵ Schreiber 1998, p.486

¹²⁶ The law also treats "illiterate" people as eligible to vote, although poor political judgment may be presumed in their case as well.

¹²⁷ Penal Code §§ 107 and 108.

¹²⁸ The effects of the possibilities of the Internet in conducting elections are not considered here; see Schreiber, 1999, p. 355.

¹²⁹ If an election is held every two years, with an annual birth rate of 0.6% to 1% (Federal Statistical Office), this only affects a maximum of 2% of voters on average per election.

¹³⁰ Shell 12th Youth Study 1997

¹³¹ 11th Children and Youth Report of the Federal Government 2002, p. 73.

¹³² Palentien 1997, p. 296

¹³³ Wilk/Wintersberger 1996, p. 34f.

¹³⁴ This is conceivably similar to the campaign on the occasion of the introduction of long-term care insurance, which also affected relatively broad sections of the population, who also naturally have a disproportionately high average number of difficulties with change.

¹³⁵ It must be understood that the media are financially dependent on advertising - a problem that already exists today. Business can thus influence the political orientation of publishers or broadcasters. Fighting against this effect is a constant task of political journalism.

¹³⁶ Beck 1999

¹³⁷ See also the reference to voting machines, which are also permitted in principle in Germany and which in the USA help those people who, because of their reading difficulties, were previously excluded from the right to vote with the help of reading ability tests (literacy tests), which have since been banned. (Jäger/Welz 1998, p. 248). In addition, there is the possibility of calling in helpers.

¹³⁸ Wilk/Wintersberger 1996, p. 37

¹³⁹ cf. Hengst 1996

¹⁴⁰ It would be up to childhood and adolescence research to substantiate such estimates.

¹⁴¹ Holt 1978, p. 119

¹⁴² CHILDREN'S rEsEARcE

¹⁴³ Merk 1995

¹⁴⁴ Although a legal phrase, this formulation was taken as a joke by child rights activists, since children and adolescents are also part of the people and the court does not have their legitimacy.

¹⁴⁵ § Section 93(3) (BVerfGG) reads as follows: If the constitutional complaint is directed - against a law or against another sovereign act against which there is no legal recourse, it can only be lodged within one year. - K.R.Ä.T.Z.Ä. documents all important texts on the Internet: www.kraetzae.de

¹⁴⁶ Press release of K.R.Ä.T.Z.Ä. from 29.1.1996

¹⁴⁷ Notice of opposition by Peter Merk, attorney-at-law, dated 17.11.1998

¹⁴⁸ "Permanent Practice of the German Bundestag since the 1st Electoral Period," Bundestag Printed Paper 14/1560, p. 1.

¹⁴⁹ Election review complaint pursuant to § 48 BVerfGG of 18.11.1999

¹⁵⁰ File number 2 BvC 2/99

¹⁵¹ BVerfGE 28, 220, <225>; 36, 139 <141>

¹⁵² www.kraetzae.de/3wkurt.htm

¹⁵³ The high point was K.R.Ä.T.Z.Ä.'s press conference on the occasion of the filing of the constitutional complaint in 1995, which was attended by seven television stations and over 60 journalists, as well as a 45-minute film on public radio ("Menschen hautnah: KRÄTZÄ", 23.4.1998, WDR and repeats on other stations).

¹⁵⁴ www.ich-will-waehlen.de

¹⁵⁵ We require a simple universal criterion for voting: Citizenship and sufficient interest to register and then vote on Election Day. (ACS - www.brown.edu/Students/Association_for_Childrens_Suffrage)

¹⁵⁶ Beck 1997, p. 52